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Monday
February 11, 1985

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Biologics
Food and Drug Administration

Customs Duties and Inspection
Customs Service

Endangered and Threatened Species
Fish and Wildlife Service

Hazardous Waste
Environmental Protection Agency

Marketing Agreements
Agricultural Marketing Service

Medical Research
Public Health Service

Motor Vehicle Safety
Federal Highway Traffic Safety Administration

National Banks
Comptroller of Currency

Nuclear Materials
Nuclear Regulatory Commission

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

CONTINUED INSIDE

Selected Subjects

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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.

Organization and Functions (Government Agencies)
Customs Service

Postal Service
Postal Service

Quarantine
Animal and Plant Health Inspection Service

Radio
Federal Communications Commission

Supplemental Security Income
Social Security Administration

Television
Federal Communications Commission

Contents

Federal Register
Vol. 50, No. 28
Monday, February 11, 1985

ACTION
NOTICES
Meetings:
5651 National Voluntary Service Advisory Council

Agricultural Marketing Service
PROPOSED RULES
5593 Vegetables grown in Texas; hearing

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service.

Animal and Plant Health Inspection Service
RULES
Livestock and poultry quarantine:
5547 Brucellosis; interim

Arts and Humanities, National Foundation
NOTICES
Meetings:
5702 Expansion Arts Advisory Panel
5702 Music Advisory Panel; amendment
5702 Theater Advisory Panel

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
5651 Utah

Coast Guard
RULES
Anchorage regulations:
5580 Puerto Rico; correction
NOTICES
5722 International Convention on Load Lines exemption; Crowley Maritime Corp.
Meetings:
5722 Towing Safety Advisory Committee

Commerce Department
See Economic Development Administration; Foreign-Trade Zones Board; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Technical Information Service; National Telecommunications and Information Administration.

Comptroller of Currency
RULES
National banks:
5567 Corporate activities; fees for processing filings

Customs Service
PROPOSED RULES
Country of origin marking:
5629 Imported nuts, coffee beans and similar agricultural products
Organization and functions; field organization, ports of entry, etc.:
5628 Chicago, IL

Defense Department
See Engineers Corps

Economic Development Administration
NOTICES
Grants; availability, etc.:
5651 Economic development assistance programs; availability of funds; correction

Education Department
NOTICES
5658 Agency information collection activities under OMB review

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
Grant awards:
5658 Battelle Columbus Laboratories

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
5657 Chena River, Fairbanks, AK

Environmental Protection Agency
RULES
Air quality implementation plans; delayed compliance orders:
5582 Pennsylvania
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
5630 Missouri
Air quality planning purposes; designation of areas:
5632 Illinois
Hazardous waste:
5637 Identification and listing; sludge from primary wastewater treatment in petroleum refining industry; data availability
NOTICES
5671 Agency information collection activities under OMB review
Meetings:
5672 Science Advisory Board
Toxic and hazardous substances control:
5671 Confidential information and data transfer to contractors (SYCOM, Inc., et al.)

Equal Employment Opportunity Commission
NOTICES
5672 Privacy Act; systems of records

Federal Aviation Administration
RULES
Airworthiness directives:
5568 Airbus Industrie
5569 Boeing
5570 British Aerospace
PROPOSED RULES
Airworthiness directives:
5625 Boeing

5626 British Aerospace
5627 McDonnell Douglas

Federal Communications Commission
RULES
Common carrier services:
5583 Public land mobile service; license applications; use of random selection or lotteries; reconsideration; correction
Radio and television broadcasting:
5583 Elimination of unnecessary broadcast regulation
Radio services, special:
5590 Aviation and maritime services; restricted radiotelephone operator permits
PROPOSED RULES
Common carrier services:
5644 MTS rates and rate structure plans; guidelines; extension of time
Radio services, special:
5644 Amateur service; operator examinations administered by volunteers
NOTICES
5675, 5676 Agency information collection activities under OMB review (3 documents)
Common carrier services:
5681 MTS and WATS market structure, etc.; correction
Hearings, etc.:
5676 Butte Creek Communications Co. et al.
5677 Harris, Susan, et al.
5678 Hi Band Broadcasting Co. et. al.
5679 Hughes, John R., et al.
5677 MATS et al.
5681 Offshore Broadcasting et al.
5683 Powley, John R., et al.
5683 South Rowan Broadcasting Co., Inc., et al.
5678 WHIS Unlimited, Inc., et al.
5730 Meetings; Sunshine Act (2 documents)

Federal Emergency Management Agency
NOTICES
5684 Privacy Act; systems of records

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
5662 Public Service Co. of New Mexico et al.
Hearings, etc.:
5659 Columbia Gas Transmission Corp.
5660 Houston Pipe Line Co. et al.
5659 Jakes Branch Gas Co.
5660 Kentucky Hydro Associates
5660 Mid Louisiana Gas Co.
5661 Northwest Pipeline Corp.
5661 Panhandle Eastern Pipe Line Co. et al.
5661 Penn-York Energy Corp.
5659 Pensacola, FL, et al.
5730 Meetings; Sunshine Act
Natural gas certificate filings:
5664 Colorado Interstate Gas Co. et al.
5668 Columbia Gas Transmission Corp. et al.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
5663 Prince George's County, MD

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
5723 Los Angeles County, CA

Federal Home Loan Bank Board
NOTICES
Conservator appointment:
5685 Alliance Federal Savings & Loan Association, Kenner, LA

Federal Reserve System
NOTICES
Bank holding Company applications, etc.:
5685 First Guthrie Bancshares, Inc., et al.
5685 Pacific Regency Bancorp
5685 SouthTrust Corp. et al.
5732 Meetings; Sunshine Act

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
5647 Inyo brown towhee; comment period reopened
5647 Prickly-ash

Food and Drug Administration
RULES
Biological products:
5574 Anti-human globulin; additional standards
NOTICES
Biological products:
5686 Anti-human globulin, additional standards; guideline revoked

Foreign-Trade Zones Board
NOTICES
Applications, etc.:
5653 New York

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service; Social Security Administration.

Health Care Financing Administration
NOTICES
Medicaid:
5686 State plan amendments, reconsideration; hearings; Arkansas

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau.

International Trade Administration
NOTICES
Antidumping:
5654 Red raspberries from Canada; postponement
Countervailing duties:
5653 Cold-rolled carbon steel flat-rolled products from Korea
5654 Welded carbon steel pipes and tubes from Spain; termination

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
5689 Southern Pacific Transportation Co.
Railroad services abandonment:

5688 Burlington Northern Railroad Co.
5689 Staten Island Railroad Corp.

Labor Department
See Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Oil and gas leasing:
5687 Federal onshore oil and gas lease form; availability; revised
Withdrawal and reservation of lands:
5688 California; correction

Legal Services Corporation
NOTICES
Grant awards:
5702 Florida Justice Institute, Inc.

National Bureau of Standards
NOTICES
Laboratory Accreditation Program, National Voluntary:
5655 Quarterly report and status of programs

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
5646 Automatic safety brakes; petition denied
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
5723, 5724 Ford Motor Co. (2 documents)
5725 Olin Corp.
5725 U-Haul International
5726 Union City Body Co., Inc.

National Institutes of Health
PROPOSED RULES
National Library of Medicine programs. (**Editorial Note:** For a document on this subject see entry under Public Health Service.)

National Oceanic and Atmospheric Administration
NOTICES
Meetings
5656 Caribbean Fishery Management Council
5656 Gulf of Mexico Fishery Management Council
5656 Pacific Fishery Management Council
5656 Western Pacific Fishery Management Council

National Park Service
NOTICES
Environmental statements; availability, etc.:
5688 Sequoia-Kings Canyon National Parks, CA

National Technical Information Service
NOTICES
Patent licenses, exclusive:
5656 Energy Streams, Inc.
5656 Zoecon Corp.

National Telecommunications and Information Administration
NOTICES
5657 Domestic telecommunications industry, structure and regulation; comprehensive study; inquiry

Nuclear Regulatory Commission
RULES
Production and utilization facilities, domestic licensing:
5567 Hydrogen control requirements; correction
5548 Spent nuclear fuel determinations storage capacity available; adequacy determination
PROPOSED RULES
Production and utilization facilities domestic licensing:
5600 Decommissioning criteria for nuclear facilities

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
5689 Bryce Corp. et al.

Postal Rate Commission
NOTICES
Complaints filed:
5703 Advo-System, Inc.

Postal Service
RULES
Domestic Mail Manual:
5580 Miscellaneous amendments
5581 Solicitations in guise of bills, invoices, or statements of accounts

Public Health Service
PROPOSED RULES
5638 National Library of Medicine programs

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
5688 Hungry Horse Project, Montana; withdrawn

Research and Special Programs Administration
NOTICES
Hazardous materials:
5726, 5727 Applications; exemptions, renewals, etc. (2 documents)
Hazardous materials; inconsistency rulings, etc.:
5726 New York City, NY; conference extension of time; correction

Securities and Exchange Commission
NOTICES
Applications, etc.:
5703 Appalachian Power Co.
5704 Citicorp
5705 Transok, Inc.
5705 Western Union Telegraph Co.
Self-regulatory organizations; proposed rule changes:
5708 New York Stock Exchange, Inc.
Self-regulatory organizations; unlisted trading privileges:
5706 Boston Stock Exchange
5707 Cincinnati Stock Exchange
5708 Midwest Stock Exchange
5715 Pacific Stock Exchange
5714 Philadelphia Stock Exchange

Small Business Administration
NOTICES
Applications, etc.:
5721 Losco Investment & Finance Corp.
5721 Monsey Capital Corp.
Authority delegations:
5721 Associate Deputy Administrator for Management and Administration et al.; ratification
Disaster loan areas:
5720 Virginia
License surrenders:
5720 Glover Capital Corp.
Loan programs:
5715 Secondary participation guaranty and certification agreement (SBA Form 1086)

Social Security Administration
RULES
Supplemental security income:
5573 AIDS; impairments listing; interim
5571 Eligibility; earned income tax credits

State Department
NOTICES
Committees; establishment, renewals, terminations, etc.:
5722 American Private Sector Overseas Security Advisory Council
Meetings:
5722 Fine Arts Committee

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration.

Treasury Department
See also Comptroller of Currency; Customs Service.
NOTICES
5728 Agency information collection activities under OMB review

Veterans Administration
NOTICES
5728 Agency information collection activities under OMB review
Meetings:
5729 Cooperative Studies Evaluation Committee

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

978 5593

9 CFR

78 5547

10 CFR

1 5548
50 5567
53 5548

Proposed Rules:

30 5600
40 5600
50 5600
51 5600
70 5600
72 5600

12 CFR

5 5567

14 CFR

39 (3 documents) 5568–5570

Proposed Rules:

39 (3 documents) 5625–5627

19 CFR

Proposed Rules:

101 5628
134 5629

20 CFR

416 (2 documents) 5571, 5573

21 CFR

610 5574
660 5574

33 CFR

110 5580

39 CFR

111 (2 documents) 5580, 5581

40 CFR

65 5582

Proposed Rules:

52 5630
81 5632
261 5637

42 CFR

Proposed Rules:

4 5638
59a 5638
63 5638
64 5638

47 CFR

22 5583
73 5583
81 5590
83 5590
87 5590

Proposed Rules:

Ch. I 5644
97 5644

49 CFR

Proposed Rules:

571 5646

50 CFR

Proposed Rules:

17 (2 documents) 5647

Rules and Regulations

Federal Register
Vol. 50, No. 28
Monday, February 11, 1985

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

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-005]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Kansas from Class B to Class A. This action is necessary because it has been determined that this State meets the standards for Class A status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the State of Kansas.

DATES: Effective date of the interim rule is February 11, 1985. Written comments must be received on or before April 12, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the State of Kansas from Class B to Class A.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Kansas was classified as a Class B State. It had been necessary to classify this State as Class B rather than Class A because of the herd infection rate and the MCI reactor prevalence rate. To attain and maintain Class A status, a State or Area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 2.5 herds per 1,000 (0.25 percent) if the State has more than 10,000 herds, and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 1,000 cattle tested (0.10 percent). A review of brucellosis program records establishes that the State of Kansas, which has more than 10,000 herds, should be changed to Class A since this State now meets the criteria for classification as Class A.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Kansas reduces certain testing and other requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary

Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Kansas.

Further, pursuant to the adminstrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

§ 78.20 [Amended]

1. Section 78.20(b) is amended by adding "Kansas," immediately before "Montana".

2. In § 78.20(c), "Kansas," is removed.

Authority: Secs. 4, 5, and 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 6th day of February, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–3322 Filed 2–8–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1 and 53

Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to establish procedures and criteria for determining whether a person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity. This determination is necessary before the Department of Energy may enter into contractual arrangements with the person generating or owning spent nuclear fuel to provide interim Federal storage capacity for limited amounts of spent nuclear fuel. The rule is necessary to meet NRC responsibilities under sections 135 (b) and (g) of the Nuclear Waste Policy Act of 1982.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: D.R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 443–7878.

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Responses to Public Comments on the Proposed Rule
III. Section-by-Section Revisions
IV. The Final Rule
V. Other Requirements
VI. Amendatory Text

I. Background

The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425, January 7, 1983, 96 Stat. 2201 *et seq.*, 42 U.S.C. 10101 *et seq.*) establishes a comprehensive framework for the disposal of spent nuclear fuel (SNF) and high-level radioactive waste (HLW) generated by domestic civilian nuclear power reactors.

Subtitle B of Title I of the Act establishes an interim program for the storage of spent nuclear fuel while the repository for ultimate disposal is selected and developed. The primary responsibility for providing interim storage of spent nuclear fuel rests with the persons owning and operating civilian nuclear power reactors. This responsibility is to be implemented through the effective use of existing storage facilities at the reactor sites and by the timely addition of new on-site storage capacity "where practical." The Federal Government has the responsibility to encourage and expedite the provision of interim storage capacity by the reactor owners. In addition, the Federal Government has the responsibility to provide up to 1900 metric tons of storage capacity for spent nuclear fuel from reactors that cannot reasonably provide adequate storage capacity on site.

Section 135(b) of the Act provides that the Department of Energy shall offer to enter into a contract under section 136(a) with a person who owns or generates spent nuclear fuel, that would provide for Federal ownership, transport, and storage of the spent fuel, but only if the Commission makes two affirmative determinations:

1. The person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at the site of any other civilian nuclear power reactor operated by that person, when needed to ensure the continued orderly operation of the reactor; and

2. The person generating or owning spent nuclear fuel is "diligently pursuing licensed alternatives to the use of Federal storage capacity" for the storage of spent fuel expected to be generated in the future.

Section 135(g) directs the Commission to establish, by rule, criteria and procedures for making these determinations, and provides the following guidance:

1. The criteria must ensure the maintenance of a full core reserve storage capability at the reactor site, unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of the reactor; and

2. The criteria must identify the feasibility of reasonably providing adequate spent fuel storage capacity, taking into account technical, economic, regulatory, and public health and safety factors, through the use of—

a. Expansion of existing storage facilities, including high-density fuel storage racks or fuel rod compaction;

b. Transshipment of spent nuclear fuel to the site of another civilian nuclear power reactor within the same utility system;

c. Construction of new or additional spent nuclear fuel storage facilities at the site of any civilian nuclear power reactor operated by such person;

d. Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; or

e. Such other technologies as may be approved by the Commission.

On April 29, 1983, 48 FR 19382, the Commission published a proposed rule establishing the criteria and procedures for determining the adequacy of available spent nuclear fuel storage capacity.

The proposed rule would have required the person making the request for a Commission determination to provide specified information on spent

fuel storage capacity and need, the feasibility of storage alternatives, and evidence that licensed storage alternatives were being diligently pursued.

The criteria for making the determination on the ability of the person to reasonably provide adequate storage capacity included consideration of any technical, economic, regulatory, and public health and safety constraints on the implementation of specified storage alternatives. Examples were also provided of the specific constraints that would be considered in making the Commission determination.

In order to determine whether the person making the request was diligently pursuing licensed storage alternatives, the proposed rule required Commission consideration of whether the person has initiated timely actions either to provide the necessary storage capacity, or to seriously investigate the feasibility of providing the necessary storage capacity.

Section 135(g) of the Act requires the Commission's criteria to ensure the maintenance of full core reserve storage capability at the site of the reactor unless the Commission determines that such capability is not necessary for the continued orderly operation of the reactor. While a full core reserve capability is not an NRC licensing or safety requirement, maintenance of full core reserve would enhance safety to some extent, and would also be needed to prevent extended reactor outages in the event a core must be discharged in order to inspect the reactor pressure vessel and perform other routine and unscheduled maintenance operations. Although a reactor can be quickly and safely shut down without a full core reserve storage capability, if the core had to be discharged the reactor would have to remain shut down while arrangements for shipping and storage were made and executed. During this time, the utility would have to purchase supplemental power at substantial additional cost to its customers, which would not represent orderly operation of the reactor. The proposed rule contained a generic finding that, for the purposes of a determination under this part, full core reserve is necessary for the orderly operation of the reactor.

The proposed rule did not provide an opportunity for public comment, either on the submission of a request for a determination, or on the Executive Director for Operations' (EDO) initial determination. However, Commissioner Asselstine specifically requested public comment on whether a short public comment period should accompany a request for a determination.

The proposed rule placed responsibility for the initial determination on the EDO, or his or her designee. This initial determination could be reviewed by the Commission at its discretion. No right of appeal of the EDO's decision was provided.

Persons with an immediate need for a determination could submit a request upon publication of the proposed rule in order to allow the staff to begin consideration of the request. However, the formal date of receipt of the request would be deemed to be the effective date of the final rule. No such requests have been submitted.

II. Responses to Public Comments on the Proposed Rule

A total of thirty-three letters of comment were received from State governments, public interest groups, electric utilities, architect-engineers, special interest groups, the Department of Energy, and individual members of the public. The comments addressed a wide range of issues and have been placed in the following categories:

1. Public Participation;
2. Commission Involvement;
3. Limitations on the Time of Filing;
4. Nature of the Determination;
5. Contents of a Request;
6. Full Core Reserve;
7. Storage Alternatives;
8. Criteria on Diligence;
9. Criteria on Feasibility;
10. NEPA; and
11. Miscellaneous.

1. Public Participation

The proposed rule contained no provision for public comment on individual requests for a Commission determination. However, Commissioner Asselstine specifically requested comments on this issue, and several commenters addressed it, both pro and con. Those in support of a public comment provision cited the Commission's need for a complete and accurate record on which to base a decision and the essential fairness of extending an opportunity to comment to those affected by a Commission determination. Public comment would help to ensure that information is brought to the Commission's attention that might not otherwise be presented if the Commission relied exclusively on the utility requests for the determination. Several commenters also noted that the denial of an opportunity for public comment was not in keeping with the spirit of the consultation and concurrence established between the Federal government and the States in the Nuclear Waste Policy Act of 1982. One commenter advocated public comment not only on the request for a determination, but also on the NRC's initial determination.

The commenters opposed to a public comment provision felt that it would involve unnecessary delay, paperwork, and the expenditure of staff resources. In addition, these commenters did not believe that public comment would be appropriate because the Commission determination will be based solely on technical findings, would have no direct environmental impact, is merely the first step in a contractual process, and does not involve a license. Finally, one commenter cautioned that the solicitation of public comments would imply an obligation for the Commission to specifically respond to these comments.

After consideration of these comments, the Commission has decided to provide for a 30-day public comment period in the interest of obtaining as much information as possible on an individual request. Although the rule requires that sufficient and accurate information be submitted by the person making a request for a determination, a more complete understanding of the situation may be generated by providing an opportunity for the presentation of other perspectives. Any resulting increase in the staff resources expended on a determination will be outweighed by furthering the objective of obtaining more complete information on the request. Therefore, § 53.11(c) has been revised to provide an opportunity for a 30-day public comment period. Although the Commission is interested in obtaining public comment, the solicitation of public comments on a request for a determination is an optional procedure that is not required by either the Atomic Energy Act or the Nuclear Waste Policy Act (NWPA). Consequently, a detailed comment analysis need not be prepared. The Commission will consider all comments in making its determination, and will address any substantial comments received in the context of the initial determination.

2. Commission Involvement

As did the proposed rule, the final rule provides that the initial determination on a request shall be made by the Executive Director for Operations (EDO), or his or her designee. This initial determination is subject to Commission review at its discretion. The final rule does not provide an opportunity for a hearing in connection with a request for a Commission determination, nor does it permit a person to petition the Commission for

review of the EDO's initial determination. The basis for not providing a hearing or a petition is that the NWPA does not require such procedures and the determination is not a "proceeding . . . for the granting, suspending, revoking, or amending of any license or construction permit or application to transfer control . . . ," pursuant to section 189a. of the Atomic Energy Act. Numerous comments were submitted on the Commission's delegation of responsibility for an initial determination to the EDO, on the absence of hearing and petition opportunities, and requesting clarification on the type of license amendments, if any, which would be required for a licensee to transfer spent fuel to DOE after an affirmative Commission determination on a request.

A large group of commenters questioned the lack of opportunity to petition the Commission for review of the staff's initial determination. These commenters argued that the unavailability of an opportunity for petition would be contrary to well-informed decision making and to the formation of wise public policy. According to this group, an opportunity to petition the Commission for review would ensure the integrity of the decision making process, while not interfering with decisions which were legitimately defensible. These commenters emphasized the fact that, although technical issues would be considered in making the determination, the decision is essentially a matter of judgement and a policy determination. In addition, they argued that the policy nature of the decision should require the Commission itself, rather than the staff, to make the final determination. One commenter did not believe the Commission should delegate the determination at all. In this commenter's opinion, delegation does not appropriately reflect the specific role that the Congress designed for the Commission in the formulation of nuclear waste policy.

Other commenters, primarily those who might be requesting a Commission determination, viewed the determination process as the first step in what is essentially a contractual process. Therefore, it would not be appropriate to provide an opportunity to anyone outside the contractual process to petition the Commission for review. However, the person requesting the determination should have the opportunity to appeal a negative determination, and to benefit from Commission review before the determination is a final agency action.

In addition to comments on the opportunity to petition, many of the public interest group and State government commenters raised concerns about the potential impacts of spent fuel transfer, transportation, and away-from-reactor (AFR) storage that might eventually result from an affirmative Commission determination. These potential onsite and offsite impacts led these commenters to request a public hearing on a determination. In addition, because an affirmative determination could lead to alteration of the facility, one commenter argued that the determination process could reasonably be construed as a proceeding for amending a license, and therefore would require a hearing under section 189a of the Atomic Energy Act. This commenter requested clarification on whether a determination request would be a proceeding to amend a license, and if not, what license amendments would be required before any transfer of fuel could take place pursuant to an affirmative determination. Another commenter recommended that there be a mandatory hearing before any transfer of spent fuel occurs.

In response to these comments, the Commission believes that a fuller explanation is warranted of the significance of its Part 53 determination in relation to the Federal interim storage program under the Nuclear Waste Policy Act. The purpose of a determination under Part 53 is to provide a basis for contract negotiations between the Secretary of the Department of Energy and the person owning or generating the spent nuclear fuel for which the determination is sought. It is simply a determination of a person's eligibility for Federal interim storage and, as such, will assist the Secretary in planning and seeking the necessary approval to provide such storage at one or more sites. An affirmative determination under Part 53 does not relieve either the licensee or the Secretary from complying with all applicable Commission regulations and licensing requirements.

The Nuclear Waste Policy Act does not require any particular procedures for a Commission determination of inadequate spent fuel storage capacity under section 135(b) of that Act. Rather, section 135(g) directs the Commission to propose procedures and criteria for making such a determination, which the Commission has done in proposed Part 53. A Commission determination under Part 53 is not a "proceeding under [the Atomic Energy] Act for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control . . .," under section 189a. of the Atomic Energy Act. A Part 53 determination does not constitute a license or other form of authorization to alter the facility, amend the license conditions, or transfer the spent fuel.[1] Rather, it is a prerequisite to a contractual process, authorized in the Nuclear Waste Policy Act, that may lead to actions requiring a license under the Atomic Energy Act. Because a license is not involved, the Commission has concluded that an opportunity for a hearing on a Part 53 determination request is not required.[2]

Section 135(a) of the Waste Act directs the Secretary to provide not more than 1900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such capacity may be provided through one or more of three methods as the Secretary determines to be appropriate. First, the Secretary may use available capacity at one or more facilities owned by the Federal government of January 7, 1983 (the date of enactment of the NWPA). Second, the Secretary may acquire modular or mobile spent nuclear fuel storage equipment and provide it to a person generating or owning spent fuel, at the site of any civilian nuclear power reactor operated by that person or at any site owned by the Federal government on January 7, 1983. Third, the Secretary may construct storage capacity at any site of a civilian nuclear power reactor.

The first method, although not subject to licensing under the Atomic Energy Act and Section 202 of the Energy Reorganization Act, requires a Commission determination that the Secretary's use of available storage capacity at an existing Federally owned facility will adequately protect the public health and safety. The Commission will consider what

[1] The typical Part 50 operating license and the Commission's regulations in 10 CFR 30.41, 40.51, and 70.42 authorize a licensee to transfer spent fuel to an authorized recipient. The Department of Energy becomes an "authorized recipient" in these circumstances when it secures the necessary license or determination from the Commission, as provided in section 135(a) of the Nuclear Waste Policy Act of 1982, section 202 of the Energy Reorganization Act of 1974, and the Atomic Energy Act of 1954.

[2] Neither the Nuclear Waste Policy Act nor the Atomic Energy Act requires a hearing for a Part 53 determination. Congressman Ottinger's remarks concerning NRC hearings, made during the House floor debates, appear to have been made in consideration of the need for NRC licensing of facilities used for Federal interim storage of spent nuclear fuel and the corresponding opportunity for a hearing that Section 189a. Of the Atomic Energy Act provides. *See*, 128 Cong. Rec. H 8533 (daily ed. Nov 29, 1982), 128 Cong. Rec. H 8796–97 (daily ed. Dec. 2 1982).

procedures may be appropriate for making that determination in the event that the Secretary proposes to provide interim Federal storage capacity by that method.

The other two methods would be subject to licensing under the Atomic Energy Act and section 202 of the Energy Reorganization Act of 1974. Depending on the storage method proposed and the arrangements made, the required licensing actions could include a reactor license amendment under 10 CFR Part 50 or a license for an independent spent fuel storage installation under 10 CFR Part 72. An opportunity for a hearing would be provided in section 189a. of the Atomic Energy Act for such licensing actions. Admissible contentions concerning the substance of a Part 53 determination could be explored in that context.

In situations where DOE would utilize an AFR facility to store spent fuel that was a part of the Federal interim storage program, section 137(a) of the Nuclear Waste Policy Act requires DOE to comply with applicable NRC and Department of Transportation (DOT) regulations. The applicable Commission regulations are contained in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," (48 FR 35600, August 5, 1983). Under Part 71, DOE would be required to use a shipping cask that has received an NRC certificate of compliance certifying that the cask satisfies the relevant NRC safety criteria (10 CFR Part 71, Subpart E) and to obtain NRC approval of a quality assurance program designed to provide adequate confidence that the packaging system will perform satisfactorily (10 CFR Part 71, Subpart H). Section 71.97 of 10 CFR Part 71 would require DOE to provide advance notification to the government of any State where the spent fuel is shipped "to, through, or across the boundary of the State." Section 73.37 of the Commission's regulations establishes requirements for the physical protection of spent fuel while in transit. Additional assurance that any impacts from the transportation of spent fuel will be prevented or mitigated will be provided by DOE's obligation to comply with the DOT regulations contained in 49 CFR Parts 171 to 177. Furthermore, section 135 of the Nuclear Waste Policy Act makes extensive provision for the protection of public health and safety, and the environment, and for the full participation by State and Indian Tribal government in the AFR storage decision making process.

In addition to utilizing a Federal AFR facility or site, sections 135(a)(1) (B) and (C) of the Nuclear Waste Policy Act authorize DOE to store fuel enrolled in the Federal interim storage program at the site of a civilian nuclear power reactor. In providing storage capacity at the site of the civilian nuclear power reactor, section 135(a)(4) of the Nuclear Waste Policy Act requires DOE to comply with any applicable requirements for the licensing or authorization of the particular storage method used. Therefore, all NRC requirements for on-site spent fuel storage, including any hearing requirements, will apply to DOE actions in this area. Likewise, if a licensee seeks permission to implement an alternative to the Federal interim storage of spent fuel, NRC regulations will apply, including an opportunity for a hearing.

In summary, the existing legal framework provides adequate consideration of the potential impacts of spent fuel storage and transportation, including opportunities for public participation, whether in relation to DOE implementation of the Federal interim storage program, or the implementation of a specific spent fuel storage alternative by an NRC licensee. Therefore, the Commission does not believe it necessary to provide additional hearing or petition opportunities in connection with the determination of adequate capacity.

As a final point, although judgement will be involved in making the spent fuel capacity determination, the decision essentially involves an informed evaluation of whether a particular factual situation satisfies the criteria established in section 135(g) of the Nuclear Waste Policy Act, as implemented by the Commission in 10 CFR Part 53. As such, it is not a policy determination, and delegation of the initial decision to the NRC staff is appropriate. Delegation is not prohibited by the Nuclear Waste Policy Act, and section 209 of the Energy Reorganization Act permits the delegation of authority to the EDO.

3. Limitations of the Time of Filing

Many commenters from the electric utility industry expressed dissatisfaction with the provisions of proposed § 53.11(b) which control the timing of a request for a determination. Proposed § 53.11(b) required requests for a determination to be filed not longer than two years before the anticipated loss of full core reserve, and in any case, before June 30, 1989. Utility commenters stated that the prohibition of the filing of a request earlier than two-years before anticipated loss of full core reserve was unjustified and not conducive to effective utility and DOE planning. These commenters recommended that requests for a determination be entertained at any time that the need can be demonstrated, preferably earlier than 2 years in advance of the anticipated loss of full core reserve. Finally, these commenters noted that the combination of the 2-year filing time and the June 30, 1989 deadline would prevent utilities from obtaining interim storage if full core reserve would be lost after June 30, 1991. One commenter also suggested that in the event that Federal interim storage were fully committed and used, the Commission should provide for a suspension on the processing or acceptance for filing of requests. A few commenters also recommended that the June 30, 1989 deadline be eliminated in the event the 1998 completion date could not be met or, in the alternative, that the Commission extend the acceptance of requests beyond June 30, 1989 if the Commission determined that the first nuclear waste repository would not be fully operational by 1998.

One of the Commission's objectives in establishing the 2-year filing requirement was to provide DOE with sufficient time to plan for potential Federal storage needs. The 2-year period was selected on the basis of the normal refueling cycles for nuclear power plants, allowing at least one complete refueling cycle before loss of full core reserve. The Commission believed that this would be early enough to give DOE sufficient lead time for planning, but also late enough in the process for a utility's potential need for interim Federal storage to be established. The June 30, 1989 limitation on filing a request for a determination was established because of the January 1, 1990 limitation established in section 136(a) of the Nuclear Waste Policy Act on DOE contracts for the storage of spent fuel. In light of the fact that the Commission is given 6 months to make a determination after a request is filed, June 30, 1989 would be the last possible date that a request could be given a full 6-month review before DOE contracting authority expired.

After considering the public comments, the staff believes that the 2-year filing limitation may unnecessarily prevent the filing of requests for a determination for which adequate justification exists well in advance of 2 years before anticipated loss of full core reserve. The better practice would be to allow the filing of a request at any time that a need can be demonstrated subject to the June 30, 1989 filing deadline. It should also be emphasized that if a request for a determination is based on circumstances that are too remote and

speculative to allow an informed Commission determination, the Commission, under § 53.27, may deny the request.

Elimination of the 2-year filing limitation would allow those persons who, for unforseen reasons, cannot implement a planned spent fuel storage alternative to file a request for a determination at any time. Deletion of the 2-year filing limitation would also allow persons who might need Federal interim storage in or beyond 1992 to file a request before the June 30, 1989 filing deadline. The Commission did not intend to preclude anyone from establishing a need for Federal interim storage before the filing deadline. However, it should be noted that the longer the time period between the filing of a request and when Federal interim storage is actually needed, the more likely it is that other spent nuclear fuel storage alternatives will be available.

The June 30 1989 filing deadline has been retained. The Commission believes that, in most cases, persons needing Federal interim storage will be able to anticipate their need well in advance of that date. However, the final rule provides that an exception to this requirement may be granted if the request is likely to be processed before the DOE contract authority expires and the person making the request has shown good cause for the failure to file on time.

If a need exists for an expanded Federal interim storage program, the Congress would be the appropriate forum to address this issue. However, because it is possible that Federal interim storage may be fully committed before the January 1, 1990 deadline on DOE contracting authority, § 53.11(e) of the final rule provides that the Commission may suspend the processing or acceptance of requests in this eventuality.

4. Nature of the Determination

A number of commenters raised a variety of concerns on the nature of the Commission determination. The DOE recommended that the Commission place a 60-day time limit on an eligibility determination ot encourage the utility to enter into a contract with DOE in a timely manner. According to DOE, a signed contract is necessary to ensure that revenues will be available to cover the costs of the Federal interim storage program. A related concern of DOE is the provision in § 53.27(c) of the proposed rule which allows the Commission to attach conditions to an affirmative determination. The DOE recommended deletion of this provision in order to provide more certainty on the amount of interim Federal spent fuel storage capacity that will be required. However, a utility comment on the same provision recommended that the conditional determination be utilized to allow the Commission to find a utility eligible for Federal interim storage for a limited period of time and a limited amount of fuel until another alternative became available. This would give the utility access to Federal interim storage until another alternative could be implemented, assuming of course that the utility continued to make diligent, good faith efforts to implement other alternatives. According to this commenter, § 53.27(c) should be construed to allow for eligibility for Federal interim storage until the uncertainties related to the implementation of other alternatives are resolved.

A number of nuclear industry commenters suggested that the Commission determination should include coverage of emergencies in which a utility needed to transfer spent fuel to an AFR facility in order to repair accidental damage to a spent fuel pool. According to these commenters, Federal interim storage should be available for these types of emergency situations. On a related point, one commenter recommended that the Commission insert a provision into the final rule that would allow the Commission to grant exemptions to the regulations contained in 10 CFR Part 53 if the exemption was authorized by law and in the public interest. Other nuclear industry commenters recommended that the determination process should include coverage of situations where a utility was storing spent fuel offsite but would eventually need to transfer the fuel back to the reactor site. Most of these commenters stated that the spent fuel presently stored at AFR facilities should be included in the calculation of when full core reserve capability at a particular site would be depleted. One commenter expanded on this idea by recommending that even if the amount of spent fuel stored offsite would not deplete full core reserve capability when added to the fuel stored at the reactor, it would still be in the public interest to ship the offsite fuel directly to a Federal facility, rather than returning it to the reactor site.

A number of other concerns related to recommendations that the Commission clearly state in the final rule that an affirmative determination establishes eligibility for the Federal interim storage program; that the final rule should specify that an affirmative determination would only cover spent fuel that is five years or older; and that the final rule should restrict participation in the Federal interim storage program to utilities only, based on the fact that the purpose of the program was to prevent the shutdown of operating reactors.

While the Commission is sympathetic to the needs of DOE to ensure that funds are available to cover the costs of the storage program, the Commission does not believe that it is appropriate for the Commission to place a time limit on the duration of an eligibility determination for the sole purpose of encouraging utilities to enter into a contract with DOE. The Commission's primary responsibility under section 135(b) of the Nuclear Waste Policy Act is to determine whether a person filing a request satifies the statutory criteria for participation in the Federal interim storage program. It would not be appropriate for the Commission to dictat, when, and if, an affirmative determination should be utilized, except in those cases where the Commission had attached conditions to an affirmative determination. However, these conditions would be related to the satisfaction of the statutory criteria, and not to other purposes, such as encouraging a utility to contract with the DOE. Furthermore, it does seem possible, and appropriate, for DOE to establish a standard clause in its interim fuel storage contract that would require a utility to enter into the contract at some specified time in advance of the need-for-storage date specified in an affirmative Commission determination. As a final point, the Commission would note that, to the fullest extent practicable, an affirmative determination will issue in only those cases where a utility has no other recourse but Federal interim storage. Therefore, affirmative determinations should be a reliable guide to the amount of storage capacity necessary.

The provision for a conditional determination contained in § 53.27(c) of the proposed rule was designed to provide the Commission with the flexibility to tailor an affirmative determination to the particular facts of a request. The Commission reaffirms its need for this type of flexibility and has not deleted the provision as recommended by DOE. However, the Commission emphasizes that the consideration of any uncertainties regarding the implementation of an alternative to Federal interim storage is an integral part of the Commission review under section 135(b) of the Nuclear Waste Policy Act. This review requires a decision as to whether the uncertainties would make a particular

alternative infeasible. The mere existence of uncertainties, in and of themselves, would not necessarily result in an affirmative determination. Therefore, it would not be appropriate, as suggested by the utility commenter, for the Commission to issue an affirmative determination merely because uncertainties exist, leaving resolution of those uncertainties for a later date. The Commission's responsibility is to attempt to determine which of those uncertainties would render a particular alternative infeasible. However, in selected instances the Commission may use the provisions of § 53.27(c) to condition an affirmative determination on there being no change in the circumstances that render a particular alternative infeasible.

The Commission has not included any provision in the final rule for emergency situations related to the need to offload spent fuel to an away-from-reactor facility (AFR) in order to make repairs to a spent fuel pool. Although a Federal facility may ultimately be used to alleviate a particular utility's problem in this regard, the Commission does not believe that the Federal interim storage program was intended to address this problem. Rather, the intent was to provide a limited amount of storage where there is an unavoidable shortfall between the spent fuel generated and a utility's long-term program to meet its storage needs.

The Commission has added an exemption provision as § 53.6 of the final rule. Because many of the requirements of the rule are taken directly from the Nuclear Waste Policy Act of 1982, no exemptions can be given to their provisions. The exemption provision is, therefore, not expected to be put to much use. It is included to give the Commission the flexibility to implement the provisions of the Act in ways not now contemplated by the regulations in 10 CFR Part 53.

The Commission has revised the final rule to clarify that a utility may include, as a basis for its request for a determination, spent fuel currently stored at an AFR site which is eventually slated for return to the reactor site. Section 53.12(c)(5) of the final rule requires the submission of information on the amount and location of spent fuel stored offsite, and the anticipated duration of offsite storage. As intended by the proposed rule, a person may request a determination based on the full core reserve at a reactor site being depleted by the pending return of offsite spent fuel. If the criteria on feasibility and diligence are met, the resulting affirmative determination could then be used to allow the utility to contract with DOE for the fuel stored offsite. However, if the criterion on the loss of full core discharge capability would not be satisfied with the return of the offsite spent fuel, the Commission would deny the request for a determination.

The Commission has decided not to add a provision to the final rule specifying that the spent fuel covered by a Commission determination be 5 years old or older. The Commission's responsibilty under section 135(b) of the Nuclear Waste Policy Act is to determine if a person cannot reasonably provide adequate spent fuel storage capacity. Restrictions on the type of spent fuel accepted by DOE for Federal interim storage is more properly addressed in DOE contract provisions, or in the licensing or safety review of Federal interim storage capacity. The Commission regulation applicable to any Federal interim storage facility subject to licensing, 10 CFR Part 72, limits storage to spent fuel aged for at least one year. The particular storage method proposed by DOE could require longer decay.

The Commission has revised the final rule to permit the filing of a request, by a "person owning 'or' operating a civilian nuclear power reactor." Although the Nuclear Waste Policy Act used both this phrase and the phrase "person owning 'and' operating a civilian nuclear power plant," (emphasis added), several commenters suggested that the use of the disjunctive "or" was more appropriate, because there are cases where the owner of the spent fuel may not be the operator of the nuclear power reactor at which the spent fuel was generated. The Commission agrees and has revised the rule accordingly. As a final point, the Commission does not feel that it would be appropriate, or necessary, to specify that only utilities are eligible to make a request. Because the determination concerns the ability of the reactor owner or operator to provide additional storage capacity at the site, the reactor owner or operator would be the appropriate person to request a Commission determination and to supply the necessary information. Likewise, the Commission does not feel it is necessary to insert a provision in the final rule to the effect that an affirmative determination establishes eligibility for participation in the Federal interim storage program. This is explicitly provided in the statutory provisions and there is no need to state this in the rule.

5. Contents of a Request

A number of comments were received on the contents of a request required by proposed §§ 53.12 and 53.13. One State, while agreeing that the proposed rule accurately specified most of the information necessary for an informed Commission determination, recommended that the Commission change the order in which the information is requested in order to emphasize the legislative intent of the Nuclear Waste Policy Act. Specifically, the State requested that the Commission first request information on "what measures might reduce the need for Federal storage" and then request information on "how much fuel the utility wishes to transfer to Federal storage." Comment Letter No. 9, at 5. [3] According to the State, requesting the information in this order would emphasize that a heavy burden of proof rests on the utility to demonstrate that no other alternatives to Federal interim storage are available. The Commission assumes that this comment is directed towards the fact that proposed § 53.12 requests general data on a number of issues, including the amount of spent fuel for which Federal interim storage would be necessary, while proposed § 53.13 requests specific information on alternatives to Federal interim storage. In response, the Commission would note that the format of the proposed rule was selected as the clearest method for organizing the information that the Commission would need to make a determination. There was no intent to convey any particular attitude about the purpose or implementation of the Federal interim storage program. The Commission notes that the format of the proposed rule does focus on that aspect of the determination process, alternatives to Federal interim storage, of most concern to the State. Moreover, an affirmative determination will not be made unless the requestor demonstrates that alternatives to Federal interim storage cannot reasonably be provided in a timely manner. Also, it is equally logical to state the magnitude of need before addressing the lack of reasonable alternatives that might reduce the need. Accordingly, the Commission believes that reordering of the information required in §§ 53.12 and 53.13 is not required. However, the State also suggested a number of useful clarifications to the information

[3] Copies of the public comments on the proposed rule published April 29, 1983 (48 FR 19382) are available for inspection, or copying for a fee, at the NRC Public Document Room, 1717 H Street NW., Washington, D.C.

requested in § 53.12 regarding the operations which result in excess spent fuel over available storage capacity. These have been incorporated into the final rule.

Several industry commenters recommended deletion of § 53.12(c)(5)(ii) which requested information on the anticipated date of reactor shutdown if full core discharge capability is not maintained. These commenters noted that this provision would be inconsistent with § 53.30(b) which provided that the Commission ensure the maintenance of a full core reserve at the site of the civilian nuclear power reactor. The Commission agrees and has deleted § 53.12(c)(5)(ii) from the final rule. Other industry comments recommended deletion of the reference in § 53.12(c)(3) to the "location of spent nuclear fuel assemblies," because it could be misconstrued to mean the precise location of spent fuel assemblies within the spent fuel pool itself, rather than the location of assemblies in terms of various storage areas at the reactor site. The Commission agrees and has deleted any reference to "location" from § 53.12(c)(3). The required description of the type and capacity of fuel storage facilities requested in § 53.12(c)(1) will already provide the requisite information on location. A final industry comment on § 53.12 requested revision of § 53.12(c)(1) to read "The type and capacity of existing and planned spent nuclear fuel storage facilities at the reactor site for the next ten years and for the remainder of the license term, assuming a reasonable date for Federal ultimate disposal availability." Comment Letter No. 25, at 2. According to this commenter, the revision would reflect that accurate planning for spent fuel storage for a reactor, particularly for those whose operating life extends beyond the year 2005, is dependent on the expected availability of a permanent disposal site. While this may be true, the Commission does not believe it necessary to add this "assumption" to the final rule. Persons making a request may specify in § 53.12(c)(1) how their spent fuel storage plans are affected by the availability of the permanent repository.

Various industry commenters made a number of recommendations in regard to the specific information requested in § 53.13 on the feasibility of implementing spent fuel storage alternatives. These comments also affect § 53.30(a), which sets forth the criteria for making the determination on feasibility, and utilizes the information submitted under § 53.13(a). First, industry commenters objected to the use of the word "prevent" in § 53.13(a) of the proposed rule. This section requests information on "technical, economic, regulatory or public health and safety constraints that would 'prevent' the use of any of the alternatives set forth in paragraph (c) of this section." (Emphasis added.) Industry commenters suggested that "prevent" is inappropriate, and also inconsistent with section 135(b)(1)(A) of the Nuclear Waste Policy Act, which directs DOE to enter into contracts for spent fuel storage where adequate capacity "cannot 'reasonably' be provided." (Emphasis added.) Therefore, these commenters recommended substitution of a phrase such as "render unreasonable" or "render impracticable" for the word "prevent," to describe the effect of various constraints on the implementation of storage alternatives. The commenters pointed out that there may be circumstances that do not actually prevent the implementation of an alternative (in the sense of making it impossible), but may make implementation impractical or unreasonable. The Commission agrees that its rules should conform to the statutory standard. Accordingly, § 53.13(a) of the final rule has been revised to substitute the phrase "that would make the implementation of any of the alternatives unreasonable" for the phrase used in the proposed rule, "that would prevent the use of any of the alternatives . . . ." section 53.30(a) has also been revised to substitute the word "unreasonable" for the word "impractical."

Second, industry commenters objected to the use of the phrase "extraordinary costs to consumers" in § 53.13(a) and in § 53.30(a)(5). Section 53.30(a) of the proposed rule sets forth a number of factors that the Commission will consider in determining whether implementation of an alternative to Federal interim storage is unreasonable. The criterion is proposed § 53.30(a)(5) read:

> Extraordinary costs of implementation that are clearly unreasonable in view of the amount of additional storage capacity needed or the time for which additional capacity is needed.

The industry commenters argue that the legislative intent would be satisfied by simply using a "clearly unreasonable" standard, rather than also including the "extraordinary cost" consideration. Accordingly, they recommended substituting "clearly unreasonably" for "extraordinary" in § 53.13(a), and deleting "extraordinary costs" from § 53.30(a)(5). Furthermore, they recommended that the entire § 53.30(a)(5) standard be revised to allow consideration of "unreasonable costs which are due to the unit costs of additional spent fuel storage capacity being substantially higher than the costs of Federal interim storage." In addition, one industry commenter recommended that the industry should be required to submit information on the entire costs of providing the additional capacity necessary, the time for which the additional capacity is necessary and the period for recovery of costs, and comparative cost information. Finally, this commenter recommended that the final rule should invite the submission of any information, in addition to that specified, which is relevant to any of the criteria in § 53.30(a).

The Commission has retained the phrase "extraordinary costs" in § 53.13(a) and § 53.30(a)(5) of the final rule. Use of the "extraordinary costs" standard is necessary to reflect the Congressional intent that Federal interim storage should be utilized only in exceptional circumstances. However, the Commission has revised § 53.30(a)(5) to allow for consideration of not only extraordinary costs related to the "amount of additional storage capacity needed" or "the time for which additional storage capacity is needed," but also other extraordinary costs that are clearly unreasonable when compared with the costs of Federal interim storage. The Commission has added a provision to § 53.13(a) requiring the submittal of information on the costs of providing the necessary additional capacity and the time for which the capacity is needed. Section 53.12(c) has also been revised to provide for the submission of any information, in addition to that specified, the Commission should consider in making its determination.

The last comment received from the industry on the contents of the request required by § 53.13 concerns clarification of the information relating to legal and institutional impediments. Section 53.13(a) of the proposed rule required information on "local or State laws limiting or preventing the timely expansion or addition of storage capacity or transshipment." Several industry commenters recommended the addition of "state or local regulatory actions." One commenter recommended the addition of "preexisting contractual agreements."

Another suggested the addition of "Commitments made by a utility to a public service Commission or local commenters." This would reflect commitments on the storage of spent fuel made by a utility during the siting

and construction of a nuclear power plant that the utility feels bound to fulfill, "even though there may be only moral and not legal reasons to meet these obligations." Comment Letter No. 5, at 1.

In response to these comments, the Commission has revised § 53.13 to clarify that the information relating to State and local laws would include State and local regulatory actions and preexisting agreements. This would include specific commitments made by a utility to a local government or public service Commission. Section 53.30(a)(7) has been modified accordingly.

6. Full Core Reserve

Most of the comments submitted on full core reserve concerned the Commission's generic finding that, for purposes of a determination under Part 53, full core reserve is necessary for continued orderly operation of the reactor. At the outset, the Commission would like to respond to the few commenters who asked for a clarification of whether the generic finding in proposed § 53.30(b) requires a licensee to operate with a full core reserve. The generic finding contained in proposed § 53.30(b) was intended to relate solely to the question of when a request for a Commission determination is "ripe" for submission under Part 53. The submission of the request must be based on the anticipated loss of full core reserve. Otherwise, there would be no need on which to base a request. The generic finding does not require reactor licensees to maintain a full core reserve.

All of the industry commenters supported the Commission's generic finding that full core reserve is necessary for continued orderly operation of a reactor. However, several commenters from State governments and public interest groups disputed the Commission's authority to make this generic finding on full core reserve, arguing that the legislative history clearly required the Commission to make a determination of whether full core reserve was necessary for continued, orderly operation on a reactor-by-reactor basis. In support of this assertion, these commenters first cite the references in sections 135(b) and 135(g) of the Nuclear Waste Policy Act, which state that full core reserve shall be maintained at "the site of the civilian nuclear power reactor involved" unless the maintenance of this capability is not necessary for the continued orderly operation "of such reactor." These commenters further support their argument for a reactor-by-reactor determination by asserting that the need for full core reserve, and the consequences of operating without it, have been overstated. One commenter based its argument on the fact that the need for full core discharge capability is closely tied to the age of the reactor, with the probability of needing full core reserve capacity being relatively low for mature reactors. Another commenter asserted that the Commission has exaggerated the need for full core reserve by presuming that the provisions for Federal interim storage would apply to all power reactors, instead of only those most likely to require storage. This commenter argues that only a few utilities may need interim storage because of the finding in the Nuclear Waste Policy Act that utilities bear the primary responsibility for providing spent fuel storage, and because of the Act's mandate that the Commission encourage and expedite on-site storage. Therefore, the need for full core reserve should not be applied to all plants, but only to those with a realistic possibility of needing Federal interim storage. According to the commenter, this small class of reactors will lose full core reserve for only a limited period of time before another storage option is available. In summary, because the need for full core reserve is low, these commenters recommended a site-by-site determination, which considers the age of the reactor, the full core discharge experience of similar reactors, the cost of replacement power, and the anticipated life of the reactor. According to these commenters, the conclusion is strengthened by their critique of the estimates, contained in the proposed rule, of the length and costs of a forced reactor shutdown due to the absence of a full core reserve capacity. One commenter labeled DOE cost estimates cited in the proposed rule [4] "exaggerated and unsupported." Comment Letter No. 9, at 4. However, this commenter did not offer any data to support this assertion. Another commenter asserted that the analysis [5] which formed the basis for DOE estimates "does not reflect the cost of outages sustained from the actual loss of full-core reserve . . ." Comment Letter No. 11, at 5. On the other hand, two industry commenters criticized DOE estimates of time and cost as too low. These industry commenters stated that DOE estimates of 50–90 days of forced reactor shutdown due to the lack of full core reserve, may be much too short because of the time required to find additional storage space, obtain casks and government approvals, and ship the spent nuclear fuel.

An additional group of comments questioned the Commission's authority to make any finding on full core reserve, and discussed the advisability of making such a finding. A State government commenter asserted that the Commission is not authorized to make any finding on full core reserve based on the consideration of economics and prudent management, because NRC's sole responsibility is to protect the public health and safety. Therefore, maintenance of full core reserve as necessary for continued, orderly operation means necessary from a public health and safety viewpoint. A public interest group commenter recommended that the Commission defer a decision of full core reserve until a full and open discussion of this issue has taken place. In the meanwhile, utilities could place temporary storage racks in their cask loading area if their capacity is exhausted and there was a need for full core discharge. After the reactor was inspected or repaired, fuel could be transferred back to the reactor. This would allow utilities an additional three to four years of storage time. A State commenter suggested that the sources and costs of replacement power be part of the Commission consideration of the need for full core reserve.

Finally, a utility commenter recommended that the Commission allow for the maintenance of multiple full core reserve availability at multi-reactor sites and also noted that the proposed rule did not consider the use of storage space for components, defective fuel canisters, new fuel, and other fuel pool storage requirements that would reduce the amount of available storage space for spent fuel.

Contrary to the opinion of the commenter who stated the Commission does not have the authority to make any finding in relation to full core reserve for reasons of economics and prudent management, the Commission notes that section 135(b)(2) of the Nuclear Waste Policy Act authorizes the Commission to determine whether full core reserve is necessary for continued orderly operation of the reactor. The legislative history of this section reveals that this determination is not related to public health and safety, but rather to the economic consequences that would result from reactor shutdown. See 128 CONG. REC. S4281 (daily ed. April 29, 1982) (Statement of Sen. Simpson); 128 CONG. REC. H8584 (daily ed. November 30, 1982) (Statement of Rep. Broyhill).

Concerning the Commission's authority to make a generic finding on

[4] U.S. Department of Energy, Spent Fuel Storage Requirements (DOE/RL–82–1, 1982).

[5] M. Stoller, Full Core Reserve Study: A System Costing Analysis (1979).

full core reserve, the Commission acknowledges that various sections of the Nuclear Waste Policy Act refer to the need for that capacity at the reactor for which the determination is requested. Nevertheless, the Commission believes that this does not preclude it from making a reasonable generic finding that full core reserve is necessary for continued, orderly operation. The Commission's finding is based on the possibility that a reactor would be required to shut down and discharge its fuel, as well as the financial consequences that would flow from the unavailability of full core reserve. The Commission finds that even if the probability of needing full core reserve differs from reactor to reactor and may be low in some cases, the possibility that full core reserve would be needed, combined with the substantial costs that would be incurred if full core reserve were not available when needed, would preclude the Commission from determining that the "maintenance of such capability [full core reserve] is not necessary for the continued orderly operation of such reactor." Nuclear Waste Policy Act of 1982, section 135(b)(2). The Commission would also note that problems such as pipe cracking and steam generator repair raise the overall importance of maintaining full core reserve discharge capability. Estimates cited in a recent DOE study [6] indicate that if full core reserve is required and not available, an additional 50 to 90 days of reactor shutdown would be experienced. A 1979 study,[7] citing data developed by the Energy Information Administration, estimated that the cost of replacement power for a reactor that was shut down would range from $320,000 to $556,000 per day. Adjusting these estimates to 1982 average costs for coal, oil, and gas, a range of $360,000 to $650,000 per day is a reasonable estimate of the cost of replacement power for a 1000 Mwe nuclear plant at 60% capacity factor. Therefore, the potential exists for substantial costs resulting from the absence of full core reserve capacity. In addition to the potentially high costs of operating without full core reserve, one statistical analysis of full core removals from nuclear power plants indicates that a full core discharge would be expected to occur about once every six years at any given nuclear power plant, and could occur as often as once every three years.[8] The Commission's generic finding that full core reserve is necessary for continued, orderly operation of a nuclear power plant, solely for purposes of the 10 CFR Part 53 determination, allows the Commission to concentrate its staff resources on evaluating the critical issues of the feasibility of storage alternatives and the diligence of the person making the request in pursuing those alternatives, rather than speculating on whether full core reserve is necessary in an individual case. The anticipated loss of full core reserve discharge capability is one element of eligibility to file a request for a Commission determination under Part 53. In addition, the Part 53 criteria on feasibility and diligence provide guidance to a utility on whether it will be eligible for Federal interim storage. In effect, as suggested by one commenter, the Commission has limited the full core reserve finding to only those plants that have a possibility of satisfying the eligibility criteria for Federal interim storage. As stated previously, the generic finding does not require a reactor licensee to maintain a full core reserve.

The Commission does not believe that it is necessary, or advisable, to defer its decision on full core reserve. The Commission's determination on full core reserve is for a very limited purpose, and there is sufficient data to support this determination. Furthermore, Section 135(g) of the Nuclear Waste Policy Act requires the Commission to consider the full core reserve issue at this time, and the proposed rule has afforded a full opportunity for public comment on this issue.

In view of the Commission's generic finding that full core reserve is necessary for the continued orderly operation of a nuclear power plant, and the basis for that finding as discussed previously, the incorporation of such factors as source and cost of replacement power into § 53.30(b) is unnecessary.

The Commission is aware that various reasons may call for the maintenance of more than one full core reserve at a multireactor site. Therefore, § 53.30(c) of the proposed rule has been retained to allow the Commission to consider, and to find, that more than one full core reserve is necessary at a multireactor site. In addition, § 53.12(c) has been revised to provide for information to be submitted to this point. Finally, because the primary purpose of the spent fuel pool is for the storage of spent fuel, the Commission is not making any allowance for storage space that has been taken up by anything other than spent fuel.

7. Alternatives to Federal Interim Storage

Two major issues were raised by the comments submitted on spent fuel storage alternatives. The first concerns the scope of the alternatives included under "any other technologies that have been approved by the Commission." Proposed § 53.13(c)(5). The second issue involves whether the Commission should treat some alternatives as preferable to others.

The criteria contained in proposed § 53.30 relating to the feasibility of implementing alternatives to Federal interim storage, and diligence in pursuing these alternatives, apply to the alternatives set forth in proposed § 53.13(c). These alternatives, derived from Section 135 of the Nuclear Waste policy Act, follow:

(1) Expansion of existing storage facilities, including high-density fuel storage racks or fuel rod compaction;

(2) Construction of new or additional spent nuclear fuel storage facilities at the site of any civilian nuclear power reactor operated by such person;

(3) Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person;

(4) Transshipment of spent nuclear fuel to the site of another civilian nuclear power reactor within the same utility system; and

(5) Such other technologies as may be approved by the Commission.

The public interest group and State government commenters asserted that the alternatives required to be examined are not confined to those specifically identified in section 135(b)(1)(B) of the Nuclear Waste Policy Act, but also include any new and promising alternatives. This would include any storage technology that may be favorable even if not already licensed by the Commission. According to one commenter, this would encourage creativity in developing alternatives and also avoid reliance on the pace of the Commission's licensing process for new technologies.

In contrast, the industry commenters stated that utilities should be required to pursue only those spent fuel storage alternatives that have already been licensed by the Commission or, at the very least, for which a license application has been submitted. According to this view, as new alternatives are licensed, they can be added to the technologies that a utility would be required to consider as

[6] U.S. Department of Energy, *Spent Fuel Storage Requirements*, DOE/RL-83-1 at 12 (January, 1983).

[7] *Supra*. Note 4.

[8] Pickard Lowe, and Garrick, "Full Core Removal Study" (1979).

alternatives. In addition, a few industry commenters requested that the Commission clarify whether a utility must pursue all of the alternatives specified in the proposed rule, even though some, if not all, of the alternatives may not be feasible for certain utilities. A related comment submitted by one utility advocated that the Commission eliminate in advance some alternatives from consideration as being too expensive to implement.

The Commission does not believe that Congress intended to limit the pursuit of alternatives to those already licensed by the Commission, as was suggested by the various industry comments. Not only does the Nuclear Waste Policy Act specifically require consideration of storage technologies that have not yet been licensed by the Commission—fuel rod compaction and dry storage casks—but, in addition, the legislative history of section 135 of the Act is replete with references to the utilities' investigation of technologies that are, as of yet, unlicensed. For example, Senator Simpson, in describing the national policy that the Act would establish for the interim storage of spent fuel, stated:

> Under this policy, the utility operators of nuclear power plants bear the primary responsibility for the interim storage of spent fuel at the sites of their nuclear plants. This places a significant, but appropriate, burden on the utilities to do everything possible to assure sufficient onsite storage capacity through a variety of measures specified in the legislation. These measures include reracking, transshipment of spent fuel between reactors within the same utility system, and the use of new technologies such as dry storage and the use of storage casks.
> 128 Cong. Rec. S4157 (daily ed., April 28, 1982)

Representative Gejdenson, one of the authors of the spent fuel alternatives provisions in the House version of the Act, highlighted the investigation of dry storage as an alternative to Federal interim storage by stating:

> Documentation from the Office of Technology assessment, the Department of Energy, the Nuclear Regulatory Commission, and the European Nuclear Community clearly indicate that alternative technologies, such as dry storage casks, dry caisson storage, and concrete silo storage offer effective, safe, and inexpensive solutions to the interim storage problems. I feel confident that interim onsite storage will be in use at many nuclear reactors lacking sufficient pool storage.
> 128 Cong. Rec. H8178 (daily ed., September 30, 1982).

Therefore, in making its determination, the Commission will evaluate the feasibility of both licensed and unlicensed alternatives as required by section 135(b)(1)(B) of the NWPA, and will require utilities to be diligent in their pursuit of those alternatives. As new technologies are approved by the Commission for use at the sites of civilian nuclear power reactors, utilities will be required to investigate these alternatives as well, as provided in section 135(g) of the NWPA. Rather than have two different sets of alternatives, the Commission has combined the requirements of these two Sections of the Act in § 53.13(c) of the final rule. However, it is clear from the legislative history that Congress required the investigation of only those spent fuel storage alternatives that are technologically feasible within the relatively near future. This would roughly correspond to a 1986–87 time frame and, according to congressional debates, would include fuel rod compaction and dry storage modular techniques. Utilities are not presently required to explore alternatives whose technical feasibility cannot be demonstrated until some time in the distant future.

In response to the utility comment requesting clarification on whether it must pursue all alternatives, even though some may be infeasible, the Commission emphasizes that, although a utility must satisfy the Commission's criteria on feasibility and diligence for the alternatives currently within the scope of Part 53, it does not have to pursue an alternative that is infeasible. However, the utility must demonstrate that it has considered each alternative and must provide a rationale, based on the criteria in § 53.30, as to why a particular alternative is infeasible. Owing to the number of factors that influence whether an alternative is feasible, as well as the judgment involved in making this decision, the Commission does not believe it would be consistent with Congressional intent to eliminate any alternatives in advance.

The second major area of concern was the assertion by public interest group and State government commenters that the Commission should give preference to on-site storage alternatives in making its determination. In support, these commenters cited the legislative history of the Nuclear Waste Policy Act to the effect that on-site storage of spent fuel should be encouraged and that transportation of spent fuel should be minimized.

The Commission does not have any authority under Subtitle B of the Nuclear Waste Policy Act to establish priorities for the pursuit of spent fuel storage alternatives in the context of a Part 53 determination, as recommended by the public interest group commenters. The authority provided by section 135(b) of the Act requires the Commission to determine the feasibility of a utility's implementing each of a broad range of alternatives. If the implementation of one or more alternatives is feasible, the utility is not eligible to participate in the Federal interim storage program. The choice of which alternative to Federal interim storage a utility should then pursue will be decided elsewhere. The Commission notes that an earlier version of the proposed legislation, H.R. 6159, did contain a provision requiring a utility to be diligent in pursuing alternatives on a priority basis. However, this provision was not included in the final version of the Bill as approved by the House of Representatives. Thus, any preference expressed in the Act for on-site storage does not apply in the context of a Part 53 determination.

8. Diligence

In order for a utility to be eligible for Federal interim storage, section 135(b) of NWPA requires the Commission to make two affirmative findings:

1. A person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor; and

2. The person owning and operating the reactor is "diligently pursuing licensed alternatives to the use of Federal storage capacity" for the storage of spent nuclear fuel expected to be generated in the future.

Under proposed § 53.30(d), to determine whether the requesting person has been diligently pursuing licensed alternatives to the Federal storage of spent nuclear fuel, the Commission will consider whether the person has initiated timely action either to provide the necessary storage capacity or to evaluate the feasibility of providing the necessary storage capacity. Although license applications are one example of these actions, the Commission will also consider the preparation of reports or studies that thoroughly investigate the technical feasibility, costs, and public health and safety aspects of alternative storage options.

A number of State government and public interest group commenters did not believe that the Commission's proposed criteria provided sufficient detail to guide the Commission or a utility in determining what would constitute "diligent pursuit" of licensed alternatives. In addition, one of these

commenters challenged the authority of the commission to consider anything other than license applications in making the diligence finding. The rationale for this later point was the definition of diligence contained in the report of the House Committee on Interior and Insular Affairs:

> The committee considers diligent pursuit of alternatives to be represented by application for and processing of licenses or other authorizations necessary to (sic) acquisition of storage capacity * * * H.R. Rep. No. 125, 97th Cong. 2d. Sess. 62 (1982).

Therefore, this commenter argued that the Commission cannot consider reports or studies as sufficient in lieu of a license application.

Although most of these commenters did not offer recommendations on how the Commission could provide more detailed criteria, one commenter did propose an alternative scheme for addressing the diligence issue. Comment Letter No. 8. The proposal would require all utilities that do not have sufficient on-site storage capacity for accommodating all the spent fuel to be generated during the term of the License to file a report, updated annually, containing information on when full core reserve will be lost, the actions that the utility has taken to avoid the need for Federal interim storage, the rationale for rejecting storage alternatives, the amount of time required to implement any alternatives that are still under consideration, and any actions that the utility has taken to maximize the efficiency of fuel usage and to prevent fuel damage. According to the commenter, this would allow the Commission's diligence finding to be "based on historical information, which would be far more reliable than the utility's *ad hoc* justification developed under pressure of impending loss of storage capacity." Comment Letter No. 8 at 4.

In addition to the reporting requirements, the commenter's proposal would require a utility to file either a license application for an alternative to Federal storage within 6 months of determining that it would lose full core reserve, or a justification for its decision not to file a license application. This justification would have to be accompanied by a plan with a specific timetable for the development and implementation of a license application. A utility would not be considered diligent unless it had filed an application for an alternative within one year after determining that it would lose full core reserve, unless the utility demonstrated that all alternatives to Federal interim storage are physically impossible or economically impracticable. Finally, the proposal included a provision that a utility could not be considered diligent if it had failed reasonably to maximize the efficiency of its fuel usage or because the fuel suffered damage that could reasonably have been avoided. A number of other commenters also recommended that the Commission consider the history of fuel management, pool design and maintenance. One commenter suggested that the Commission fine utilities with a record of improper management in these areas. A State commenter suggested that the Commission analyze utility leadership and cooperation in utility ownership or pooled ownership of casks for transporting and storing spent fuel.

The Commission believes that the circumstances surrounding the Federal interim storage program do not warrant the imposition of the extensive reporting requirements suggested in the public comment letter. The primary resonsibility for providing interim storage of spent fuel rests with the utilities. In light of the relatively few utilities that may be compelled to seek Federal storage, it would not be productive for the Commission to impose a blanket reporting requirement on every utility that may not have sufficient on-site storage capacity for the spent fuel to be generated during the term of the operating license. Furthermore, the Commission would note that the proposed rule requires a utility that desires eligibility for the Federal interim storage program to submit essentially the same information as sugested by the commenter. However, the Commission does find that portions of the proposal dealing with submission of information on the history of reactor refueling and of actions intended to provide additional spent nuclear fuel storage are an improvement over the information request format in the proposed rule and accordingly, has revised § 53.12 to reflect this. In addition, the Commission agrees with the commenters that studies or reports on spent fuel stroage alternatives alone would not be sufficient to constitute evidence of diligence. This is represented by § 53.30(d) of the final rule. A person making a request will not be expected to have a license application pending for each alternative to Federal interim storage. However, in order to find that the person has been diligently pursuing alternatives, the Commission would expect that an application for at least one alternative would exist, along with a plan or program for evaluating the feasibility of alternatives, and studies that form the basis for demonstrating why certain alternatives have not been pursued.

Finally, the Commission does not believe that it is within its authority under the Nuclear Waste Policy Act to factor fuel handling and management or pool design considerations into the diligence determination, much less to penalize a utility for poor management in these areas in the context of a Part 53 determination. The text of Section 135(b) of the Act, and the legislative history cited previously, indicate that diligence relates only to the pursuit of storage alternatives and not to any considerations of fuel management or pool design.

9. Feasibility

In addition to diligence, eligibility for the Federal interim storage program is dependent on the Commission's determination that the person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent fuel storage capacity at the reactor site, or at the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor. This determination is dependent on feasibility, taking into account the economic, technical, regulatory, and public health and safety factors of providing adequate storage capacity through various storage alternatives. Proposed § 53.30 establishes several constraints on the feasibility of implementing storage alternatives that the Commission will consider in making the adequate capacity determination.

Comments on these criteria were submitted by public interest groups and the nuclear industry. Although most of these comments were addressed to specific criteria, a few commenters addressed the criteria generally. For example, one utility was concerned that the criteria could be so restrictive as to unjustly limit the usefulness of the Federal interim storage program. The opposite viewpoint was expressed by a public interest group commenter, who felt that the criteria were not specific enough to determine when a utility would qualify for the Federal storage program. In response, the Commission emphasizes that, first, the clear Congressional intent was for the interim Federal storage program to provide only a limited amount of storage capacity on an exceptional basis to utilities that are unable to reasonably provide their own storage capacity in time to ensure the continued orderly operation of the reactor. Therefore, the Commission does not believe that the criteria are too restrictive. Second, in order to provide

the flexibility necessary to address a potentially wide range of individual storage capacity situations and to apply the broad factors cited in section 135(g) of the Nuclear Waste Policy Act, the criteria must necessarily be somewhat broad. In §53.30(a), the Commission has sought to strike a proper balance between attempting to quantify every possible situation that would render an alternative unreasonable and merely restating the broad criteria of section 135(g) of the Act. The Commission notes that it is fully cognizant of the Congressional intent that the Federal interim storage program be utilized only as a last resort, and will apply the criteria of § 53.30(a) accordingly.

In terms of comments on individual criteria, a State asked if the term "site" in § 53.30(a)(1) is a utility site or a Federal site. In the context of its use, the Commission believes it is clearly a reactor site and has modified the rule accordingly. A public interest group commenter recommended that proposed § 53.30(a)(3), on the inability to obtain the necessary shipping or storage equipment, be deleted. The commenter, characterizing this consideration as a "possible justification for use of a federal AFR facility," reasoned that if the Federal government could provide shipping from, or storage at, a particular site, the utility could have done so as well. Comment Letter No. 8, at 5. Therefore, the shipping or storage alternative could not be infeasible because of the lack of shipping or storage equipment.

The Commission's intent was to allow for consideration of those situations where a utility, through no fault of its own, could not utilize a particular alternative because of the physical unavailability of materials or equipment within the time frame necessary. This provision must be viewed in the context of the numerous alternatives to Federal storage. There may be cases where an alternative cannot be implemented because of the unavoidable shortage of materials and equipment. This would then shift the focus to other alternatives. To qualify for the Federal interim storage program, the utility would still be required to demonstrate that all other alternatives are infeasible. Although it is anticipated that the lack of equipment will rarely be a determining factor, the Commission does not want to foreclose this possibility from consideration. In order to delete the emphasis of the provision on any particular storage alternatives, the Commission has reworded § 53.30(a)(3). Under the interim Federal storage program established by the Nuclear Waste Policy Act, the Commission's responsibility is to determine whether it is infeasible for the utility to implement all storage alternatives owing to economic, technical, regulatory, or public health and safety reasons. If this is demonstrated, and the utility is diligent in pursuing alternatives, it is the Federal Government's responsibility to provide storage.

A number of comments addressed the criterion in proposed § 53.30(a)(7) which provides for consideration of legal impediments to the implementation of an alternative, such as State and local laws or preexisting contractual agreements that cannot be alleviated in a timely manner. A commenter, representing several nuclear utilities, requested that this provision be clarified so as not to encourage or endorse enactment or enforcement of State and local laws involving matters committed exclusively to the NRC, DOT, or other Federal agencies. This commenter recommended the substitution of the following provision for proposed § 53.30(a)(7):

> Legal impediments to the implementation of an alternative, such as state and local laws pertaining to matters within the jurisdiction of those levels of government, which are valid and enforceable or though not valid, cannot reasonably be invalidated or enforcement enjoined in a timely manner. Comment letter No. 23, at 5.

A second commenter also asked for clarification of this provision. In fact, the commenter recommended the elimination of the provision because of the concern that State and local laws would be enacted simply to require the fuel to be shipped offsite and into Federal storage. In the commenter's opinion, ". . . State and local laws such as 'blanket' prohibitions that are inconsistent with Federal laws (e.g., interstate commerce laws) might be afforded an inappropriate statute" by proposed § 53.30(a)(7). Comment letter No. 16, at 2.

The intent behind proposed § 53.30(a)(7) was to allow the Commission to consider any State or local laws (statutes, ordinances, administrative regulations) or preexisting contractual arrangements that might limit the implementation of a storage alternative. In the course of evaluating the impact of a State or local law, the Commission necessarily would have to inquire into the nature and extent of impact, including the apparent validity and enforceability of the law in question, and whether the utility has taken reasonable and timely steps to identify and alleviate constraints imposed by State or local laws. The suggested revision of § 53.30(a)(7) accomplishes the same result, but clarifies the nature of legal impediments that might affect a utility's eligibility for Federal interim storage. Accordingly, the Commission has adopted the suggested revision.

In response to the commenter's concern, the Commission would note that it is a possibility that a particular alternative may not be feasible, at least for a given time period, because of a State or local law. Therefore, the Commission criteria should take this possibility into account. The Commission does not believe that such a criterion will encourage the enactment of State or local laws prohibiting the transportation of spent fuel. This is particularly true in light of the U.S. Court of Appeals for the Second Circuit decision in *City of New York* v. *U.S. Department of Transportation*, 715 F. 2d 732 (2d Cir. 1983). The Circuit Court upheld the validity of the DOT routing regulations for the transportation of radioactive materials, which preempt all inconsistent State and local regulations.

A number of nuclear industry commenters suggested that the Commission delete the term "extraordinary" from proposed § 53.30(a)(5), which allowed the Commission to consider the costs of implementation of a particular alternative. These commenters argued that, in evaluating the economics of an alternative, the Commission only need consider clearly unreasonable costs. In light of the clear Congressional intent that Federal interim storage be a last resort option, the Commission is retaining the "extraordinary costs" terminology as an appropriate expression of that Congressional intent. Another industry commenter suggested that the definition of "extraordinary costs" must include consideration of the facility's ability to recover the costs associated with implementation of an alternative. The Commission disagrees. In evaluating the feasibility of an alternative from an economic standpoint, the Commission's primary concern is whether the implementation involves "extraordinary costs . . . that are clearly unreasonable . . ." § 53.30(a)(5). Although the Commission will not foreclose consideration of whether the utility can recover the costs of implementation, the Commission does not believe that the issue of cost recovery should be a necessary or determining factor in evaluating the feasibility of an alternative. A State commenter suggested that only unique local economic considerations or unique orderly operations scenarios be

considered in the Commission's determination regarding feasibility. Although it is unclear exactly what the commenter means by "unique local economic considerations or unique orderly operations scenarios," the Commission believes that the criteria contained in the final rule, including the consideration of the "extraordinary costs of implementation" (§ 53.30(a)(5)), are appropriate statements of the types of factors that may make an alternative to Federal interim storage unreasonable, and are a consistent expression of the Congressional intent that such storage be a last resort option.

Several nuclear industry commenters recommend that the Commission delete any references to "timeliness" from the proposed criteria in § 53.30(d) for determining diligence. These commenters believe that diligence and good faith are the key factors for the Commission's determination in § 53.30(d), and that words and phrases such as "timely", "as early as possible", and "prompt development", should be eliminated. As expressed by one commenter, "while the utility is required to demonstrate diligent and good faith efforts, such efforts may simply be untimely (or unproductive) through no fault of the utility." Comment letter No. 15, at 6.

Although the Commission does recognize that there may be cases where a utility's efforts are untimely through no fault of its own, one factor that must be considered in evaluating diligence is whether the utility has explored storage alternatives in a timely manner. Timeliness is a key consideration in ascertaining diligence. Therefore, no revision of the rule is warranted based on these comments.

A State commenter recommended that § 53.30(d)(3), which establishes one of the criteria to guide the Commission's "diligence" determination under § 53.27(a)(2), be revised to read:

> The timely implementation of a spent nuclear fuel storage program which has utilized all available options for storage of spent fuel at the reactor, or within the utility, if necessary, taking into account technical, economic, regulatory, and public health and safety factors, and that includes the prompt development of feasible alternatives to Federal storage.

The Commission believes that the criteria contained in § 53.30(d) already address the concerns expressed in the above comment.

10. National Environmental Policy Act (NEPA).

The Commission received two comments on National Environmental Policy Act issues. One State sought clarification of whether issuance of a determination under Part 53 may be subject to NEPA. A public interest group stated that the Commission should consider itself bound to operate within all of the provisions of NEPA in regard to all its decisions concerning Federal interim storage. In response, the Commission believes that the environmental appraisal contained in the draft Regulatory Analysis for the proposed rule adequately addresses these comments. A summary of that appraisal appears in the Commission's Finding of No Significant Impact which follows in this preamble.

11. Miscellaneous

One commenter raised several concerns over the use of the Idaho National Engineering Laboratory as a Federal interim storage site. The Commission notes that the use of a specific site for Federal storage is not within the scope of the Part 53 rulemaking or the determination required under section 135(b) of the Nuclear Waste Policy Act. All comments on specific storage sites must be addressed in connection with the implementation of section 135(a), (c), and (d) of the Act.

A nuclear industry commenter requested that the Commission clarify proposed § 53.1 to indicate that the pursuit of storage alternatives is only a "stop gap" approach, necessary only until such time as the final repositories are established. The Commission believes that the reference in proposed § 53.1 to section 135(b) of the Nuclear Waste Policy Act appropriately limits the application of the rule.

The same commenter requested clarification on which 10 CFR Part 170 fee category a request for a determination would fall. The Commission intends to assess fees for Part 53 determinations as "special projects" pursuant to 10 CFR 170.31, "Schedule of Fees for Materials Licenses and Other Regulatory Services." Charges will be separately determined, taking into account the professional manpower required to conduct the review multiplied by the applicable cost per staff-year, plus any appropriate costs incurred for support services. Once the Commission has gained some experience with the processing of Part 53 determination requests, it will determine whether a standard fee for such services should be established.

III. Section-by-Section Revisions

1. Section 53.5

This section has been revised to reflect the current OMB regulations on the implementation of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Section 1320.7(u) of 5 CFR Part 1320 creates an irrebuttable presumption that any information collection requirements contained in a rule of general applicability will involve 10 or more persons and therefore must be reviewed and approved by OMB. Accordingly, the Commisison has submitted the final rule to OMB for clearance.

2. Section 53.6

The Commission has added an exemption provision as § 53.6 of the final rule. Because many of the requirements of the rule, including the spent nuclear fuel storage alternatives, which must be considered before a determination can be made as to the need for Federal interim storage, are taken directly from the Nuclear Waste Policy Act of 1982, no exemptions can be given to their provisions. The exemption provision is, therefore, not expected to be put to much use. It is included to give the Commission the flexibility to implement the provisions of the Act in ways not now contemplated by the regulations in 10 CFR Part 53.

3. Section 53.11

Section 53.11(a) has been revised to require 10 copies of a request instead of the 20 copies specified in the proposed rule. Ten copies are adequate to meet the NRC need to conduct an expedited review of a request. Section 53.11(b) has been revised to allow the filing of a request for a determination at any time that a need can be demonstrated, up to the June 30, 1989 filing deadline. An exception to the filing deadline may be granted if the request is likely to be processed prior to January 1, 1990 and the person making the request has shown good cause for the failure to file on time. Section 53.11(c) has been revised to allow for a 30-day public comment period and for the NRC transmittal of a copy of the request to DOE Office of Civilian Radioactive Waste Management. Section 53.11(d) has been revised to specify the basis on which the fee for a determination request will be assessed. Section 53.11(e) has been added to allow the Commission to suspend the acceptance for filing of requests if the total amount of Federal interim storage authorized by section 135 of the Nuclear Waste Policy Act has been fully contracted for.

4. Section 53.12:

The format of § 53.12 has been changed. In addition, § 53.12(c) has been revised to require the submission of additional information on the fueling/

refueling cycle of the reactor, the amount and location of any fuel stored offsite, and the necessity of maintaining more than one full core reserve at multireactor sites. Finally, § 53.12(c)(9) has been added to allow the submission of other information which the Commission should consider in making its determination.

5. Section 53.13:

The title of this section has been changed to "Contents of a request: alternatives." Section 53.13(a) has been revised to specify that the analysis of spent fuel alternatives is keyed to constraints that would make the implementation of an alternative "unreasonable," rather than those that would "prevent" their implementation. Section 53.13(a)(5) has been revised to include regulatory actions and preexisting agreements. Section 53.13(a)(8) has been revised to eliminate the word "consumers." Although the Commission will consider who bears the costs of implementation, the key consideration is the type and amount of the cost. Section 53.13(a)(8) has also been revised to include information on the costs of providing the necessary additional capacity and the time for which the capacity is needed. Section 53.13(b) has been placed into a new format. Section 53.13(c) now contains the alternatives formerly specified in § 53.27(a)(2).

6. Section 53.15:

Paragraph (a) of this section has been revised to permit the person submitting the request to withdraw the request up to the time of the intial determination without asking permission of the Commission or EDO.

7. Section 53.27:

The alternatives formerly listed in § 53.27(a)(2) are now found in § 53.13(c).

8. Section 53.30:

Section 53.30(a) has been revised to focus the Commission's analysis of the feasibility of alternatives on factors that would make an alternative "unreasonable" as opposed to "impractical." Section 53.30(a)(5) has been revised to include, in the consideration of extraordinary costs, the comparative cost of Federal interim storage. Section 53.30(a)(7) has been revised to include regulatory actions and preexisting agreements.

IV. The Final Rule

1. Subpart A—General Provisions

Sections 53.1 through 53.6 address a number of general issues, including purpose and scope of the rule, definitions, communications with the Commission, interpretations of the rule, and a new general exemption provision. The rule applies to all persons owning or operating domestic civilian nuclear power reactors who submit a request for a Commission determination under section 135(b) of the Nuclear Waste Policy Act. This determination consists of a decision by the Commission as to whether adequate spent nuclear fuel storage capacity to ensure the continued orderly operation of a particular reactor cannot reasonably be provided in a timely manner by the person owning or operating that reactor.

2. Subpart B—Request for a Commission Determination

Subpart B specifies the procedures that must be followed and the information that must be submitted by a person seeking a Commission determination. The final rule requires the submission of information on spent nuclear fuel storage capacity and need, feasible storage alternatives, and the diligence of the person requesting the determination in pursuing alternatives. This information will enable the Commission to determine—

- Whether additional capacity is needed, in what amount, and in what time frame, and
- Whether it is practical for the person making the request to implement alternatives to Federal interim storage in light of technical, economic, regulatory, and public health and safety constraints.

Subpart B also sets forth procedures related to the filing and distribution of a request for a Commission determination. These procedures provide for publication of notice of receipt of a request in the **Federal Register** to inform the public that Commission action on the request is pending and for a 30-day public comment period. The solicitation of comments is for the purpose of generating more complete information for Commission review. Such a solicitation is an optional procedure that is not required by either the Atomic Energy Act or the Nuclear Waste Policy Act. Consequently, a detailed comment analysis need not be prepared. However, the Commission will consider all comments in making its determination, and will address in the determination any significant comments received.

The making of a Commission determination under section 135(b) of the Nuclear Waste Policy Act is not a "proceeding . . . for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control . . . ," pursuant to section 189a. of the Atomic Energy Act. Accordingly, there is no opportunity for a hearing in connection with a request for a Commission determination. Similarly, there is no right to petition the Commission for review of an initial determination of the Executive Director for Operations under Subpart C of the rule. Of course, if a licensee seeks permission to implement a licensed alternative to Federal interim storage of spent fuel, an opportunity for a hearing would be available in that licensing proceeding. Although some of the same facts might be in issue, a Commission determination under section 135(b) would be entirely separate from the decision of the presiding officer in a licensing proceeding. In addition, the final rule should not be construed as expressing any Commission position on the feasibility of a particular storage technology. A licensee's use of a specific storage technology will require Commission evaluation and approval.

3. Subpart C—Issuance of a Commission Determination

Subpart C establishes the criteria and standards that the Commission will use to make the statutory determinations—

- That adequate storage capacity cannot reasonably be provided in a timely manner, and
- That the person requesting the determination has been diligently pursuing licensed alternatives to the use of Federal storage capacity.

In determining the ability of the requesting person to reasonably provide adequate storage capacity, the Commission will consider any technical, economic, regulatory, or public health and safety factors that would constrain implementation of alternatives to Federal storage. Although it is not possible to anticipate all the constraints that could affect the ability of a reactor owner or operator to implement a spent fuel storage alternative, these constraints could include such factors as structural limitations; inability to meet the Commission's regulatory requirements due to factors beyond the licensee's control; the extent to which implementation would disrupt operation of the reactor; unavailability of necessary materials or equipment; legal impediments; unusual licensing delays; the time required for licensing, design, and construction; extraordinary costs; and consideration of offsite and occupational radiation exposure. Depending on the particular facts, a single factor or a combination of factors could make implementation of a given alternative unreasonable. While it is not anticipated that either occupational or

offsite public health and safety will be a determining factor as long as the applicable Commission regulations are met, the criteria do allow for consideration of unusual circumstances where radiation exposure is unreasonably out of proportion to the amount of additional storage capacity needed or the time period for which it is needed.

In determining whether the requesting person has been diligently pursuing licensed alternatives to the Federal storage of spent nuclear fuel, the Commission will consider whether the person has initiated timely action either to provide the necessary storage capacity or to evaluate the feasibility of providing the necessary storage capacity. Although license applications are one example of these actions, the preparation of reports or studies that thoroughly investigate the technical feasibility, costs, and public health and safety aspects of alternative storage options will also be considered by the Commission. A person making a request will not be expected to have a license application pending for each alternative to Federal interim storage. However, in order to find that the person has been diligently pursuing alternatives, the Commission does expect that an application for at least one alternative would exist, along with a plan or program for evaluating the feasibility alternatives, and studies that form the basis for demonstrating why certain alternatives have not been pursued.

Section 135(g) of the Act requires the Commission's criteria to ensure the maintenance of full core reserve storage capability at the site of the reactor unless the Commission determines that such capability is not necessary for the continued orderly operation of the reactor. Commission policy has been to permit continued operation at licensed reactor facilities where less than a full core reserve is maintained because such operation does not constitute an undue risk to the health and safety of the public. While a full core reserve capability is not an NRC safety requirement, the Commission has recognized that the maintenance of a full core reserve would be a prudent management practice on the part of the reactor operator.

Full core reserve would be needed to prevent extended reactor outages in the event a core had to be discharged in order to inspect the reactor pressure vessel or to conduct routine and unscheduled maintenance. Although a reactor could be quickly and safely shut down without full core reserve, if the core had to be discharged, the reactor would have to remain shut down while arrangements for shipping and storage were made and executed. During this time, the utility would have to purchase supplemental power at substantial additional cost to its customers (See previous discussion under "Responses to Public Comments on the Proposed Rule," "Full Core Reserve."). The Commission finds that even if the probability of needing full core reserve may differ from reactor to reactor and may be low in some cases, the possibility that full core reserve would be needed, combined with the substantial costs that would be incurred if full core reserve were not available when needed, would preclude the Commission from determining that the "maintenance of such capability [full core reserve] is not necessary for the continued orderly operation of such reactor." Nuclear Waste Policy Act of 1982, section 135(b)(2). The Commission also notes that problems such as pipe cracking and steam generator repair could raise the overall importance of maintaining full core reserve discharge capability.

The Commission interprets "continued, orderly operation" to mean the avoidance of extended reactor shutdown due to lack of spent fuel storage capacity. The Commission considers the likelihood of needing full core reserve, and the resulting costs from not having that discharge capability, to be inconsistent with continued orderly operation. Therefore, the Commission has made a generic finding that, for the purposes of a determination under this part, full core reserve is necessary for the continued orderly operation of the reactor. The legislative history of the Nuclear Waste Policy Act suggests that the maintenance of full core reserve is closely related to the concept of continued, orderly operation. As first introduced in the Senate, the bill provided for a determination of whether adequate storage capacity could be provided to ensure continued, orderly operation "through the maintenance of a full core reserve capability." S. 1662, 97 Cong., 2d Sess., section 302(a), 128 Cong. Rec. S4139, S4141 (daily ed., April 28, 1982). This language was later changed to that now found in the Waste Act, which gives the Commission the flexibility to examine whether full core reserve is needed for continued, orderly operation. In this context, the Commission believes that a generic finding that full core reserve is necessary for continued, orderly operation is consistent with Congressional intent. The generic finding contained in § 53.30(b) relates solely to the time when Federal interim storage may be needed. The generic finding does not require a licensee to maintain a full core reserve.

Where two or more reactors share a particular site, the maintenance of a single full core reserve capability should normally be sufficient to ensure continued orderly operation. However, the person requesting the determination has the opportunity to demonstrate that special circumstances require the maintenance of more than one full core reserve at the site. The special circumstances could include the inability to utilize available storage space for some reason; for example, incompatibility between the storage pool and the fuel type.

Because a license is not involved and the determination is based primarily on matters within the technical competence of its staff, the Commission has provided in Subpart C that the Executive Director for Operations, or his or her designee, shall make the initial determination. Section 1.40 of 10 CFR Part 1 has been revised to reflect this delegation. Redelegation beyond the office director level is prohibited. However, the initial determination is subject to Commission review, at the Commission's discretion. The final determination must be made within 6 months of the receipt of the request.

V. Other Requirements

Finding of No Significant Environmental Impact

1. This final rule will establish procedures and criteria for a Commission determination under section 135(b) of the Nuclear Waste Policy Act of 1982 that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site when needed to ensure the continued orderly operation of the reactor.

2. The Commission has determined under the National Environmental Policy Act of 1979, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that promulgation of this final rule is not a major Federal action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required.

3. The Commission activities under this aspect of the Nuclear Waste Policy Act of 1982 consist of the establishment of procedures and criteria for making the determination required by the Act, and the determinations themselves. Neither of these activities has an

environmental effect. Any environmental impacts that might ultimately occur result from the decision of the Secretary of Energy to enter into a specific contract with a utility, not from the prior Commission determination.

4. An environmental impact statement need not be prepared in connection with this rulemaking action because promulgation of the final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. The final rule will establish procedures and criteria for a Commission determination under section 135(b) of the Nuclear Waste Policy Act of 1982 that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site when needed to ensure the continued orderly operation of the reactor. The adoption of such procedures and criteria by promulgation of a final rule does not have an environmental effect.

The making of a Commission determination in accordance with these procedures and criteria is also without environmental effect. The sole purpose of a Commission determination is to provide assurance, in a specific factual context, that the person generating or owning spent nuclear fuel has met the statutory conditions precedent to entering into a contract with the Secretary of Energy that provides for interim Federal storage of a limited amount of spent fuel.

Although a Commission determination is necessary before the Secretary may enter into contract negotiations, the determination does not specify the terms or authorize the execution or performance of a contract for the storage of spent fuel. Since the details of the contract are not and cannot be known at the time of a Commission determination, the environmental effects of the contract cannot be ascertained and a meaningful environmental impact statement or assessment cannot be prepared. The determination, in and of itself, has no environmental effect.

As Congress recognized, any environmental impacts that might ultimately occur result from the decision of the Secretary of Energy to enter into a specific contract with a utility, not from the prior Commission determination. Under section 136(a) of the Waste Act, this contract must provide for Federal ownership, transport, and interim storage of such amounts of spent fuel as the Commission determines cannot be stored on site. The Waste Act also specifies the nature of the environmental review that must be undertaken when the Secretary of Energy provides for Federal storage of spent fuel. Section 135(c) states that provision by the Secretary of Energy of 300 or more metric tons of storage capacity at any one Federal site shall be considered a major Federal action requiring preparation of an environmental impact statement. If the Secretary of Energy provides less than 300 metric tons of storage capacity at any one Federal site, the Secretary need only prepare an environmental assessment of the probable impacts. Thus, the Waste Act not only recognizes that environmental effects will flow from contracts entered into by the Secretary, but also provides that these effects are to be evaluated at the time the Secretary provides for interim spent fuel storage capacity at one or more Federal sites. Because, prior to that time, no environmental effects will occur, and the nature of any potential environmental effects that might occur in the future as a result of the storage contracts cannot be known with any degree of certainty, no environmental impact statement or assessment need be prepared in connection with this rulemaking action.

5. There are no other environmental documents related to this rulemaking action.

6. The environmental assessment on which this finding of no significant impact is based is contained in the Regulatory Analysis that is available for inspection as noted below.

Paperwork Reduction Act Statement

The final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under control number 3150-0126.

Regulatory Analysis

The Commission has prepared a regulatory analysis of the proposed regulation. The analysis identifies and examines the costs and benefits of the final rule and its alternatives. The analysis is available for inspection, and copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The addition of 10 CFR Part 53 applies solely to certain owners and operators of civilian nuclear power reactors, none of which can be considered small entities.

List of Subjects

10 CFR Part 1

Organization and functions.

10 CFR Part 53

Administrative practice and procedure, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Spent nuclear fuel, Waste treatment and disposal.

VI. Amendatory Text

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the NRC is adopting the following new part, 10 CFR Part 53, and a related conforming amendment to 10 CFR Part 1.

1. A new Part 53 is added to 10 CFR, Chapter I, to read as follows:

PART 53—CRITERIA AND PROCEDURES FOR DETERMINING ADEQUACY OF AVAILABLE SPENT NUCLEAR FUEL STORAGE CAPACITY

Subpart A—General Provisions

Sec.

53.1 Purpose and scope.
53.2 Definitions.
53.3 Communications.
53.4 Interpretations.
53.5 Information collection requirements.
53.6 Specific exemptions.

Subpart B—Request for a Commission Determination

53.11 Filing and distribution of a determination request.
53.12 Contents of a request: General information.
53.13 Contents of a request: alternatives.
53.14 Additional information.
53.15 Withdrawal of a determination request.
53.16 Elimination of repetition.

Subpart C—Issuance of a Commission Determination

53.27 Initial determination.
53.28 Final determination.
53.29 Notice of issuance of a final determination.
53.30 Criteria for a Commission determination.

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 103, 104, 161, 68 Stat. 930, 932, 933, 934, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2133, 2134, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 53.11, 53.12, 53.13, 53.14, and 53.16 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 53.1 Purpose and scope.

(a) The regulations in this part establish procedures and criteria for making the determination required by section 135(b) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2201 and 2233) that a person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at the site of any other reactor operated by that person, when needed to ensure the continued orderly operation of the reactor, and that such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future.

(b) The regulations in this part apply to any person owning or operating a civilian nuclear power reactor who requests a Commission determination.

§ 53.2 Definitions.

As used in this part:

Civilian nuclear power reactor means—a civilian nuclear power plant required to be licensed as a utilization facility under Sections 103 or 104(b) of the Atomic Energy Act of 1954.

Commission means—the Nuclear Regulatory Commission or its duly authorized representatives.

Full core reserve means—the capability to store all of the fuel in a single reactor core at one time at an on-site storage facility.

Spent nuclear fuel means—fuel that has been withdrawn from a nuclear power reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

§ 53.3 Communications.

Except where otherwise specified, each communication and report concerning the regulations in this part should be addressed to the Document Control Desk, U.S. Nuclear Regulatory Commission, Attention: Executive Director for Operations, Washington, DC 20555, or may be delivered in person to the Commission's Document Control Desk between the hours of 8:15 a.m. and 4:00 p.m. (e.s.t.), at 7920 Norfolk Avenue, Bethesda, MD.

§ 53.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than written interpretation by the General Counsel will be considered binding on the Commission.

§ 53.5 Information collection requirements.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (42 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0126.

(b) The approved information collection requirements in this part appear in §§ 53.11, 53.12, 53.13, and 53.14.

§ 53.6 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemption from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Subpart B—Request for a Commission Determination

§ 53.11 Filing and distribution of a determination request.

(a) The person submitting a request for a Commission determination must file a signed original and 9 copies of the request with the Commission at the address specified in § 53.3, with a copy also provided to the appropriate Regional Administrator at the address specified in Appendix D to Part 20 of this chapter. The request must be signed by the person requesting the determination or the person's authorized representative under oath or affirmation.

(b) Any request for a Commission determination under this part, must be filed no later than June 30, 1989. An exception to this requirement may be granted if the Commission determines that:

(1) The request is likely to be processed and the determination made prior to January 1, 1990; and

(2) The person requesting the determination has shown good cause for the failure to file on time.

(c) Upon receipt of a request for a determination, the Secretary of the Commission will cause to be published in the **Federal Register** a notice of receipt of the request and the opportunity for a 30-day public comment period on the request. A copy of the request will be made available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Local Public Document Room for the reactor site. The Secretary of the Commission will also transmit a copy of the request to the Office of Civilian Radioactive Waste Management of the U.S. Department of Energy.

(d) Fees applicable to a request for a Commission determination under this part will be determined in accordance with the procedures set forth for special projects under category 12 of § 170.31 of this chapter.

(e) In the event that the Department of Energy has entered into contracts for the full amount of spent fuel authorized for Federal interim storage under section 135(a) of the Nuclear Waste Policy Act, the Commission may suspend the processing or acceptance of requests for determinations until additional interim Federal storage capacity is authorized.

§ 53.12 Contents of request: General information.

A request for a Commission determination under this part must include the following general information:

(a) Name and address of the person owning or generating the spent nuclear fuel for which the determination is sought,

(b) The civilian nuclear power reactor or reactor site for which the request is being made,

(c) Explanation of why the determination described in § 53.1(a) is needed, including—

(1) A complete history of fueling/refueling cycles for each reactor at the reactor site from beginning of operation to date of request;

(2) Projected refueling cycles for each reactor from date of request through operating life of plant, including anticipated maintenance schedules;

(3) A schedule of all actions taken to provide storage for spent nuclear fuel generated by each reactor from the beginning of operation to date of request, with a projection of the amount of capacity still available in terms of number of assemblies and metric tons of uranium (MTU) of spent nuclear and time remaining until loss of full core reserve discharge capability;

(4) A schedule of all actions planned or currently underway to provide additional storage, with the projected amount of additional capacity to be provided by these actions;

(5) The amount and geographical location of any spent nuclear fuel stored

offsite, and the anticipated duration of offsite storage;

(6) The anticipated date of loss of full core reserve;

(7) An estimate of the amount of spent nuclear fuel and the schedule for its storage for which Federal interim storage would be necessary to prevent the loss of full core reserve;

(8) For a request related to a multi-reactor site, the necessity of maintaining reserve storage capability of more than one full core reserve; and

(9) Any other information which the Commission should consider in making its determination.

§ 53.13 Contents of a request: alternatives.

(a) The request must include, for each alternative spent nuclear fuel storage technology listed in paragraph (c) of this section, an analysis of any substantial technical, economic, regulatory, or public health and safety constraints that would make the implementation of any of the alternatives unreasonable, including factors such as:

(1) Structural limitations;

(2) The extent to which implementation would disrupt operation of the reactor;

(3) Unavailability of necessary materials or equipment;

(4) Inability to meet the Commission's regulatory requirements due to factors beyond the licensee's control and despite the licensee's good faith efforts;

(5) Local or State laws and regulatory actions, including preexisting agreements, that limit or prevent the timely expansion or addition of storage capacity or transshipment;

(6) Unusual licensing delays;

(7) The time required for licensing, design, and construction;

(8) Extraordinary costs of implementation, including the costs of providing the necessary additional capacity, and the time for which the capacity is needed; and

(9) Radiation exposure considerations.

(b) The request must include, for each alternative spent nuclear fuel storage technology listed in paragraph (c) of this section, detailed information on the actions that the person requesting the determination has taken to date to avoid or reduce the need for Federal interim storage, including—

(1) The timing and description of each license application and study done by or for the person; and

(2) The amount of time that the person estimates would be required to develop, have approved, and implement any alternatives that are still under consideration.

(c) For the purposes of this part, spent nuclear fuel storage alternatives include—

(1) Expansion of existing storage facilities, including high-density fuel storage racks or fuel rod compaction;

(2) Construction of new or additional spent nuclear fuel storage facilities at the site of any civilian nuclear power reactor operated by such person;

(3) Acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person;

(4) Transshipment of spent nuclear fuel to the site of another civilian nuclear power reactor within the same utility system; and

(5) Such other technologies for spent nuclear fuel storage as may be approved by the Commission for use at the sites of civilian nuclear power reactors.

§ 53.14 Additional information.

(a) The Commission, the EDO, or designee, as appropriate, may require additional information from a person making a request for Commission determination under this part concerning any portion of the request.

(b) The Commission, the EDO, or designee, may deny a request for a Commission determination under this part if the person making the request fails to respond to a request for additional information under paragraph (a) of this section within thirty (30) days from the date of the request for additional information, or such other time as the Commission, Executive Director, or designee, may specify. This denial shall be without prejudice to the right of the person making the request to file another request for a Commission determination under this part.

§ 53.15 Withdrawal of a determination request.

(a) A person may withdraw a request for a Commission determination under this part without prejudice at any time prior to the issuance of an initial determination under § 53.27.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the withdrawal of a request for a Commission determination under this part.

§ 53.16 Elimination of repetition.

In any request under this part, the person making the request may incorporate by reference information contained in a previous application, statement, or report filed with the Commission provided that these references are clear and specific.

Subpart C—Issuance of a Commission Determination

§ 53.27 Initial determination.

(a) Not later than four (4) months after the receipt of a request for a Commission determination under this part from a person generating or owning spent nuclear fuel, the Executive Director for Operations, or designee, shall make an initial determination of whether—

(1) Adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which the spent nuclear fuel is generated cannot reasonably be provided by the person owning or operating the reactor at that site, or at the site of any other civilian nuclear power reactor operated by the person, and that the capacity cannot be made available in a timely manner through any method described in § 53.13(c) despite the licensee's diligent and good faith efforts to pursue such methods; and

(2) That person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by the person in the future, so as to ensure the availability of additional storage capacity as soon as possible by means of the spent fuel storage alternatives listed in § 53.13(c).

(b) In making an initial determination under this section, the Executive Director for Operations, or designee, shall be guided by the criteria set forth in § 53.30.

(c) An initial determination under this section shall be in writing and shall contain a full explanation of the facts upon which the determination is based and the reasons for granting or denying the request. An affirmative determination shall specify the amount of spent nuclear fuel that cannot reasonably be stored on site and the schedule for when Federal storage is needed, and may contain conditions on which the determination is dependent. A copy of the initial determination shall be sent to the person who filed the request.

(d) If a request for a determination is based on circumstances that are too remote and speculative to allow an informed determination, the Commission, the EDO, or designee, may deny the request.

§ 53.28 Final determination.

(a) An initial determination under § 53.27 shall be filed with the Office of the Secretary of the Commission. Such initial determination shall constitute the final determination of the Commission thirty (30) days after its issuance, unless

the Commission decides to review the initial determination under paragraph (b) of this section.

(b) Within thirty days after the Executive Director for Operations, or designee, makes an initial determination, the Commission may, on its own motion, review the determination.

(c) The Commission may, at its discretion, extend the time for review of an initial determination under paragraph (b) of this section; provided, however, that if the Commission has not completed its review or issued a final determination within six (6) months of the filing of a request under this part, the initial determination of the Executive Director for Operations, or his or her designee, shall constitute the final determination of the Commission.

(d) No petition or other request for Commission review of an initial determination under § 53.27 will be entertained by the Commission.

§ 53.29 Notice of issuance of a final determination.

(a) Upon the issuance of a final Commission determination or after the expiration of the time for Commission review of an initial determination under § 53.28, which constitutes a final determination, the Secretary of the Commission will notify, in writing, the person making the request, and the Office of Civilian Radioactive Waste Management of the Department of Energy of the final determination.

(b) The Secretary of the Commission will cause to be published in the **Federal Register** a notice of the issuance of the final determination.

(c) The Secretary of the Commission will make a copy of the final determination available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Local Public Document Room for the reactor site.

§ 53.30 Criteria for a Commission determination.

(a) In making the determination required by § 53.27(a)(1), the Commission shall consider the existence of technical, economic, regulatory, or health and safety factors that would make the implementation of any alternative to Federal interim storage of spent nuclear fuel set forth in § 53.13(c) unreasonable, such as—

(1) Suitability of the reactor site for implementation of an alternative, including consideration of structural integrity.

(2) Inability to meet the Commission's regulatory requirements for implementation and licensing of an alternative due to factors beyond the licensee's control and despite the licensee's diligent and good faith efforts.

(3) Inability to obtain necessary materials or equipment in a timely manner.

(4) Modifications that would result in the excessive reduction of code design margins.

(5) Extraordinary costs of implementation that are clearly unreasonable in view of such factors as the amount of additional storage capacity needed, the time for which additional storage capacity is needed, or the cost of Federal interim storage.

(6) Unforeseen or unavoidable delays in the licensing or implementation of an alternative due to factors beyond the licensee's control and despite the licensee's diligent and good faith efforts.

(7) Legal impediments to the implementation of an alternative, such as State or local laws or regulatory actions, including preexisting agreements, pertaining to matters within the jurisdiction of those levels of government, which are valid and enforceable or, though not valid, cannot reasonably be invalidated or enforcement enjoined in a timely manner.

(8) Occupational or off-site radiation exposures or on-site construction hazards that are clearly unreasonable in view of the amount of additional storage capacity needed or the time for which additional storage capacity needed.

(b) Solely for the purpose of making the determination required by § 53.27(a)(1), the Commission shall ensure the maintenance of a full core reserve at the site of the civilian nuclear power reactor for which the request is being made.

(c) If the person requesting the determination demonstrates, and the Commission finds, that the maintenance of a single full core reserve at the reactor site is either inadequate or not necessary for continued orderly operation of the reactor, the Commission may make an exception to the provision of paragraph (b) of this section.

(d) In making the determination required by § 53.27(a)(2), the Commission will consider whether the person submitting the request has demonstrated diligent and timely efforts to initiate activities reasonably calculated to implement alternatives to Federal interim storage of spent fuel on a schedule commensurate with the need to support the continued orderly operation of the reactor, including—

(1) Diligent and good faith efforts to prepare and file existing license application(s) for spent nuclear fuel storage alternative(s) as early as possible so as to provide sufficient time to allow for design, licensing, and implementation; and

(2) Subsequent developments beyond the control of the person submitting the request that (i) have changed the original estimate of when and how much additional storage capacity will be needed or (ii) would prevent the timely implementation of one or more alternatives; and

(3) The timely preparation and implementation of a spent nuclear fuel storage program or plan that evaluates the feasibility of alternatives to Federal storage of spent nuclear fuel, taking into account technical, economic, regulatory, and public health and safety factors and that includes the prompt development of feasible alternatives to Federal storage.

Conforming Amendments

PART 1—STATEMENT OF ORGANIZATIONAL AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

Sec. 1.40(q) also issued under secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155).

3. In § 1.40 paragraph (q) is added to read as follows:

§ 1.40 Office of the Executive Director for Operations.

* * * * *

(q) Makes or delegates the authority to make the following determinations pursuant to Part 53 of this chapter: (1) The initial determination, pursuant to § 53.27, of whether a person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent fuel storage capacity and is diligently pursuing licensed alternatives to the use of Federal storage capacity; (2) whether an exemption should be granted pursuant to § 53.6; and (3) whether an exception should be granted to the filing deadline in § 53.11(b). This authority may not be redelegated beyond the office director level.

Dated at Washington, DC, this 5th day of February, 1985.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 85-3412 Filed 2-8-85; 8:45 am]
BILLING CODE 7590-01-M

10 CFR Part 50

Hydrogen Control Requirements

AGENCY: Nuclear Regulatory Commission.
ACTION: Final rule; correction.

SUMMARY: In a Federal Register document published on January 25, 1985 (50 FR 3498), the U.S. Nuclear Regulatory Commission (NRC) amended its regulations to improve hydrogen control capability for boiling water reactors with MARK III containments and for pressurized water reactors with ice condenser containments. This notice contained a number of typographical errors which are corrected below.

FOR FURTHER INFORMATION CONTACT: Morton R. Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-443-7616.

SUPPLEMENTARY INFORMATION:
Corrections are made to the following pages:

1. On page 3499, column two, line 15, "reduced" is corrected to read "reduce".
2. On page 3499, column two, paragraph two of footnote two, line one, "NUREG/CR2540" is corrected to read "NUREG/CR-2540".
3. On page 3499, column three, line 15, the sentence which reads "The Commission feels confident that there will be an appropriate margin of safety." is removed.
4. On page 3500, column one, second full paragraph which begins "It was suggested by some commenters . . .", line four after the first word "containments", add "and should not impose requirements for the remaining containments" before the word "since".
5. On page 3500, column one, last paragraph, line six, after the word "detonations", add "cannot occur in lieu of evaluating the effects of local detonations."
6. On page 3500, column two, second full paragraph which begins "Several commenters have . . .", line seven, "defering" is corrected to read "deferring" and in the same paragraph on line 18, "intergrated" is corrected to read "integrated".
7. On page 3500, column three, 11 lines from the bottom of the column, the word "safety" is corrected to read "safely".
8. On page 3502, column three, line nine of Commissioner Asselstine's Dissenting Views, the word "sustantive" is corrected to read "substantive".
9. On page 3502, column three, four lines from the bottom of the column, the word "Commission's" is corrected to read "Commission".
10. On page 3504, column one, 11 lines from the botton of the column, the word "seven" is corrected to read "severe".
11. On page 3504, column two, line six of the List of Subjects, add "and recordkeeping" after the word "Reporting" and before the word "requirements".

PART 50—[CORRECTED]

§ 50.44 [Corrected]

12. On page 3505, column two, line 13 of § 50.44(c)(3)(v)(A), the word "maintian" is corrected to read "maintain".
13. On page 3505, column two, line five of § 50.44(c)(3)(vi)(B)(*1*), the word "metalwater" is corrected to read "metal-water".
14. On page 3505, column three, line 11 of § 50.44(c)(3)(vi)(B)(*5*)(*i*), the word "Section" is corrected to read "section".
15. On page 3505, column three, lines two and three of § 50.44(c)(3)(vii)(B), the words "the effective date of this section" are replaced by "February 25, 1985".

Dated at Washington, DC, this 5th day of February 1985.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 85-3410 Filed 2-8-85; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 85-3]

Rules, Policies, and Procedures for Corporate Activities, Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.
ACTION: Final rule.

SUMMARY: The office of the Comptroller of the Currency (Office) is postponing the publication of the 1985 schedule of fees for corporate filings made under 12 CFR Part 5. This final rule provides that the new schedule of corporate filing fees will be published no later than February 28, 1985, and will be effective thirty days after its publication. Current fees for corporate filings will remain in effect until the new schedule has taken effect.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems (202) 447-1184, or Jonathan H. Rushdoony, Legal Advisory Services Division (202) 447-1880.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1985, the Office published a final rule in the Federal Register (50 FR 1439) to revise the procedures for determining the fees for corporate filings made under 12 CFR Part 5. Under the revised procedures, the new corporate filing fee schedule for 1985 was to be published no later than January 31, 1985, in the Office's Notice of the Comptroller of the Currency Fees, and was to take effect thirty days after publication. However, the new schedule for corporate filings was not completed by that date, and, thus, was not included in the subject Notice. Consequently, a technical amendment to the final rule of January 11 is required to notify affected parties of the date on which the schedule of new filing fees will be published.

This amendment provides that the Office will publish the schedule of new corporate filing fees for 1985 no later than February 28, 1985. As before, any fee revisions contained in the new schedule will become effective thirty days after the publication of the schedule. All existing corporate filing fees will remain in effect until the new schedule has taken effect.

No change is being made in the publication dates for the filing fees that will apply to 1986 and subsequent years. Thus, the annual fee schedules for each upcoming year will continue to be published no later than the first day in December of the preceding year.

Reason for not Providing Notice and Comment Procedures

The Office has determined that public notice and comment are not required since the present action merely makes a technical amendment to a rule of agency procedure: the date for Office publication of the 1985 schedule of corporate licensing fees. As before, the rule of procedure delays implementation of any fee revisions for thirty days after the fee schedule is published. Consequently, the public will not be adversely affected by the postponement of publication because there will be a corresponding delay in the implementation of the new fees. The present action is therefore being issued as a final rule since public notice and comment are not necessary.

Reason for Effective Date of February 11, 1985

An effective date of February 11, 1985, is provided herein since that is the date on which the amended rule (50 FR 1439) will take effect. A later date for the technical amendment published here is not required because the amendment concerns a rule of agency procedure that will not adversely affect the public.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 et seq.), the Comptroller of the Currency finds that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 5

National banks, Fees.

Authority and Issuance

For the reasons set forth in the preamble, 12 CFR Part 5 is amended to read as follows:

PART 5—[AMENDED]

1. The authority citation for 12 CFR Part 5—Rules, Policies, and Procedures for Corporate Activities—reads as follows:

Authority: 12 U.S.C. 1 et seq.

2. Section 5.5, as amended by 50 FR 1439, is revised to read as follows:

§ 5.5 Fees.

(a) Fees must accompany certain filings before they will be accepted by the Office. Filing fees will be set at an amount necessary to recover the Office's projected total cost of processing corporate filings during the ensuing calendar year. Individual fees will be established by first apportioning the projected total cost of processing corporate filings among the different types of corporate filings according to the projected proportion of Office staff time spent processing the different types. A projected average processing cost will then be determined by dividing the projected total cost of processing the different types of corporate filings by the projected number of filings of each type. The projected average processing cost will form the basis of the new fee schedule.

(b) Each year, the Office will prepare a report on the determination of the projected average processing costs and the new filing fee schedule. The Office will make the report available to interested parties upon request. The new filing fee schedule will be published in the Notice of the Comptroller of the Currency Fees no later than the first business day in December of each year. These fees will be effective January 1 of the upcoming year. Notwithstanding the provisions of 12 CFR 8.8, however, the new schedule of filing fees to be charged during 1985 will be published no later than February 28, 1985. Any fee revision contained in the new schedule for 1985 will become effective thirty days after the schedule is published. Existing filing fees will remain in effect until the new schedule for 1985 becomes effective.

(c) Investigation fees may be charged at the rates established under 12 CFR 8.6 if the Office determines that a special investigation or examination is necessary to reach an informed decision on a given filing.

(d) Fees must be paid by check payable to the Comptroller of the Currency.

Dated: February 5, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85-3443 Filed 2-8-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-64-AD; Amdt. 39-4999]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes which requires the installation of an additional clamp on the feeder fuel line located inside each engine pylon. Fatigue cracks have been discovered in these fuel lines. These cracks, if not prevented, can lead to rupture of the fuel lines and create a fire hazard.

EFFECTIVE DATE: March 11, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, telephone: (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Cracks in the feeder fuel lines located inside the engine pylons have been reported. These cracks are due to vibrations. The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilité mandating compliance with the requirements of Airbus Industrie Service Bulletin A300-28-039. This service bulletin prescribes installation of clamps and mountings to dampen vibrations.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the **Federal Register** on August 2, 1984 (49 FR 30965). The comment period closed on September 22, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment.

Two comments were received. One operator indicated that it had completed the AD requirements on all its airplanes. The other commenter stated that the world fleet of A300 airplanes had accomplished the requirements of the AD and, therefore, there is no reason for issuing a final rule. The FAA disagrees. The FAA has received no verification that the world fleet of A300 airplanes has accomplished the AD requirements. While the FAA has determined that the U.S. fleet of A300 airplanes has accomplished these requirements, the AD is issued to cover the import of A300 airplanes that may not have accomplished the modification. This amendment will have no economic impact on the current U.S. fleet.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by

contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, serial numbers as listed in the Airbus Industrie Service Bulletin A300-28-039, Revision 2, dated December 17, 1981, certificated in all categories. To prevent rupture of the feeder fuel lines located inside the engine pylons, accomplish the following, unless previously accomplished:

A. Prior to the accumulation of 4,000 hours total time in service or within the next 120 days after the effective date of this AD, whichever occurs later, install an additional clamp on the feeder fuel line located inside each engine pylon in accordance with the accomplishment instructions of the service bulletin.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective March, 11, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3444 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-68-AD; Amdt. 39-4998]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires structural inspections, and replacement or modification, as necessary, of the wing-to-body drag angle on certain Boeing Model 737 series airplanes to ensure continued airworthiness. The AD is prompted by numerous reports of cracking of these angles. Continued operation with failed angels could lead to progressive cracking of adjacent structure and rapid decompression.

DATE: Effective March 11, 1985. Compliance schedule as prescribed in the body of the AD.

ADDRESSES: The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection, repair, and replacement or modification, as necessary, of the wing-to-body drag angles on certain Boeing Model 737 series airplanes was published in the **Federal Register** on September 6, 1984 (49 FR 35126). The comment period for the proposal closed on October 22, 1984.

The proposal was prompted by numerous reports of cracks in the wing-to-body drag angle. In several cases, as a result of angle failures, secondary damage occurred on bolts attaching the wing center section front spar lower chord to the Body Station 540 frame chord.

Interested persons have been afforded an opportunity to participate in the making of this AD and due consideration has been given to all comments received.

The Air Transport Association of America (ATA) responded to the NPRM on behalf of four member operators. Three of these four operators had no objections to the proposed amendment. The fourth operator stated the AD as proposed provided no terminating action. Replacement of the angles in accordance with Revisions 1, 2, or 3 of the manufacturer's service bulletin should constitute terminating action. The FAA concurs with the comment and the AD has been revised accordingly.

Another commenter noted that the manufacturer's service bulletin has no provisions for repairing the drag angles; therefore, the term "repair" should be changed to "replace" or "modify". The FAA concurs with the comment and the AD has been revised accordingly. The FAA recognizes that some operators may choose to replace cracked angles with original production aluminum angles or modify by installing the newer titanium replacement angles. Should an operator choose to submit a repair proposal as an equivalent means of complying with the AD, paragraph F. allows this option. For these reasons the word "repair" is deleted.

Another operator suggested that the compliance time limit of 90 days is too restrictive. The Flight Safety Addendum of the manufacturer's service bulletin allows 4,000 flights, for aircraft over the specified thresholds, before inspection must commence. The FAA recognizes the undue hardship the proposed compliance limit might have on some operators and, upon reconsideration, has determined that the compliance time may be extended without compromising safety. The AD has been revised accordingly.

It is estimated that 178 airplanes of U.S. registry will be affected by this AD, and that approximately 2 manhours per airplane will be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost of the U.S. fleet for accomplishment of the AD is estimated to be $14,240.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Boeing: Applies to Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737–53–1031, Revision 3, dated October 28, 1983. To prevent rapid decompression resulting from undetected cracking of the wing-to-body drag angle, accomplish the following (unless previously accomplished) prior to the accumulation of 8,000 landings on Group I airplanes, or 35,000 landings on Group II airplanes, or within 1 year or 4,000 landings from the effective date of this AD, whichever occurs later:

A. Visually inspect the upper drag angles for cracks in accordance with the Flight Safety Addendum of Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA approved revisions. Repeat the visual inspections at intervals not to exceed 4,000 landings.

B. Replace or modify cracked upper drag angles before further flight in accordance with Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA approved revisions. Repeat the visual inspections at intervals not to exceed 4,000 landings.

C. Modification of airplanes in accordance with Accomplishment Instructions, Part II Replacement Data, of Boeing Service Bulletin 737–57–1031, Revision 3, or later FAA approved revisions, constitutes terminating action for this AD.

D. Airplanes may be flown to a maintenance base for drag angle replacement or modification in accordance with FAR 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. For purposes of complying with the AD, subject to acceptance by the assigned FAA Principal Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, Northwest Mountain Region, Seattle, Washington.

G. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 11, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430 and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–3446 Filed 2–8–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–40–AD; Amdt. 39–5001]

Airworthiness Directives; British Aerospace Model HS 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain British Aerospace Model HS 748 airplanes which requires inspections, modifications, and repairs, as necessary, to passenger and cargo door components to correct certain unsafe conditions relative to improper door closing, jamming, and false closing indications. This action is necessary to ensure that all doors properly close and lock.

EFFECTIVE DATE: March 11, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washingon.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, telephone: (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on the passenger and cargo door components of British Aerospace Model HS 748 airplanes. These may be corrected by incorporating ten (10) separate mandatory service bulletins. These service bulletins prescribe inspections, modifications, and repairs, as necessary, to passenger and cargo door components.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the **Federal Register** on September 11, 1984 (49 FR 35644). The comment period closed on October 29, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

It is estimated that five airplanes of U.S. registry will be affected by this AD, that it will take approximately 160 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $3,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $47,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, British Aerospace Model HS 748 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

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

British Aerospace: Applies to Model HS 748 airplanes, certificated in all categories, which are listed in the British Aerospace service bulletins specified below. Compliance is required within the time interval specified in each of the following paragraphs, unless previously accomplished:

A. To ensure the baggage door properly locks from the interior, within 180 days after the effective date of this airworthiness directive (AD), modify the baggage door in accordance with British Aerospace HS 748 Service Bulletin 52/94, dated May 14, 1982.

B. To ensure the passenger and crew/freight doors properly lock, within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/95, dated May 14, 1982.

C. To prevent false door warnings on baggage, passenger, and crew/freight doors, within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/96, dated May 14, 1982.

D. To ensure passenger, baggage, and crew/freight doors properly lock, within 90 days after the effective date of this AD, install warning decals to the interior trim of the doors in accordance with British Aerospace HS 748 Service Bulletin 52/97, dated May 14, 1982.

E. To prevent false door warnings on baggage and crew/freight doors, within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/99, dated May 14, 1982.

F. To ensure the large freight door properly locks, within 90 days after the effective date of this AD, install warning decals to the interior trim of the door in accordance with British Aerospace HS 748 Service Bulletin 52/100, dated May 14, 1982.

G. To prevent failure of the crew/freight door locking mechanism swivel lever, within 90 days after the effective date of this AD, inspect the swivel levers in accordance with British Aerospace HS 748 Service Bulletin 52/101, Revision 1, dated December 1983. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

H. To ensure the integrity of door sills and secondary locking mechanisms, inspect the passenger, baggage, and crew/freight doors (including the large freight door), within 180 days after the effective date of this AD, in accordance with British Aerospace HS 748 Service Bulletin 52/108, dated November 1982. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

I. To provide an audible door unsafe warning on all airplanes, except Model 235, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/109, dated October 13, 1982.

J. To provide an audible door unsafe warning on Model 235 airplanes, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/110, dated October 13, 1982.

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

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective March 11, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3445 Filed 2-6-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending our regulation, § 416.210, that implements section 1611(e)(2) of the Social Security Act (Act) which requires that Supplemental Security Income (SSI) applicants and beneficiaries apply for other benefits for which they may be eligible. The existing regulations provide that individuals are not eligible for SSI benefits if they do not apply for other benefits when notified to do so by the Social Security Administration (SSA). These benefits include payments received as annuities, pensions, retirement benefits, and disability benefits. We are amending the regulations by adding earned income tax credits (EITC's) as payments individuals must apply for in order to be eligible for SSI benefits. Individuals who are eligible for advanced payment of EITC's must apply for them. Individuals with a past period of employment or who are self-employed must apply for EITC's with their tax returns. EITC payments are made under the provisions of sections 43 and 3507 of the Internal Revenue Code. These payments became countable as earned income for SSI purposes effective January 1, 1980, with the enactment of Pub. L. 96-222 (section 101(a)(2)(B)). We published a Notice of Proposed Rulemaking on August 17, 1983 (48 FR 37228). Comments received are discussed in this preamble.

DATE: These rules are effective February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7460.

SUPPLEMENTARY INFORMATION: We are revising our rules on eligibility for SSI benefits that require that individuals apply for other benefits when SSA notifies them to do so. Section 1611(e)(2) of the Act states that individuals must apply for other benefits of a certain type (when SSA notifies them to do so) as a requirement for eligibility for SSI benefits. Section 416.210 of the existing regulations implements this section and describes the other benefits as including pensions, retirement and disability benefits, veterans' compensation and pensions, and other like payments. These regulations specify EITC's as another benefit for which individuals will have to apply upon notification by SSA. EITC's are payable under the Internal Revenue Code (sections 43 and 3507) to individuals who meet certain qualifications of family composition and low earnings.

Thus, for purposes of obtaining or continuing to receive SSI benefits, individuals are now required to apply to employers for advance payment of EITC's, or if the income is available because of past employment, or if the individuals are self-employed, to apply with their personal income tax returns. Regulations implementing Pub. L. 96-222, section 101(a)(2)(B), which provides that EITC's are earned income for SSI purposes as of 1980, were published May 24, 1983 (48 FR 23177).

Section 1611(e)(2) of the Act requires individuals to take all appropriate steps to apply for and obtain payments of the type enumerated in section 1612(a)(2)(B). The existing regulation § 416.210 reflects this requirement and lists examples of the types of payments SSI claimants must apply for and obtain. We believe that EITC's should be added as another example of the type of income that is listed in § 416.210(b) and for which applications must be filed as a requirement for SSI eligibility. EITC's are of the same type as those payments already cited in the statute and the regulations. They also require application or similar action. They entail conditions for eligibility. They, like at least some of the other payments, are available on a periodic or one-time basis. Finally, they are a source of income that will reduce the amount of,

or obviate the need for, an SSI benefit. Including EITC's as one type of payment that an individual must request or apply for is consistent with the recognized purpose of the SSI program—that is, to use SSI as a program of last resort for needy aged, blind, and disabled individuals. This theme runs throughout the legislative background of the program. The Congress envisioned that needy aged, blind, and disabled individuals would have to exhaust other means of support available to them before qualifying for SSI benefits. EITC's which are available upon request to low income individuals provide one means of support. These payments are available to individuals who qualify for them if received would serve to obviate the need for SSI benefits or at least reduce the amount payable under the SSI program.

Requiring SSI claimants who qualify for EITC's to apply for them is to their financial advantage. Receipt of the payments increases their overall current income. Under the SSI program an EITC is treated as earned income. Since less than half of an individual's earned income is counted in determining an SSI benefit payment, individuals will have more overall income available to meet their current subsistance needs.

We are revising § 416.210 by adding EITC's as an example of the type of payment for which qualified individuals must apply if they wish to be eligible for or continue to receive SSI benefits.

Comments Received Following Publication of Notice of Proposed Rulemaking

We received three comments from one source. Two comments were combined to facilitate our response.

Comment: The regulation appears to go beyond the scope of 42 U.S.C. 1382a(a)(2)(B) (section 1612(a)(2)(B) of the Act), which defines the other benefits which an SSI applicant must apply for pursuant to 42 U.S.C. 1382(e)(2) (section 1611(e)(2) of the Act) as:

> any payment received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

The benefits described neither explicitly nor implicitly extend to EITC's.

Response: It is true that EITC's are not explicitly set out in section 1612(a)(2)(B) of the Act. We believe, however, that reading section 1611(e)(2) as limited only to the benefits specifically described in section 1612(a)(2)(B) is at variance with the recognized legislative purpose of the SSI program. The purpose was to use SSI as a program of last resort. This theme runs throughout the legislative background to the program, and is specifically discussed in the context of the provisions of section 1611(e)(2) that require SSI claimants to file for other benefits. (*See*, S. Rept. No. 92–1230 92d Cong., 2d Session 386 (1972)). Congress envisioned that an individual would have to exhaust other means of support before coming to the SSI program. When section 1611(e)(2) was enacted, Congress could not have specifically required that an individual file for EITC's because they were not provided for in the Internal Revenue Code until 1975. These payments are countable as income under the SSI program. For all these reasons, we do not think they should be excluded from the requirement to file. If an individual is not required to apply for an EITC in those situations in which he or she is entitled to a payment merely because EITC's are not specifically mentioned in section 1612(a)(2)(B), reliance on the specific list of benefits in the SSI statute would bring about a result contrary to legislative intent. Therefore, we believe that section 1611(e)(2) can be read as requiring individuals who are eligible for EITC's to file for those payments in order to be eligible for SSI benefits.

Comment: It may well be impossible, given the amount of time which is required for the IRS to process income tax returns, for an individual to meet the requirement of 42 U.S.C. 1382(e)(2) (§ 1611(e)(2) of the Act) that an individual must take all appropriate steps "to apply for and (if eligible) obtain" benefits within 30 days. Similar difficulties may be encountered in attempting to formulate time frames within which employers would be required to process and make payment on advance EITC's. Also, it would appear extremely harsh to require individuals with mental disabilities, who lack the capacity to respond to the most basic inquiries, to apply for EITC's.

Response: The regulation does not require that an individual actually obtain EITC's or advance EITC's within 30 days. Rather, it requires that an individual apply for (file an application and do whatever else is needed to establish eligibility) the EITC's within 30 days once notified in writing that he or she may be eligible. Section 416.210(e)(2) of the regulations provides that an individual will not be found ineligible for SSI benefits if he or she has a good reason for not applying for other benefits within 30 days. We have developed appropriate procedures to assist the individual when it appears necessary, particularly when there is an indication of an individual's lack of capacity to take required steps to pursue benefits or payments due, including an individual's inability to apply for EITC's.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation, because only about 3 percent of SSI beneficiaries have earned income and only a fraction of these may qualify for EITC's. Therefore, a regulatory impact analysis not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements for SSI beneficiaries that require clearance by the Office of Management and Budget (OMB). SSA has clearance for form SSA–8150, on which beneficiaries report income (OMB No. 0960–0128). However, a new form, SSA–L8050, is used by SSA to notify an SSI claimant to apply for EITC's and by an employer to verify that the claimant has applied for advance payment of EITC's when the claimant is unable to furnish evidence of eligibility for such payments. OMB has approved this additional reporting form (OMB No. 0960–0324).

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals with some impact on a few employers. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: July 9, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 29, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Part 416 Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart B reads as follows:

Authority: Secs. 1102, 1110, 1602, 1611, 1614, and 1631 of the Social Security Act as amended, Secs. 211 and 212 of Pub. L. 93-66, 49 Stat. 647 as amended, 94 Stat. 474, 86 Stat. 1465, 86 Stat. 1466, 86 Stat. 1471, and 86 Stat. 1475; 42 U.S.C. 1302, 1310, 1381a, 1382, 1382c, and 1383.

2. In § 416.210, paragraph (b) is revised to read as follows:

§ 416.210 You do not apply for other benefits.

* * * * *

(b) *What "other benefits" includes.* "Other benefits" includes any payments for which you can apply that are available to you on an ongoing or one-time basis of a type that includes annuities, pensions, retirement benefits, or disability benefits. For examaple, "other benefits" includes veterans' compensation and pensions, worker's compensation payments, Social Security insurance benefits, unemployment insurance benefits and earned income tax credits (EITC's) payable under Section 43 and 3507 of the Internal Revenue Code. You will be required to apply to your employer for advance payment of EITC's. If a past period of employment is involved, or if your earned income is derived from self-employment, you will be required to apply with your personal income tax return.

* * * * *

[FR. Doc. 85-3326 Filed 2-8-85; 8:45 am]

BILLING CODE 4190-11-M

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20 CFR Part 416

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Presumptive Disability and Presumptive Blindness; Categories of Impairments—AIDS

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations with request for comments.

SUMMARY: We pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before making a formal determination when available information indicates a high probability that disability exists. These presumptive disability and blindness decisions may be made at the Social Security district offices for some impairment categories. We are adding AIDS as defined by the Centers for Disease Control, where the disease has progressed to the point where the individual is unable to work, to these categories in view of the predictability that the disease will result in a finding of disability.

DATES: These interim regulations are effective February 11, 1985. Written comments may be submitted by April 12, 1985.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone (301) 594-7415.

SUPPLEMENTARY INFORMATION: Section 1631(a)(4)(B) of the Social Security Act (the Act) provides that a claimant applying for supplemental security income benefits based on disability or blindness may receive up to 3-months payments prior to the determination of the individual's disability or blindness, if he or she is presumptively disabled or blind and otherwise eligible. Any such payments based on presumptive disability or blindness are not considered overpayments if it is later determined that the person is not disabled or blind, unless the person is disallowed benefits due to excessive income or resources, or it is later determined that the amount of the payment was incorrectly calculated.

A presumptive disability or presumptive blindness decision is made either at the district office or the State agency in cases where the available evidence or other information, including observations and confirming contacts, while not sufficient for a final determination of disability or blindness, indicates a high degree of probability that the claimant is disabled or blind.

Generally, a presumptive finding of disability or blindness made at the State agency may be based on any impairment when the evidence is sufficient to determine that there is a high degree of probability that the finding will later be confirmed when complete evidence is obtained.

On the other hand, district office decisions are restricted to impairment categories for which experience has shown that particularly reliable presumptive disability and presumptive blindness decisions can be made. The district office may make presumptive disability and blindness decisions in those situations specified in 20 CFR 416.934, where the claimant's statements about his medical condition are consistent with observations of the district office representative or supported by confirming contacts. These limitations insure that presumptive decisions are seldom reversed when actual medical evidence is obtained for the formal disability or blindness determinations.

We are adding acquired immune deficiency syndrome (AIDS) to the impairment categories in § 416.934 to permit presumptive disability decisions for this disease at district offices.

AIDS is a newly identified disease, now defined by the Centers for Disease Control (CDC), as a disease, at least moderately predictive of a defect in cell-mediated immunity, occurring in a person with no known cause for diminished resistance to that disease. Such diseases include pneumocystis carinii pneumonia, Kaposi's sarcoma, and severe opportunistic infections. The diagnoses are considered to fit the case definition only if based on sufficiently reliable methods (generally histology and culture). After an increasing number of reports of these illnesses and much analysis by CDC scientists, it became clear that the diseases themselves were manifestations of another more fundamental problem—a severe deficiency in a person's immune system, that is, loss of the body's natural ability to resist certain kinds of diseases. The symptoms and signs of AIDS are non-specific and the disease continuously increases in severity. Individuals with AIDS often experience severe illness from infections or diseases which ordinarily do not have serious effects on or do not occur in healthy individuals. In individuals with AIDS, these infections or diseases have been reported to have an exceedingly high death rate. The death rate for those persons who contracted AIDS before 1981 is 85 percent. No patient so far has regained lost immunity. Our case experience to date indicates that a claim with a confirmed diagnosis of CDC defined AIDS is almost always allowed for medical reasons (some are denied for nondisability factors).

The district office interviewer may make a presumptive disability decision when a claimant, who is not working, alleges disability due to AIDS after a confirming contact has been made to ascertain that this disease, as defined by CDC, has been diagnosed and that it has progressed to the point that the

individual is unable to work. Confirmation of this should be by contact with a physician or some other medical or treating source, such as a member of a hospital or clinic staff who is able to confirm the diagnosis and level of severity on the basis of available medical records. This confirming contact may be made by telephone. The presumptive disability decision may be made immediately upon confirmation of the diagnosis and the level of severity to which the disease has progressed and will not be delayed for the receipt of the actual medical reports or records. A final disability determination will be made later when sufficient medical evidence is received by the State agency.

This presumptive disability category for AIDS will be effective for 3 years. Because of the dynamic nature of research concerning the diagnosis, evaluation, and treatment of AIDS, this impairment category will require periodic review and reassessment. We intend to carefully monitor these regulations over a 3-year period by providing for ongoing evaluation of the impairment category to determine whether they will need to be revised and updated to reflect advancements in scientific knowledge concerning this disease. Therefore, 3 years after publication of these regulations, they will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

We are publishing these amendments to the regulations as interim final rules instead of proposed rules. The Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides exceptions to its notice and public comment rulemaking procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We find that at this time publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest under the APA. The purpose of these regulations is to provide immediate financial relief to individuals with AIDS who are obviously disabled under the law and who are already financially impoverished due to insufficient income and resources. Because of the severity of this disease, experience has demonstrated that only in rare and unusual cases would disability not be ultimately established on the basis of the medical evidence. In view of the extremely high death rate for this disease, our objective is to make disability payments as soon as possible. Therefore, we think that delaying publication of final regulations would serve little practical purpose and would be especially detrimental to those persons who need immediate assistance.

Although we are publishing these regulations to be immediately effective on an interim basis, we are asking for comments concerning these rules from members of the public. After the end of the comment period, we will carefully consider any comments we receive in order to determine whether any changes are necessary before issuing final rules.

Executive Order 12291

These interim regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major rule. The cost of implementing this presumptive disability provision is negligible. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these interim regulations will not have a significant economic impact on a substantial number of small entities because they only affect a small number of disability claimants under Title XVI of the Social Security Act.

Paperwork Reduction Act

These interim regulations impose no reporting/record/keeping requirements necessitating clearance by the Office of Management and Budget.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Program No. 13.807, Supplemental Security Income Program)

Dated: February 21, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approval: April 11, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, Part 416, Subpart I, Chapter III of Title 20, Code of Federal Regulations, is amended as set forth below.

Subpart I—Determining Disability and Blindness

1. The authority citation for Subpart I reads as follows:

Authority: Secs. 1102, 1614, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 88 Stat. 52, 86 Stat. 1475; 42 U.S.C. 1302, 1382c, and 1383.

2. Section 416.934 is amended by revising the introductory paragraph and by adding a new paragraph (k) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

We may make findings of presumptive disability and presumptive blindness in specific impairment categories without obtaining any medical evidence. These specific impairment categories are—

* * * * *

(k) Allegation of acquired immune deficiency syndrome (AIDS), as defined by the Centers for Disease Control. This category is effective for 3 years unless extended by the Secretary or revised and promulgated again.

[FR Doc. 85-3325 Filed 2-8-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Parts 610 and 660

[Docket No. 81N-0417]

Additional Standards for Anti-Human Globulin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing additional standards for Anti-Human Globulin. The additional standards include many of the recommendations in FDA's existing guidelines as well as changes and additions that reflect recent experience and scientific knowledge in the use of Anti-Human Globulin.

DATES: Effective May 13, 1985; labeling requirements become effective February 11, 1986, for all affected products initially introduced or initially delivered for introduction into interstate commerce. For more information about the effective date, see the discussion under the heading "Paperwork Reduction Act of 1980."

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-368), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1982 (47 FR 18623), FDA proposed to establish additional standards for Anti-Human Globulin Serum. As defined in the proposal, Anti-Human Globulin Sera consist of sterile preparations of sera or protein-rich fluids containing one or more antiglobulin antibodies. The preparations usually are produced by injecting rabbits or other animals with human proteins or are obtained from immunoglobulin-secreting cell lines. The preparations are used as reagents in antiglobulin tests to demonstrate that red blood cells have been coated with immunoglobulin molecules or complement components.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Anti-Human Globulin Sera, offered for sale in interstate commerce must be licensed and meet certain standards that ensure their continued safety, purity, efficacy, and potency.

On April 30, 1982, FDA proposed to amend the additional standards in Part 660 (21 CFR Part 660) by adding new Subpart F for Anti-Human Globulin Sera to include many of the recommendations in FDA's existing guidelines as well as changes and additions that reflect recent experience and scientific knowledge in the use of these products. At the time the proposal was issued, the agency also made available draft-recommended testing procedures for these products entitled "Recommended Methods for Anti-Human Globulin Serum Evaluation." The draft-recommended testing procedures included recommended serological testing procedures, potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties. The agency chose to make these draft-recommended testing procedures available as described in 21 CFR 10.90(b)(10) of FDA's administrative practices and procedures regulations instead of publishing the information as proposed codified requirements or to make these testing procedures available as guidelines under 21 CFR 10.90(b)(4) to permit timely future changes and improvements in the recommended methods consistent with advances in science regarding the products. Consistent with its proposal of April 30, 1982, FDA now is announcing under 21 CFR 10.90(b)(10) that a document entitled "Docket No. 84S–0182 Recommended Methods for Anti-Human Globulin Evaluation" is available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice revoking its existing guidelines for Anti-Human Serum labeling, recommended test procedures, and lot release requirements that FDA made available in 1977 (**Federal Register** of August 19, 1977; 42 FR 41920).

FDA provided interested persons 60 days to submit written comments on the proposal. In response, FDA received nine letters of comment. A summary of the comments and FDA's responses follows:

1. Three comments on proposed § 660.50(a) concerned the proper name, Anti-Human Globulin Serum. One comment recommended deleting the word "human" from the proposed proper name. One comment recommended deleting the word "serum" from the proposed proper name. Another comment suggested that changing the proper name of the product from Anti-Human Serum to Anti-Human Globulin Serum is unnecessary.

The agency agrees in part and disagrees in part with the comments. FDA advises that the term "proper name" is defined in 21 CFR 600.3(k). The agency agrees that the word "serum" unnecessarily lengthens the proposed proper name and is therefore deleting the word. Also, Anti-Human Globulin may be manufactured from immunoglobulin-secreting cell lines as well as from serum and including the word "serum" in the name may be misleading. FDA disagrees with the recommendation to delete the word "human" from the proposed proper name. The word "human" distinguishes this product from a large variety of other antiglobulin products that are directed against nonhuman proteins. Therefore, FDA believes that the word "human" should remain part of the proper name. Accordingly, FDA believes that the proper name of this product should be Anti-Human Globulin. In the final rule FDA is amending §§ 660.50 through 660.56 to reflect this new proper name and making conforming changes in the name of the product in the Recommended Methods for Anti-Human Globulin Evaluation.

2. In proposed § 660.50(a), FDA proposed that Anti-Human Globulin Serum be defined as a sterile preparation. Two comments on proposed § 660.50(a) questioned the need for manufacturers to perform final product sterility tests of each lot of this in vitro diagnostic product as required in §§ 610.1 and 610.12. One of these comments requested that the word "sterile" be deleted from the definition of Anti-Human Globulin.

FDA believes that Anti-Human Globulin should be sterile and be prepared by procedures demonstrated to yield consistently a sterile final product. However, manufacturers' control of the sterile manufacturing process provides more assurance of product sterility than performance of final product sterility tests. Final product sterility tests reveal whether the units tested are sterile, but such tests cannot provide complete assurance that untested units in the lot are sterile. FDA advises that manufacturers are required to assure that the products are sterile and manufactured by a method demonstrated to yield consistently a sterile product through performance of sterile process validation, a requirement of FDA's current good manufacturing practice (CGMP) regulations for medical devices in 21 CFR 820. In the **Federal Register** of July 19, 1984 (49 FR 29272), FDA announced the availability of a working draft guideline entitled "Guideline on General Principles of Process Validation" (March 1984).

FDA requires that a preservative be added to Anti-Human Globulin to prevent development of any microbial contamination during use and reuse of the container. To provide increased assurance that the product is safe and effective at time of use, FDA also requires that blood banks perform the daily checks for potency and specificity of Anti-Human Globulin that are required by FDA's CGMP regulations for blood and blood components (21 CFR 606.65(c)). Thus, FDA believes it can eliminate the proposed requirement for performance of final product sterility tests of each lot without compromising the safety, potency, or effectiveness of Anti-Human Globulin and without any reduction in consumer protection.

Accordingly, in the final rule the agency is amending § 660.50(a) by substituting the phrase "prepared by a method demonstrated to yield consistently a sterile product" for the word "sterile" in the definition of Anti-Human Globulin. The agency is amending § 660.51(a)(4) to delete the phrase "and that sublot is sterile as specified in § 610.12 of this chapter." In addition, FDA is amending § 660.51(b)(1) to replace the word "sterile" with the word "clean." Further, the agency is amending § 610.12(g)(4)(i) of the general biologics regulations to add Anti-Human Globulin to the list of biological products for which the final product sterility test is not required.

3. Two comments requested that proposed § 660.51(a)(3), which requires that Anti-Human Globulin be sterile filtered into a single vessel and then thoroughly mixed, be amended to permit manufacturers to prepare sublots of Anti-Human Globulin at the time of filtration, because the proposal appears to preclude this possibility by requiring filtration of the product before mixing.

The agency agrees with these comments. In the final rule, FDA is amending § 660.51(a)(3) to permit filtration into sublots directly by rewording the first sentence to read "Only that material which has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot."

4. One comment on proposed § 660.51(a)(4) suggested that the sublot prefix or suffix should be sufficient product identification without requiring the lot number and sublot number and other test specifications to be recorded on each protocol.

The agency disagrees with the comment. To verify sublot identity and equivalence to other sublots of the lot, FDA's CGMP regulations for drugs (21 CFR Parts 210 and 211), which also apply to biologic drugs, and § 600.12 require a manufacturer to record on each protocol the lot number, any sublot designation, and test specifications or results. If a manufacturer observes an inconsistent product test result during tests on a sublot, the requirement in §660.51(a)(4) will assure that the manufacturer can trace each sublot back to other sublots and the original lot of product. Accordingly, in the final rule the agency is adopting § 660.51(a)(4) as proposed, with the deletion noted in paragraph 2.

5. One comment on proposed § 660.51(b)(3) suggested that manufacturers be permitted to use dropper bulbs of any color providing that these colors are not reserved for Blood Grouping Sera.

The agency agrees with the comment but notes that the proposed regulations do not state that dropper bulbs must be colored white. In the proposal, the agency encouraged the use of white dropper bulbs by using the word "may" to prevent mixups of Anti-Human Globulin droppers with droppers from other clinical laboratory reagents, such as Blood Grouping Sera. However, the agency now believes that manufacturers should decide what dropper bulb colors are satisfactory for their particular product lines. Accordingly, to clarify the regulations, in the final rule the agency is deleting proposed § 660.51(b)(3).

6. Two comments concerned proposed § 660.51(c), which limits final container volumes of Anti-Human Globulin to no more than 50 milliliters of the product. One comment suggested that any requirement concerning the volume of product in the final container be consistent with regulations for Blood Grouping Serum (21 CFR Part 660, Subpart C) and allow for the anticipated use of automated equipment for performing Anti-Human Globulin testing. Another comment requested that proposed § 660.51(c) be amended to permit export of bulk containers of Anti-Human Globulin in greater than 50 milliliter containers.

The agency agrees with the comments. FDA now believes that all container volume restrictions for Anti-Human Globulin should be removed to allow manufacturers and consumers greater flexibility in determining the appropriate final container volume. The agency is also reviewing the current regulations for Blood Grouping Serum as part of the agency's ongoing retrospective review program (see **Federal Register** of July 14, 1981; 46 FR 36333) and FDA is preparing proposed changes in those regulations. Accordingly, in the final rule the agency is deleting proposed § 660.51(c) concerning the maximum final container volume requirements and redesignating proposed § 660.51(d) as § 660.51(c).

7. Three comments recommended that proposed § 660.53 be amended, because § 660.53 would require that unlicensed positive and negative control sera be approved prior to use by the Director, Office of Biologics Research and Review, Center for Drugs and Biologics. One comment asked whether samples of control antisera need to be submitted or whether merely the methods of preparation need to be submitted. The other two comments recommended that no approval be required for unlicensed control antisera.

The agency advises that samples of unlicensed control antisera need not be submitted to the Office of Biologics Research and Review, Center for Drugs and Biologics, but that procedures and information concerning source and reactivity of unlicensed control antisera should be a part of the firm's license file submitted to FDA. Accordingly, in the final rule the agency is amending proposed § 660.53 by deleting the second sentence of that section that requires agency approval of unlicensed control antisera.

8. FDA received a number of comments that are summarized below relating to proposed § 660.54, which concerned product testing. At the time the agency published the proposal, FDA made available testing methods in a draft document entitled "Recommended Methods for Anti-Human Globulin Serum Evaluation." The agency advises that FDA is making available its final test procedures for the product as authorized in 21 CFR 10.90(b)(10) of its administrative practices and procedures regulations. The final test procedures, modified in response to the comments below, are in a document entitled "Docket No. 84S–0182 Recommended Methods for Anti-Human Globulin Evaluation" and are available for public examination at FDA's Dockets Management Branch (HFA–305), 5600 Fishers Lane, Rockville, MD 20857.

Thus, the following comments and responses (paragraphs 8a. through 8f.) concern FDA's draft Recommended Methods for Anti-Human Globulin Serum Evaluation.

8a. Two comments requested that section II(a)(2) of the draft "Recommended Methods for Anti-Human Globulin Serum Evaluation" be amended to permit collection of Rh_o(D) positive red blood cells in CPDA–1 anticoagulant, or to eliminate the anticoagulant statement entirely.

The agency agrees with the comments. FDA believes that ACD, CPD, or CPDA–1 are examples of satisfactory anticoagulants for collecting red blood cells to be used in potency tests. Accordingly, the agency is revising its final Recommended Methods for Anti-Human Globulin Evaluation to include CPDA–1 as a satisfactory alternative anticoagulant for collecting Rh_o(D) positive red blood cells.

8b. One comment on section II(b) of the draft recommended methods requested that the anti-D and anti-Fy^a sera used to evaluate potency be permitted to be diluted in certain instances to achieve desired potency levels.

The agency agrees with this comment. The agency recognizes that antisera, such as anti-Fy^a from a single donor source, may not be available in all instances. The practice of using either pooled or single donor antisera that are diluted should be permitted, as requested by the comment. Accordingly, in its final recommended methods the agency is revising section II(b) to clarify the procedure. However, FDA notes that some anti-D and anti-Fy^a sera from hyperimmunized donors may not be representative of the antibodies that someone may wish to detect in patients, and, for this reason, undiluted single donor antisera should be used whenever possible.

8c. One comment concerned section II(c)(1) of the draft recommended methods that recommends that two normal whole blood samples be used in

testing for anti-complement activity. The comment stated that only one normal whole blood sample should be sufficient for the test.

The agency disagrees with the comment. Because of donor variability, in its draft recommended methods the agency recommended that a minimum of two normal whole blood samples be used for testing anti-complement activity. FDA continues to believe that two normal whole blood samples should be used to ensure product safety and effectiveness. Accordingly, in its final recommended methods, FDA made no changes as a result of the comment.

8d. One comment suggested deleting the 30-minute incubation time for preparing anti-C3d coated cells that is described in section II(d)(1)(vi) of the draft recommended methods, because of the variable time duration of trypsin treatment to achieve optimally sensitized test cells.

The agency partially agrees and partially disagrees with the comment. The agency is retaining the 30-minute incubation time, but to allow for variability in trypsin treatment, FDA is revising section II(d)(1)(vi) of its final recommended methods to state that the incubation time should be 30± 3 minutes.

8e. One comment mentioned that section III(a) of the draft recommended methods recommends that manufacturers use IgA sensitized cells in the specificity testing of anti-IgG (heavy chain) antisera. The comment was not aware of any appropriate testing procedure for this specificity test.

In response to the comment, the agency is amending its final recommended methods to include a procedure for evaluating anti-IgA activity. Other procedures not in FDA's recommended methods also may be acceptable. There are several published test methods, including a method using chromic chloride, for preparing IgA coated cells useful in determining the presence or absence of anti-IgA activity. FDA notes that this test is necessary only if a manufacturer specifically claims that its product is free of all anti-IgA activity.

8f. Two comments recommended a reduction in the number of normal clotted blood specimens needed in the test for nonspecific qualities recommended in section V(a)(1) of the draft recommended methods. One comment recommended reducing the number of specimens from 10 to 3, while the second comment suggested that manufacturers should decide how many blood specimens should be used to test for nonspecific qualities.

The agency agrees in part with the comments. The agency's experience indicates that at least five normal clotted blood samples are needed to test for nonspecific qualities due to individual variation among clotted blood specimens and to show that ABO groups are represented adequately. Accordingly, the agency is amending its final recommended methods in section III (B)(1)(i) to reduce from 10 to 5 the number of clotted normal blood samples that should be used in the test for nonspecific qualities.

9. One comment suggested deleting the specific potency tests listed in proposed § 660.54(a), because these tests are included in the draft recommended methods and are subject to change in the future.

The agency agrees with the comment. FDA now believes that all appropriate tests are available in its final "Docket No. 84S–0182 Recommnded Methods for Anit-Human Globulin Evaluation." Because these tests may be changed in the future, listing the tests in the regulations would only delay the implementation of such changes. Accordingly, in § 660.54(a) of the final rule the agency is deleting all references to specific potency tests.

10. One comment suggested that proposed § 660.54 be amended to permit alternative test methods or procedures for evaluating anti-complement activity.

The agency agrees with this comment. In the **Federal Register** of April 18, 1984 (49 FR 15186), FDA published a rule to establish new § 160.9 *Equivalent methods and processes.* The new section permits manufacturers of any biological product, including manufacturers of Anti-Human Globulin, to modify any test method or manufacturing process after satisfying certain conditions. The manufacturers must present evidence to FDA in the form of a license amendment showing that the proposed alternative procedure will provide assurances of the safety, purity, potency, and effectiveness of the biological product equal to or greater than the assurances provided by the method or process in the general standards or additional standards for the biological product; and the manufacturers must have received written approval of the alternative procedure or modification from the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics. Thus, FDA advises that the suggestion of the comment already has been implemented through publication of the rule noted above.

11. One comment concerned proposed § 660.55(a)(1), which would require that final container labels for polyspecific (anti-IgG, anti-C3d) reagents be completely white or colorless, with printing in solid black lettering. The comment stated that only the main panel of the final container label of all polyspecific (anti-IgG, -C3d) reagents should be white or colorless with printing in solid black lettering. The comment requested the inclusion of a company logo or company name including color identification outside of the main panel of the final container label.

The agency agrees with the comment. FDA believes that a manufacturer should be allowed to use a company logo or company name outside the main panel of the final container label. The agency is aware that product identification by company logo or company name is an important asset to companies manufacturing in vitro products and foresees no potential interference with the effective use of Anti-Human Globulin products from the suggested use of logos or trademarks on the label. Accordingly, in the final rule FDA is amending § 660.55(a)(1) to allow use of such logos or company names along the bottom or the end of the label outside of the main panel on final container labels for Anti-Human Globulin products.

12. One comment on proposed § 660.55(d) requested that FDA add the designation "Anti-C3b plus C3d" to the list of names of antibodies.

The agency believes that proposed § 660.55(a)(2)(i) allows for products such as Anti-C3b, -C3d. For clarification, in the final rule the agency is amending § 660.55(d) to state that Anti-Human Globulin preparations may contain one or more of the listed antibody specificities.

13. One comment on proposed § 660.55(d) questioned use of the term "polyspecific" with the antibody designation "Anti-IgG, C3d", because other specificities are permitted.

The agency believes that a product labeled "polyspecific" must contain anti-IgG and anti-C3d activity, but may also contain other antibodies, such as anti-IgM, anti-C3b, anti-C4b, or anti-C4d. Thus, FDA believes that use of the term "polyspecific" is appropriate.

14. One comment on proposed § 660.55(a)(2)(viii) requested that the work "human" be deleted from the cautionary statement, "Does Not Contain Antibodies To Human Immunoglobulins." The comment stated that if the word "human" is not required in the cautionary statement with components of complement, it should not be required in the cautionary statement with immunoglobulin components.

The agency agrees with this comment. Accordingly, in the final rule FDA is deleting the word "human" from the cautionary statement listed in § 660.55(a)(2)(viii).

15. One comment on proposed § 660.55(a)(3) suggested that the minimum lettering size allowed for identifying the antibody on the final container label be reduced from 12 point type size to no less than 8 point.

The agency believes that the 12 point minimum lettering size is appropriate and should be used in most instances. However, to allow greater flexibility in lettering size on labeling for products with multiple antibody specificities, the agency will evaluate the minimum lettering size requirements on a case-by-case basis. Accordingly, in the final rule the agency is amending § 660.55(a)(3) to allow less than 12 point size for identifying the antibody on the label, if approved by the Director, Office of Biologics Research and Review, Center for Drugs and Biologics.

16. Five comments on proposed § 660.56 requested that the lot release requirements be changed or eliminated.

The agency has reconsidered the need for specific lot release requirements for "Anti-Human Globulin that were proposed in § 660.56. FDA now believes that such specific requirements are not always necessary to assure the safety, purity, efficacy, and potency of the products. The proposed specific lot release requirements for Anti-Human Globulin products supplement the general lot release regulation in § 610.2(a) (21 CFR 610.2(a)), which is applicable to any biological product. The general lot release regulation in § 610.2(a) authorizes the agency to require official lot release for any biological product at any time the agency believes lot release is necessary. Accordingly, to reduce the regulatory burden on manufacturers and allow the agency the flexibility to modify or waive the lot release requirements for Anti-Human Globulin products, in the final rule the agency is deleting the specific requirements in proposed § 660.56 for samples, protocols, and official release for such products. The agency now believes that the safety and effectiveness of these products can be assured by using, when necessary, the authority for lot release in § 610.2(a) of the general biological regulations.

17. The agency is changing proposed §§ 660.53, 660.54, and 660.55 by replacing the phrase "Director, Office of Biologics" with the phrase "Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics," consistent with a recent reorganization within FDA (**Federal Register** of March 19, 1984; 49 FR 10168).

Effective Date

18. Four comments asked for more time than FDA's proposed effective date of 180 days to use existing inventories of labels to preclude economic hardship on manufacturers. One of these comments asked for a 1-year extension of the effective date while the other three comments requested an indefinite grace period.

The agency accepts the requests to delay somewhat the effective date of the labeling requirements. Accordingly, in the final rule FDA is changing the effective date for labeling changes to 1 year after the date of publication of the final rule.

Also, FDA is providing manufacturers an opportunity to request and be granted additional time (not to exceed an additional 6 months) to exhaust current supplies of package inserts and other promotional materials for products used with Anti-Human Globulin to preclude economic hardship. A manufacturer should address a request for additional time beyond the 1-year effective date to the Director, Office of Biologics, Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205. The manufacturer should include in the request the proposed date (month and year) that the manufacturer plans to begin use of the new labeling. Such requests should be made concurrently with, or subsequent to, submission to FDA under § 601.2 of draft labeling that shows the changes required by the final rule.

Accordingly, FDA is establishing additional standards for Anti-Human Globulin with the changes described above and other minor clarifying changes.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR 1320.13(g) of OMB's regulations implementing the provisions of that act, FDA has submitted the final rule to OMB for approval of the collection of information requirements contained in §§ 660.51, 660.52, 660.53, 660.54, and 660.55 of the rule. These requirements will not be effective until FDA obtains OMB approval. In accordance with 5 CFR 1320.13(j), prior to May 13, 1985, FDA will publish in the **Federal Register** a notice of OMB's decision to approve, modify, or disapprove these requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

The agency has reexamined the economic effects of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Currently, the 11 licensed manfacturers of Anti-Human Globulin are essentially in compliance with the final rule. The rule does not impose new or different requirements on industry, as it reflects requirements derived from current product license provisions, minimum requirements, recommendations in existing guidelines, and current experience and scientific knowledge concerning these products. Further, in the final rule FDA is eliminating certain requirements that were proposed, such as specific lot release requirements and final product sterility testing. FDA is eliminating these requirements without reduction of consumer protection. The agency therefore concludes that the final rule is not a major rule as defined in Executive Order 12291. The agency certifies that the final rule will not have a significant impact on a substantial number of small business entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Parts 610 and 660

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 610 and 660 are amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.12 [Amended]

1. In Part 610 by revising § 610.12(g)(4)(i) to read as follows:

* * * * *

(g) * * *

(4) *Test precluded or not required.* (i) The tests prescribed in this section need not be performed for Whole Blood (Human), Cryoprecipitated Antihemophilic Factor (Human), Platelet Concentrate (Human), Leukocyte Typing Serum, Red Blood Cells (Human), Single Donor Plasma (Human), Source Plasma (Human), Smallpox Vaccine, Reagent Red Blood Cells, or Anti-Human Globulin.

* * * * *

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

2. In Part 660 by adding new Subpart F to read as follows:

Subpart F—Anti-Human Globulin

Sec.
660.50 Anti-Human Globulin.
660.51 Processing.
660.52 Reference preparations.
660.53 Controls for serological procedures.
660.54 Potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties.
660.55 Labeling.

Authority: Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).

Subpart F—Anti-Human Globulin

§ 660.50 Anti-Human Globulin.

(a) *Proper name and definition.* The proper name of this product shall be Anti-Human Globulin which shall consist of one or more antiglobulin antibodies identified in § 660.55(d) and be prepared by a method demonstrated to yield consistently a sterile product.

(b) *Source.* The source of this product shall be either serum from animals immunized with one or more human serum globulins or protein-rich fluids derived from stable immunoglobulin-secreting cell lines maintained either in tissue cultures or in secondary hosts.

§ 660.51 Processing.

(a) *Processing method.* (1) The processing method shall be one that has been shown to yield consistently a specific, potent final product, free of properties that would adversely affect the product for its intended use throughout its dating period.

(2) Anti-IgG, –C3d (polyspecific) reagents and anti-IgG products may be colored green.

(3) Only that material which has been fully processed, thoroughly mixed in a single vessel, and sterile filtered shall constitute a lot. Each lot shall be identified by a lot number.

(4) A lot may be subdivided into clean, sterile vessels. Each subdivision shall constitute a sublot which shall be identified by the lot number to which has been added a distinctive prefix or suffix. If lots are to be subdivided, the manufacturer shall include this information in the license application and on the protocol. The manufacturer shall describe the test specifications to verify that each sublot is identical to other sublots of the lot.

(b) *Final containers and dropper assemblies.* (1) Final containers and dropper assemblies shall be clean.

(2) Final containers and dropper pipettes shall be colorless and sufficiently transparent to permit observation of the contents for presence of particulate matter or increased turbidity.

(c) *Date of manufacture.* The date of manufacture shall be the date the manufacturer begins the last entire group of potency tests.

(Collection of information requirements approved by the Office of Management and Budget under number ————).

§ 660.52 Reference preparations.

Reference Anti-Human Globulin preparations shall be obtained from the Center for Drugs and Biologics (HFN–890), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, and shall be used as described in the accompanying package insert for determining the potency of Anti-Human Globulin.

(Collection of information requirements approved by the Office of Management and Budget under number ————).

§ 660.53 Controls for serological procedures.

Red blood cells sensitized with complement shall be tested with appropriate positive and negative control antisera. All tests shall be performed in accordance with serological testing procedures approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205.

(Collection of information requirements approved by the Office of Management and Budget under number ————).

§ 660.54 Potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties.

The following tests shall be performed using test procedures approved by the Director, Office of Biologics Research and Review (HFN–800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205:

(a) Potency tests for determining anti-IgG and anti-complement activity.

(b) Specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties.

(Collection of information requirements approved by the Office of Management and Budget under number ————).

§ 660.55 Labeling.

In addition to the applicable labeling requirements of §§ 610.62 through 610.65 and § 809.10 of this chapter, and in lieu of the requirements in §§ 610.60 and 610.61 of this chapter, the following requirements shall be met:

(a) *Final container label*—(1) *Color coding.* The main panel of the final container label of all Anti-IgG, –C3d (polyspecific) reagents shall be white or colorless and printing shall be solid dark contrasting lettering. The main panel of the final container label of all other Anti-Human Globulin reagents shall be black with solid white lettering. A logo or company name may be placed on the final container label, however, the logo or company name shall be located along the bottom or end of the label, outside of the main panel.

(2) *Required information.* The proper name "Anti-Human Globulin" need not appear on the final container label provided the final container is distributed in a package and the package label bears the proper name. The final container label shall bear the following information:

(i) Name of the antibody or antibodies present as set forth in paragraph (d) of this section. Anti-Human Globulin may contain one or more antibodies to either immunoglobulins or complement components but the name of each significant antibody must appear on the final container label (e.g., anti-C3b, –C3d, –C4d). The final container labels of polyspecific Anti-Human Globulin are not required to identify antibody specificities other than anti-IgG and anti-C3d but the reactivity of the Anti-Human Globulin shall be accurately described in the package insert.

(ii) Name, address, and license number of the manufacturer.

(iii) Lot number, including any sublot designations.

(iv) Expiration date.

(v) Source of the product.

(vi) Recommended storage temperature in degrees Celsius.

(vii) Volume of product.

(viii) Appropriate cautionary statement if the Anti-Human Globulin is not polyspecific. For example, "DOES NOT CONTAIN ANTIBODIES TO IMMUNOGLOBULINS" or "DOES NOT CONTAIN ANTIBODIES TO COMPLEMENT COMPONENTS."

(ix) If the final container is not enclosed in a package, all items required for a package label shall appear on the container label.

(3) *Lettering size.* The type size for the designation of the specific antibody on the label of a final container shall be not less than 12 point, unless otherwise approved by the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics. The prefix anti- and other parts of the name such as polyspecific may appear in smaller type.

(4) *Visual inspection.* When the label has been affixed to the final container, a sufficient area of the container shall remain uncovered for its full length or for no less than 5 millimeters of the lower circumference to permit inspection of the contents.

(b) *Package label.* The following items shall appear either on the package label or on the final container label if see-through packaging is used:

(1) Proper name of the product, and the name of the antibody or antibodies as listed in paragraph (d) of this section.

(2) Name, address (including zip code), and license number of the manufacturer.

(3) Lot number, including any sublot designations.

(4) Expiration date.

(5) Preservative(s) used and its concentration.

(6) Number of containers, if more than one.

(7) Recommended storage temperature in degrees Celsius.

(8) Source of the product.

(9) Reference to enclosed package insert.

(10) The statement: "For In Vitro Diagnostic Use."

(11) The statement: "Meets FDA Potency Requirements."

(12) A statement of an observable indication of an alteration of the product, e.g., turbidity, color change, precipitate, that may indicate possible deterioration of the product.

(13) Appropriate cautions.

(c) *Package insert.* Each final container of Anti-Human Globulin shall be accompanied by a package insert meeting the requirements of § 809.10 of this chapter. If two or more final containers requiring identical package inserts are placed in a single package, only one package insert per package is required.

(d) *Names of antibodies.*

Antibody designation on container label	Definition
(1) Anti-IgG, -C3d; polyspecific.	Contains anti-IgG and anti-C3d (may contain other anticomplement and anti-immunoglobulin antibodies).
(2) Anti-IgG	Contains anti-IgG with no anti-complement activity (not necessarily gamma chain specific).
(3) Anti-IgG; heavy chains.	Contains only antibodies reactive against human gamma chains.
(4) Anti-C3b	Contains only C3b antibodies with no anti-immunoglobulin activity. **Note:** The antibody produced in response to immunization is usually directed against the antigenic determinant which is located in the C3c subunit; some persons have called this antibody "anti-C3c." In product labeling, this antibody should be designated anti-C3b.
(5) Anti-C3d	Contains only C3d antibodies with no anti-immunoglobulin activity.
(6) Anti-C4b	Contains only C4b antibodies with no anti-immunoglobulin activity.
(7) Anti-C4d	Contains only C4d antibodies with no anti-immunoglobulin activity.

Anti-Human Globulin preparations may contain one or more of the antibody specificities listed in this paragraph as described in paragraph (a)(2)(i) of this section.

(Collection of information requirements approved by the Office of Management and Budget under number ———).

Effective date. This regulation is effective May 13, 1985; labeling requirements become effective February 11, 1986, for all affected products initially introduced or initially delivered for introduction into interstate commerce.

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: January 10, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-3305 Filed 2-8-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD7-83-29]

Special Anchorage Area; Bahia de San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document renumbers subsection markings that were inadvertantly omitted in the Final Rule published December 13, 1984 (49 FR 48539) reclassifying Anchorage D in Bahia de San Juan, PR as a Special Anchorage Area. This action is necessary to remove a reference to deleted Anchorage D and to renumber the remaining subsections.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant (J.G.) Harry D. Craig, (305) 350-5651.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by removing § 11.240(b)(1) [The regulations.], renumbering § 110.240(b)(3) as § 110.240(b)(2), and revising and renumbering § 110.240(b)(2) to read as follows:

§ 110.240 Bahia de San Juan, PR.

* * * * *

(b) * * *

(1) Vessels awaiting customs or quarantine shall use Temporary Anchorage E. No vessel shall remain in this anchorage more than 24 hours without a permit from the U.S. Coast Guard Captain of the Port.

(33 U.S.C. 2030, 2035, and 2071; 49 U.S.C. 1655(g)(1); 49 CFR 1.46; and 33 CFR 1.05-1(g))

Dated: January 28, 1985.

A.R. Larzelere,

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

[FR Doc. 85-3348 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual, Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 17 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Federal Register, 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the revised regulations on business reply mail and the amended specifications for testing postage meters, have previously been published in the Federal Register.

EFFECTIVE DATE: December 20, 1984.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Federal Register (see 39 CFR 111.1), has been amended by the publication of a transmittal letter for issue 17, dated December 20, 1984. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 17 covers the minor changes not previously described in interim or final rules published in the Federal Register.

Note.—Issue 17 contains all DMM revisions published between October 4, 1984, and December 20, 1984. [Postal Bulletins 21479 through 21490.]

Summary of Changes

Major Revision

Business Reply Mail. * * *

Other Revisions

1. Exhibits 122.63 f, g, i and j are revised to reflect that effective January 1, 1985 all second class mail will be handled in the surface preferential network (PB 21490, 12–20–84).

2. Exhibit 125.2 is revised to reflect changes in the restrictions applied to mail that is addressed to Military Post Offices (PB 21480, 10–11–84).

3. * * *

4. Sections 260 and 270 are revised to update Express Mail preparation and mailing requirements (PB 21486, 11–22–84).

5. Section 369 is added to allow First-Class Presort Mailers the use of optional endorsement line procedures in effect for second- and third-class mailings (PB 21486, 11–22–84).

7. * * *

8. Sections 932.2 and 932.41 and 42 have been revised to reflect changes in Form 3811, *Return Receipt*, and Form 3811–A, *Request for Return Receipt (After Mailing)* (PB 21479, 10–4–84).

9. Minor editorial and typographical changes have been made to 132; 145.3; 321.3; 467.242d (note); 467.342d (note); 468.2; Exhibit 482 a, b (p. 1, p. 2, p. 3), c (p. 1, p. 2), d, e, f, g, h, i; 667.121c; 667.132b; 667.621; 767.222; 911.521(2); 911.533d; 912.56.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	"Federal Register" publication
17	Dec. 20, 1984	49 FR

(5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14)

W. Allen Sanders,

Associate General Counsel, Office of General Law & Administration.

[FR Doc. 85–3400 Filed 2–8–85; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 111

Solicitations in the Guise of Bills, Invoices, or Statements of Account

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation implementing statutory provisions on the mailing of solicitations in the guise of bills, invoices, or statements of account. It clarifies the existing regulation by removing possible ambiguity. It also forecloses a potentially deceptive technique used by some mailers to render less obvious a required warning regarding the true nature of their solicitations.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: George C. Davis (202) 245–4385.

SUPPLEMENTARY INFORMATION: On December 20, 1984, the Postal Service published for comment in the Federal Register (49 FR 49483) proposed amendments of the postal regulations regarding the mailing of solicitations in the guise of bills, invoices, or statements of account (Domestic Mail Manual, section 123.4). These regulations implement 39 U.S.C. 3001(d) which provides that such solicitations are "nonmailable" unless certain warnings are printed on the face of the solicitation making it clear that the solicitations are merely offers and not bills that have to be paid. These regulations require warnings to be displayed in capital letters of a color prominently contrasting with the background against which they appear. These regulations also specify alternative locations for the warnings. The regulations regarding one alternative location require the warning to be centered diagonally across the face of the solicitation. Recent litigation involving this regulation suggested that the rule is ambiguous and that the mailer is free to print the warning horizontally on the center of the invoice. Also, some recent solicitations resembling invoices have surrounded the required warning with printed matter so similar in style and size of type to the warning as to "camouflage" the warning and render it less conspicuous to the consumer. The final rule revises these regulations to specify and illustrate diagrammatically the alternative diagonal placement of the warning and specifies that the required warning may not be surrounded by words or symbols which detract from its conspicuousness.

Interested persons were invited to submit written comments on or before January 19, 1985.

Written comments were received from four organizations. Each comment supported the proposed rule. One comment, while supporting the rule, suggested that it did not go far enough and recommended that any writing which resembles a bill be prohibited from the mails unless the recipient has contracted for the goods or services for which the mailer seeks payment. While this suggestion appears to be a plausible response to this problem, the Postal Service's authority to adopt rules implementing 39 U.S.C. 3001 is limited to defining the content and prominence of warnings respecting the true nature of simulated bills.

In view of the above considerations, the Postal Service hereby adopts the following revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

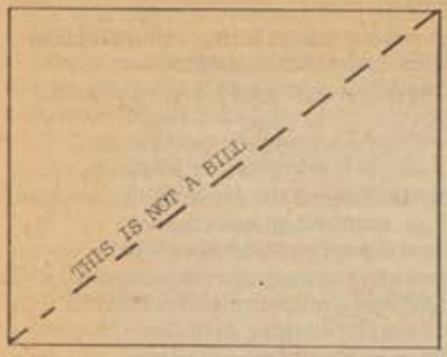
In 123.4 revise .41b(1) and .41(c) to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally

.41 * * *

b. The notice or disclaimer required by this section must be displayed either:

(1) Diagonally on the center of a line drawn from the vertex of the lower left corner to the vertex of the upper right corner, as in the following example; or



* * * * *

c. The notice or disclaimer must stand conspicuously apart on the page. It must not be preceded, followed or surrounded by words, symbols or other matter which reduces its conspicuousness or which introduces, modifies, qualifies or explains the prescribed text, such as "Legal notice required by law."

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

[39 U.S.C. 401, 3001, 3005]

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-3401 Filed 2-8-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2770-5]

Delayed Compliance Order; Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Cole Division, Joyce International

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Cole Division, Joyce International. The Order requires the company to bring air emissions from its two metal furniture manufacturing facilities in Spring Garden Township and Springettsbury, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because of the Administrator's approval, compliance with the Order by Cole Division will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, (215) 597-6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION: On August 22, 1984 the Acting Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49, No. 164, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Cole Division, Joyce International. The notice asked for public comments by September 21, 1984 on the EPA proposal.

No public comments have been received by this Office, therefore, the delayed compliance order issued to Cole Division is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Cole Division on a schedule to bring its two metal furniture manufacturing facilities in Spring Garden Township and Springettsbury, into compliance as expeditiously as practicable with Title 25 Pennsylvania Code, § 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Cole Division to delay compliance with the SIP regulations covered by the Order until April 9, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place Cole Division on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

[42 U.S.C. 7413(d), 7601]

Dated: February 1, 1985.

Lee M. Thomas,

Acting Administrator.

PART 65—DELAYED COMPLIANCE ORDER

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

In § 65.431 revise the heading for the fifth column and add the following entry to the table:

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation involved	Date of FR Proposed	Final compliance date
Cole Division Joyce International	Spring Garden and Springettsbury, PA		§ 129.52 of title 25	Aug. 22, 1984	Apr. 9, 1985

[FR Doc. 85-3084 Filed 02-8-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

Amendment of the Commission's Rules To Allow the Selection From Among Certain Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission recently amended its rules to allow the use of lotteries instead of comparative hearings which was subsequently published in the **Federal Register** on December 20, 1984, 49 FR 49466.

This document corrects certain errors in that Final Rule action.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of Amendment of the Commission's Rules to Allow the Selection from Among Certain Applications Using Random Selection or Lotteries Instead of Comparative Hearings; Gen. Docket No. 81-768.

Released: January 31, 1984.

On December 4, 1984, the Commission issued a Memorandum Opinion and Order (FCC-84-596) in the above captioned proceeding. On December 18, 1984, an Erratum was released to correct certain errors. Additional errors have been discovered in Rule § 22.33 adopted by the Order. For purposes of clarification we are setting forth in its entirety revised § 22.33.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 22—[AMENDED]

Section 22.33 is revised to read as follows:

§ 22.33 Grants by random selection.

(a) If a properly filed application for an initial license in the Public Land Mobile Service, or in the Domestic Public Cellular Radio Telecommunications Service for markets below the top-30 cellular modified Metropolitan Statistical Areas, is mutually exclusive with another such application, the applicants shall be included in the random selection process set forth in Part I, § 1.821 *et seq.*; except, however, that an applicant in the Public Land Mobile Service that qualifies under paragraph (c) below may request to proceed by comparative hearing as set forth therein. No preferences shall be awarded. Renewal applications shall not be included in a random selection process.

(b) *Cumulative chances for partial cellular settlements.* The joint enterprise resulting from a partial settlement among mutually exclusive cellular applicants, if entered into after the filing of individual applications by its members, will receive the cumulative number of lottery chances that the individual applicants would have had if no partial settlement had been reached.

(c) A mutually exclusive applicant in the Public Land Mobile Service proposing to expand an authorized station as described in paragraph (c)(1) or (c)(2) of this section may request that its application and those applications mutually exclusive with it be designated for a comparative hearing under the procedures set forth in Section 22.32. Such a request must be filed with the Commission within 30 days of the date of public notice (as defined in Section 1.4) that the applications appear to be mutually exclusive. The request must include a demonstration of how the public interest would be served by using a comparative hearing procedure. If the Commission finds that the requesting applicant satisfies the requirements of this paragraph, it shall determine whether the public interest would be served by using some form of comparative procedure instead of a lottery. The showings necessary to qualify for a request under this paragraph are in addition to any need showing or traffic load study that may be required for the requested facilities. The following applicants shall be eligible to make this request:

(1) an applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 40 miles of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service; or

(2) an applicant proposing to add one or more frequencies to an authorized station at the same location or other locations within 40 miles of an existing transmitter location, if the frequencies to be added are in the same frequency band as those already authorized (*i.e.*, low-band (35–43 MHz), VHF (150 MHz), UHF (450 MHz) or 900 MHz).

[FR Doc. 85-3371 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket 83-842; FCC 85-25]

Elimination of Unnecessary Broadcast Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule (Policy Statement and Order).

SUMMARY: This action eliminates six policy statement areas concerning broadcast business practices set forth in Part 73 of the Commission's Rules.

This action is taken by the Commission in its ongoing efforts to eliminate unnecessary broadcast regulation no longer warranted or required by the public interest.

This action will permit the more efficient utilization of Commission resources.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Policy Statement and Order

In the Matter of Elimination of Unnecessary Broadcast Regulation; MM Docket 83-842.

Adopted: January 18, 1985.
Released: February 5, 1985.

By the Commission: Commissioner Rivera concurring in part and issuing a statement at a later date.

Introduction

1. This is the fifth in a series of ongoing actions in this proceeding, in which we propose to eliminate or modify various broadcast regulatory "underbrush" policies and rules which our review indicates are no longer warranted or required by the public interest. "Underbrush" is the accumulation of Commission policies, doctrines, declaratory rulings, rules, informal rulings and interpretive statements that have grown up over the years. These "underbrush" policies concern activities for which the Commission believes it should no longer expend resources. The policies relate to

area which often are not within this Commission's area of expertise and where either alternate remedies exist to deter the activity addressed by the particular policy or where marketplace forces will correct the particular abuse. Regulatory "underbrush" appears in various forms and sizes and often has gone relatively unnoticed, yet these "underbrush" matters have the potential to impede the competitive functioning of the marketplace.

2. The first action in this proceeding was adopted in July of 1983 [1] and deleted two policies relating to distortion of audience ratings and the use of inaccurate or exaggerated coverage maps by broadcast licensees. The second action, taken August 4, 1983, deleted ten policies broadly dealing with broadcast program content and issued a companion *Notice of Proposed Rule Making* proposing the deletion of three additional program content policies dealing with horse race programming and advertising.[2] The third action was a *Report and Order* eliminating the horse race policies.[3] The fourth action was a *Policy Statement and Order* adopted the same day as this instant action, which eliminated a Commission Policy concerning "scare announcements" and disruptive contests.[4]

3. In today's "underbrush" action, we primarily focus our attention upon certain broadcast policies—only two of which have been codified in a substantive Commission rule—which essentially concern business practices of licensees, both with outside parties and within the broadcast station itself.[5] Today's action consists of two parts—the instant *Policy Statement and Order* and a companion *Second Notice of Proposed Rule Making*. Specifically, this *Policy Statement and Order* eliminates policies in six areas on which our review indicates we should no longer continue to expend resources:

1. Audience ratings: licensee distortion (Sec. 73.4040).

2. Conflict of interest (Sec. 73.4085) and Sports announcer selection (Sec. 73.4245).

3. Promotion of non-broadcast business of a station (Sec. 73.4225) and Use of a station for personal advantage in other business activities.

4. Concert promotion announcements.

5. Sales contracts, failure to perform (Sec. 73.4230).

6. Commercials, false, misleading and deceptive (Sec. 73.4070).

Three additional policy areas dealing with licensee business practices are proposed for deletion or substantial modification in the companion *Second Notice of Proposed Rule Making:*

1. Fraudulent billing practices (Secs. 73.4115 and 73.1205).

2. Network clipping (Secs. 73.4155 and 73.1205).

3. Combination advertising rates; joint sales practices (Sec. 73.4065).

4. For several broad reasons we conclude that the policies concerning broadcast business practices treated in this *Policy Statement and Order* should be eliminated. Several of the policies address economic conduct not prohibited by antitrust laws (Conflict of Interest, Promotion of Non-broadcast Business, Use of Station for Personal Advantage). Others regulate practices addressed by other federal or state proscriptions, either by statute or tort law (Audience Ratings, Failure to Perform Sales Contracts, Misleading Commercials). Still others are contained in the form of FCC-imposed prohibitions (Sports Announcer Selection, Concert Promotion Announcements).

5. With respect to those policies that circumscribe economic arrangements more tightly than the antitrust laws, we believe that the rationales on which they are based are ill-conceived. There is little reason to believe that the prohibited practices in fact suppress competition. To the contrary, we believe that these rules prohibit practices which are either competitively neutral or would foster economic efficiency and are unnecessary to protect listeners or viewers. The Congress has identified those practices which are genuinely anticompetitive and has outlawed such practices in the antitrust laws, most notably the Sherman and Clayton Acts. We do not believe that this Commission should attempt to outlaw practices not prohibited by the antitrust laws, at least where, as here, the listeners or viewers receive no offsetting benefits.

6. Although designed to promote competition, these policies may have unwittingly obstructed economic efficiencies. The Commission's prohibition against the use of a station in furtherance of a licensee's other business activities appears to be based on the theory that all broadcasters have economic power greater than that found in ordinary competitive markets, and that such power can be exploited to aid non-broadcast lines of business. The antitrust laws would proscribe a broadcaster from unfairly using whatever economic power it may have to injure competition in other markets.

7. With respect to those policies which address practices prohibited by other legal norms, such as false and misleading commercials, we believe that this agency has no special expertise or speed which would justify imposing strictures beyond those of the primary law enforcement mechanisms. The FTC is the agency with expertise in determining whether an advertisement is false or misleading. With respect to failure to perform sales contracts and the like, we believe the party wronged has effective remedies under state law, and that the remedy for such wrongs can best be tailored by state courts to fit the misdeeds. Our limited resources can more effectively be devoted to other endeavors where our expertise is critical to protecting the public interest.

8. We do not beieve it inappropriate to leave the parties involved in these practices to private remedial mechanisms. This would place them on a par with entities engaged in businesses not regulated by the Government. This agency generally should not directly enforce private rights and obligations of its licensees without a showing that absent such enforcement a substantial and immediate danger to viewers or listeners would ensue.

9. With respect to those policies which prohibit specific activities already proscribed by more general rules, we believe it confusing to continue to single out certain violations for special emphasis. To do so may imply that actions not specifically prohibited are permissible. For example, the Commission's special prohibitions against misleading material, either in commercial or sports programming, is redundant and could give the impression that such misleading programming will be treated differently than misleading news or weather reporting, or perhaps even that the latter are unobjectionable. With respect to advertising material, the 1960 *En Banc Programming Inquiry*, 44 FCC 2d 2303 (1960), already requires broadcasters "to take all reasonable

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[1] *Elimination of Unnecessary Broadcast Regulation*, adopted July 14, 1983, FCC 83-339,——FCC 2d——(1983).

[2] *Elimination of Unnecessary Broadcast Regulation and Inquiry into Subscription Agreements Between Radio Broadcast Stations and Music Format Companies*, Dockets MM 83-842 and No. 19743, adopted August 4, 1983, FCC 83-375,——FCC 2d——(1983) and *Notice of Proposed Rule Making in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket No. 83-842, adopted August 4, 1983, FCC 83-376,——FCC 2d——(1983).

[3] *Report and Order in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket 83-842, adopted August 8, 1984, FCC 84-368,——FCC 2d——(1984).

[4] *Policy Statement and Order in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket 83-842, adopted January 18, 1985, FCC 85——, ——FCC 2d——(1085).

[5] Some of the policies treated herein also involve on-air material, but they nevertheless are appropriate for inclusion here because they also are a reflection of broadcast business practices.

measures to eliminate any false, misleading, or deceptive matter." *Id.* at 2313. We see no reason to have special policies on misleading commercials or sports programs. We note, however, that our repeal of these specific prohibitions in no way indicates that we sanction the activities proscribed thereby. Rather, we will treat the prohibited activities in the same manner as other types of misleading conduct.

10. In summary, this *Policy Statement and Order* eliminates underbrush policies where they proscribe (1) business practices permitted by federal antitrust laws, or (2) practices that are unlawful under other legal strictures at either the federal or state levels, when the FCC lacks any special fact-finding or other expertise or attribute that would make it the perferred forum for determining the legality of the conduct.

Procedural Matters

11. None of the matters considered in this *Policy Statement and Order* was established by Commission rule. Therefore, pursuant to Section 553(b)(3)(A) of the Administrative Procedure Act[6], the ordinary notice and comment rule making requirements do not apply, and we are exercising our discretion to announce changes in the subject policies.[7] Further, we also note that the listing of most of the subject policies in § 73.4000 *et seq.* of the Commission's Rules does not affect the need, or lack thereof, for a notice and comment proceeding; § 73.4000 expressly states that the policies are listed and relevant citations provided in the Rules "solely for the purpose of reference and convenience . . . ." However, inasmuch as our policies concerning fraudulent billing and network clipping have been substantively codified in our rules (Sec. 73.1205), we seek public comment before taking action in this area. They are the subject of the companion *Notice of Proposed Rule Making.* We also have elected to add a third policy—§ 73.4065, combination advertising rates; joint sales practices—to this NPRM to have the benefit of current information and comment upon the continued validity of such practices and the extent of discretionary alternative action available.

[6] 15 U.S.C. 553 *et seq.*

[7] For a general discussion of statements of policy, see *Batterton v. Marshall*, 648 F.2d 694 (D.C. Cir. 1980), and *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33 (D.C. Cir. 1974). The new policies announced herein are, of course, subject to the same legal limitations as applied to our former policies.

Character Issue

12. Before treating specific broadcast business practices, we note that the actions prohibited by the policies we are revoking may be considered as reflecting on the "character" of a licensee. Consideration of how such conduct should be treated and the weight to be accorded thereto are addressed in a separate proceeding.[8]

Policies To Be Eliminated

Distortion of Ratings

13. *Section 73.4040. Audience ratings: licensee distortion.*[9] This policy was issued in 1977 in the form of a Public Notice. The Commission stated that it had received information indicating that some licensees had attempted to distort audience ratings by either furnishing false information to an audience rating service or by improperly influencing the recipients of survey diaries. The Commission cited as examples two instances where licensees falsified ratings. In one instance, employees and an officer of a licensee received diaries from a rating company which they submitted to a secretary at the station, who completed the diaries to show falsely that certain households watched the licensee's station exclusively from sign-on to sign-off every day of the week. The falsely completed diaries were thereafter submitted to the rating company. In the other cited instance, some licensees apparently purchased diaries from persons to whom they were sent, or paid recipients of rating diaries to complete them favorably to the licensees.[10] The Commission articulated its ratings distortion policy as follows:

> These practices [providing false information to alter the outcome of a rating survey] raise questions as to whether a licensee that engages in them is qualified to remain a licensee. Licensees are warned * * * that in the future we intend to consider issuance of an appropriate hearing order.

14. We have concluded that the expenditure of our limited resources on investigating and adjudicating complaints such as this *in the first instance* is unjustified, since other corrective forces are available to ensure that false ratings will not be relied on. Those corrective forces include ratings services, advertisers, and competing stations. The ratings services themselves have the strongest incentive to prevent tampering in order to protect the integrity of their ratings methodology, and such services normally take precautions to prevent distortion of their ratings. Rating services normally prescreen participants in their surveys and reject those with media connections, and if they learn of any distortions they throw out the offending surveys and alert subscribers (stations, advertisers, etc.) at the front of their published audience ratings surveys. Another corrective force is supplied by advertisers themselves, who would likely look askance at a station attempting to distort diaries. Competing stations would also be in a good position to suspect skewing of their normal market listening/viewing patterns, to investigate suspicious results, and to call aberrations to the attention of the ratings company, advertisers, and possibly the Electronic Media Rating Council.[11] Further, legal recourse against the offending station is available to any injured party—e.g., filing a complaint with the FTC or instituting private civil litigation.

15. Reasons similar to those articulated in our July, 1983 "underbrush" action deleting our policy concerning the "hypoing' of ratings (FN #1, *supra*) also militate in favor of repeal of this policy. We view it as unlikely that listeners and viewers are appreciably influenced to make decisions to listen to one station over another because of a station's ratings; rather, their decisions are based primarily on the programming offered. Given the alternate methods of dealing with ratings abuse, the commercial nature of the conduct involved, and the minimal impact on the listening/viewing audience, we have concluded that Commission oversight in the first instance is no longer warranted. Accordingly, and as we likewise concluded with respect to our former "hypoing" policy, we no longer plan to

[8] *Notice of Inquiry in General Docket No. 81-500*, 87 FCC 2d 836 (1981). In the interim, however, should a licensee's actions in the areas eliminated by this *Policy Statement and Order* result in judicial or agenda finding of a violation of law, we will continue to consider such findings. See, *e.g.*, *Violations of Laws of USA by Station Applicants*, 42 FCC 2d 399 (1951).

[9] *Distortion of Ratings*, 65 FCC 2d 413 (1977).

[10] The Commission noted that it previously had issued several statements concerning "hypoing", which is defined as any irregular activity during survey periods designed to distort survey results, including both promotional and special programming activities, but that the practices under discussion did not necessarily constitute hypoing.

[11] The Electronic Media Ratings Council, formed in 1964, is a non-profit, industry-sponsored organization which seeks to maintain and improve the credibility and quality of ratings through a variety of activities, the most important of which is a system whereunder the council sets minimum standards for audience measurement research, accredits ratings services which apply for accreditation and meet such standards, and audits the accredited services to assure that the services are operating as represented to the Ratings Council and to their customers.

investigate and adjudicate complaints in this area. We believe any future complaints should be directed to the Federal Trade Commission, the federal agency with the greatest expertise in ratings matters.

Conflict of Interest

16. *Section 73.4085. Conflict of interest* [12] concerns conflicts of interest of station employees and the obligations of licensees when conflicts exist. Section 73.4085 cites two Commission decisions, *Crowell-Collier Broadcasting* and *Straus Communications. Crowell-Collier* involved a licensee whose employees recurrently violated their employer's policies with respect to the acceptance of favors, loans, extraordinary forms of entertainment, and "outside" business ventures. The Commission stated:

> * * * a licensee has an obligation to exercise special diligence to prevent improper use of its radio facilities when it has employees in a position to influence program content who are also engaged in outside activities which may create a conflict between their private interests and their roles as employees of the station. *Id.* at 358.
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> * * * * *
>
> Further, if conflicts of interest in the form of outside economic interests are not prohibited then the personnel involved should be insulated from the process of program selection. When complete insulation cannot be effected, a licensee should take extraordinary measures to insure that no program matter is presented as a result of such practices. In others words, the licensee of a station which plays records which are heavily promoted must be extremely sensitive to the risks of improper influence. He cannot stop with the promulgation of policies and standards, however praiseworthy, but must be vigilant in their continuing enforcement and strengthening to meet new situations as they may develop. *Id.* at 359.

In none of the dozen or so proceedings in which this case and policy have been cited did the Commission take adverse action against the licensee solely as a result of violations of this policy.

17. In *Straus Communications*, an employee of the licensee repeatedly failed to log accurate commericals on behalf of an advertiser in which the employee had an outside interest. The Commisson stated:

> While the selection of programming was the subject to which *Crowell-Collier* was addressed, there is no reason that the principles involved in that policy are not equally applicable to matters related to the determination of the duration of commerical announcements. The Commission acknowledges that a licensee may wish to grant an air personality some discretion to increase the scheduled time for announcements. Nevertheless, in a situation where a conflict of interest exists, close supervision of the employee's use of that discretion should be exercised to avoid abuses. Undoubtedly the duration of commerical announcements is a vital matter in station operations. In this case, the employee, without supervision, lengthened the scheduled commerical announcements from one minutes to two minutes, three minutes, and over four minutes. It appears that you have failed to exercise adequate control over the station's broadcast. *Id.* at 437.

For failing to exercise proper supervision, the licensee was given a short-term license renewal, which, upon reconsideration, was set aside as "too severe" a sanction [13]. There have been no subsequent Commission actions in which this policy has been cited.

18. To the extent the conflict of interest policy merely duplicates provisions of the Communications Act, it is redundant. To the extent it goes beyond the statutory framework, it is unnecessarily restrictive of the discrection of broadcast licensees in the conduct of their business activities. The basic law in the area of conflicts of interest with respect to programming and commerical matter—i.e., "plugola" and "payola"—is, of course, set forth in sections 317 and 507 (formerly 508) of the Communications Act of 1934, as amended, and § 73.1212 of the Commission's rules promulgated thereunder. In brief, §§ 317 and 507 require that all matter broadcast by any station for which any money, service or other valuable consideration is paid, directly or indirectly, shall be so announced at the time of broadcast; each violation is subject to a fine of not more than $10,000 or imprisonment of not more than one year or both. Section 73.1212 contains detailed rules implementing the statutory requirements.

19. The subject conflict of interest policy is unnecessarily restrictive because it goes beyond explicit provisions of the Communications Act and our rules. *Crowell-Collier* requires broadcast licensees to exercise "*special diligence*" and to use "*extraordinary measures*" to oversee compliance in this area. However, sections 317(c) of the *Act* and § 73.1212(b) of our Rules require only that licensees exercise "*reasonable*" diligence in order to make the required sponsorship identification announcement. We have no reason to believe that the statutory standard is ineffectual. Holding licensees to the statutory standard will not, in our view, affect what is broadcast, for the deterrents posed by existing law—up to one year imprisonment and/or a $10,000 fine as well as the sanctions provided for violations of Commission rules—should be sufficient to discourage prohibited activities by either station employees or management. Deletion of these policies will return licensees to their basic statutory obligations and will allow the Commission to police those obligations more effectively. [14]

20. In addition, there are strong marketplace forces to correct potential abuses. For example, in situations where records or other program material or commercial matter are broadcast primarily for reasons of private gain rather than for programming considerations, listenership and station ratings would likely decline, as would advertising support. In such circumstances, station management could be expected to respond quickly. Nevertheless, we certainly do not condone such actions, and we shall continue vigorously to enforce those provisions of the Act and our rules which deal with conflicts of interest.

21. *Section 73.4245. Sports Announcer Selection.* [15] This policy concerns the requirement that stations disclose the existence of any arrangements by which sports announcers are chosen, paid, or their selection influenced by parties other than the station licensee. The Commission adopted its sports announcer selection policy in response to allegations that sports announcers had misrepresented facts to the audience (e.g., weather conditions or size of the crowd) at sports events or had refrained from expressing criticism of home teams, players, or those officiating at games, i.e., being "homers." The *Report and Order* adopted by the Commission found that third parties' control over the selection of sports announcers should not be outlawed, but that the public interest would be served

> * * * by requiring licensees to disclose publicly and prominently during each broadcast the existence of such arrangements. The Commission feels that a disclosure requirement will prevent public deception as to possible lack of objectivity based upon the private interest of the announcer. Such disclosure appears to be

[12] See (a) *Letter to Crowell-Collier Broadcasting*, 14 FCC 2d 358 (1966), and (b) *Letter to Straus Communications, Inc.*, 56 FCC 2d 436 (1975).

[13] 36 RR 2d 77 (1976).

[14] This same basic regulatory approach of returning licensees to their statutory obligations was utilized in our August, 1983 "underbrush" action—see, *e.g.*, the similar treatment of former § 73.4105, Foreign language programming (see FN #2) at Para. 2–27—and it is appropriate here also.

[15] See *Report and Order in Docket 19773*, 48 FCC 2d 235 (1974).

fully consistent with existing Commission policy and precedent. *Id.* at 237.

Accordingly, the *Report and Order* notified all licensees and networks that

> * * * they will be required to disclose clearly, publicly and prominently during each broadcast of an athletic event, the existence of any arrangement whereby announcers broadcasting that event may be, directly or indirectly, chosen, paid, approved and/or removed by parties other than the licensee and/or network upon which that event is broadcast. Further, licensees and networks are reminded of their responsibility to refrain from engaging in, or permitting others to engage in, deliberate falsification, distortion or suppression of facts. *Id.* at 238.

22. We believe the sports announcer selection policy represents an unnecessary and unwarranted intrusion into the business operations of licensees. The Communications Act and the Rules thereunder, *supra*, set certain requirements for sponsorship identification, but do not cover this situation. We do not believe there exists sufficient benefit to the public to justify this regulation.

23. We believe that the marketplace will function effectively so as to ensure that announcers who are likely to favor one team over another are not chosen where it would be inappropriate. On national network sports broadcasts, where listeners/viewers tend to be relatively impartial as to teams, the networks are likely to hire impartial announcers. For local broadcasts, we believe that the sports-oriented audience which listens to or views such programs seldom objects to announcers who favor the "home" team; indeed, many "fans" may prefer this.[16] Those who do not may well refuse to listen to or view biased programs, and if a sufficient number of persons pursue this course, their collective attitude would soon be made known to station management and advertisers. Competing media—local newspapers or competing stations—also could be expected to bring public attention to potential abuses. In addition, as noted, the broadcast of false or deceptive material is, of course, prohibited. See para. 9, *supra*. Thus we believe the continued existence of our special policy for sports programming is not justified, and the policy is eliminated as unnecessary.

Improper Use of Station

24. *Section 73.4225. Promotion of nonbroadcast business of a station;*[17] *Use of a station for personal advantage in other business activities.*[18] These interrelated policies both involve the improper business use of a station license. The first policy relates to the use of a station to promote other, nonbroadcast businesses owned by the licensee. This policy is based on two cases, *Carolina* and *WJIM–TV*. In the *Carolinas* case (Station WADE), the owner of the station also owned a local drug store which received a high volume of commercial announcements at a comparatively low rate not made availble to a competing drug store. The Commission stated, *inter alia:*

> While a licensee is not prohibited from engaging in non-broadcast activities or advertising them over its facilities, it is clear that a licensee may not utilize its broadcast facilities in a manner that would be destructive of competition in the area of its non-broadcast business interests. A licensee's use of its broadcast facility to advertise its non-broadcast activities in a manner which forecloses competition or unfairly treats a competitor would clearly subvert the policy which underlies the grant of the broadcasting license in the first instance. [Citations omitted.]

25. We see no reason to assume, without more evidence than was adduced by the enacting Commission, that the practice of selling commercial time at a discount to another business owned by the licensee is anticompetitive. If indeed the conduct in issue illegally hurts competitors in a non-broadcast market, the antitrust laws would prohibit such conduct. The agencies responsible for enforcing those laws have greater expertise than we in investigating and in determining its legality. We see no basis for assuming these practices harm listeners/viewers, and we believe it inappropriate for us to police competition in non-broadcast businesses.

26. In the *WJIM–TV* case the station, which also owned a restaurant at the local airport, broadcast editorials concerning a controversy between airport authorities and the restaurant without revealing its ownership interest in the restaurant. The station contended that its ownership interest was irrelevant to the public nature of the issue involved and that its ownership was, in any event, a matter of public knowledge. The Commission concluded:

> Although a licensee's obligation to serve the public interest would not preclude it from editorializing on matters in which it has a significant personal interest as in this case, its decision to do so would impose a responsibility to reveal to the broadcast audience the extent and nature of its private interest. Neither the fact that the controversy received coverage by a local newspaper nor the fact that your station broadcast news stories disclosing the acquisition of the restaurant 2 years prior to the editorials justifies the omission from your editorials of reference to your financial interest as concessionaire.

Here again, we believe the policy in issue is relatively inconsequential and that our processes are ill-suited to enforcing it. Most importantly, the Commission's general policy prohibits the broadcast of false or deceptive programming and we believe that policy is sufficient to deter abuses.

27. The second policy—forbidding use of a station for personal advantage in other business activities—is illustrated in the two cited cases (FN #18). The 1970 *Sarkes Tarzian* case involved co-owned and co-located broadcasting stations and newspapers. Competing newspapers complained to the Commission that advertisers who purchased a certain quantity of advertising in one of the Sarkes Tarzian newspapers received a specified discount on any of the three Sarkes Tarzian broadcast stations. In a letter to the licensee, the Commission discussed various areas of applicable law, observing that although the Commission does not enforce antitrust and unfair trade practice laws as such, it takes cognizance of these policies in its application of the public interest standard. It concluded that a licensee's use of his station as a trade weapon, or to gain a competitive advantage, contravenes these policies, and that stations may not be used to serve the purely private interests of licensees. In *WFLI, Inc.*, the station was conducting two of its own local concerts and advertised them on its own station but refused to sell time to another concert promoter to advertise a competing concert. The Commission stated:

> The license to operate a broadcasting station is a limited or quasimonopoly granted by the government in the general public interest rather than for the primary benefit of the licensee. In this respect, boradcasting licenses are similar to patents for inventions. It is well established that a patent cannot be used to secure any monopoly beyond that contained in its express terms and that a patent cannot be used to suppress or restrain competition in the sale of an unpatented article. [Citation omitted.] The Commission holds that a similar principle applies to broadcasting licenses. The limited monopoly

[16] For a broad discussion of economic considerations in the payment for material broadcast, see R.H. Coase, "Payola in Radio and Television," *The Journal of Law and Economics* 12 (October 1979): 269–328.

[17] See, e.g., *Carolinas Advertising, Inc.*, 42 FCC 2d 1027 (1973), and *Station WJIM–TV*, 14 FCC 2d 239 (1968).

[18] See, e.g., *WFLI, Inc.*, 13 FCC 2d 846 (1967), and *Sarkes Tarzian, Inc.*, 23 FCC 2d 221 (1970).

granted by a broadcasting license cannot be used by the licensee to gain a competitive advantage with respect to any transaction or matter other than the operation of the licensed facility within the specified terms of the license.

If the licensee here rejected any programing matter, commercial or otherwise, for the purpose of promoting its own outside business interests, it acted contrary to the principles which define its duties and obligations as a licensee. Decisions by a broadcasting licensee relating to either commercial or noncommercial programing must be made without regard to the private nonbroadcasting interests of the licensee.

28. We believe that regulation by the Commission of these types of practices is unnecessary and possibly counterproductive. To the extent the policies cover areas regulated by the antitrust laws, other agencies such as the Department of Justice or the Federal Trade Commission have primary enforcement responsibility.[19] To the extent the policies cover areas unprotected by other laws, we believe it inappropriate for this Commission to strike down practices not forbidden by the Congress unless there is substantial risk of serious harm to listeners. Where the practices do not amount to antitrust violations, we think they are unlikely to have serious harmful effect. Accordingly, we believe our retention and enforcement of these two policies dealing with the "improper use of a station" is no longer necessary.

Concert Promotion Announcements

29. *Concert Promotion Announcements.*[20] Somewhat related to the foregoing policies concerning the improper use of a station is the Commission's policy concerning concert promotion announcements.[21] In brief, many stations like to associate themselves with local concerts featuring artists whose work is similar to the station's own format, and the Commission's policy declares that it is improper for a station to promote a concert in such a manner as to indicate it is a co-promoter, if, in fact, it has no financial interest in the event. In the *Doubleday* case, for example, the station ran announcements stating that "Station KITE presents in concert Tony Bennett . . . ." but had no financial interest in the concert except that the promotion would benefit its "good music station" image. The Commission said:

> In a manner similar to the situation in *Waterman*, you assumed no responsibility for production or arrangements, nor did you even receive a percentage of the gross revenue. Thus, you have announced over the air that Station KITE presents a concert, when, in fact, it was merely publicizing the concert on behalf of the actual sponsors in exchange for tickets and promotional privileges. Hence, it is the staff's view that you have broadcast misleading announcements regarding the source of the concert's sponsorship.
>
> * * * * *
>
> Although no further Commission action is contemplated on the basis of information presently available, you are expected to adopt procedures to prevent such violations in the future. This matter is being made a part of the records for Station KITE. *Id.*

30. This concert announcement policy exemplifies the very type of unnecessary regulation which should be eliminated because no injury to the public need ensue from such announcements. Further, other more appropriate remedies are available to aggrieved persons. The FTC has authority to prohibit misleading commercials, and competing stations who have exclusive contractual promotional rights would have recourse to private legal action. Concert promoters and the performer(s), if aggrieved, could seek private redress for the unauthorized use of the performer's name, etc. Not only is the policy trivial in nature, but as NRBA points out (FN #21, *supra*) it could easily be circumvented by using a slightly different message—e.g., "Station WXYZ invites you to attend ——— concert" instead of the prohibited "Station WXYZ presents ——— concert." Also, a close examination of the cases reveals that the "policy" in this area is somewhat vague and difficult to apply. For example, in the *Waterman* case the Commission was unable to conclude that participation in the concert by the station's announcer as master of ceremonies and remittance to the station of a small percentage of revenues received by the announcers was sufficient to make the station a co-promoter; the proceeding ultimately was resolved upon grounds of failure to properly log commercial matter. In sum, there appears to be no need to use our limited resources to investigate and adjudicate alleged violations. Private marketplace remedies are available for those parties who believe they are injured. Accordingly, the policy is deleted.

Sales Contracts—Failure to Perform

31. *Section 73.1205. Sales contracts, failure to perform.*[22] This policy was issued in 1973 in the form of a Public Notice to correct a broadcast industry practice whereby large numbers of commercial advertisements were sold but not subsequently broadcast. The Commission explained that under the practice, a station would typically sell a special high volume, low cost advertising package for commercials to be scheduled at times when advertisements normally would not be sold. However, after receiving prepayment, the Commission observed, some stations failed to broadcast all the advertising covered in the contract. (The Commission explained that its fraudulent billing rule did not apply because with prepayment, no bills or other documents were issued.) The Commission warned:

> This document will serve to put all broadcast licensees on notice that where .*.*.* a pattern of partial or non-performance of advertising contracts is found, resulting from either willfulness or lack of adequate supervision or control, serious questions will be raised as to the licensee's qualifications to hold a broadcast authorization, and appropriate sanctions or hearings will be ordered.

32. This policy is being eliminated because alternate and more appropriate fora exist to enforce the rights protected thereby. Advertisers and their agencies generally are entirely capable of asserting their rights. A contractual requirement of a simple periodic statement as to the number of announcements run to date would probably permit advertisers and/or agencies to insure compliance with sales agreements. Monitoring programs could also be implemented. Also, private contract actions or "make good" announcements would be available to advertisers in the event all announcements were not run as contracted. The sales contract policy requires that the Commission, in effect, enforce the private rights of advertisers, a strictly commercial matter which is best left to the functioning of private remedies and of the marketplace. Accordingly, we delete this policy as unnecessary.

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[19] The Commission, of course, has some antitrust enforcement responsibility and "competitive considerations are an important element of the 'public interest' standard." *United States* v. *FCC*, 652 F. 2d 72 (D.C. Cir. 1980). However, the Commission also has discretion to determine the appropriate weight that should be accorded such considerations in particular circumstances. *See id* at 82.

[20] See *Waterman Broadcasting Corporation of Texas*, 28 FCC 2d 348 (1970); and *Doubleday Broadcasting Co.*, 55 FCC 2d 703 (1975).

[21] On September 7, 1983 the National Radio Broadcasters Association filed a Petition for Rule Making looking toward the elimination of this Commission policy. The action taken herein largely moots that petition.

[22] *Performance of Sales Contracts*, 43 FCC 2d 978 (1973).

False, Misleading and Deceptive Advertising

33. *Section 73.4070. Commercials, false, misleading and deceptive.*[23] This policy first appeared in a 1961 *Public Notice*. That *Notice* enclosed a copy of the FTC publication "Advertising Alert" and informed licensees that they would regularly receive the publication, which would familiarize licensees with various deceptive practices so that they will be able to recognize them and take appropriate steps to protect the public against them." The *Notice* then reminded licensees of their basic obligations, citing the 1960 *en banc* programming policy statement:[24]

> Broadcasting licensees must assume responsibility for all material which is broadcast through their facilities. This includes all programs and advertising material which they present to the public. With respect to advertising material the licensee has the additional responsibility to take all reasonable measures to eliminate any false, misleading or deceptive matter. . . . This duty is personal to the licensee and may not be delegated.

The *Notice* announced the first part of a specific new policy:

> If there is submitted to a licensee advertising matter which has been the subject of an FTC Complaint, he should realize that, although no final determination has been made that the advertising in question is false or deceptive, a question has been raised as to its propriety, and *he should therefore exercise particular care in deciding whether to accept it for broadcast.* An Order issued by the Federal Trade Commission against an advertiser, which has become final, is a formal determination by that agency that the particular advertising in question is false or deceptive. Should it come to this Commission's attention that a licensee has broadcast advertising which is known to have been the subject of a final Order by the FTC, serious question would be raised as to the adequacy of the measures instituted and carried out by the licensee in the fulfillment of his responsibility, and as to his operation in the public interest. (Emphasis supplied.)

The *Notice* then continued with the second part of the new policy:

> In this regard, particular attention is directed to the fact that licensee responsibility is not limited merely to a review of the advertising copy submitted for broadcast, but that *the licensee has the additional obligation to take reasonable steps to satisfy himself as to the reliability and reputation of every prospective advertiser* and as to his ability to fulfill promises made to the public over the licensed facilities. (Emphasis supplied.)

34. In 1971, in a letter to a consumer group which had complained of deceptive television advertising, the Commission discussed and summarized its overall policies and then concluded:

> In short, *every station must have a program* to protect the public in this area [deceptive advertising]. The extent of its program will, of course, depend upon the size and resources of the station, with the larger stations making a correspondingly greater effort in this field. However, somewhere in every station operation (whether it be owner, manager, or staff) there must be cognizance of problems regarding deceptive or misleading advertising, familiarity with the important policies and developments in this area, and the responsibility for determining the acceptability of advertising offered to the station. While reasonable diligence thus varies with the station and with each factual situation, what is called for is a commitment by the licensee to be as vigilant as feasible in his circumstances to protect the public. (Emphasis supplied.)

35. It is important to note that the policies cited § 73.4040 with which we are here concerned are FCC-created and are rather narrow in scope. We have now reviewed these policies—which require *particular care* in deciding whether to accept advertising which is the subject of an *unadjudicated* FTC complaint and requiring a review of the *reliability and reputation of every prospective advertiser* and that *every station must have a program*—and have concluded that they should be eliminated. The first policy, in effect, produces a situation where the mere pendency of a complaint with the FTC may well result in broadcasters refusing to air a proffered advertisement. In many instances, an FTC complaint may take years to adjudicate. During this period, other advertising media would be free to accept the advertising in question, albeit in a slightly different form, the end result being that the general public would receive the advertising message and broadcasters would not participate in the revenues. A far more desirable approach would be, in the case of truly deceptive advertisements, for the FTC to seek injunctive relief, rather than to have this Commission accomplish the same result by raised eyebrow.

36. The second policy—requiring each licensee to research the reliability and reputation of each prospective advertiser—is overbroad and unduly burdensome. Perhaps this requirement would not be so burdensome for a large network-affiliated television station, with its own continuity acceptance staff and the services of the network program practices department, but for many of our 10,000 AM/FM licensees, some with entire station staffs of only 5 or 6 persons, this requirement would appear excessive. The additional requirement that each station have a specific "program" in this area similarly may be excessive for licensees of these small stations.

37. We believe that broadcasters should be treated like other media; if presented with an advertisement they feel may be deceptive, they may refuse to broadcast it, or if they do broadcast it, they do so at their own risk. We see no reason to require broadcasters to take steps not required of other media. We believe that good business judgment will discourage broadcasters from airing obviously deceptive advertisements. If the deception is not immediately apparent, it is unlikely that broadcasters will be able to find the latent deceit anyway.

38. Continued protection of members of the general public from deceptive advertising practices is available from several sources. In addition to the complaint procedures of the FTC, other legal remedies are available to injured parties through state and federal fraud statutes and 18 U.S.C. 1343, *Fraud by wire, radio or television.* Additional corrective forces exist within the advertising community. At the local level, there are consumer assistance groups and Better Business Bureaus which process complaints dealing with fraudulent advertising, and at the national level there are such important entities as the National Advertising Division (NAD) and the National Advertising Review Board (NARB), which resolve numerous complaints concerning nationally advertised products.[25] Broadcasters, of course, may continue to review prospective advertisement voluntarily through network, broadcast group, and individual licensee procedures.

39. In sum, we shall delete § 73.4070. The requirements therein go well beyond those of either the FTC or fraud law provisions, and we find no justification for such overreach. Therefore, we believe that we should no longer investigate complaints that a licensee has broadcast an advertisement which is the subject of an unadjudicated FTC complaint or that a licensee has not checked the reliability and reputation of

[23] See (a) *Public Notice*, 74 FCC 2d 623 (1961), and (b) *Letter to Center for Law and Social Policy*, 32 FCC 2d 400 (1971).

[24] *Report and Statement of Policy re: Commission en banc Programming Inquiry*, 44 FCC 2303 (1960).

[25] The NAD and NARB were formed in 1971 by four organizations working together—the American Association of Advertising Agencies, American Advertising Federation, the Association of National Advertisers, and the Council of Better Business Bureaus. In its first ten years NAD processed 1,874 cases. In only 2 percent of these cases was it necessary to appeal to the NARB. In 98 percent of the cases, the issue was resolved at the NAD level because the advertiser substantiated the claims or voluntarily withdrew the advertising.

each and every advertiser.[26] Broadcast licensees, of course, continue to be responsible for all material broadcast through their facilities, including advertising (see Par. 33, *supra*), but the method of compliance now will be left to the discretion of licensees.

Conclusion

40. Today's actions in this docket continue to clear away some of the broadcast "underbrush" which has grown up over the years. The policies eliminated here have little impact on the public, and elimination of these policies will give broadcasters greater flexibility to conduct their business to the benefit of the public interest, and free us all to concentrate our efforts on more important matters. For all the policies eliminated there are alternative remedies in either or both the law and the marketplace.

41. Even though this Commission is forthwith deleting these six policy areas, and no longer plans to be engaged in their oversight, there remains a possibility that an action against a licensee might be brought in other fora for the very same business practices discussed herein—e.g., if a licensee were charged with anticompetitive behavior in a state of federal court or charged by a Federal Trade Commission complaint with having broadcast a false, misleading or deceptive advertisement. In such event, our policy with regard thereto would be as defined in our "character" proceeding.

42. It is ordered that:

Sections 73.4040, 73.4070, 73.4085, 73.4230, 73.4225, and 73.4245 are ordered removed from the Commission's rules, effective March 14, 1985.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

§ 73.4040 [Removed]

1. 47 CFR, 73.4040, *Audience ratings: licensee distortion,* is removed in its entirety.

§ 73.4070 [Removed]

2. 47 CFR 73.4070, *Commercials, false, misleading and deceptive,* is removed in its entirety.

§ 73.4085 [Removed]

3. 47 CFR 73.4085, *Conflict of interest,* is removed in its entirety.

§ 73.4225 [Removed]

4. 47 CFR 73.4225, *Promotion of non-broadcast business of a station,* is removed in its entirety.

§ 73.4230 [Removed]

5. 47 CFR 73.4230, *Sales contracts, failure to perform,* is removed in its entirety.

§ 73.4245 [Removed]

6. 47 CFR 73.4245, *Sports announcer selection,* is removed in its entirety.

The Commission removes, as unnecessary regulation, six broadcast policies.

[FR Doc. 85-3369 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 81, 83 and 87

[PR Docket No. 84-760; FCC 85-42]

Requirements for Restricted Radiotelephone Operator Permits; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules concerning requirements for the Restricted Radiotelephone Operator Permit (RP) in the Aviation and Maritime Services. The purpose of these amendments is to relieve the public from unnecessary license requirements. This action will minimize the number of station operators in the Aviation and Maritime Services who are required to possess an RP.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Garcia, Private Radio Bureau, Aviation and Marine Branch, Washington, D.C. 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Telephone.

47 CFR Part 83

Ship Stations, Telephone.

47 CFR Part 87

Aeronautical stations, Radio.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of Parts 81, 83 and 87 of the rules concerning requirements for Restricted Radiotelephone Operator Permits; PR Docket No. 84-760, FCC 85-42.

Adopted: January 23, 1985.

Released: January 30, 1985.

By the Commission.

1. This Report and Order amends Parts 81, 83 and 87 of the Commission's rules (47 CFR Parts 81, 83 and 87) to eliminate the requirement for the Restricted Radiotelephone Operator Permit (RP) in the Aviation and Maritime Services except where it is required by statute or treaty.

2. Currently, the RP is routinely issued to anyone who files an FCC Form 753 and certifies that he or she can speak and hear, is familiar with communications laws, can keep a log and is eligible for employment in the United States. In the Private Radio Services the RP is required only in the Aviation and Maritime Radio Services.[1] Section 318 of the Communications Act permits the Commission to waive the requirement for an operator's license for any station except stations for which licensed operators are required (1) for safety purposes or (2) for compliance with an international agreement.

3. In order to relieve many members of the aviation and marine communities from having to file *pro forma* applications and to save the Government the cost of issuing *pro forma* licenses, we adopted a Notice of Proposed Rule Making (Notice) proposing to eliminate the RP requirement for domestic VHF station operations.[2] It was our opinion that the stations which could be operated by a holder of an RP did not require a licensed operator for safety purposes within the meaning of Section 318 of the Act. The controlling consideration was whether a licensed operator is required for safety [3] not whether the station itself is used for safety purposes. We also felt that international agreements did not bar elimination of the RP for domestic VHF operations. Although the International Radio Regulations require aircraft and ship station radiotelephone

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[26] We note that since 1957 (see Public Notice 41503, February 27, 1957, FCC 57-172), this Commission and the Federal Trade Commission have maintained a liaison arrangement whereunder the FTC will advise the FCC of the issuance of any complaints concerning broadcast advertisements and the resolution thereof. This liaison agreement is unaffected by the policies announced herein, inasmuch as we shall continue to be concerned as to adjudicated violations. (See FN #6, *supra*).

[1] The RP is also required in the Broadcast Service. See Section 318(3) of the Communications Act of 1934, as amended, 47 U.S.C. 318(3). The discussion in this Report and Order is limited to RP requirements in the Aviation and Maritime Radio Services.

[2] Notice of Proposed Rule Making, PR Docket No. 84-760, released August 1, 1984, FCC 84-375, 49 FR 31734.

[3] For example, large oceangoing vessels must have licensed radiotelegraph officer on board for safety purposes.

operators to have operator permits [4] they also allow governments to decide whether to require such permits for aircraft and ship stations operating on frequencies above 30 MHz provided these frequencies are not assigned for international use.[5]

4. Rockwell International Corporation (Rockwell) and Aeronautical Radio, Inc. (ARINC) filed the only comments in this proceeding. Rockwell supports the proposed amendments to all three rule parts. ARINC opposes the proposed elimination of the RP requirement in the Aviation Services.

Discussion

5. Rockwell supports the elimination of the RP for domestic VHF operations and advocates eliminating the requirement for an RP for the domestic operation of HF telephony transceivers in the Aviation Services. Rockwell's assertion that this change would accord with similar elimination of the RP in the maritime services apparently stems from a misunderstanding of our proposal. We proposed to eliminate the RP requirement for maritime services only on VHF frequencies. In the Notice, we emphasized that ships equipped with MF and HF radiotelephone equipment must hold an RP even on domestic voyages.[6] Furthermore, because HF communications have a range of up to several thousand miles, they are international rather than domestic in nature. The international Radio Regulations require operators to be licensed for such international operations on frequencies below 30 MHz. Therefore, we will continue to require operators of HF radiotelephone stations in the Aviation Services to have an RP or higher class of license.

6. ARINC opposes the elimination of the RP in the Aviation Services, asserting that both Section 318 of the Communications Act and international agreements require us to continue to mandate the RP for domestic VHF aviation operations. Initially ARINC states that the international Radio Regulations require each adminstration to ensure that the operators of aircraft stations have an adequate knowledge of radiotelephone operations and procedures.[7] ARINC argues that notwithstanding the provisions of Radio Regulation Number 3395 this obligation cannot be satisfied without an RP requirement.

7. As we indicated in the Notice, the RP is routinely issued to anyone who submits an FCC Form 753. It does little to ensure that aircraft station operators have knowledge of radio procedures. However, adequate knowledge is ensured by Federal Aviation Administration regulations which require pilots to be familiar with radio procedures. For example, student pilots must receive instruction in the use of radio and applicants for higher categories of pilot certificates must demonstrate knowledge of radio procedures.[8] Therefore, we find that the RP can be eliminated in the Aviation Services without derogating this treaty obligation to make sure pilots have adequate knowledge of radio operations.

8. ARINC is of the view that domestic VHF aviation radio operations fulfill important safety functions. It points to the international Radio Regulations and our own rules as confirming the safety aspects of the Aviation Radio Services. ARINC states that there is an important safety connotation to domestic VHF aviation radio operations.

9. We concur with ARINC's view of the safety functions of domestic VHF radio operations. We did not intend to imply otherwise. However, as ARINC agrees, the controlling consideration under section 318 is not whether the station itself is utilized for safety purposes but whether a licensed operator is required for safety purposes. We continue to believe that the *pro forma* issuance of RP's is not required for safety purposes in the Aviation Services.

Conclusion

10. In view of the above, we conclude that it is in the public interest to eliminate the requirement for operators of domestic VHF stations in the Aviation and Maritime Services to hold an RP. Many members of the aviation and marine public will be relieved of the necessity of applying for an RP. The Commission will save scarce resources because of the reduction in the number of RP's required to be issued. Further, there will be no negative impact on any segment of the public. Accordingly, we are amending the rules as proposed with some minor editorial changes.

11. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. These rule amendments relieve many future aviation and marine radio station operators of the burden of filing FCC Form 753. Because the form is very brief, the time required to complete it is minimal in each individual case. Thus, no small entities will be economically affected by the new rules.

12. The amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. A minor revision in Form 753 to clarify which operators must apply will be submitted to the Office of Management and Budget for approval. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

13. Accordingly, it is ordered, That under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Parts 81, 83 and 87 of the Commission rules are amended as set forth in the attached Appendix, effective March 8, 1985.

14. It is further ordered, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

15. It is further ordered, That this proceeding is terminated.

16. Regarding questions on matters covered in this document, contact Loretta Garcia (202) 632-7175.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

APPENDIX

Parts 81, 83 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED STATIONS

A.1. Section 81.152 is amended by revising paragraphs (c) and (d) to read as follows:

§ 81.152 Operator required.

* * * * *

(c) Except when licensed operators are not required as set forth in § 81.158 of this subpart, actual operation of transmitting apparatus in any radio station subject to this part shall be performed only by a person holding a commercial radio operator license or

[4] *See*, Radio Regulation Numbers 3393 and 3861.

[5] *See*, Radio Regulation Numbers 3395 and 3864.

[6] *See*, Note 2 of the Notice of Proposed Rulemaking, PR Docket 84-760, released August 1, 1984, FCC 84-375.

[7] *See*, Radio Regulation Number 3454.

[8] *See*, 14 CFR 61.93(b) and 61.105.

permit of the required class, who shall be on duty at an authorized control point of the station and shall be responsible for the proper operation of the station as controlled from that position. The minimum class of radio operator license or permit required for operation of each specific classification of station is set forth in paragraphs (d), (e), and (f) of this section.

(d) Description of station:

	Minimum operator authorization
Public coast telegraph, all classes, except:	
A1 Morse under supervision of T1 or T2.	T-3.
NB-DP under supervision of T1 or T2.	T-3, G or MP.
Coast telephone, all classes:	
Exceeds 250 watts carrier power or 1,500 watts peak envelope power.	T-2 or G.
250 watts or less carrier power or 1,500 watts or less peak envelope power operating on frequencies below 30 MHz.	T-3, G or MP.
250 watts or less carrier power or 1,500 watts or less peak envelope power operating on frequencies above 30 MHz.	None.

* * * * *

2. Section 81.154 is revised to read as follows:

§ 81.154 Limitations on Operators.

The operator of equipment in the Maritime Services and Alaska Fixed Services other than the holder of a G, T-1 or T-2 license must not:

(a) Make any equipment adjustments which may affect transmitter operation; or

(b) Operate any transmitter which requires more than the use of simple external switching devices or manual adjustment of frequency determining elements; or

(c) Operate transmitters whose frequency stability is not maintained by the transmitter itself, within the limits of tolerance specified by § 81.131 or the station license.

3. Section 81.155 is amended by revising paragraph (a) to read as follows:

§ 81.155 Control by operator.

(a) When the station is used for telephony, and when a licensed operator is required, an unlicensed person may, if authorized by the station licensee, speak into a station microphone, which may be located at a dispatch point (see § 81.7(n)). Such operation shall be under the direct supervision and responsibility of the operator on duty at an authorized control point (see § 81.7(m)).

* * * * *

4. Section 81.158 is amended by revising the section heading and by adding a new paragraph (c) to read as follows:

§ 81.158 Activities not requiring an operator authorization.

* * * * *

(c) No operator permit is required to operate coast stations of 250 watts or less carrier power or 1500 watts or less peak envelope power operating on frequencies above 30 MHz, or marine fixed, marine utility or shipyard base stations.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

B.1. Section 83.152 is amended by revising paragraphs (a) and (c) to read as follows:

§ 83.152 Operator required.

(a) Except as provided in § 83.164, and except for voluntarily equipped ships operating in the VHF band on domestic voyages, the actual operation of transmitting apparatus in any radio station in the maritime mobile, maritime mobile-satellite or maritime radiodetermination services on board a ship of the United States must be performed only by a person holding a commercial radio operator license or permit of the required class. The minimum class of radio operator authorization required for operation of each specific classification of station is set forth in this subpart.

* * * * *

(c) Except for § 83.158, as used in this subpart "qualified operator," "operator" or "certified person" on a ship of the United States means a person holding a commercial radio operator license or permit of the proper class, as prescribed and issued by the Commission.

2. Section 83.158 is amended by revising the section heading and the text to read as follows:

§ 83.158 Operator required for ships subject to the Bridge-to-Bridge Radiotelephone Act.

Each ship of the United States which in accordance with the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act is equipped with a radiotelephone installation, must be operated by the master, a person designed by the master, a person in charge of the vessel or a pilot, who must be in attendance at the principal operating position of the required bridge-to-bridge station while the watch is required.

3. Section 83.159 is revised to read as follows:

§ 83.159 Operator requirements for noncompulsory stations.

Description of station	Minimum operator requirement
Ship telegraph, except direct-printing	T-2.
Ship direct-printing telegraph	MP.
Ship telephone, more than 250 watts carrier power or 1,000 watts peak envelope power.	G.
Ship telephone, not more than 250 watts carrier power or 1,000 watts peak envelope power.	MP.
Ship telephone, not more than 100 watts carrier power or 400 watts peak envelope power:	
Above 30 MHz	None.[1]
Below 30 MHz	RP.
Ship earth station	RP.

[1] RP required for international voyage.

4. Section 83.161 is amended by revising the paragraph (a) to read as follows:

§ 83.161 Control by operator.

(a) Except in the case of voluntarily equipped ship stations operating in the VHF band on domestic voyages for which no operator permit is required, when a ship station is used for telephony the operator may, if authorized by the station licensee or the master (the latter acting in this respect as the station licensee's agent), permit an unlicensed person to speak into a station microphone. The operator shall continue to exercise control so as to ensure operation of the station in compliance with the radio law and the rules and regulations of the Commission.

* * * * *

5. Section 83.164 is amended by adding a new paragraph (e) to read as follows:

§ 83.164 Activities not requiring an operator authorization.

* * * * *

(e) Voluntarily equipped ship stations on domestic voyages operating on VHF channels need not be operated by a licensed operator.

PART 87—AVIATION SERVICES

Section 83.139 is amended by adding a new paragraph (a)(5) to read as follows:

§ 87.139 Operator licenses not required for certain operations.

(a) * * *

(5) Operation of VHF telephony transceivers providing domestic service or used on domestic flights.

* * * * *

[FR Doc. 85-3378 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 28
Monday, February 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 978

[Docket No. TVR-PA-1]

Vegetables Grown in Texas; Hearing on a Proposed Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on a proposed marketing agreement.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement providing for research and promotion of vegetables grown in Texas. The proposal was submitted on behalf of Texas vegetable growers and handlers and has not received the approval of the Secretary of Agriculture. The proposed agreement would provide a means to establish, finance, and conduct appropriate programs or projects for advertising, promotion, consumer education, trade information, production research, market research and market development. The program would be financed by an assessment levied only on signatory handlers.

DATE: The hearing will begin at 9:00 a.m. on February 20, 1985.

ADDRESS: The hearing will be held in Courtroom No. 1, Third Floor, U.S. Courthouse and Post Office Building, 615 East Houston Street, San Antonio, Texas 78205.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5432.

SUPPLEMENTARY INFORMATION: A public hearing is to be held to consider a proposed marketing agreement providing for research and promotion of vegetables grown in Texas. The proposal was submitted on behalf of Texas vegetable growers and handlers and has not received the approval of the Secretary of Agriculture.

The proposed agreement would provide authority solely for research and promotion type activities. There are no provisions for any inspection, grade, size, container or volume regulations. Commodity committees consisting of two to eight members would handle the local administration of the program. A Texas Vegetable Council, consisting of the chairman of each commodity committee would be created to coordinate and handle the administrative responsibilities, so that the commodity committees could function more efficiently. Program costs would be financed by assessments collected only from the shippers of fresh market vegetables who voluntarily sign the agreement. To become effective the proposal would require that the marketing agreement be signed by handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is exempt from the requirements of Executive Order 12291.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposal has not received the approval of the Secretary of Agriculture.

This proposal has been widely discussed within the Texas vegetable industry. A pre-notice press release was issued on January 4, 1985, inviting public comment on the proposed marketing agreement or alternative proposals. Five comments, all in support, were received by the January 21 deadline.

The hearing is for the purpose of:

(a) Receiving evidence regarding the economic and marketing conditions which relate to the proposed marketing agreement or to any appropriate modifications thereof;

(b) Determining whether the handling of vegetables grown in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement for Texas vegetables; and

(d) Determining whether the proposal or an appropriate modification of it will tend to effectuate the declared policy of the act.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within statutory authority of a program, regulatory and information requirements are tailored to the size and nature of small businesses. Most parties who would be subject to this proposal are considered as a small buiness. Accordingly, interested persons are invited to present evidence at the hearing on the probably regulatory and informational impact of the proposed marketing agreement on small businesses. Also, parties may suggest modifications of this proposal for the purpose of tailoring their appliability to small businesses.

Since the proposal has been widely discussed at industry meetings for over a year and the January 4, 1985, pre-notice provided adequate time for proponents and other interested persons to complete hearing preparations, it has been requested by proponents that the hearing be held on February 20, 1985, the date as originally discussed. Further, any marketing agreement, if adopted, would be voluntary. Therefore, the Department has concluded that less 15 days notice of hearing is adequate in this proceeding.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Fruit and Vegetable Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibiiton and many be discussed at any time.

List of Subjects in 7 CFR Part 978

Marketing agreements and orders, Vegetables, Texas

The marketing agreement proposed on behalf of Texas vegetable growers and handlers is as follows:

PART 978—TEXAS VEGETABLE RESEARCH AND PROMOTION AGREEMENT—NO. 159 DEFINITIONS

§ 978.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 978.2 Act.

"Act" means Public Act. No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.).

§ 978.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 978.4 Area.

"Area" means the State of Texas.

§ 978.5 Vegetables.

"Vegetables" means the edible product of all varieties grown in the area and includes but is not limited to the following: Broccoli, cabbage, carrots, celery, cantaloupes, honeydew melons, cucumbers, onions, peppers, potatoes, and mixed greens.

§ 978.6 Grower.

"Grower" is synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for market.

§ 978.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, transport, or in any other way to place fresh vegetables, produced in the area, or cause such vegetables to be placed, in the current of commerce within the area or between the area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the area of field-run vegetables to a person for the purpose of having such vegetables prepared for market.

§ 978.8 Handler.

"Handler" is synonymous with "shipper" and means any signatory person (except a common or contract carrier of vegetables owned by another person) who handles vegetables or causes vegetables to be handled.

§ 978.9 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of vegetables.

§ 978.10 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

§ 978.11 Consumer education.

"Consumer education" means any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation and utilization of vegetables.

§ 978.12 Programs and projects.

"Programs" and "projects" mean those production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects pursuant to § 978.40.

§ 978.13 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the calendar year or such other period recommended by the Council and approved by the Secretary.

§ 978.14 Part and subpart.

"Part" means the Texas Vegetable Research and Promotion Agreement and all rules, regulations, and supplemental orders issued pursuant to the Act and the agreement. The aforesaid agreement shall be a "subpart" of such "part."

§ 978.15 Commodity Committee.

"Commodity Committee" means a committee established pursuant to § 978.20.

§ 978.16 Council.

"Council" means the Texas Vegetable Council pursuant to § 978.24.

§ 978.17 District.

"District" means any of the geographic divisions of the area initially established pursuant to § 978.28 or as reestablished pursuant to § 978.29.

Administrative Bodies

Commodity Committees

§ 978.20 Establishment and membership.

(a) A Commodity Committee is hereby established for each commodity subject to this agreement. Whenever a commodity is added to this subpart, a Commodity Committee shall be formed for such.

(b) Each Commodity Committee shall consist of not less than two or more than eight members, each of whom shall have an alternate. The members and alternates shall be selected in accordance with the provision of § 978.21. To the extent practical, the membership of each Commodity Committee shall be apportioned among signatory districts in accordance with the number of signatory handlers and respective volume in each district: Except that whenever two or more districts are represented on a Commodity Committee, no single district's representation shall constitute a majority of that committee.

§ 978.21 Eligibility.

Each Commodity Committee member and alternate member shall be at the time of selection and throughout the term of office a signatory handler, or an officer or an employee of a signatory handler of the particular commodity and a grower of such commodity in the district for which selected.

§ 978.22 Term of office.

(a) The term of office of the Commodity Committee members and their respective alternates shall be for three years beginning January 1 and ending December 31, or such other three-year period as the Committees and the Council may recommend and the Secretary approve. The term shall be so determined that approximately one-third of each committee shall terminate each year. Members and alternates shall serve in such capacity for the portion of the term for which they are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin on the effective date of this subpart. The initial members and alternates shall be selected for terms of one, or two, or three years so that approximately one-third of each Commodity Committee may be replaced each year.

§ 978.23 Powers and duties.

Each Commodity Committee shall have, among others, the following powers and duties with regard to the respective vegetable for which it was established:

(a) To meet and organize and to select from among its members a chairman, vice chairman, and such officers as may be necessary, to select subcommittees from its membership, and such consultants as it deems advisable. To adopt such by-laws for the conduct of its business as it may deem advisable, and

it may establish consultant committees of persons other than Commodity Committee members and alternates;

(b) To act as intermediary between the Secretary and any grower or shipper;

(c) To investigate, from time to time, and assemble data on the growing, shipping, and marketing conditions;

(d) To establish production research, marketing research, and marketing development projects authorized under § 978.40;

(e) To consult, cooperate, and exchange information with marketing agreement and order committees and other individuals or agencies in connection with all proper activities and objectives under this part;

(f) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Commodity Committee;

(g) To establish, with the approval of the Secretary, such rules and regulation with respect to the vegetable for which the committee was established as are necessary or incidential to the administration of the agreement as are consistent with its provisions, and as may be necessary to accomplish the purpose of the Act and the efficient administration of this part;

(h) To submit to the Secretary, for approval, as soon as practicable after the beginning of each fiscal period, a budget of is expenses for such fiscal period, including its proportional share of the expenses of the Council, the probable cost of each research, information, advertising, promotion, and development program or project, and an explanation of the items therein and a recommendation as to the rate of assessment for the respective vegetable for which Commodity Committee was established;

(i) With the approval of the Secretary to redefine the districts pursuant to § 978.29 or change the representation of any signatory district affecting the Commodity Committee;

(j) To develop programs and projects and, with the approval of the Secretary, to enter into contracts or agreements with appropriate contracting parties, including, but not limited to, industry groups, profit or nonprofit companies, private or State colleges and universities, and governmental groups, for the development and carrying out of the projects and programs of the Commodity Committee, and for the payment of the costs thereof with funds collected pursuant to this part, except that nothing in this subpart shall preclude a Commodity Committee from directly, without the use of contracts, conducting projects or activities pursuant to § 978.40. Any such contract or agreement shall provide: (1) That such contracting parties shall develop and submit to the Commodity Committee a plan or project, together with a budget, which shows the estimated cost to be incurred for such plan or project; (2) any such plan or project shall not become effective until after approval by the Secretary; (3) any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement; (4) to make periodic reports to the Commodity Committee of activities carried out; (5) to accounts for funds received and expended; and (6) such other reports as the Commodity Committee and/or the Secretary may require;

(k) To appoint and convene from time to time special panels drawn from, but not limited to, any one or more of the following: Production, wholesale, retail, or consuming sectors of the vegetable industry; or advertising, promotion, education, consumer education, to assist in the development of research, information, education, advertising and promotion programs or projects. To disburse the necessary funds for such panel or panels; and

(l) To accumulate a reasonable monetary reserve not to exceed approximately three fiscal periods' budgets to maintain the continuity of programs and fulfill other obligations and expenses.

Council

§ 978.24 Establishment and membership.

(a) A Texas Vegetable Council is hereby established consisting of the Chairmen of each Commodity Committee. Their alternate shall be the Vice Chairman of each such Committee.

§ 978.25 Term of office.

(a) The term of office of the Texas Vegetable Council and their respective alternates shall be for one year beginning January 1, and ending December 31, or such other one-year period as the Council may recommend and the Secretary approve.

(b) The term of office of the initial members and alternates shall begin on the effective date of this subpart and end when their successors are selected and have qualified.

(c) Council members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and their successors are selected and have qualified.

§ 978.26 Powers.

The Council shall have the following powers:

(a) To supervise and coordinate the administration of this part in accordance with its terms and conditions;

(b) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(c) To recommend to the Secretary amendments to this part.

§ 978.27 Duties.

The Council shall have, among others, the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, and also to select committees and subcommittees from its membership, and consultants, to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable. The Council may also establish consultant committees of persons other than Council members and alternates and reimburse their necessary and reasonable expenses;

(b) To appoint from its members an Executive Committee consisting of not less than four nor more than eight members, which shall, to the maximum extent practicable, reflect the membership composition of the Council, and whose commodity group representation shall be proportional to that of the Council. Also to delegate to said committee authority to administer the terms and conditions of their agreement under the direction of the Council and within the policies determined by the Council, and to appoint or employ such persons as it may deem necessary and to determine the composition, define the duties and fix the bonds of such employees. Whenever it may develop that three or less Commodity Committees are effective pursuant to § 978.70 or paragraph (b) of § 978.76, the Commodity Committee(s) may assume the responsibilities of the Council and appoint members from its membership to a temporary Executive Committee to serve in such capacity until more Commodity Committees become effective, as aforesaid. At such time as this occurs the Council will be established in accordance with § 978.24 and the Executive Committee will be appointed by such Council, replacing the temporary Executive Committee;

(c) To keep minutes, books, and records which clearly reflect all the acts and transactions of the Council,

Commodity Committees, Executive Committee, and subcommittees. Such minutes, books, and records shall be subject at any time to examination by the Secretary or by such persons as may be designated by the Secretary. Minutes of each such meeting shall be promptly transmitted to the Secretary;

(d) To develop and provide the Commodity Committees data on shared expenses to facilitate equitable apportionment of such expenses in the development of budgets;

(e) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Council;

(f) To cause the books of the Council and Commodity Committees to be audited by a competent public accountant at least once each fiscal period and at such other time or times as the Council may deem necessary or as the Secretary may request. Such audit shall be submitted to the Secretary and shall indicate whether the funds have been received and expended in accordance with the provisions of this part;

(g) To give the Secretary the same notice of meetings of the Council, Commodity Committees, Executive Committee, and subcommittees as is given to their members in order that representatives of the Secretary may attend such meetings;

(h) To submit to the Secretary such available information pertaining to this subpart as may be requested;

(i) To prepare periodic statements of the financial operations of the Council and Commodity Committees and to make copies of such statements available to signatory handlers for examination at the Council office;

(j) To prepare and forward to the Secretary, as soon as is practicable after the close of each fiscal period, an annual report and make copies available to each signatory handler. This report shall contain at least a review and summary of all activities, programs, and projects conducted during the fiscal period; and

(k) To maintain books and records of the Council, Commodity Committees, Executive Committee, and subcommittees, and prepare and submit reports from time to time to the Secretary as may be prescribed and to make appropriate accounting with respect to the receipt and disbursements of funds entrusted thereto.

Administration

§ 978.28 Districts.

The area is hereby initially divided into the following districts:

(a) *District 1:* (Rio Grande Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy.

(b) *District 2:* (South Texas) The Counties of Maverick, Kinney, Val Verde, Edwards, Real, Kerr, Bandera, Gillespie, Kendall, Blanco, Travis, Hays, Bastrop, Caldwell, Fayette, Gonzales, Colorado, Lavaca, Wharton, Jackson, Matagorda, Uvalde, Medina, Bexar, Comal, Guadalupe, Wilson, Karnes, Goliad, Refugio, Aransas, De Witt, Victoria, Calhoun, Zavala, Frio, Atascosa, Live Oak, Bee, San Patricio, Dimmit, La Salle, McMullen, Jim Wells, Nueces, Webb, Duval, Kleberg, Zapata, Jim Hogg, Brooks, and Kenedy.

(d) *District 3:* (Plains) The Counties of Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Floyd, Gaines, Hale, Hartley, Hockley, Howard, Lamb, Lubbock, Lynn, Martin, Parmer, Potter, Swisher, Terry, Yoakum, Dallam, Sherman, Hansford, Andrews, Cochiltree, Mitchell, Cottle, Lipscomb, Nolan, Hardeman, Moore, Taylor, Foard, Hutchinson, Callahan, Willbarger, Roberts, Dickens, Hemphill, King, Oldham, Knox, Carson, Baylor, Gray, Garza, Wheeler, Kent, Randall, Stonewall, Armstrong, Haskell, Donley, Throckmorton, Collingsworth, Borden, Hall, Scurry, Childress, Fisher, Motley, Jones, and Shackelford.

(d) *District 4:* (Trans-Pecos) The Counties of Brewster, Crane, Culberson, Jeff Davis, Ector, El Paso, Hudspeth, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

(e) *District 5:* (Remainder of State) All of the counties not in Districts 1 through 4.

§ 978.29 Redistricting and reapportionment.

(a) The various Commodity Committees may recommend and the Secretary may approve, the reestablishment of districts for each commodity within the area and the reapportionment of members among districts. In recommending any such changes, the Committee shall give consideration to: (1) Shifts in vegetable acreage; (2) the importance of new production; (3) the equitable relationship of membership and districts; (4) economies to result in promoting efficient administration; and (5) other relevant factors.

(b) No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for such redistricting or reapportionment may be made less than six months prior to such date.

§ 978.30 Nominations.

(a) *Initial members.* Nominations for initial members of each Commodity Committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the Committee responsible for promulgation of this subpart. Such nominations may be made by means of a meeting or meetings of the handlers of the particular commodity in each district. Such nominations, if made, shall be filed with the Secretary no later than 60 days after the effective date of this agreement. In the event nominations for initial members and alternate members of the Commodity Committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 978.20.

(b) *Successor members.* (1) The council shall hold or cause to be held and shall reasonably publicize a meeting or meetings of handlers for each applicable Commodity Committee in each district for the purpose of designating at least one nominee for each position on said Committee which either is or is about to become vacant. These meetings shall be supervised by the Council in accordance with procedure prescribed for each commodity.

(2) The names of nominees shall be supplied to the Secretary in such manner as may be prescribed not later than November 1 of each year, or by such other date as may be specified by the Secretary.

(3) Only signatory handlers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the election of nominees. Each such handler, including his employees, shall be entitled to cast but one vote in each balloting in which he is eligible to participate.

(4) Each handler, including employees of such handler, is entitled to cast one vote on behalf of itself, its agents, subsidiaries, affiliates, and representatives for each position in each district for each commodity the shipper handles in such district.

(5) Each Commodity Committee shall prescribe such additional clarifications,

qualifications, administrative rules and procedures for nominations as it deems necessary and the Secretary approves.

§ 978.31 Selection.

The Secretary shall appoint the members and alternate members of each Commodity committee from nominations made in accordance with § 978.30.

§ 978.32 Failure to nominate.

If nominations are not made within the time and manner prescribed in §§ 978.30 and 978.31, the Secretary may, without regard to nominations, select members and alternate members of the Council.

§ 978.33 Alternate members.

(a) There shall be an alternate member for each member of each Commodity Committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner, and shall hold office for the same term as the member for whom he/she is an alternate.

(b) An alternate member of a Commodity Committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or committee, in that order, may designate another alternate from the same commodity group to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified.

(c) The Commodity Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 978.34 Vacancies.

To fill Commodity Committee vacancies, the Secretary may select members or alternates from nominees on the latest nomination reports or from nominations made in the manner specified in § 978.30, unless such is deemed unnecessary by the Secretary.

§ 978.35 Procedure.

(a) A majority of all of the members of the Council shall constitute a quorum, and any action of the Council shall require the concurrence of the majority of all members present at a meeting.

(b) A quorum of each Commodity Committee shall consist of the majority of the members and all actions shall require the concurrence of the majority of all members present at a meeting.

(c) The Council and each Commodity Committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) At assembled meetings, all votes shall be cast in person. However, the Council and Commodity Committees may vote by mail, telephone, telegraph, or othe means of communication: Except that each proposition is explained accurately, fully, and identically to each member. All such votes shall be promptly confirmed in writing and recorded in the minutes of each meeting so as to reflect how each member voted.

§ 978.36 Reimbursement.

All Council and Commodity Committee members, alternates, and subcommittees, including any special subcommittees, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of their duties under this subpart.

Research and Promotion

§ 978.40 Production research, market research, information, education, advertising, promotion, and market development.

(a) Each Commodity Committee shall in the manner prescribed in § 978.23 provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for, but not be limited to: Advertising, promotion, consumer education, and trade information, with respect to any one or more of particular vegetables and products of such, and for the disbursement of necessary funds for such purposes;

(2) The establishment and conduct of research, market development projects and studies with respect to the production, sale, distribution, processing, marketing, or utilization, of one or more vegetables, and the creation of new products thereof, to the end that the production, marketing and distribution and utilization of a particular vegetable or vegetables and products thereof, may be encouraged, expanded, improved, or made more efficient and/or acceptable; and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of sales, both within the United States and in international markets, with respect to a particular vegetable or vegetables and products thereof;

(4) Each program or project authorized under paragraphs (a) (1) and (2) of this section shall be periodically reviewed or evaluated by the Council to insure that such program or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Council finds that a program or project does not further the purposes of the Act, then the Council shall terminate such program or project;

(5) No reference to a private brand or trade name shall be made. No advertising, consumer education, nor sales promotion programs shall make use of false or misleading claims on behalf of a particular vegetable or vegetables or its (their) products; or no such programs or projects shall make use of false or misleading statements with respect to the quality, value, or use of any competing product.

Expenses and Assessments

§ 978.50 Expenses

Each Commodity Committee is authorized to incur such expenses including provision for an operating reserve as the Secretary finds are reasonable and are likely to be incurred by the Commodity Committee during each fiscal period for the maintenance and functioning of such Committee, including its proportionate share of the expenses of the Council, to enable it to exercise its powers and perform its duties in accordance with this subpart. Such expenses shall be paid from assessments received pursuant to § 978.51 and other funds available to the Committee, including donations.

§ 978.51 Assessments.

(a) *Requirements for payment.* Each signatory handler who first handles vegetables shall pay to the Council that handler's pro rata share of the Commodity Committee's expenses and the Council's overhead expenses, authorized by the Secretary for each fiscal period. The payment of assessments for the maintenance and functioning of the Committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each vegetable during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment as necessary to cover authorized expenses. Such increase shall apply to all such vegetables handled during the fiscal period. In order to provide funds for the

administration of this part, the Council may accept advance payments of assessments, which shall be credited toward assessments levied against such handler during the fiscal period. The Council may also borrow money for such purposes.

(c) There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be prescribed by the Commodity Committees, with the approval of the Secretary.

§ 978.52 Accounting

(a) If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each Commodity Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as an operating monetary reserve: Except that funds already in such reserve do not exceed approximately three (3) fiscal periods' budgeted expenses or such lower limits as each Commodity Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Commodity Committee for (1) expenses authorized pursuant to § 978.50 and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period or be paid such refund.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be used, to the extent practicable, to continue one or more of the research projects, education or promotion programs hitherto authorized.

§ 978.53 Influencing governmental action.

No funds collected under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 978.60 Reports

(a) Each handler subject to this subpart shall be required to furnish to the manager of the Council, at such times and for such periods as the Council or Commodity Committee may designate, certified reports containing such information as is required by regulations and will effecutate the purposes of the Act. Such information may include but not be limited to the following:

(1) The name of the handler and the shipping point;

(2) The date of departure;

(3) The number and type of containers in the shipment; and

(4) The quantities shipped shown separately by commodity.

(b) Upon request of the Council, with the approval of the Secretary, each handler shall furnish to the manager of the Council, in such manner and at such time as it may prescribe, such other information as may be necessary for the Council to perform its duties under this part.

§ 978.61 Books and records.

Each handler subject to this subpart shall maintain, and during normal business hours make available for inspection by employees of the Council and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 978.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 978.60 and 978.61 shall be kept confidential by all persons, including employees of the Secretary, and all officers and employees of contracting parties, and shall not be available to Council or subcommittee members and alternatives or any other handlers, producers, wholesalers, or retailers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, or the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous

§ 978.70 Effective time.

The provisions of this agreement, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 978.76: except that the Secretary shall not execute this agreement in regard to a particular vegetable until the agreement has been executed by persons who handle not less than 75 percent of the total quantity of such vegetable handled in such district during the most recent completed calendar year.

§ 978.71 Right of the Secretary.

Members and alternates of the Council, Commodity Committees, Executive Committee, subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Council and the Commodity Committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 978.72 Personal liability.

No member or alternate member of the Council, any Commodity Committee, any committee, or any subcommittee, nor any employee, representative or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsover, to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty or willful misconduct.

§ 978.73 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 978.74 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 978.75 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this agreement.

§ 978.76 Suspension or termination.

(a) Failure to effectuate policy of Act. The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever, the Secretary finds that such do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall terminate the provisions of this part as it pertains to a particular vegetable whenever the Secretary finds that such is favored by a majority of the signatory handlers who during the most recent crop year handled more than 50 percent of such vegetable in any district. Such termination shall become effective on the first day of January subsequent to such announcement by the Secretary.

(c) *Producer referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement, as it pertains to any vegetable, at the end of any fiscal period whenever he finds that such termination is favored by a majority of the producers in a district of that particular vegetable who during the fiscal year have been engaged in the production of that vegetable in that district for the fresh market: Except that such majority has during such period produced for fresh market more than 50 percent of the volume of such vegetable produced for the fresh market within that district, but such termination shall be effective only if announced on or before November 1 of the then current fiscal period.

(d) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the Act authorizing them cease to be in effect.

§ 978.77 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any vegetable or vegetables, the Council then functioning shall for the purpose of liquidating the affairs of the Council with respect to such vegetable continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of Commodity Committee under any contracts or agreements entered into pursuant to §§ 978.23 and 978.40; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and Commodity Committee, committees and subcommittees and also of the trustees to such persons as the Secretary may direct; and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the Council and Commodity Committees or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the research projects, information programs, or promotion programs hitherto authorized.

§ 978.78 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this agreement or any regulation issued thereunder, or (b) release or extinguish any violation of this agreement or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 978.79 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council.

(b) Funds generated by such patents, copyrights, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council and Commodity Committees.

(c) Upon termination of the agreement, the Council shall transfer custody of all patents, copyrights, inventions, and publications to the Secretary pursuant to the procedure provided for in § 978.77 of this subpart.

§ 978.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Council, or any interested person affected by its provisions, including the Secretary.

§ 978.81 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 978.82 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 978.83 Additional parties.

After the effective date of this agreement, any nonsignatory handler may become a party hereto if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary. The obligations, benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 978.84 Withdrawal.

(a) Any signatory handler may withdraw from this agreement during November 1990, and every fifth year thereafter by filing with the Council and the Secretary written notice of such withdrawal. If it is determined, after such withdrawal period, that less than 75 percent of the total volume of a particular vegetable in any one district is subject to this agreement, the Secretary shall suspend the provisions pertaining to that particular vegetable or vegetables for that district.

(b) At such time as sufficient persons become signatories, representing at least 75 percent of the total volume of a particular vegetable handled in any one district during the most recent calendar

year, the Secretary shall reinstate the provisions applying to such vegetable for that district.

The undersigned hereby authorizes the Secretary to correct typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting handlers, acting under the provisions of the Act, and for the purposes and subject to the limitations therein contained, and not otherwise, have hereunto set their respective hands and seals.

Signature of party:

(Firm Name)

(Address)

By:

(Name)

(Title)

Date of Execution (Corporate seal; if none, so state)

Copies of this notice of hearing may be obtained from James B. Wendland, Vegetable Branch, Fruit and Vegetable Division, AMS, Room 2545-S, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5432, or from David B. Fitz, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, 320 North Main Street, Box A-103, McAllen, Texas 78501 (512) 682-2833.

Signed at Washington, D.C., on February 7, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-3464 Filed 2-7-85; 2:49 pm]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 51, 70 and 72

Decommissioning Criteria for Nuclear Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing amendments to its regulations that would set forth technical and financial criteria for decommissioning licensed facilities. The proposed amendments address decommissioning planning needs, timing, funding mechanisms, and environmental review requirements. The intent of the proposed amendments is to assure that decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that adequate licensee funds will be available for this purpose. The proposed rule also contains a response to a petition for rulemaking (PRM-50-22), concerning decommissioning financial assurance, initially filed by the Public Interest Research Group (PIRG), et al. on July 5, 1977.

DATE: Comments must be received on or before May 13, 1985.

Comments received after this date will be considered if it is practical to do so. Assurance of consideration is possible only if comments are received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received and the generic environmental impact statement may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith G. Steyer or Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7910.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1978, the Commission published an Advance Notice of Proposed Rulemaking in the **Federal Register** (43 FR 10370) stating that the Commission was reevaluating its decommissioning policy and considering amendments to its regulations to provide more specific requirements relating to the decommissioning of nuclear facilities. The plan for the reevaluation included the development of an information base and the preparation of a generic environmental impact statement (GEIS), and based on these, the development of proposed amendments to the regulations. The information base for rulemaking is essentially complete and consists primarily of a series of NUREG/CR reports on studies of the technology, safety, and costs of decommissioning various kinds of nuclear facilities. These reports were prepared by Battlle Pacific Northwest Laboratories (PNL).[1] On February 10, 1981, the Commission announced the availability of the draft GEIS for public comment (46 FR 11666). Section 15 of the draft GEIS recommends certain policy considerations. These recommendations, as modified by comments received on the draft GEIS and other sources, provide the basis for the proposed amendments to the Commission's regulations. The proposed amendments cover a number of topics related to decommissioning. However, acceptable levels of residual radioactivity for release of property for unrestricted use are not being proposed as part of this rulemaking. This issue will be dealt with in a separate rulemaking action which will propose amending 10 CFR Part 20 to specify limits of residual radioactivity for decommissioning.

In the course of this reevaluation, the staff has maintained a dialouge with the States and the public during the early, formative time of decisionmaking on critical issues. Preliminary staff positions on the major decommissioning issues have been presented in staff (NUREG) reports.[2]

Decommissioning as defined in this proposed rule means to remove nuclear facilities safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license. For the purposes of this proposed rule, the term "nuclear facilities" is used to refer to the site, buildings and contents, and equipment associated with any NRC licensed activity.

Decommissioning activities are initiated when a licensee decides to terminate licensed activities. If nuclear facilities are to be reused for nuclear purposes, applications for license renewal or amendment or for a new license are submitted according to the appropriate existing regulation. Reuse of a nuclear facility for other nuclear purposes is not considered decommissioning.

These proposed amendments apply to decommissioning of power reactors, nonpower reactors, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, independent spent fuel storage installations, and non-fuel-cycle nuclear facilities. The decommissioning of uranium mills and mill tailings, low-level waste burial facilities, or high-level waste repositories, has been treated in separate regulatory actions. However,

[1] A bibliography of these reports and other background documents is included at the end of the Supplementary Information. These documents are available for inspection and copying for a fee in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555.

[2] Ibid.

the general technical criteria in this proposed rule will apply to uranium mills in addition to the technical and financial criteria contained in Appendix A or Part 40.

The proposed amendments apply to nuclear facilities that operate through their normal lifetime, as well as to those that may be shut down prematurely. It is expected that nearly all facilities will operate through their normal lifetime. However, the activities following premature shutdown of a facility as a result of an accident are somewhat different than those of a routine decommissioning. There are three stages involved: a stabilization period, during which accident conditions are brought under control if necessary; an accident cleanup period; and a decommissioning period. During the accident cleanup, the major portion of contamination resulting from the accident is cleaned up and the associated wastes are processed. Following accident cleanup, the facility may either be recovered for reuse or be decommissioned. A detailed study of reactor decommissioning following accident cleanup (NUREG/CR-2601—Reference 7) indicated that there may be differences in some of the specific aspects of decommissiong such as the spread of contamination, waste volumes, exposures, and costs. However, the report also indicates that the technology exists to accomplish the decommissioning and that the safety and costs of decommissioning following the accident cleanup do not vary significantly from that following normal operations.

Current regulations cover the requirements and criteria for decommissioning in only a limited fashion. Although decommissioning is not an imminent health and safety problem, specific requirements related to decommissioning have had to be determined on a case-by-case basis. Revision of current regulations is necessary to clarify these requirements and to provide for consistent and efficient regulatory actions related to decommissioning. The necessary amendments could be issued as a new part of the Commission's regulations. However, the policy developed as a result of the reevaluation will directly affect licensing activities under 10 CFR Parts, 30, 40, 50, 51, 70, and 72. Accordingly, amendments to each of these parts, rather than a new part, will facilitate use by NRC staff and licensees.

Classes of facilities licensed under Parts 50 and 72 are considered major facilities all of which will require a significant decommissioning effort. Activities licensed under Parts 30, 40, and 70 however, cover a wide range. Termination of the majority of these licenses requires relatively simple decommissioning procedures. For these reasons it was necessary to take a somewhat different regulatory approach in these parts to implement the same generic policy.

Description of Policy and Proposed Rule

Five major issues evolved from the policy reevaluation, namely decommissioning alternatives, timing, planning, financial assurance, and residual radioactivity. In addition, it became apparent that environmental review requirements could be reduced. These subjects are discussed in the following paragraphs.

A. Decommissioning Alternatives

More than one alternative method of decommissioning may be acceptable depending on the type of radioactive contamination present at shutdoun and other factors. The proposed rule indicates that use of alternatives in which unrestricted release is postponed for a significant period of time following cessation of operations would be acceptable in cases where sufficient benefit results. Possible benefits include such things as reduction in occupational exposure or waste volume. Alternatives and factors affecting their acceptability will be dealt with in a revision of Regulatory Guide 1.86 on termination of licenses for nuclear reactors, and in a similar document to be developed for materials facilities.

The alternatives considered are essentially the same as those which have been used in the past except that they have been redefined to include all activities leading to termination of license in keeping with the definition of decommissioning contained in this proposed rule.

B. Timing

Timing refers to the length of the decommissioning period, that is, the time from permanent cessation of operations to license termination. Each type of nuclear facility has characteristic radionuclides that will affect the selection of the decommissioning alternative and the length of time acceptable to delay license termination. These proposed rules require that decommissioning begin shortly after permanent cessation of operations and significant delays in completion of decommissioning would be acceptable if there is some compensating benefit. Beyond this, factors affecting timing will be considered in the related regulatory guides to be issued, since the acceptability of alternatives and overall timing may involve case-by-case considerations.

C. Planning

Preliminary planning at the licensing stage and over facility life is important to ensure that decommissioning can be accomplished safely. Information on funding methods for providing financial assurance for decommissioning will be submitted with applications for new licenses for production and utilization facilities. For existing licenses under Part 50, this information will be submitted within a reasonable period of time after the rule becomes effective. The time period suggested in this proposed rule is two years. This information will consist of a cost estimate for decommissioning either as prescribed in the regulations or as estimated by the applicant or licensee and a description of the method of assuring funds for decommissioning. Part 50 licensees will also submit an updated cost estimate and, if necessary, plans for adjusting funding levels 5 years before the projected end of operation. Applicants for independent spent fuel storage installation (ISFSI) licenses will include plans for providing financial assurance for decommissioning in a decommissioning plan submitted at licensing as is currently required.

Similarly, some material licensees licensed under Parts 30, 40, and 70 will either provide financial assurance in prescribed amounts or submit a decommissioning funding plan showing the basis for a proposed amount. Details of financial assurance requirements are discussed in the next section.

Licensees under Parts 30, 40, 50, 70, and 72 will be required to keep records which could be important at the time of decommissioning. Relevant records, as specified in the proposed rule, consist of records of spills or other unusual occurrences from which significant contamination may remain and design specifications, in the form of drawings if available, of areas of high radiation or potential inaccessible contamination. The proposed rule would require a separate file for information important to decommissioning but would allow the use of references to records kept for other purposes.

Applicants and licensees should also consider other aspects of operating procedures as well as design features which could facilitate decommissioning as part of overall programs to protect the health and safety of the public and to keep radiation exposures and effluents "as low as reasonably

achievable," however, no specific requirements would be added to the regulations.

Decommission plans will be submitted by all Parts 50 and 72 licensees at the time of written notification that the licensee desires to terminate the license as is the current licensing practice. This proposed rule would require that this notification be made within two years following permanent cessation of operation or one year prior to license expiration, whichever occurs first. For Part 50 licensees, the present practice of also applying for an amendment to restrict operation of the facility would continue. The amendment changes the operating license to what is referred to as a "possession only" license, under which required controls and limits are modified as appropriate to planned procedures. Licensees under Parts 30, 40, and 70 engaged in activities resulting in major decommissioning considerations will also submit plans for completion of decommissioning. These will be required if a potential for significant health and safety impacts exists and will be submitted promptly after the end of optional activities and prior to the license expiration date.
Decommissioning plans will contain sufficient detail to demonstrate that decommissionig can be accomplished safely. Major elements of decommissioning plans are specified in the proposed rules. Additional guidance will be made available in planned regulatory guides on standard format and content of decommissioning plans.

In addition to specifying decommissioning plans, other amendments related to license termination are proposed for Parts 30, 40, and 70 primarily for clarifty and uniformity. These changes would somewhat modify the procedures established for the termination of a license contained in a final rule published on July 15, 1983 (48 FR 32324). The requirement for notification of intent to terminate licensed activities contained in existing paragraph (c) of §§ 30.36, 40.42, and 70.38 will be removed. Although it may be practical in most cases for operational activities to cease and initial cleanup and survey to completed at least 30 days prior to license termination, the requirement as it exists may result in licensees submitting a separate notification of intention not to renew 30 days prior to expiration plus the submission of information concerning residual contaimination sometime in the next 30 days. This separate notification is not considered necessary.

Additional modifications to the requirements contained in existing paragraphs (d) (2) and (3) of §§ 30.36, 40.42, and 70.38 are made to insert the standard for submission of decommissioning plans and to clarify—

1. That, whether or not the licensee has detected residual radio-activity, the licensee is responsible for controlling the site until the Commission terminates the license; and

2. That, in all cases, the same standards for termination of license apply, as stated in proposed paragraph (f) of §§ 30.36, 40.42, and 70.38: that radioactive material has been properly disposed of, reasonable effort has been made to remove any residual contamination, and information exists which demonstrates that the premises are suitable for release for unrestricted use.

D. Financial Assurance

The objective of the proposed rule on financing the decommissioning of nuclear facilities is to require licensee to provide reasonable assurance that adequate funds are available to ensure that decommissioning can be accomplished in a safe manner and that lack of funds does not result in delays that may cause potential health and safety problems. The licensee is responsible for completing decommissioning in a manner that protects health and safety.

There are several different methods for providing financial assurance. Because of the variety of facility types and licensee financial situations, different methods are considered acceptable for providing reasonable assurance of the availability of funds. The funding methods specified in the proposed rule meet the criteria respecting assurance and cost which are described more fully under the subject heading "Criteria for Funding Methods."

Information on funding methods will be provided by all applicants for operating licenses and existing licensees for production and utilization facilities. For electric utility applicants and licensees, the amount of funds assured can be based either on an amount prescribed in the regulations, or on a facility-specific cost estimate submitted as part of a decommissioning funding plan. The amount [3] proposed is $100,000,000 (1984 dollars) adjusted for inflation at a rate two times the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics. Plans for financial assurance for decommissioning are already required for independent spent fuel storage installations.

Certain applicants and existing licensees under Parts 30, 40, and 70 will also be required to submit a decommissioning funding plan. The rule specifies that funding plans will be required of licensees authorized to use unsealed materials of half-life greater than 120 days in quantities exceeding 10^3 times the applicable quantities in Appendix C of Part 20. The note to Appendix C concerning the "rule of ratios" used for purposes of § 20.303 is not applied in this case. For the purposes of this requirement, plated foils would not be considered unsealed material. In Part 40, the funding plan requirement applies to licensees authorized to use more than 10 mCi of source material in a readily dispersible form. If the license authorizes processing of materials, although initially sealed or non-dispersible, the processing would be assumed to result in unsealed or readily dispersible material. These licensees will have the following options: (1) Submitting the funding plan within one year following the effective date of the final rule or (2) submitting a certification of financial assurance for decommissioning in an amount of at least $500,000, within one year of the effective date of the final rule, deferring the funding plan until application for renewal is made. Financial assurance requirements for mills are contained in Appendix A to Part 40 and are not covered by this proposed rule.

Certain other materials licensees will be required to submit either a certification that a means of assuring funds in a prescribed amount has been provided or a decommissioning funding plan. Licensees using between 10^4 and 10^5 times Appendix C values of unsealed byproduct or special nuclear material must provide assurance of funds in the amount [3] of $500,000 or submit a decommissioning funding plan. Licensees using between 10^3 and 10^4 times Appendix C values of unsealed byproduct or special nuclear material or between 10 mCi and 100 mCi of source material in readily dispersible form must provide assurance of funds in the amount [3] of $100,000 or submit a funding plan. Licensees using sealed sources containing byproduct material in quantities exceeding 10^{10} times Appendix C values must provide assurance of funds in the amount [3] of $50,000 or submit a funding plan.

This proposed rule specifies acceptable funding methods in the appropriate sections for various types of

[3] The bases for selecting this prescribed amount and those noted below for materials facilities are described more fully under the subject heading "Mechanisms for Requiring Financial Assurance."

licensees. In order to assure that the funds will be adequate at the time of decommissioning, the proposed rule provides that decommissioning funding plans include provisions for adjusting cost estimates and associated funding levels over the life of the facility and that in the case of Part 50 licensees an update cost estimate be submitted specifically at about 5 years prior to the projected end of operation. Additional guidance on financial assurance is also planned to be provided in regulatory guides.

At the time of final shutdown, or cessation of operations, decommissioning plans, when required, will provide an updated, more accurate cost estimate, and some adjustment may need to be made in the decommissioning fund. Parts 50 and 72 specifically state that if an alternative is chosen which significantly delays completion of decommissioning, means must be included to continue periodic review and adjustment of funding level over the extended decommissioning period. In Part 50, where internal reserve is allowed for utilities during operation, it is specifically required that the funds be placed in an account separate from licensee assets during the prolonged decommissioning period or that assurance be provided by a surety or insurance method.

E. Residual Radioactivity

A primary objective after permanent cessation of operations is authorized termination of a license. For all facilities covered by this rule, all premises must be suitable for release for unrestricted use before a license can be terminated. To release property for unrestricted use a permissible level of residual radioactivity must be established. These levels are not proposed in this rule, but are being developed in a separate rulemaking action. In the past, limits have been provided as guidance in such documents as Regulatory Guide 1.86, and have sometimes been determined on a case-by-case basis.

F. Environmental Review Requirements

The proposed rule would reduce the environmental review requirements (National Environmental Policy Act of 1969, as amended) related to decommissioning by amending Part 51.

The overall impacts of decommissioning would continue to be addressed in the environmental reviews for the licensing of major facilities. No additional detail would specifically be required. Except to the extent required by special circumstances, preparation of environmental impact statements for the decommissioning of production and utilization facilities and independent spent fuel storage installations would no longer be required. Instead, in accordance with the procedures in the recently revised Part 51 of the Commission's regulations, an environmental assessment would be prepared. This environmental assessment would supplement the environmental impact statements previously prepared in connection with the issuance of the construction permit and operating license for the facility. It should be noted that pursuant to criteria in revised 10 CFR Part 51 environmental assessments may result in a conclusion that an environmental impact statement is required in the particular circumstances of the proposed Federal action. Information concerning environmental impacts of decommissioning would be submitted by the licensee in a supplement to environmental reports previously submitted. Environmental impact statements would continue to be required for the decommissioning of waste disposal facilities only.

The proposed rule also indicates that there would be no additional environmental review requirements connected with the new decommissioning requirements, specifically, that approval of decommissioning funding plans be categorically excluded from requirements for environmental impact statements or environmental assessments.

Rational for the Proposed Rule Changes

A. Decommissioning Alternatives

Decommissioning alternatives are categorized into three major classifications which are referred to as DECON, SAFSTOR, and ENTOMB. This terminology was introduced to reduce the confusion and misunderstanding that existed with the previous terms used to designate decommissioning alternatives. These terms have the following meanings:

DECON is the alternative in which the equipment, structures, and portions of a facility and site containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after cessation of operations.

SAFSTOR is the alternative in which the nuclear facility is placed and maintained in such condition that the nuclear facility can be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting unrestricted release of the property. This alternative would be allowable for nuclear facilities contaminated with relatively short-lived radionuclides such that all contaminants would decay to levels permissible for unrestricted use within a period on the order of 100 years.

Based on an analysis of the technical data base, decommissioning can be accomplished safely and at reasonable cost shortly after cessation of facility operation. DECON has certain benefits in that it would prepare the property for unrestricted use in a much shorter time period than SAFSTOR or ENTOMB with acceptable effects on occupational and public health and safety. Completing decommissioning and releasing the property for unrestricted use eliminates the potential problems that may result from an increasing number of sites contaminated with radioactive material, as well as eliminating potential health, safety, regulatory, and economic problems associated with maintaining the nuclear facility. The use of DECON assumes the availability of capacity to handle waste requiring disposal. The Federal and State governments have activities underway to assure that there will be this capacity.

Delay in the completion of decommissioning, as in the case of SAFSTOR or ENTOMB, would be acceptable primarily for reasons of occupational health and safety, since it is recognized that with delay there will be reduction in occupational dose and radioactive waste volume for some nuclear facilities due to radioactive decay. In addition, SAFSTOR may have some advantage where there are other operational nuclear facilities at the same site, and may also become necessary in other cases if there is a shortage of radioactive waste disposal space offsite. The appropriate delay will depend on the type of facility and the contaminant isotopes involved, but should not be greater than about 100 years as this is considered a reasonable time period for reliance on institutional control (Ref. 19). One of the difficulties with ENTOMB for any complex structure such as a reactor is that the radioactive materials remaining in the entombed structrue would need to be characterized well enough to be sure that they will have decayed to acceptable levels at the end of the surveillance period (up to about

100 years). If this cannot be done adequately deferred decontamination would become necessary, which could make ENTOMB more difficult and costly than DECON or SAFSTOR.

B. Timning

The issue of timing concerns what amount of time would be appropriate to allow for completion of decommissioning including the entire period between final shutdown and license termination. The primary consideration is the decay of radioactivity which may result in reductions in occupational exposure and waste needing disposal. Facilities differ regarding the particular radionuclides most critical to decommissioning. For light water power reactors Co-60, with a half-life of 5.3 years, is the nuclide that has the most effect on decontamination efforts and is referred to as the critical/abundant nuclide. Other isotopes that can affect decommissioning efforts are Cs-137 (30-year half-life) and the long-lived isotopes Nb-94 and Ni-59.

As discussed above, a review of the technical data shows that, for DECON, occupational exposure can be kept reasonable. For example, studies indicate that occupational doses from decommissioning light water power reactors would be about 400 man-rem per year (1200–1900 man-rem over 4–5 years for large ractors). This is gnerally less than current annual doses at operating reactors. SAFSTOR will result in reduced occupational dose and amount of radioactively contaminated waste. Based on the half-life of the critical/abundant nuclide, the reduction of occupational doses beyond about 30 years would be marginally significant although a significant volume reduction in contaminated waste would result from 50 years in safe storage. It appears that DECON or 30 to 50 year SAFSTOR are reasonable options for decommissioning a light water power reactors. Generally for reactors, the overall impact of either of these alternatives is similar, with the lower occupational dose and wastes with SAFSTOR compensating for the costs and uncertainties of controlling the site for a long period. The choice of alternative in individual cases will depend on a number of factors specific to the particular reactor, site, and time of decommissioning, for example, a longer SAFSTOR period may be acceptable if the safety of an adjacent reactor might be affected by dismantlement procedures.

With regard to the ENTOMB alternative, long-lived activation products contained in reactor internals, such as Nb-94 and Ni-59, would probably preclude the use of ENTOMB for power reactors unless reactor internals were removed. If reactor internals are removed, some method would have to be provided to demonstrate that the entombed radioactivity will decay to levels permitting release of the property for unrestricted use within about 100 years, which, as noted above, would be difficult.

For research and test reactors and ISFSIs, occupational doses would be much less significant and much easier to manage than for power reactors. Thus, DECON is considered the most reasonable option. SAFSTOR could be justified in some cases. ENTOMB is not expected to be viable for ISFSIs and is also unlikely to be a reasonable option for non-power reactors as the cost would not be justified.

For materials facilities associated with licenses under Parts 30, 40, and 70, occupational doses are also quite low in most cases, and DECON the most likely option. SAFSTOR is possible for short-lived materials, but any extended delay would rarely be justifiable. For these reasons the proposed amendments to Parts 30, 40, and 70 do not mention alternatives or have special requirements for extended delays. If after disposing of inventory and some preliminary decontamination, contamination from relatively short-lived materials is reported, the Commission will determine whether allowing a period for decay is an appropriate means of completing decommissioning. It is expected however that for most licenses under these parts it will be practical to complete decontamination to levels suitable for unrestricted release prior to reporting levels of residual radioactivity to the Commission. A survey must be carried out and reported on promptly after the end of operations and prior to the expiration of the license.

C. Planning

Planning for decommissioning is a critical item for ensuring that the decommissioning activities can be accomplished in a safe and timely manner. Development of detailed plans at the application stage is not possible because many factors (e.g., technology, regulatory requirements, economics) will change before the license period ends. Thus, most of the planning for the actual decommissioning will occur near final shutdown. However, a certain amount of preliminary planning should be done at the application stage.

Preliminary Planning

The availability of adequate funds is important in assuring that decommissioning will be carried out in a safe and timely manner. There are also aspects of design and operations that could affect decommissioning in terms of improved health and safety and reduced radioactive waste.

Information on decommissioning funding methods, described below, will be submitted with an application for an operating license for a production or utilization facility. An application for an independent spent fuel storage installation will include a decommissioning plan including financial plans as is presently required. In the case of existing Part 50 licensees, information on funding methods would need to be submitted within a reasonable time period following the effective date of this rule. This information will be provided in the form of a decommissioning funding plan or, in the case of electric utility applicants and licensees, may be provided as a certification of financial assurance. A certification will indicate that the amount prescribed in the regulation is being used and will include a description of the method of assuring funds for decommissioning. A funding plan will include an initial cost estimate and also provide a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the facility. The initial cost estimate is intended to provide an approximate estimate of the decommissioning cost. Initial estimates may be based on information from the literature (e.g., generic studies, licensee models, experience, etc.) which provide a reasonable estimate of the cost of decommissioning. The PNL decommissioning studies can be used for initial estimates with suitable adjustments for inflation and for site-specific factors. The proposed regulations require that over the operating life of the facility, the cost estimate be updated by the licensee periodically to take into account factors which could affect the cost of decommissioning. The rule would specifically require all Part 50 licensees to submit 5 years prior to the projected end of operation an up-to-date cost estimate on which to base financial assurance even if the certification option had been used previously. In this manner it is expected that the amounts being assured by the funding method will reach a level at the end of life which

is approximately equal to the actual costs of decommissioning. In particular, the cost estimate submitted at 5 years prior to end of operation would be based on a current assessment of major factors that could affect decommissioning costs. The requirement is intended to assure that all Part 50 licensees, including those choosing the certification method, shall consider relevant, up-to-date information which could be important to adequate planning and funding for decommissioning well before decommissioning actually begins. It is expected that this requirement can ordinarily be accommodated in the provisions of a funding plan.

Acceptable methods of providing financial assurance are specified in the rule and are discussed further in the following section on financial assurances.

For most facilities associated with licenses under Parts 30, 40, and 70, decommissioning is much less involved, and has much less impact than the decommissioning of a reactor, for example. A decommissioning funding plan is being required for certain facilities where decommissioning costs could be very high. Financial assurance is also required without the submittal of a funding plan for certain other materials licensees as discussed in the next section.

The studies performed as part of the policy reevaluation have shown that facilitation of decommissioning in the design of a facility or during its operation can be beneficial in reducing operational exposures and waste volumes requiring disposal at the time of decommissioning. In addition, facilitation can improve financial assurance by keeping actual costs of decommissioning in line with the estimated costs on which the levels of financial assurance are based. Although no specific requirement is being proposed, the effects of operational procedures on decommissioning should be considered by licensees as part of their program to maintain radiation exposures and effluents "as low as reasonably achievable." The facilitation of decommissioning in the design of facilities can be considered under the general standard for issuance of license that equipment and facilities be adequate to protect the health and safety of the public contained in §§ 30.33(a)(2), 40.32(c), 50.40(a), 70.23(a)(3), and 72.31(a)(10). Suggestions for facilitation are presented in the PNL studies, including a preliminary study on facilitation of reactor decommissioning.

In particular, experience has shown that an important aspect of operation is the maintenance of adequate information on the design and current condition of the facility and site, so that decommissioning can be carefully planned and carried out. The proposed rule would specifically require that records of relevant operational information helpful in facilitating decommissioning be kept by all reactor and materials licensees. Plans should be developed to collect, maintain, and recall records and archive files which include as-built and as-revised drawings and specifications and operational occurences which could significantly affect decommissioning. The proposed rule would specifically allow the use of references to relevant information and locations in order to avoid unnecessary duplication of records kept for other purposes. The proposed rule would also specify that referencing of drawings need not include indexing of each individual relevant document. The intent of this requirement is to assure that all important information is kept until termination of license and that it be readily accessible when needed.

Final Planning

Final decommissioning planning will involve greater technical detail than preliminary planning. Decommissioning plans should be submitted in a timely way for review and approval prior to the initiation of any major decommissioning activity to avoid delay of decommissioning after shutdown. For a power reactor, review and approval could take up to a year. Thus, it would be beneficial to submit plans a year prior to planned termination of operation, if possible.

The proposed rule would require decommissioning plans for production and utilization facilities and ISFSIs to be submitted within two years following permanent cessation of operation or one year prior to operating license expiration. The decision as to whether a shutdown will be permanent is, of course, the licensee's. This provision does not limit how long a licensee may have a facility shut down under his operating license but means only that when a facility is permanently removed from operational status, plans need to be made as to how the ultimate termination of license will be attained. Upon approval of the plans, the license will be modified to reflect the approved decommissioning alternative authorizing continued possession until the approved alternative has been carried out. This reflects current licensing practice. For reactors which have permanently shut down prior to the effective date of the final rule, no time limit is given for application for license termination and no additional planning is specifically required until such application is made. However, the Commission may require additional planning, particularly in the area of financial assurance, on a case-by-case basis as appropriate or practical for partially decommissioned facilities in line with the policy represented by this rule if made effective.

The level of detail required would be appropriately less for the delayed decontamination activities if SAFSTOR is the proposed alternative, however, preliminary aspects of planning would have to be included for the entire decommissioning procedure. Updated and more complete plans for delayed decontamination activities would be submitted towards the end of the safe storage period and would have to be approved by NRC before the start of the major decontamination activities.

Decommissioning plans must address the following:

1. *Decommissioning alternative.* A description of the alternative to be used for decommissioning must be presented. Plans for processing and disposing of radioactive waste must also be described. Waste disposal plans must assess the availability of waste burial grounds. If waste burial space is unavailable, then contingency plans must be presented that address use of available temporary above-ground waste storage or some other method. Depending on a variety of circumstances, temporary above-ground waste storage may be accomplished offsite or onsite and may require Commission review and approval.

2. *Technical and environmental plans.* Controls and limits on procedures and equipment to ensure occupational and public safety and to protect the environment during decommissioning must be proposed by the licensee. As part of this, details of a quality assurance program should also be submitted. Changes to procedures for safeguarding special nuclear material should be included when appropriate.

3. *Terminal radiation survey.* A plan for a final radiation survey must also be presented to ensure that remaining residual radioactivity is within levels permitted for releasing the property for unrestricted use. Unrestricted access to portions of the property may be desirable prior to full decommissioning. A separate termination survey would be necessary for those areas.

4. *Cost estimate.* An updated cost estimate must be included along with a plan to ensure that adequate decommissioning funds are available to carry out the decommissioning operations. This plan would show how any deficit in present funding would be

covered. If delayed decommissioning is proposed, a method for securing the fund would be proposed. Plans for adjusting funds over the storage period are also needed.

For specific licenses under Parts 30, 40, and 70 detailed plans for the completion of decommissioning are only required where decommissioning could significantly increase health and safety impacts over those of normal operation or if the Commission has previously determined a need for such plans and required them by a license condition. These plans would contain essentially the same information as described above for Parts 50 and 72 licenses. For materials licensees, those plans are not required until after inventories of radioactive materials have been disposed of, preliminary decontamination procedures have been carried out, and contamination remaining after these procedures has been assessed. However, it would be advantageous to licensees and the Commission for decommissioning plans to be submitted prior to the end of operational activities, if possible. It is expected that the need for such a plan will in most cases be anticipated and that a reasonably accurate appraisal of what will be necessary can be accomplished prior to the end of operation. It would therefore be possible for the licensee to submit plans early and obtain approval of these plans in time for decommissioning to proceed promptly following the end of operational activities.

No amendments are proposed which specify limitations on occupational or public doses or effluents to the environment. It is considered sufficient that the requirements of Part 20 continue to apply until the license is terminated by the Commission. The proposed planning requirements are considered appropriate means of assuring that the decommissioning will be carried out in accordance with Part 20 and specifically that doses will be kept as low as reasonably achievable.

D. Financial Assurance

In accordance with its responsibilities as defined by the Atomic Energy Act, the primary responsibility of the NRC with respect to decommissioning is to protect the health and safety of the public. An important aspect of this responsibility is to have reasonable assurance that at the time of termination of operations (including premature closure of the nuclear facility) adequate funds are available so that decommissioning can be carried out in a safe and timely manner. Without this assurance, there could be uncertainties concerning the availability of funds at the time of decommissioning. These uncertainties are of two general types. The first is that the financial condition of a particular organization is difficult to predict years into the future when decommissioning is likely to occur. As a result it is possible that there may be priority or competing claims to these assets. The second type of uncertainty is the possibility that the nuclear facility could be forced to shut down prematurely, thus reducing the time for collecting funds.

The availability of funds for post-accident cleanup is related to financial assurance for decommissioning. The costs of post-accident cleanup can be substantially larger than the costs of decommissioning and the availability of funds for accident cleanup can impact a licensee's capability to decommission the facility following the cleanup. Assurance of funds for post-accident cleanup is more properly covered by use of insurance. Post-accident cleanup activities are broader in scope than decommissioning, that is, they can lead ultimately to either reuse or decommissioning. Accordingly, the funding requirments for accident cleanup are not included in ths proposed rule but are contained in 10 CFR 50.54(w) which requires that utility licensees for production and utilization facilities obtain insurance to cover decontamination and cleanup costs associated with onsite property damage resulting from an accident. As discussed below, the acceptability of certain of the funding methods allowed in the proposed regulations depends on this accident cleanup insurance requirement. Accident cleanup insurance for other types of licensees is under consideration in a separate action; an advanced notice of proposed rulemaking is being developed.

Mechanisms for Requiring Financial Assurance

As discussed earlier, financial assurance for the decommissioning of major facilities will be provided by implementation of a funding method with a funding level based on expected decommissioning costs. This includes all Parts 50 and 72 licensees, as well as those licensees under Parts 30, 40, and 70 which are expected to have significant decommissioning costs. Electric utility and some material licensees are given the option of providing financial assurance in a prescribed amount or submitting a decommissioning funding plan which contains an estimate based on a facility-specific evaluation. If financial assurance is provided in the prescribed amount, only a certification pertaining to financial assurance is submitted. This approach is proposed in order to minimize the administrative effort of licensees and the Commission of obtaining reasonable financial assurance for decommissioning and is based on the significant data base on decommissioning developed as part of the policy reevaluation.

The specified amounts are chosen to provide sufficient funds to cover decommissioning costs for most of most of the licensees in each category. For power reactors the amount of $100 million (1984 dollars) was chosen based on data in NUREG/CR-0130 and -0672 (References 2 and 3), which analyze the costs of decommissioning PWRs and BWRs, respectively. This figure also takes into account escalation of these costs to 1984 dollars, additional costs of engineering and planning, use of contractors, and variations in local labor rates, in waste transportation costs, and in local power costs. This amount does not account for costs of shipment of spent fuel which are assumed to be part of operational costs or the costs of demolition of nonradioactive structures which is not required for NRC license termination. The use of an inflation rate of twice that indicated by the Consumer Price Index is an approximation obtained by analyzing the rate of escalation of the major cost elements in the PNL data (i.e., waste disposal, labor, energy, and other), over the last several years, and comparing the net increase in decommissioning costs to the general inflation rate as reflected in the Consumer Price Index. This net increase is due primarily to the large increases in the cost of radioactive waste disposal. If decommissioning costs differ significantly in the future from that approximated by this prescribed amount, the regulation may be modified. Additionally, if at any time the licensee determines that this amount is no longer appropriate for a specific reactor, the regulation would allow submittal of a decommissioning funding plan. For research and testing facilities a specific amount is not set due to the large diversity of facility types.

The amounts for materials licensees were chosen based primarily on data in NUREG/CR-1754 (Reference 12) and on licensing experience. Based on estimates in NUREG/CR-1754, a single major processing laboratory would cost in a range approaching $100,000 to decommission. It is expected that the majority of licensees for which a certification of $100,000 is specified would have only one major laboratory or processing area and a very limited

potential for site contamination. For those materials licensees for which assurance of $500,000 is specified, it is expected that several laboratories would typically be involved in radioactive material processing or handling. In some cases, a large number of individual rooms or laboratories may be used in connection with licensed activities, however, only a few would require a major decontamination effort such as the example laboratories studied in NUREG/CR-1754. The $50,000 specified for very large sealed sources is based on licensing experience and is the estimated maximum cost to decommission a large pool-type irradiator.

Of course, many factors will affect decommissioning costs. Licensees who can demonstrate that the expected decommissioning costs for their facility are significantly lower than the applicable prescribed amount have the option of doing by submitting a decommissioning funding plan.

An additional means of reducing administrative effort which has been incorporated into the proposed rule is allowing those materials licensees for which a decommissioning funding plan is required to first supply financial assurance for $500,000 and delay submitting the funding plan until application for license renewal is made, at which time the funding plan can be more efficiently reviewed together with the renewal application.

Funding Methods

The wide diversity in types of nuclear facilities necessitates that the NRC allow latitude in the use of funding methods. In analyzing funding methods which would provide reasonable assurance, NRC has developed the following major classification of funding alternatives:

1. *Prepayment.* Cash or other liquid assets that will retain their value for the projected operating life of the nuclear facility are deposited prior to startup into an account segregated from licensee assets and outside its administrative control. Periodic review and adjustment of the fund is necessary to assure the adequacy of the fund. Prepayment can be in the form of a trust, certificate of deposit, government security, escrow account, or government fund.

2. *External sinking funds.* The external sinking fund requires that a prescribed amount of funds be set aside in an account at fixed intervals over the life of the facility, such that the funds plus accumulated interest would be sufficient to pay for decommissioning costs at the time termination of operation is anticipated. The account would be segregated from licensee assets and outside licensee control. Types of accounts could be similar to those described above for prepayment.

3. *Internal reserve.* This approach usually uses negative net salvage value depreciation that allows estimated decommissioning costs to be accumulated over the life of the nuclear facility. In this method, the funds are not segregated from the company's assets, rather they are invested in its assets. At the end of the nuclear facility's life, bonds are issued against these assets and the funds raised are used to pay for decommissioning. This approach can also take the form of a segregated internal reserve, which is similar to an external sinking fund, except that funds are held by the company.

4. *Insurance, surety bonds, letters of credit, and lines of credit and other guarantee methods.* Insurance could be used to provide coverage for premature decommissioning expenses. An insurance-type mechanism might also be used for all decommissioning expenses, including those planned under normal circumstances. The surety bond, credit methods, and other guarantee methods assures that decommissioning costs will be paid should the licensee default. The licensee would still be responsible to pay for decommissioning. With respect to power reactors, it appears questionable that bonds of the size necessary and for the time involved will be available. However, surety bonds or credit methods appear to be available for nuclear facilities that involve smaller costs and shorter time periods. Contractual arrangements must provide that NCR be notified prior to cancellation, must ensure that a surety bond or credit method remains in effect until the license is terminated, and must be set up such that the beneficiary would be a trustee acceptable to the Commission.

The types of surety arrangements being considered in this proposed rule are similar to those contained in the Commission's recently enacted requirements in 10 CFR part 61. The Commission found in developing those requirements that self insurance for a private sector applicant or licensee would not be an acceptable form of surety.

Another potential funding method of this type is for a licensee, where practical, to obtain a guarantee that the local, state, or Federal government will assume financial responsibility for decommissioning the facility. This would most likely be possible when the licensee is a local, State, or Federal agency or a state-affiliated organization, such as a university or hospital.

Criteria for Funding Methods

The NRC staff considers two primary criteria in evaluating funding methods. These criteria are the degree of assurance of the availability of funds and the cost of providing assurance.

The degree of assurance is a measure of how effective the funding method is in providing assurance that funds for decommissioning will be available when needed. From the Commission's perspective, assurance is the most important criterion.

Prepayment provides the greatest assurance that funds will actually be available for either normal or premature decommissioning since the necessary funds are deposited at startup. Some adjustment will likely be necessary over the period of licensing because of uncertainties in cost estimates and changes in inflation and interest rates.

The insurance alternative also provides excellent assurance in that it could provide coverage for premature decommissioning costs and for licensee default. For electric utility licensees, the property damage insurance required by 10 CFR 50.54(w) provides reasonable assurance of funds for the potentially large costs of decontamination leading up to premature decommissioning. In some instances, such as in the case of government licensees, guarantees of financial responsibility by the appropriate local, State, or Federal government entities are considered adequate in providing assurance. As discussed above, self-insurance is not considered adequate.

Surety methods (for example, surety bonds, lines of credit, letters of credit, secured interests, or other guarantees) can provide adequate assurance to cover default for those licensees to whom they are available. However, from the standpoint of acceptability, sureties have certain disadvantages that must be considered. In particular, contractual arrangements will have to be written such that the surety bond or credit mechanism cannot be terminated by the surety company or bank prior to other arrangements being made, that a surety bond or credit mechanism remains in effect until the license is terminated, and that the surety company itself is financially stable.

The external sinking fund option provides a good level of assurance. Because the external sinking fund is held outside the licensee's assets and control, it would not be vulnerable under most likely trust arrangements if the licensee went bankrupt. On the other hand, in the event of premature decommissioning, there would be a

greater likelihood than with the prepayment method that insufficient funds had been accumulated. This situation would be mitigated if the fund was either structured so that higher payments were made earlier in a facility's life, or coupled with a deposit or insurance or surety.

Providing lesser assurance is the internal reserve. Under normal circumstances, the internal reserve would be similar to the external sinking fund in the pattern of funds set aside and should provide adequate funds if a nuclear facility is decommissioned at the end of its expected life. However, because it depends on financing internal to the licensee, the internal reserve is vulnerable to events or situations that undermine the financial solvency of a licensee. A bankrupt or financially troubled licensee would have difficulty in raising capital against its decommissioning reserve and even a segregated internal reserve fund may not be available to pay for decommissioning costs. Thus, the internal reserve is acceptable only if supplemented by a mechanism providing additional assurance such as insurance or surety arrangement.

For most electric utilities, the insurance required by § 50.54(w) is considered sufficient to allow the use of internal reserve. For other licensees, internal reserve would not provide adequate assurance unless backed up by a surety or insurance covering decommissioning costs. In this case, however, it is the surety or insurance that provides the assurance; although the licensee may use an internal reserve to accumulate funds, only the surety or insurance need be reported to NRC.

Cost of assuring funds is an important consideration from the standpoint that an alternative must be reasonably cost effective in order to be acceptable. Cost of a funding method is defined as the incremental revenue requirements that result from using a particular funding method, other factors being equal. (Administrative costs to the NRC and other regulatory agencies are also included.) Cost is sensitive to even relatively small variations in assumed inflation rates, interest and discount rates, expected facility life, Federal tax policies, depreciation and amortization schedules, and other accounting procedures. Based on these variations, each of the funding alternatives has a fairly wide calculated cost range. Taxation policies can have a significant effect on the cost of funding alternatives.

The internal reserve method tends to be less expensive than external sinking funds or prepayment since a company can normally earn more from its own capital structure than by investing in higher grade commercial securities outside the company. The cost of guarantee methods, such as sureties, letters of credit, or insurance would be in addition to normal decommissioning expense.

Funding methods considered acceptable in providing reasonable levels of assurance may be different for different types of facilities. For example, the situation of a large power reactor, can be significantly different than that for a small research or testing facility. Generally for power reactors, state utility commissions regulate retail rates thus permitting utilities to recover the cost of providing electricity from their customers, the decommissioning costs are higher, and the licensees are required by 10 CFR 50.54(w) to carry insurance for post accident decontamination and cleanup. Even financially troubled utilities have sufficient assets to cover the costs of decommissioning. Among utilities, there are also differences, such as multi-asset versus single-asset utilities (i.e., a utility with a single generating facility) or public versus investor-owned utilities.

Based on the above considerations, this proposed decommissioning rule permits a range of options which are expected to provided reasonable assurance of the availability of funds for decommissioning. The acceptable options are specified in the proposed rule. Planned regulatory guides will provide guidance on how these funding methods will be implemented. These requirements and the planned accompanying guidance are similar to those for 10 CFR Part 61.

Periodic Review

The proposed rule would require that decommissioning funding plans contain provisions for periodic review and adjustment in order to assure that funds will be adequate at the time of decommissioning. Appropriate periods for review and the level of effort necessary will vary for different types of licensees and financial considerations. For many cases, routine adjustments for changes in inflation and interest rates might be done annually by the licensee and could be reported in the annual financial report without the need for NRC approval. A technical review of the information in the preliminary plans or the cost estimate for a funding plan could be done less frequently and submitted to NRC for approval. For the shorter term materials licenses, the renewal process may be sufficient for technical reviews.

Existing Licensees

Particular consideration has been given to the case of existing licensees whose funding methods will need to provide an adequate level of assurance within a shorter time frame. The proposed rule would require that a funding method be proposed within two years following the effective date of this rule for production and utilization facilities and within one year for other licensees for which it is required and established as soon as approved by NRC. For funding methods in which funds would normally be accumulated over the entire life of the facility, larger periodic payments would, of course, be necessary in order to accumulate the total decommissioning costs within the remaining lifetime of the facility. When such methods are not coupled with a surety or other guarantee as is allowed in the case of utilities, adequate assurance should be provided by building up the fund to the level that would have been attained if accumulation of funds had been started at the beginning of facility life. Establishment of these decommissioning funds by use of prepayment or accelerated sinking fund by all existing licensees, within a short time following issuance of this rule could have a significant impact on capital markets. To alleviate this impact, existing licensees with estimated decommissioning costs of 5 million dollars or more would be allowed to accumulate an adequate decommissioning fund, as discussed above, over a reasonable period of time following the initial establishment of the fund. If more than 5 years remain prior to license expiration an acceptable period of time would be 5 years or one-third of the remaining license period, whichever is greater.

Extended Decommissioning Period

When decommissioning is to be carried out over an extended period of time such as with SAFSTOR, the proposed rule would require that the decommissioning fund be in an external account unless assurance is being provided by a surety, insurance, or certification method. In this way, for a facility which is no longer producing revenue, the funds would be protected irrespective of licensee stability. This would be done at the beginning of the storage or surveillance period. Review and adjustment of the funding level must continue over the extended decommissioning period.

Request for Comment

The regulatory approach for assuring funds for decommissioning has been

particularly difficult to resolve. The issues of concern are: which funding methods to allow for utilities during operation and during any long term decommissioning, and whether to set a prescribed amount for the level of assurance. Additional information and comments are specifically requested by the Commission on the costs and adequacy or assurance of the various funding methods.

More specifically, Commissioners Asselstine and Bernthal continue to be concerned about the vulnerability of the internal funding mechanism for decommissioning funds, particularly where the funds are used to purchase assets or reduce existing debt. They believe the proposed rule should have included two options for public comment; one option would permit the use of unsegregated internal funding for electric utilities (as the staff recommended) and the other option not permitting the use of unsegregated internal funding. Commissioners Asselstine and Bernthal would like public comments on the need to consider the possibility of insolvency and its impact on the continued availability of decommissioning funds.

PIRG, et al., Petition for Rulemaking, Docket No. PRM-50-22.

On July 5, 1977, as supplemented October 7, 1977, and January 3, 1978, the Public Interest Research Group (PIRG), Arizonans for Safe Energy, Citizens United Against Radioactive Environment, Community Action Research Group, Critical Mass Energy Project, Environmental Action Foundation, Environmental Action, Inc., New Mexico Public Interest Research Group, New York Public Interest Research Group, North Anna Environmental Coalition, Texas Public Interest Research Group, and National Consumer Law Center Energy Project (hereinafter the 'petitioners'), petitioned the Commission to initiate rulemaking to promulgate regulations for nuclear power plant decommissioning which would require plant operators to post bonds, to be held in escrow, to ensure that funds would be available for proper and adequate isolation of radioactive material upon each plant's decommissioning. On June 22, 1979, the Commission published in the **Federal Register** (44 FR 36523) a partial denial of the petitioners' request. In this notice the Commission specifically denied the petitioners' request to immediately initiate rulemaking to implement a specific decommissioning funding plan that would require nuclear power plant operators to post surety bonds to cover decommissioning costs. The Commission granted the petitioners' request to reconsider the adequacy of its regulations on decommissioning. The Commission indicated that other issues and funding alternatives raised by the petitioners would be considered within the context of the NRC decommissioning rulemaking proceedings.

In addition to surety bonds, the petitioners advanced two other options to finance nuclear power reactor decommissioning: (1) Funds in an amount sufficient to pay for projected decommissioning would be set aside in an escrow account before commencing reactor operations, and (2) funds would be accumulated in a sinking fund during the life of the plant supplemented by a surety arrangement as necessary to allow for the risk of a licensed utility going bankrupt before the sinking fund had accumulated sufficient funds. The petitioners indicated that the requirements should apply to existing licensees as well as future licensees. The petitioners also raised the issue of the Commission's jurisdiction to regulate the arrangements for decommissioning. The original petitioners joined by others, submitted comments in response to the **Federal Register** notice (44 FR 36523, June 22, 1979). These comments were received on November 21, 1979. The comments discussed NRC's jurisdiction to promulgate rules mandating specific requirements covering decommissioning costs, the need for NRC to establish a rule requiring its licensees to make specific financial plans to meet decommissioning costs, surety bonds as a supplementary option, and the disadvantage of unfunded alternatives.

The PIRG petition and the petitioners' supplementary comments were considered in the development of this proposed rule. The Commission agrees that its regulations should be amended to require that licensees plan for decommissioning costs when needed. For reasons discussed in the previous section, the Commission does not believe it is necessary, or desirable, to require a specific financial method for collecting decommissioning funds. The proposed amendments would require licensees to submit a cost estimate and a proposed financial method for assuring that funds will be available for decommissioning. A number of acceptable methods are indicated. The Commission will review the licensees' funding methods and evaluate them with respect to the new requirements. A licensee's method for providing decommissioning funds must be acceptable to the Commission. This procedure covers all applicants for operating licenses and existing licensees under Part 50. To the extent that the petitioners would require promulgation of a specific method for financing power reactor decommissioning, the petition is denied. To the extent that the proposed amendments would allow consideration of the petitioners' suggested financing methods, including surety bonds if they are available, the petition is granted. This action would complete NRC consideration of the issues raised in PRM-50-22.

E. Residual Radioactivity Levels

Although residual radioactivity limits are being developed in a separate action, much consideration has been given to this issue as part of the overall reevaluation of decommissioning policy. Although an upper limit in terms of dose is being considered, actual levels attained in any case should be as low as reasonably achievable. Based on the information developed, it is expected that contamination levels considered suitable for release for unrestricted use will not be changed significantly enough to affect cost estimates for decommissioning, nor conclusions of the generic environmental impact statement concerning overall impacts of decommissioning. Whatever criteria are applicable, the survey which verifies that these criteria are met and serves as the primary basis of termination of the license must be carefully designed to provide a high degree of reliability.

F. Environmental Review Requirements

In the course of development of this proposed rule, it became apparent that the requirements for environmental reviews related to decommissioning could be reduced.

Environmental Review Requirements at Licensing

Decommissioning is the inevitable result of having built and operated a nuclear facility. The GEIS and its supporting technical data base assessed all of the costs and environmental impacts occurring at the time of decommissioning. These overall impacts, although dependent on the specific decommissioning procedures, are essentially the result of operation and accordingly should be addressed prior to licensing.

As is the present licensing practice, environmental reports and environmental impact statements which are developed in connection with the licensing of major facilities will include the major environmental impacts expected at decommissioning. The major impacts, of which the wastes needing controlled disposal are the most

significant, can be reasonably assessed. At the time a facility is licensed, however, it is impractical to plan in detail what specific procedures will be used at decommissioning since decommissioning will not be carried out until many years later. Thus, at this time, it is also impractical to attempt to develop highly detailed analysis of the environmental impacts of specific decommissioning procedures. Since the GEIS and its supporting data base showed that the costs and environmental impacts at decommissioning are small compared to the total costs and impacts of building and operating a major facility such as a reactor, the availability of more detailed information concerning impacts at decommissioning would not affect the NEPA cost-benefit balance. Thus, no amendment to the regulations is being proposed in regard to the consideration of decommissioning impacts in environmental reviews at licensing.

Environmental Reviews at Decommissioning

At the end of operation, when a facility must be decommissioned, application for termination of license is made and, in the case of major facilities, a detailed decommissioning plan is submitted. As stated above, the overall environmental impacts occuring at decommissioning, of which the radioactive wastes resulting from operation and needing controlled disposal are the most significant, have already been evaluated in environmental impact statements prepared in connection with the issuance of the construction permit and operating license for the facility. In view of these circumstances and on the basis of information in the draft GEIS and its supporting technical data base indicating that the environmental impacts associated with decommissioning are unlikely to be significant, the Commission is of the opinion that there is no need, absent special circumstances, to prepare an environmental impact statement in connection with the issuance of a license amendment or order authorizing the decommissioning of a facility other than a waste disposal facility. In most cases, preparation of an environmental assessment which supplements the previously prepared environment impact statements should be sufficient. The Commission notes, however, that there may be situations in which the special nature of the decommissioning action necessitates the preparation of an environmental impact statement.

This proposed rule has been developed to assure that decommissioning can and will be accomplished in a safe and efficient manner and that the impacts at decommissioning will be minimized to the extent practical. The draft GEIS indicates that for any viable decommissioning alternative, radioactivity released to the environment and associated radiation doeses are substantially less than those associated with operation and maintenance of a reactor during its lifetime and that public doses from decommissioning activities are negligible (calculated in the background documents as roughly a few micro-rem to the maximally exposed individual). Occupational doses during the decommissioning of a reactor are, for the short period of active dismantlement, comparable to that occurring during operation and maintenance, and over the longer period of a safe storage period are much lower.

Since in most instances environmental impacts are unlikely to be significant enough to warrent the development of an environmental impact statement, the rule proposes that the Commission no longer be required to prepare environmental impact statements in connection with the issuance of license amendments or orders authorizing the decommissioning of facilities licensed under Parts 50 and 72. Instead, the Commission would prepare environemental assessments which would supplement environmental impact statements previously prepared in connection with the facility. Although this environmental review procedure is expected to accommodate most decommissioning actions, it should be noted that under the critieria in revised 10 CFR Part 51 an environmental assessment may result in a conclusion that an environmental impact statement is required in the particular circumstances of the proposed Federal decommissioning action. The environmental assessment would be based on information provided by the licensee in a supplement to the environmental report submitted at the decommissioning stage. The information submitted by the licensee would take account of any changes to the estimated environmental impacts based on the information in the decommissioning plan.

The information in the data base and the conclusions of the GEIS will also assist in evaluating decommissioning plans. If unique methods are proposed by a licensee which are significantly different from those studied by the Commission, the Commission retains discretion to require an environmental impact statement in special circumstances.

Categorical Exclusion From Environmental Reviews

The Commission has identified a category of actions connected with the proposed requirements which appears to meet the criterion for categorical exclusion set out in 10 CFR 51.22(a). Presently there are eighteen categories of actions designated as such, thus the following category of actions is designated Category 19:

Category of Actions

19. Approvals of decommissioning funding plans.

Discussion and Finding

Although decommissioning funding plans concern how licensees expect to carry out the activities required to decommission their facilities, the approval of these plans does not authorize a licensee to perform these activities. The principal purpose of considering decommissioning activities at this time is to provide information which will enable the Commission to determine whether the licensee's plan for assuring funds for decommissioning is adequate. Approval of a decommissioning funding plan affects the financial arrangements of the licensee but does not affect the scope and nature of the licensed activity. These actions in and of themselves do not have an environmental impact.

Accordingly, the Commission finds that approvals of decommissioning funding plans (Category 19) comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment, designates Category 19 as a categorical exclusion, and directs that Category 19 be listed in 10 CFR 51.22(c) as a categorical exclusion.

Separate Views of Commissioner Bernthal

I feel compelled to comment on the nature of this rule setting forth, as it does, prescriptive requirements for assuring that financial resources are available for decommissioning of nuclear facilities. My voting record on general financial qualifications reviews reflects my long opposition to what I consider to be inappropriate and ill-suited Commission involvement in financial matters related to the construction and operation of nuclear facilities.

However, there are distinctions between construction and operation of these facilities and their safe

decommissioning. First, the Commission already has prescriptive requirements for construction and operation which, independently from financial review requirements, provide assurance that those tasks will be accomplished safely. For decommissioning there are no such independent requirements in the Commission's regulatory scheme. The financial options which the Commission would adopt by these rule changes appear, therefore, to be justifiable as a means to assure that expeditious action can be taken for safe implementation of whatever decommissioning plan is selected by licensees. Second, abandonment of a facility during construction because of financial problems does not create a health and safety problem. Abandonment of a decommissioning plan before completion may well involve health and safety considerations. Finally, apart from financial considerations, applicants have an incentive to comply with regulations governing the construction of nuclear facilities because their receipt of a permit or license for the facility depends upon such compliance. Absent the proposed decommissioning regulations, no such incentive would exist to dedicate funds in advance for successful completion of decommissioning.

For these reasons, I believe the proposed regulations provide a necessary adjunct to the Commission's authority to take reasonable steps for the protection of public health and safety in the decommissioning of nuclear facilities.

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3. H.D. Oak, et al., *Technology, Safety, and Costs of Decommissioning a Reference Boiling Water Reactor Power Station*, NUREG/CR–0672, Prepared by Pacific Northwest Laboratory for the U.S. Nuclear Regulatory Commission, June 1980, and Addendum, July 1983.

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7. E.S. Murphy, *Technology, Safety, and Costs of Decommissioning Reference Light Water Reactors Following Accidents*, NUREG/CR–2601, Prepared by Pacific Northwest Laboratory for U.S. Nuclear Regulatory Commission, November 1982.

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19. J. P. Witherspoon, *Technology and Cost of Termination Surveys Associated With Decommissioning of Nuclear Facilities*, NUREG/CR–2241, Prepared by Oak Ridge National Laboratory for U.S. Nuclear Regulatory Commission, January 1982.

20. *Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities*, U.S. Nuclear Regulatory Commission, NUREG–0586, January 1981.

Note.—Free single copies of reference items 14 and 20, to the extent of supply, may be requested by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Copies of all other reference documents may be purchased by calling (301) 492–9530 or writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Environmental Impace Statement: Availability

As required by the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, the NRC has prepared a draft environmental impact statement on the decommissioning of nuclear facilities.

This draft environmental impact statement is available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the draft environmental impact statement may be obtained from Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)443–7910.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from C.R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7910.

The Commission requests public comments on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC has carefully considered the effect on small entities in developing the proposed rule and has attempted to tier the requirements to reduce the impact on small entities to the extent possible while adequately protecting health and safety. . .

Based on the information presently available, it is not expected that this proposed rule, if promulgated, will have a significant economic impact on a substantial number of small entities. Although the impact may be considered significant to some, for the large majority of small entities, it is expected to be minimal.

The proposed rulemaking would broadly affect all Commission applicants and licensees and, because Agreement States will be required to maintain compatibility with the proposed changes, the proposed rule would also affect Agreement State applicants and licensees. There are approximately 9,000 Commission licenses, which include about 5,200 byproduct material licenses under Parts 30 through 34, 2,500 medical licenses under Part 35, 400 source material licenses under Part 40, 200 production and utilization licenses (including approximately 50 applications in various stages of review) under Part 50, 700 special nuclear material licenses under Part 70, and 1 license and approximately 5 potential applicants under Part 72. Between 11,000 and 12,000 Agreements States' licensees would also be affected.

The Commission estimates that approximately 43 percent of its licensees would be considered small entities under the criteria set out in the size standards by the Small Business Administration in 13 CFR Part 121 (e.g., for most licensees less than 500 employees, for hospitals less than 150 beds, and for other medical licensees less than $1.5 million annual gross receipts). Licensees under 10 CFR Parts 50 and 72 would not be considered small entities.

All licensees including small entities will be required to keep records important to decommissioning. In general, for small licensees, such recordkeeping is "good practice" and should not constitute a significant change in operation. Generally, keeping records important to decommissioning reduces both the costs and health and safety impacts of decommissioning and can also result in savings in doses or costs during operation. Costs of recordkeeping would tend to be recouped either in operation or at decommissioning.

The changes proposed in this rule at the time of termination of license will affect few small entities. These changes consist primarily of specifying in more detail contents of decommissioning plans, presently called "decontamination plans." Although more detailed plans may be required than have been considered acceptable in the past, there will also be a reduction in administrative effort because there will be less uncertainty as to what is expected. Overall, these changes are not expected to have a significant impact.

The most significant impact of this rule on licensees is likely to result from the financial assurance requirements. A cost estimate for decommissioning and a method of providing assurance of funds for decommissioning will be required of roughly 830 Commission licensees of which few if any will be small entities. Roughly another 660 Commission licensees including about 280 small entities will have the option of providing financial assurance in a prescribed amount and submitting a certification to that effect or submitting a funding plan to support a lower amount. A similar number of Agreement State licensees would also be affected. Those small entities affected would be almost exclusively industrial licensees. Because the historical information indicates that such small industrial licensees are the most likely to default, it is particularly important that financial assurance be provided by these licensees. The rule allows as much flexibility as possible to licensees for providing financial assurance, in order to reduce the impact. Also, the economic impact of making cost estimates can be reduced by using the data base which has been developed.

The cost of this requirement depends on the method used. A surety or insurance method is likely to be used by small entities; it is estimated to cost approximately 1 to 2% of the face value, or 1 to 2% of decommissioning costs annually, plus the administrative cost of either developing a cost estimate and reporting on the funding methods to NRC or of making a certification. The cost of a surety using the prescribed amounts proposed in the rule would thus be in the range of $500–$10,000 per year. For a few small entities affected this would be a significant economic impact, however, these cases would present the highest risk of default.

A more detailed analysis of impacts to small entities is included in the Regulatory Analysis.

Because of the widely differing conditions under which the licensees covered by this proposed regulation operate, the Commission is particularly seeking comment from small entities as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following items:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation Protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

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

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special Nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts, 30, 40, 50, 51, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 30.3, 30.34(b) and (c), 30.41(a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 30.36, 30.51, 30.52, and 30.55 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 30.4 is amended by adding a new paragraph (y) to read as follows:

§ 30.4 Definitions.

* * * * *

(y) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

3. Section 30.32 is amended by adding a new paragraph (g) to read as follows:

§ 30.32 Application for specific licenses.

* * * * *

(g) As provided by § 30.35, certain applications for specific licenses filed under this part and Parts 32 through 35 of this chapter must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before [insert a date one year after the effective date of the final rule] this submittal may follow the renewal application but must be submitted on or before [insert a date one year after the effective date of the final rule].

4. Section 30.33 is amended by deleting the word "and" following paragraph (a)(4), replacing the period following paragraph (a)(5) with a semi-colon, adding the word "and" following paragraph (a)(5), and adding a new paragraph (a)(6) to read as follows:

§ 30.33 General requirements for issuance of specific licenses.

(a) An application for a specific license will be approved if:

* * * * *

(6) The applicant's proposed decommissioning funding plan or certification of financial assurance for decommissioning, if required by § 30.35(a) or (b), includes sufficient information to demonstrate that the proposed funding method will provide reasonable assurance that funds will be available to decommission the facility in a safe and timely manner.

* * * * *

5. Section 30.34 is amended by adding new paragraphs (h) and (i) to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(h)(1) Each holder of a specific license issued on or after [insert a date 1 year after the effective date of the final rule] which is of a type described in § 30.35(a) or (b), shall provide financial assurance for decommissioning in accordance with the criteria set forth in § 30.35.

(2) On or before [insert a date one year after the effective date of the final rule], each holder of a specific license of a type described in § 30.35(a) shall submit a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $500,000 in accordance with the criteria set forth in § 30.35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) On or before [insert a date 1 year after the effective date of the final rule], each holder of a specific license of a type described in § 30.35(b) shall submit a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in § 30.35.

(4) As of [insert a date 1 year after the effective date of the final rule], each licensee covered by § 30.35(a) or (b) shall provide financial assurance for decommissioning as a condition of license. If a decommissioning funding plan has been submitted to the Commission, implementing the plan becomes a condition of the license upon approval of the plan.

(i) Each person licensed under this part or Parts 32 through 35 of this chapter shall keep records of information important to the safe and effective decommissioning of the facility in a file explicitly for this purpose until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be substituted. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must

include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in high radiation areas and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

6. A new § 30.35 is added to read as follows:

§ 30.35 Financial assurance for decommissioning.

(a) Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix C of Part 20 shall submit a decommissioning funding plan as described in paragraph (d) of this section. Each holder of such a license shall provide financial assurance for decommissioning; required submittals for providing financial assurance are set out in § 30.34(h)(2).

(b) Each applicant for or holder of a specific license authorizing possession and use of by product material of half-life greater than 120 days and in quantities specified in paragraph (c) of this section shall either—

(1) Submit a decommissioning funding plan as described in paragraph (d) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (c) of this section using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material.

(c) Table of required amounts of financial assurance for decommissioning by quantity of material.

Greater than 10^4 but less than or equal to 10^6 times the applicable quantities of Appendix C of Part 20 in unsealed form	$500,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix C of Part 20 in unsealed form	100,000
Greater than 10^{12} times the applicable quantities of Appendix C of Part 20 in sealed sources	50,000

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the facility.

(e) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets that will retain their value over the projected operating life of the facility and that are in an amount such that the principal plus accumulated earnings would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method or insurance.* A surety method or insurance is a guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, line of credit, secured interest, or other guarantee method. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the beneficiary may automatically collect prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The beneficiary of the surety or insurance must be a trustee acceptable to the Commission such as an appropriate state or Federal government agency or a major financial organization.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by the periodic deposit of a prescribed amount into an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of the periodic deposits plus accumulated earnings would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(4) In the case of Federal, State, or local government licensees, a certification that the appropriate government entity will be guarantor of decommissioning funds.

(5) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (c) (1) through (3) of this section.

7. Section 30.36 is revised to read as follows:

§ 30.36 Expiration and termination of licenses.

(a) Except as provided in § 30.37(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 30.6, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1) (iv) and (v) of this section and a plan for completion of decommissioning if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for licensee renewal under § 30.37, the license shall on or before the expiration date specified in the license—

(i) Terminate use of byproduct material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of byproduct material;

(iv) Submit a completed form NRC-314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted

use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1) (iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC, are extensive, and could significantly increase potential health and safety impacts to workers or to the public such as in cases where—

(A) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(B) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(C) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation; or

(D) Procedures would involve techniques not applied routinely during maintenance operations.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of this section or by license condition, must include—

(A) Discussion of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and shall certify the disposition of accumulated wastes for decommissioning.

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect beyond the expiration date if necessary with respect to possession of residual byproduct material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving byproduct material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Byproduct material has been properly disposed;

(2) Reasonable effort has been made to the eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

8. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 68 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31 (g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.83 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 40.4 is amended by adding a new paragraph (r) to read as follows:

§ 40.4 Definitions.

* * * * *

(r) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

10. Section 40.31 is amended by adding a new paragraph (i) to read as follows:

§ 40.31 Applications for specific licenses.

* * * * *

(i) As provided by § 40.36, certain applications for specific licenses filed under this part must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before [insert a date one year after the effective date of the final rule] this submittal may follow the renewal application but must be submitted on or before [insert a date one year after the effective date of the final rule].

11. Section 40.32 is amended by adding a new paragraph (g) to read as follows:

§ 40.32 General requirements for issuance of specific licenses.

An application for a specific license will be approved if:

* * * * *

(g) The applicant's proposed decommissioning funding plan or certification of financial assurance for decommissioning, if required by § 40.36 (a) or (b), includes sufficient information to demonstrate that the proposed funding method will provide reasonable assurance that funds will be available to decommission the facility in a safe and timely manner.

12. A new § 40.36 is added to read as follows:

§ 40.36 Financial assurance for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in Appendix A of this part, criteria for providing financial assurance for decommissioning are as follows:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan. Each holder of such a license shall provide financial assurance for decommissioning; required submittals for providing financial assurance are set out in § 40.41(f)(2).

(b) Each applicant for or holder of a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either—

(1) Submit a decommissioning funding plan as described in paragraph (c) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $100,000 using one of the methods described in paragraph (d) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material.

(c) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the facility.

(d) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets that will retain their value over the projected operating life of the facility and that are in amount such that the principal plus accumulated earnings would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method or insurance.* A surety method or insurance is a guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, line of credit, secured interest, or other guarantee method. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the beneficiary may automatically collect prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The beneficiary of the surety or insurance must be a trustee acceptable to the Commission such as an appropriate state or federal government agency or a major financial organization.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by the periodic deposit of a prescribed amount into an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of the periodic deposits plus accumulated earnings would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(4) In the case of Federal, State, or local government licensees, a certification that the appropriate government entity will be guarantor of decommissioning funds.

(5) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (c) (1) through (3) of this section.

13. Section 40.41 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(f)(1) Each holder of a specific license issued on or after [insert a date 1 year after the effective date of the final rule] which is covered by § 40.36 (a) or (b), shall provide financial assurance for decommissioning in accordance with the criteria set forth in § 40.36.

(2) On or before [insert a date one year after the effective date of the final rule], each holder of a specific license covered by § 40.36(a) shall submit a decommissioning funding plan or certification of financial assurance for decommissioning in an amount at least equal to $500,000 in accordance with the criteria set forth in § 40.36. If the licensee submits the certification of financial assurance rather than a decommissioning funding plea at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) On or before [insert a date 1 year after the effective date of the final rule], each holder of a specific license covered by § 40.36(b) shall submit a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in § 40.36.

(4) As of [insert date 1 year after the effective date of the final rule], each licensee covered by § 40.36 (a) or (b) shall provide financial assurance for decommissioning as a condition of license. If a decommissioning funding plan has been submitted to the Commission, implementing the plan becomes a condition of the license upon approval of the plan.

(g) Each person licensed under this part shall keep records of information important to the safe and effective decommissioning of the facility in a file explicitly for this purpose until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be substituted. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on

identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in high radiation areas and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

14. Section 40.42 is revised to read as follows:

§40.42 Expiration and termination of licenses.

(a) Except as provided in § 40.43(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 40.5, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1) (iv) and (v) of this section and a plan for completion of decommissioning, if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for license renewal under § 40.43, the licensee shall on or before the expiration date specified in the license—

(i) Terminate use of source material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of source material;

(iv) Submit a completed form NRC–314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demostrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1) (iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC, are extensive, and could significantly increase potential health and safety impacts to workers or to the public such as in cases where—

(A) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(B) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(C) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation; or

(D) Procedures would involve techniques not applied routinely during maintenance operations.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of this section or by license condition, must include—

(A) Discussion of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect beyond the expiration date if necessary with respect to possession of residual source material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

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

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2139). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C.

2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued uder sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. Section 50.2 is amended by adding a new paragraph (y) to read as follows:

§ 50.2 Definitions.

* * * * *

(y) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

17. Section 50.33 is amended by revising paragraphs (f) (2) and (4) and adding paragraph (k) to read as follows:

§ 50.33 Contents of applications; general information.

Each application shall state:

* * * * *

(f) Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

* * * * *

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, plus the estimated costs of decommissioning the facility. The applicant shall submit estimates for total annual operating costs for each of the first five years of operation of the facility and estimates of the costs to decommission the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An application to renew or extend the term of an operating license must include the same financial information as is required in an application for an initial license.

* * * * *

(4) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

* * * * *

(k)(1) For an application for an operating license for a production or utilization facility, information on how reasonable assurance will be provided that funds will be available to decommission the facility. Except in the case of an electric utility, this information must consist of a proposed decommissioning funding plan. An electric utility may submit either a proposed decommissioning funding plan or a certification that financial assurance for decommissioning will be provided in an amount at least equal to $100,000,000 (1984 dollars) adjusted annually for inflation using an inflation rate twice that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics. This certification must also show that the financial assurance will be provided by a means acceptable to the Commission as specified in paragraphs (k) (2) and (4) of this section. A decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the facility.

(2) As provided in paragraphs (k) (3) and (4) of this section, financial assurance may be provided by the following methods:

(i) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets that will retain their value over the projected operating life of the facility and that are in such amount that the principal plus accumulated earnings would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(ii) *External sinking fund.* An external sinking fund is a fund established and maintained by the periodic deposit of a prescribed amount into an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of the periodic deposits plus accumulated earnings would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate or deposit of government securities.

(iii) A surety method or insurance. A surety method or insurance is a guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, line of credit, secured interest, or other guarantee method. Any surety method or insurance used to provide financial insurance for decommissioning must contain the following conditions.

(A) The surety or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, who must be a Commission-approved trustee, and the licensee of its intention not to renew. The surety or insurance must also provide that the beneficiary may automatically collect prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(B) The surety of insurance must remain in effect until the Commission has terminated the license.

(iv) *Internal reserve.* Internal reserve is a fund established and maintained by the periodic deposit or crediting of a prescribed amount into an account or reserve which is not segregated from licensee assets and is within the licensee's administrative control in which the total amount of the periodic deposits or funds reserved plus accumulated earnings would be sufficient to pay for decommissioning at the time termination of operation is expected. This method may use negative net salvage value depreciation in which funds are invested in licensee assets, and at the end of facility life, bonds are issued against these assets and the funds raised are used to pay for decommissioning. An internal reserve may also be in the form of an internal sinking fund which is similar to an external sinking fund except that the fund is held and invested by the licensee.

(3) For licensees other than an electric utility, acceptable methods of providing financial assurance for decommissioning are—

(i) Prepayment;

(ii) An external sinking fund, in which deposits are made at least annually, coupled with a surety method or

insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

(iii) A surety mehtod or insurance;

(iv) In the case of Federal, State, or local government licensees, certification that the appropriate government entity will be guarantor of decommissioning funds; and

(v) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (k)(3) (i) through (iv) of this section.

(4) For an electric utility, acceptable methods of providing financial assurance for decommissioning are—

(i) Prepayment;

(ii) An external sinking fund in which deposits are made at least annually;

(iii) A surety method or insurance;

(iv) For an electric utility owning more than one generating facility, an internal reserve in which deposits are made at least annually; and

(v) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (k)(4) (i) through (iv) of this section.

18. Section 50.51 is revised to read as follows:

§ 50.51 Duration of license, renewal.

Each license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from the date of issuance. Where the operation of a facility is involved the Commission will issue the license for the term requested by the applicant or for the estimated useful life of the facility if the Commission determines that the estimated useful life is less than the term requested. Where construction of a facility is involved, the Commission may specify in the construction permit the period for which the license will be issued if approved pursuant to § 50.56. Licenses may be renewed by the Commission upon the expiration of the period. Unless application for renewal has been made, application for termination of license pursuant to § 50.82 must be made no later than one year prior to the license expiration date.

19. Section 50.54 is amended by adding new paragraphs (cc) and (dd) to read as follows:

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued:

* * * * *

(cc)(1) Each holder of an operating license for a production or utilization facility issued on or after [insert a date 2 years after the effective date of the final rule] shall provide financial assurance for decommissioning in accordance with an approved decommissioning funding plan or by means of a certification as provided in § 50.33(k)(1).

(2) On or before [insert a date two years after the effective date of the final rule], each holder of an operating license for a production or utilization facility in effect on [insert date immediately preceding the date two years after the effective date of the final rule] shall submit information on providing financial assurance for decommissioning as specified in § 50.33(k). Upon approval of a decommissioning funding plan by the Commission, the licensee shall implement procedures for providing financial assurance for decommissioning in accordance with the plan. In each certification of financial assurance, the licensee shall indicate that the means of providing financial assurance for decommissioning are in place.

(3) A decommissioning funding plan will be approved if it includes sufficient information to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the costs of decommissioning.

(4) Each licensee shall at or about 5 years prior to the projected end of operation submit a cost estimate for decommissioning based on an up-to-date assessment of the actions necessary for decommissioning and, if necessary, plans for adjusting levels of funds assured for decommissioning.

(dd) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in a file explicitly for this purpose until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be substituted. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in high radiation areas and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

20. Section 50.55 is amended by revising paragraph (c) to read as follows:

§ 50.55 Conditions of construction permits.

Each construction permit shall be subject to the following terms and conditions:

* * * * *

(c) Except as modified by this section and § 50.55a, the construction permit shall be subject to the same conditions to which a license is subject, not including § 50.54(cc).

* * * * *

21. Section 50.82 is revised to read as follows:

§ 50.82 Applications for termination of licenses.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the facility. For a facility that permanently ceases operation after [insert effective date of the final rule] this application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan. For a facility which has permanently ceased operation prior to [insert effective date of the final rule], requirements for contents of the decommissioning plan as specified in paragraphs (b) through (d) of this section may be modified with approval of the Commission to reflect the fact that the decommissioning process has previously been initiated.

(b) The proposed decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. Alternative methods for decommissioning which significantly delay completion of decommissioning such as use of a storage period, will be acceptable if sufficient benefit results;

(2) A description of controls and limits on procedures and equipment to protect

occupational and public health and safety;

(3) A description of the planned final radiation survey;

(4) An updated cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(c) Decommissioning plans which propose an alternative that delays completion of decommissioning by including a period of storage or long-term surveillance must provide that—

(1) Funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund certification be maintained in accordance with the criteria of § 50.33(k); and

(2) Means be included for adjusting cost estimates and associated funding levels over the storage or surveillance period.

(d) For decommissioning plans in which the major dismantlement activities are delayed by first placing the facility in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(e) If the decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will issue an order authorizing the decommissioning.

(f) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with an approved decommissioning plan and any conditions in the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the facility and site are suitable for release for unrestricted use.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

22. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

§ 51.20 [Amended]

23. Section 51.20 is amended by removing paragraphs (b) (5) and (10).

24. Section 51.22 is amended by adding a new paragraph (c)(19) to read as follows:

§ 51.22 Criterion for and identification of licensing and regulatory actions eligible for categorical exclusion.

* * * * *

(c) The following categories of actions are categorical exclusions:

* * * * *

(19) Approvals of decommissioning funding plans.

25. In § 51.53 paragraph (b) is revised to read as follows:

§ 51.53 Supplement to Environmental Report.

(b) *Post operating license stage.* Each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20 and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage," which will update "Applicant's Environmental Report—Operating License Stage," as appropriate, to reflect any new information or significant environmental change associated with the applicant's proposed decommissioning activities or with the applicant's proposed activities with respect to the planned storage of spent fuel. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The "Supplement to Applicant's Environmental Report—Post Operating License Stage" may incorporate by reference any information contained in "Applicant's Environmental Report—Construction Permit Stage," "Supplement to Applicant's Environment Report—Operating License Stage," final environmental impact statement, supplement to final environmental impact statement or records of decision previously prepared in connection with the construction permit or operating license.

26. In § 51.55, paragraph (a) is revised to read as follows:

§ 51.55 Environmental Report—Number of copies; Distribution.

(a) Each applicant for a license to construct and operate a production or utilization facility covered by paragraphs (b)(1), (b)(2), (b)(3) or (b)(4) of § 51.20 and each applicant for a license amendment authorizing the decommissioning of a production or utilization facility covered by § 51.20, and each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, forty-one (41) copies of an environmental report, or any supplement to an environmental report. The applicant shall retain an additional 109 copies of the environmental report or any supplement to the environmental report for distribution to parties and Boards in the NRC proceeding, Federal, State, and local officials and any affected Indian tribes, in accordance with written instructions issued by the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

27. Section 51.60 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 51.60 Environmental Report—Materials licenses.

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to Parts 30, 32, 33, 34, 35, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1)–(b)(6) of this section, shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66, of a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate. The "Applicant's Environmental Report" shall contain the information specified in § 51.45. If the application is for an amendment to or a renewal of a license

or other form of permission for which the applicant has previously submitted an environmental report, the supplement to applicant's environmental report may be limited to incorporating by reference, updating or supplementing the information previously submitted to reflect any significant environmental change, including any significant environmental change resulting from operational experience or a change in operations or proposed decommissioning activities.

* * * * *

(c) An applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall comply with the requirements for environmental reports in § 51.53(b), instead of the requirements in this section.

§ 51.95 [Amended]

28. In § 51.95, paragraph (b) is revised to read as follows:

* * * * *

(b) *Post operating license stage.* In connection with the amendment of an operating license authorizing the decommissioning of a production or utilization facility covered by § 51.20 or with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a supplemental environmental impact statement for the post operating license stage or an environmental assessment as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

29. The authority section for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 70.3, 70.19(c), 70.21(c) 70.22(a), (b), (d)-(k), 70.24 (a) and (b), 70.32(a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c) and (d), 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)-(g), 70.56, 70.57 (b) and (d) and 70.58(a)-(g)(3), and (h)-(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59 and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

30. Section 70.4 is amended by adding a new paragraph (x) to read as follows:

§ 70.4 Definitions.

* * * * *

(x) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

31. Section 70.22 is amended by adding a new paragraph (a)(9) to read as follows:

§ 70.22 Contents of applications.

(a) Each application for a license shall contain the following information: * * *

* * * * *

(9) As provided by § 70.25, certain applications for specific licenses filed under this part must contain a proposed decommissioning funding plan or a certifiction of financial assurance for decommissioning. In the case of renewal applications submitted before [insert a date one year after the effective date of the final rule] this submittal may follow the renewal application but must be submitted on or before [insert a date one year after the effective date of the final rule].

* * * * *

32. Section 70.23 is amended by adding a new paragraph (a)(12) to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) An application for a license will be approved if the Commission determines that:

* * * * *

(12) The applicant's proposed decommissioning funding plan or certification of financial assurance for decommissioning, if required by § 70.25 (a) or (b), includes sufficient information to demonstrate that the proposed funding method will provide reasonable assurance that sufficient funds will be available to decommission the facility in a safe and timely manner.

* * * * *

33. A new § 70.25 is added to read as follows:

§ 70.25 Financial assurance for decommissioning.

(a) Each applicant for a specific license authorizing the possession and use of unsealed special nuclear material in quantities exceeding 10^3 times the applicable quantities set forth in Appendix C of Part 20 shall submit a decommissioning funding plan as described in paragraph (d) of this section. Each holder of such a license shall provide financial assurance for decommissioning; required submittals for providing financial assurance are set out in § 70.32(k)(2).

(b) Each applicant for or holder of a specific license authorizing possession and use of unsealed special nuclear material in quantities specified in paragraph (c) of this section shall either—

(1) Submit a decommissioning funding plan as described in paragraph (d) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (c) of this section using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material.

(c) Table of required amounts of financial assurance for decommissioning by quantity of material.

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of Appendix C of Part 20	$500,000

Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix C of Part 20	100,000

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the facility.

(e) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets that will retain their value over the projected operating life of the facility and that are in amount such that the principal plus accumulated earnings would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) *A surety method or insurance.* A surety method or insurance is a guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, line of credit, secured interest, or other guarantee method. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the beneficiary may automatically collect prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The beneficiary of the surety or insurance must be trustee acceptable to the Commission such as an appropriate state or federal government agency or a major financial organization.

(iii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by the periodic deposit of a prescribed amount into an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of the periodic deposits plus accumulated earnings would be sufficent to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(4) In the case of Federal, State, or local government licensees, a certification that the appropriate government entity will be guarantor of decommissioning funds.

(5) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (c)(1) through (3) of this section.

34. Section 70.32 is amended by adding new paragraphs (k) and (l) to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(k)(1) Each holder of a specific license issued on or after [insert a date 1 year after the effective date of the final rule] which is of a type described in § 70.25(a) or (b), shall provide financial assurance for decommissioning in accordance with the criteria set forth in § 70.25.

(2) On or before [insert a date 1 year after the effective date of the final rule] each holder of a specific license of a type described in § 70.25(a) shall submit a decommissioning funding plan or certification of financial assurance for decommissioning in an amount at least equal to $500,000 in accordance with the criteria set forth in § 70.25. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) On or before [insert a date 1 year after the effective date of the final rule] each holder of a specific license of a type described in § 70.25(b) shall submit a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in § 70.25.

(4) As of [insert a date 1 year after the effective date of the final rule] each licensee covered by § 70.25 (a) or (b) shall provide financial assurance for decommissioning as a condition of license. If a decommissioning funding plan has been submitted to the Commission, implementing the plan becomes a condition of the license upon approval of the plan.

(l) Each person licensed under this part shall keep records of information important to the safe and effective decommissioning of the facility in a file explicitly for this purpose until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be substituted. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms and concentrations.

(2) As-built drawings and modifications of structures and equipment in high radiation areas and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

35. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses.

(a) Except as provided in § 70.33(b) and paragraph (e) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(b) Each licensee shall notify the Commission promptly, in writing under § 70.5, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (c)(1 (iv) and (v) of this section and a plan for completion of decommissioning if required by paragraph (c)(2) of this section or by license condition.

(c)(1) If a licensee does not submit an application for license renewal under § 70.33, the licensee shall on or before the expiration date specified in the license—

(i) Terminate use of special nuclear material;

(ii) Remove radioactive contamination to the extent practicable except for those procedures covered by paragraph (c)(2)(i) of this section;

(iii) Properly dispose of special nuclear material;

(iv) Submit a completed form NRC-314, which certifies information concerning the disposition of materials; and

(v) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate—

(A) Report levels of radiation in units of microrads per hour of beta and gamma radiation at one centimeter and gamma radiation at one meter from surfaces, and report levels of radioactivity in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

(B) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(2)(i) In addition to the information required under paragraphs (c)(1) (iv) and (v) of this section, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the NRC, are extensive, and could significantly increase potential health and safety impacts to workers or to the public such as in cases where—

(A) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(B) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(C) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation; or

(D) Procedures would involve techniques not applied routinely during maintenance operations.

(ii) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(iii) The proposed decommissioning plan, if required by paragraph (c)(2)(i) of this section or by license condition, must include—

(A) Discussion of planned decommissioning activities;

(B) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) A description of the planned final radiation survey; and

(D) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(iv) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(d) If the information submitted under paragraphs (c)(1)(v) or (c)(3) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the Commission will inform the licensee of the appropriate further actions required for termination of license.

(e) Each specific license continues in effect beyond the expiration date if necessary with respect to possession of residual special nuclear material present as contamination until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving special nuclear material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the Commission notifies the licensee in writing that the license is terminated.

(f) Specific licenses will be terminated by written notice to the licensee when the Commission determines that—

(1) Special nuclear material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present, and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

36. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended by (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

37. Section 72.3 is amended by adding a new paragraph (y) to read as follows:

§ 72.3 Definitions.

* * * * *

(y) "Decommission" means to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

38. Section 72.14 is amended by revising paragraph (e)(3) to read as follows:

§ 72.14 Contents of application: General and financial information.

* * * * *

(e) * * *

(3) Estimated decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that decommissioning will be carried out after the removal of spent fuel from storage.

* * * * *

39. Section 72.18 is revised by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 72.18 Decommissioning plan, including financing.

* * * * *

(b) The decommissioning plan must contain information on how reasonable assurance will be provided that funds will be available to decommission the

ISFSI. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning including means of adjusting cost estimates and associated funding levels over the life of the ISFSI.

(c) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets that will retain their value over the projected operating life of the ISFSI and that are in amount such that the principal plus accumulated earnings would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposits of government securities.

(2) *A surety method or insurance.* A surety method or insurance is a guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, line of credit, secured interest, or other guarantee method. Any surety method or insurance used to provide financial insurance for decommissioning must contain the following conditions:

(i) The surety or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, which shall be a Commission-approved trustee, and the licensee of its intention not to renew. The surety or insurance must also provides that the beneficiary may automatically collect prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety or insurance must remain in effect until the Commission has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by the periodic deposit of a prescribed amount into an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of the periodic deposits plus accumulated earnings would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(4) In the case of Federal, State, or local government licensees certification that the appropriate government entity will be guarantor of decommissioning funds.

(5) Other funding methods which are demonstrated by the applicant or licensee to provide comparable assurance to methods listed in paragraphs (c) (1) through (3) of this section.

40. In § 72.33 new paragraphs (b) (6), and (7) are added to read as follows:

§ 72.33 License conditions.

* * * * *

(b) Every license issued under this part shall be subject to the following conditions, even if they are not explicitly stated therein:

* * * * *

(6) The licensee shall implement procedures for providing financial assurance for decommissioning in accordance with the approved preliminary decommissioning plan.

(7) Each licensee shall keep records of information important to the safe and effective decommissioning of the facility in a file explicitly for this purpose until the license is terminated by the Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be substituted. Information the Commission considers important to decommissioning consists of—

(i) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(ii) As-built drawings and modifications of structures and equipment in high radiation areas and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

* * * * *

41. Section 72.38 is revised to read as follows:

§ 72.38 Applications for termination of licenses.

(a) Any licensee may apply to the Commission for authority to surrender a license voluntarily and to decommission the ISFSI. This application must be made within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the license. Each application for termination of license must be accompanied, or preceded, by a proposed final decommissioning plan.

(b) The proposed final decommissioning plan must include—

(1) The choice of the alternative for decommissioning with a description of activities involved. Alternative methods for decommissioning which significantly delay completion of decommissioning, such as use of a storage period, will be acceptable if sufficient benefit results;

(2) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

(3) A description of the planned final radiation survey; and

(4) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period.

(c) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of such activities.

(d) If the final decommissioning plan demonstrates that the decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will issue an order authorizing the decommissioning.

(e) The Commission will terminate the license if it determines that—

(1) The decommissioning has been performed in accordance with an approved final decommissioning plan and any conditions in the order authorizing decommissioning; and

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use.

Dated at Washington, D.C. this 5th day of February 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-3413 Filed 2-8-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-124-AD]

Airworthiness Directives: Boeing Model 767, 757, 737, and 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require rework of the Rosemount angle of attack (AOA) sensors on Boeing Model 767 and 757 series airplanes and on certain Model 737 and 727 series airplanes. During receiving inspections by the airframe manufacturer, it was found that some internal gears were not secured to the shaft and caused erroneous AOA information; it was also found that gears could come off the shaft and possibly jam the vane. Failure of the AOA system will cause improper operation of the stall warning and stall protection systems, and will also affect operation of other systems using AOA data.

DATE: Comments must be received on or before April 1, 1985.

ADDRESSES: Send comments to: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The applicable Service Bulletins may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, and Rosemount Inc., P.O. Box 35129, Minneapolis, Minnesota 55435. This information may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Systems and Equipment Branch; telephone: (206) 431-2948. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

During receiving inspection at The Boeing Company, it was found that certain Rosemount angle of attack (AOA) sensors had loose resolver and damper gears. Investigation revealed that the looseness is caused by undersized gear set screw threads which prevent the gear set screws from firmly setting against the shafts. The result of loose gears may be loss of vane damping, loss of resolver signal, or blocked vane travel. Failure of the AOA sensor can affect the safe operation of the airplane. Specifically, this condition could result in inadvertent stall warning or no warning by the affected channel; inoperative stick pusher; erroneous minimum speed computations by the autopilot and thrust management systems; erroneous autoslat operations; and secondary effects on yaw damper performance.

Since these unsafe conditions may exist or develop on other Model 767, 757, 737, and 727 series airplanes, an airworthiness directive is proposed to require: (a) initial and interim inspection(s) to insure that the vane is free to move and provide damping (this can be performed with the assembly installed); and (b) a complete one-time inspection which requires opening of the vane assembly case to insure that all the gears are properly machined and installed as specified. Faulty vane assemblies must be removed from the airplane for rework.

It is estimated that 87 airplanes of U.S. registry would be affected by this AD; that it would take approximately 3 manhours per aircraft to accomplish the required inspection, removal, rework, and/or replacement; and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD would be $10,440.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since few, if any, Boeing Model 767, 757, 737, and 727 series airplanes are operated by small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

List of Subjects in 14 CFR Part 39

Aviation safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767 and 757 series airplanes, and certain Model 737 and 727 series airplanes, certificated in all categories, equipped with Rosemount angle of attack (AOA) sensors, identified as Model 861CAB or 861CAK, and modification number 0001. To prevent the hazards associated with a malfunctioning AOA sensor caused by loose resolver and/or damper gears, accomplish the following as indicated below, unless already accomplished:

A. Inspect Model 757 and 767 series airplanes equipped with Rosemount AOA sensors, Model 861CAB, modification number 0001, within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days until replacement prescribed in subparagraph A.1. or A.2., below, is accomplished. Inspect in accordance with Boeing Alert Service Bulletins 757-34A0026 or 767-34A30, both dated November 12, 1984, or later FAA approved revision. Units determined to be faulty during inspections must be replaced with a serviceable unit, as follows:

1. Replace AOA sensors, serial number 00475 through 00629, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

2. Replace AOA sensors, serial number 00001 through 00474, within 360 days after the effective date of this AD, with a unit bearing modification number 0001A, in accordance with the instructions in paragraph C., below.

B. Inspect Model 727 and 737 series airplanes equipped with Rosemount AOA sensors, Model 861CAK, modification number 0001, within 30 days after the effective date of this AD and thereafter at intervals not to exceed 30 days until replacement required in subparagraph B.1., below, is accomplished. Inspect in accordance with paragraphs 3 of "Accomplishment Instructions" of Boeing Alert Service Bulletin 727-34A0223 or 737-27A1126, both dated November 12, 1984, or later FAA approved revision. Units determined faulty during inspections must be replaced with a serviceable unit, as follows:

1. Replace AOA sensors, serial number 00001 through 00173, within 180 days after the effective date of this AD, with a unit bearing modification number 0001A in accordance with the instructions in paragraph C., below.

C. Remove, inspect, and rework Rosemount AOA sensors specified in paragraphs A. and B., above, in accordance with Rosemount Service Bulletin 861CAB-34-02 or 861CAK-34-01, both dated November 12, 1984, as applicable, or later FAA approved revision. Units found with both resolver gears loose must be returned to Rosemount for rework.

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

E. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturers may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or Rosemount, Inc., P.O. Box 35129, Minneapolis, Minnesota 55435.

They may also be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), and 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised Pub. L 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3195 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-119-AD]

Airworthiness Directives: British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require repetitive inspections and repairs, if necessary, of the tailplane center section top skin assembly for cracks in the reinforcing plate on British Aerospace Model BAC 1-11 200 and 400 series airplanes. Cracks have been reported in the reinforcing plate on high flight time airplanes. Uncontrolled propagation of these cracks could lead to structural failure of the horizontal stabilizer.

DATE: Comments must be received no later than April 1, 1985.

ADDRESSE: Send comments to: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The service bulletin specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption **"Availability of NPRM."** All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-119-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace Alert Service Bulletin 55-A-PM5873 as mandatory.

Cracks in the reinforcing plate attached to the tailplane center section top skin have been reported. These cracks have developed from the edge of the plate and have propagated perpendicularly to the plate edge. They may or may not terminate in a rivet hole. Uncontrolled propagation of these cracks create a significant reduction in static strength of the tailplane center section, which could lead to the inability of the structure to withstand limit loads.The service bulletin prescribes repetitive inspections and, if cracks are found, repairs before further flight.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action previously mentioned.

It is estimated that 60 U.S. airplanes would be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on

these figures, the total cost impact of this AD to U.S. operators is estimated to be $76,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034 February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A copy of a draft regulatory evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The proposed amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in all categories. To prevent loss in the integrity of the tailplane center section top skin assembly due to cracks in reinforcing plates, accomplish the following upon accumulation of 40,000 landings or within the next 120 days after the effective date of this AD, whichever occurs later, unless previously accomplished:

A. Inspect the tailplane center section top skin assembly for cracks in reinforcing plate AB18-3663 (200 series) and AK18-965 (400 series) in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Service Bulletin 55-A-PM5873, dated October 17, 1983:

1. If no cracks are found, repeat the inspection specified above at intervals not to exceed 7,500 landings;

2. If cracks are found, repair in accordance with the accomplishment instructions of the service bulletin before further flight. Reinspect in accordance with paragraph 2.2.1 of the service bulletin.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3197 Filed 2-8-85; 8:45 am]

BILLING CODE 4901-13-M

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14 CFR Part 39

[Docket No. 84-NM-139-AD]

Airworthiness Directives: McDonnell Douglas Model DC-10 and KC-10A Series Airplanes, Fuselage Numbers 1 through 370

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require replacement of the aluminum rivet in the speedbrake module gate assembly with a corrosion-resistant steel rivet. This action is prompted by reports of failures of the aluminum rivet in the speedbrake module assembly. This amendment is necessary to prevent failure of the aluminum rivet which could allow the spoiler handle to latch in the full speedbrake position during an aborted landing or "touch and go" landing situation. With the spoilers in this position and the flaps at 22° or greater, the aircraft cannot attain a pitch angle which will permit flight.

DATE: Comments must be received no later than April 1, 1985.

ADDRESSES: Send comments to: Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808.

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption **"Availability of NPRM."** All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-139-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been six recorded occurrences of the speedbrake lever "ratcheting into" either the ⅔ or full speedbrake detent position during retraction after speedbrake lever knock-down during the after landing check list or during maintenance.

This situation can occur when the existing aluminum rivet attaching the speedbrake module gate to the quadrant fails and allows the gate to become separated from the quadrant. This separation allows the roller of the speedbrake lever to drop through a slot normally covered by the gate. The spoiler handle is then in the "Speedbrake Mode" rather than fully retracted. The gate is provided so that the ground spoiler throw can be available if the crew did not arm the lever or if the crew member placed the lever in the speedbrake mode. The lever can be lifted through this gate and moved to the ground spoiler detent without the need to fully retract the lever arm and then move to the ground spoiler detent, thus reducing the time

and motion required to attain ground spoilers.

Should the spoiler handle latch in the full speedbrake position during a touch and go or aborted landing with the flaps set at 22° or greater, the tail would strike the runway during rotation, limiting the airplane to a pitch angle which would not permit flight with the speedbrakes extended.

The manufacturer has changed to a corrosion-resistant steel rivet in production and provided instructions in the DC-10 Component Maintenance Manual for the operators to change to the new corrosion-resistant steel rivet.

Therefore, in consideration of the hazardous consequence of failure of the existing aluminum rivet, the proposed AD requiring installation of the corrosion resistant steel rivet within one year is considered necessary.

Cost Estimate

Approximately 177 U.S. registered airplanes would be affected by this proposed AD. It would require approximately 8 manhours per aircraft, to accomplish the required modification. The average labor cost is estimated to be $40 per manhour. The cost of the new steel rivets is estimated at $16 each. Base on these figures, the total economic impact of this AD is approximately $59,525.

For the reasons discussed above, the FAA had determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 and KC-10A series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10 and KC-10A series airplanes, fuselage numbers 1 through 370, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To prevent the speedbrake lever from latching into either the 2/3 or full speedbrake detent position during lever retraction after landing, accomplish the following:

A. Within one year after the effective date of this AD, replace the existing MS20470AD6 gate rivet in the speedbrake module assembly with a 4932183-3F034 corrosion-resistant steel rivet in accordance with the instructions in Chapter 27-62-01, Iten 6, of the DC-10 Component Maintenance Manual, dated August 1, 1982, or later revisions.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to compy with the requirements of this AD.

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

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on January 30, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-3194 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Customs Regulations Amendment Relating to the Customs Service Field Organization—Chicago, IL

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to change the Customs field organization by slightly extending the geographical limits of the port of Chicago, Illinois. The proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before April 12, 1985.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by slightly extending and redefining the geographical limits of Chicago, Illinois.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), the port of Chicago, Illinois, is listed in the Chicago, Illinois, Customs District in the North Central Region. Customs has determined that the Chicago port limits could be extended eastward without incurring any increase in workload and without necessitating additional staffing.

Prior to this proposal, T.D. 71-121, published in the Federal Register on May 11, 1971 (36 FR 8666), set forth the current geographical limits of the port of Chicago to include the following territory:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where State Highway Fifty-Three (53) intersects this Line, thence in a southerly direction along State Highway Fifty-Three (53) to the point where this highway intersects the Dupage County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State

Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to a point where this highway and Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to the place where this highway meets Lake Michigan.

It is proposed to expand the existing port limits by slightly extending the eastern boundary to include Interstate 80 from its intersection with Indiana Route 49 to its intersection with Indiana Highway 421 in La Porte County, Indiana.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Chicago, Illinois area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291 this proposal is not subject to the Executive Order.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: January 23, 1985.

John M. Walker,

Assistant Secretary of the Treasury.

[FR Doc. 85–3346 Filed 2–8–85; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 134

Country of Origin Marking of Imported Nuts, Coffee Beans and Similar Agricultural Products

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed change in country of origin marking; solicitation of comments.

SUMMARY: Customs has previously ruled that nuts, coffee beans and similar agricultural products which are imported raw, then processed in the U.S. by roasting, may subsequently be marked and marketed as products of the U.S.

Customs has been requested to rescind these rulings on the basis that the roasting process does not result in a substantial transformation of an agricultural product which has otherwise attained the character in which it will be sold to consumers prior to importation. Specifically, it has been called to Customs attention that pistachio nuts which are grown in Iran are being imported into the U.S. in raw form, and are then roasted in the U.S. Subsequently, these roasted nuts are being sold under brand names which imply that they are products of California. Based on the information currently available, Customs is considering whether the previous rulings are correct, and if the roasting of nuts, coffee beans and similar agricultural products, without more, results in a substantial transformation.

Because a change in the country of origin of these agricultural products may be of interest to a significant number of domestic parties, this notice invites public comments for consideration before any change is made.

DATE: Comments must be received on or before April 12, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to, and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Tom Lindmeier, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S. shall be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the U.S., unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304. The purpose of these requirements is to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Section 134.1(b), Customs Regulations (19 CFR 134.1), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the U.S.". Generally, an article which is not wholly the growth or manufacture of a particular country will be considered to be the product of the country in which it last underwent a substantial transformation prior to acquiring its form as imported. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion is important in making this determination, Customs policy is that a substantial transformation will not be deemed to have occurred, with a change in country of origin, as a result of insignificant

processing operations. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with Customs understanding of recent court decisions.

Customs previous rulings on the significance of the roasting process used by importers of nuts, coffee beans and similar agricultural products when these products enter the U.S. have been questioned by domestic producers of pistachio nuts. In ruling #724350, dated June 4, 1984, and ruling #726412, dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts effected a substantial transformation of these goods into a new and different article of commerce. Customs held that the roasting was, in fact, a substantial transformation. These rulings were based on a previous Customs ruling involving the roasting of imported raw coffee beans (#722980, dated October 17, 1983).

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use; and because roasting is not a significant or complex processing operation. Therefore, the U.S. is not the correct country of origin and as a result, these agricultural products should not be sold to consumers as U.S. products. If Customs concludes that the roasting of such products does not result in a substantial transformation, the containers of such products must be marked to indicate the country of origin of the products in accordance with Part 134, Customs Regulations (19 CFR Part 134). In view of the concern of the domestic agricultural producers, Customs has determined that a review of the above rulings is warranted.

Authority

Because any change in country of origin marking is important to domestic producers as well as importers, Customs is giving interested parties notice and an opportunity to comment in accordance with § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)).

Comments

Consideration will be given to any written comments timely submitted to the Regulations Control Branch at the address provided below. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulation Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Imports labeling.

William von Raab,

Commissioner of Customs.

Approved January 28, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-3345 Filed 2-8-85; 8:45 am]

BILLING CODE 4820-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action MO 1619; A-7-FRL-2775-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking (PRM).

SUMMARY: In this document, EPA proposes to approve a revision to the State air pollution control regulations as part of the Missouri State Implementation Plan. This revision contains the regulations and other necessary elements of the State's Inspection and Maintenance program for motor vehicles in the St. Louis area. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by March 13, 1985.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The State submission and EPA's technical support document are available at the above address and at the Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at 816/374-3791.

SUPPLEMENTARY INFORMATION: On October 15, 1984 (49 FR 40164), EPA approved the majority of the Missouri State Implementation Plan (SIP) submission which was designed to attain the ozone and carbon monoxide standards in the St. Louis area. One requirement that was not approved at that time is for an Inspection and Maintenance (I/M) program for motor vehicles as discussed below. EPA is now proposing to approve the Missouri SIP as it pertains to I/M in the St. Louis ozone and carbon monoxide nonattainment area. For information on the general approvability of the Missouri SIP, the reader should refer to the October 15, 1984, rulemaking.

On August 27, 1984, the State submitted the documentation for the St. Louis I/M program. This documentation was adopted after notice and public hearing by the Missouri Air Conservation Commission as an official part of the Missouri SIP. The documentation package contains regulations, procedures, forms, manuals, equipment specifications and other items necessary to the operation of the I/M program. The program began January 1, 1984, and is currently in operation.

A. Requirements for an I/M Program

The requirements for an I/M program are outlined in the final EPA policy on "Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension" published January 22, 1981 (46 FR 7781). Each of the ten requirements found at 46 FR 7186 (Col. 3) are given below, along with a discussion of how the St. Louis I/M program satisfies the requirement.

(1) Inspection Test Procedures

The test procedure is described in Missouri State Highway Patrol (MSHP) regulation 11 CSR 50-2.400, "Emission Test Procedures." There is also an anti-tampering inspection, including a leak check of the exhaust system performed prior to the emission inspection.

(2) Emission Standards

Emission standards are prescribed for each class of vehicle subject to testing in MSHP regulation 11 CSR 50-2.400, "Emission Test Procedures" and Missouri Department of Natural Resources (MDNR) regulation 10 CSR 10-5.380, "Motor Vehicle Emissions Inspection."

(3) Inspection Station Licensing Requirements

Licensing requirements are described in MSHP regulations 11 CSR 50–2.020, "Minimum Inspection Station Requirements", 11 CSR 50–2.090, "Inspection Station Operational Requirements", and 11 CSR 50–2.370, "Inspection Station Licensing."

(4) Emissions Analyzer Specification and Maintenance/Calibration Requirements

Minimum instrument specifications and calibration requirements are prescribed in MSHP regulation 11 CSR 50–2.370. A list of approved analyzers is also provided.

(5) Recordkeeping and Record Submittal Requirements

MSHP regulations 11 CSR 50–2.100, "Issuance of Inspection Stickers and Decals," 11 CSR 50–2.120, "MVI–2 Form," 11 CSR 50–2.390, "Safety/Emission Stickers," and 11 CSR 50–2.410, "Vehicles Failing inspection" provide for maintaining records on vehicle inspections and submitting them to the MSHP.

(6) Quality Control, Audit and Surveillance Procedure

Quality control (QC) procedures for inspection facilities are prescribed in the MSHP regulations. Inspection facility audits and surveillance by MSHP investigators are conducted as prescribed in the MSHP QC manual.

(7) Procedures to Assure that Non-Complying Vehicles are Not Operated on the Public Roads

Registration of non-complying vehicles is prohibited by State law and Missouri Department of Revenue policy.

(8) Any Other Official Program Rules, Regulations and Procedures

The State submission includes all the necessary MSHP and MDNR regulations. It includes official State policies and explains the tie-in to the State's existing safety inspection. It also includes forms, procedures, lists of certified analyzers and the legislative base for the entire program.

(9) A Public Awareness Plan

The State has submitted evidence of an extensive publicity campaign.

(10) Mechanics Training Plan

No credit is claimed for mechanics training at this time.

B. General SIP Requirements

In addition to these specific elements, the program must meet the general EPA requirements for an I/M program. These requirements, as they relate to a 1982 SIP submission, are described below:

(1) Authority to Implement I/M

The State has submitted evidence of adequate legal authority as provided by Sections 307.350 through 307.395, Revised Statutes of Missouri.

(2) I/M Implementation Deadlines

The EPA policy contemplated a schedule for a then-future implementation date of December 31, 1981. EPA believes that the implementation date issue is moot in this case, since the St. Louis I/M program has already been implemented and is operating.

(3) Geographic Coverage

An I/M program should include the urbanized area although the boundaries may be adjusted if an equivalent emission reduction is achieved. The Missouri program affects the City of St. Louis and three entire counties which have urbanized portions. One rural county in the St. Louis ozone nonattainment area is not covered by the program.

(4) Emission Reductions Required for I/M

An I/M program must achieve a level of control that represents a reasonably available control measure. EPA defines this as obtaining a 25% reduction in light duty vehicle (LDV) hydrocarbon (HC) emissions and a 35% reduction in LDV carbon monoxide (CO) in the urbanized area. EPA analyzed the emission reduction potential of the Missouri I/M program using the MOBILE2 emission calculation technique. This analysis included credit for light duty trucks and for the larger geographic area in which the program will be conducted. Using a 20% stringency factor, the potential emission reductions are 28.7% for HC and 37.9% for CO. The analysis conducted by the State differs from EPA's because the State used the uncorrected version of MOBILE2 and a State specific VMT mix which differs from the national default. Based on EPA's analysis, Missouri I/M program qualifies as a reasonably available control measure.

(5) Minimum Program Requirements

These items are essentially the I/M elements discussed above. The one item not discussed is the requirement for a referee station where vehicle owners can obtain a valid test to compare to a test from a licensed station. The State is currently using a mobile station rotating between shopping centers on a fixed schedule. The State is attempting to find a permanent location for a fixed referee station.

C. Anti-tampering Program Requirements

EPA has also provided guidance on documentation for anti-tampering programs. This is an option states can use to increase the credit from an I/M program by physically inspecting the pollution control equipment to ensure that it is in place and operational. The State has submitted documentation to establish that it meets the requirements for an anti-tampering program.

The State requires inspectors to attend classroom training, pass a written test, and perform a practical hands-on demonstration before being licensed to do safety/anti-tampering inspections. Inspectors are required to know all regulations and procedures and how to determine if required air pollution control devices are disconnected or missing.

The enforcement of the program is done through vehicle registration. Each year, thirty days before the vehicle registration expires, the State notifies the vehicle owner that the vehicle must pass the inspection before being registered for the new year. No license can be renewed unless the vehicle passes the safety inspection.

The anti-tampering portion of the safety inspections requires inspection of the thermal air cleaner, positive crankcase ventilation valve, air pump, and, on 1981 and newer vehicles, catalytic converter. Any vehicle which fails the anti-tampering portion of the safety inspection has noted on the form which device was faulty or missing. The forms are picked up by a State auditor once every 30 days.

The State runs an undercover enforcement program to find inspectors and/or stations violating the law. Any person who believes an improper anti-tampering inspection was performed, may notify the State Highway Patrol and have the vehicle reevaluated. This is done on an as needed basis when an inquiry is received. The program began in 1968, and no public information program is required.

D. Summary

EPA'S evaluation of the State submittal finds that the required elements for an I/M program are in place, that the general requirements for approval as part ot the SIP are met that the State has correctly claimed credit for its anti-tampering program. Therefore, EPA proposes to approve the Missouri motor vehicle inspection and

maintenance program for the St. Louis area.

This State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of Section 110 and 172 of the Clean Air Act, of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify this SIP revision will not have a significant economic impact on a substantial number of small entities.

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

This notice of proposed rulemaking is issued under the authority of sections 110 and 301 of the Clean Air Act (42 U.S.C 7410 and 7601).

List of Subjects in 40 CFR Part 52

Ozone, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: December 19, 1984.

Morris Kay,

Regional Administrator.

[FR Doc. 85-3329 Filed 2-8-85: 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL-2776-1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to change the total suspended particulates (TSP) attainment status designations for all or part of eleven Illinois counties: Cook, Jo Daviess, Kane, Kankakee, LaSalle, Madison, Peoria, Rock Island, St. Clair, Tazewell, and Will. The proposed revisions are based upon a July 20, 1984, request from the State of Illinois to redesignate these areas and on supporting data submitted by the State. USEPA is also proposing to change the TSP attainment status designations of all or part of the following ten counties if the State provides sufficient additional information during the public comment period: Cook, Jo Daviess, LaSalle, McLean, Madison, Peoria, Rock Island, Sangamon, Tazewell and Whiteside. If adequate additional information is not provided, USEPA will reject the State's redesignation request for these ten counties in the final rulemaking. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change.

DATE: Comments on this revision and on the proposed USEPA action must be received by April 12, 1985.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of Illinois. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978).

Section 107(d)(5) of the Act, as amended in 1977, permits a State to request USEPA to rulemake on a change in the NAAQS attainment/nonattainment status of an area, when the available data warrant such a change. On July 20, 1984, the Illinois Environmental Protection Agency (IEPA) submitted a request to USEPA proposing redesignation of all or part of 14 counties for the pollutant TSP. The current designation of each area for which a change has been requested, and the requested changes are as follows:

Cook County:
- West Town, South Town, Worth, South Stickney and Cicero Townships—Primary and Secondary Nonattainment to Secondary Nonattainment
- Palatine, Elk Grove, Wheeling, Maine, Northfield, Niles, Lakeview, Rogers Park and Bloom Townships—Secondary Nonattainment to Attainment

JoDaviess County:
- East Galena, West Galena, Rawlins and Derinda Townships—Secondary Nonattainment to Attainment

Kane County:
- Aurora and Elgin Townships—Secondary Nonattainment to Attainment

Kankakee County:
- All townships presently classified Secondary Nonattainment—Secondary Nonattainment to Attainment

LaSalle County:
- Deer Park, Dimmick, Utica and Waltham Townships—Secondary Nonattainment to Attainment

MeLean County:
- Bloomington and Normal Townships—Secondary Nonattainment to Attainment

Madison County:
- Wood River Township—Primary and Secondary Nonattainment to Attainment
- Alton, Collinsville, Fort Russell, Foster, Godfrey and Moro Townships—Secondary Nonattainment to Attainment

Peoria County:
- Hollis, Limestone, Peoria, Richwoods, Medina and Kickapoo Townships—Secondary Nonattainment to Attainment

Rock Island County:
- Blackhawk, Hampton and Moline Townships—Primary and Secondary Nonattainment to Secondary Attainment
- South Moline Township—Primary and Secondary Nonattainment to Attainment
- Rock Island Township—Secondary Nonattainment to Attainment

St. Clair County:
- Shiloh Valley and St. Clair Townships—Secondary Nonattainment to Attainment

Sangamon County:
- Springfield Township—Secondary Nonattainment to Attainment

Tazewell County:
- Cincinnati, Elm Grove, Fondulac, Groveland, Morton, Pekin and Washington Townships—Secondary Nonattainment to Attainment

Whiteside County:
- Clyde, Genesee, Hopkins, Hume, Jordon, Lyndon, Montgomery, Mount Pleasant, Prophetstown and Sterling Townships—Secondary Nonattainment to Attainment

Will County:

Crete and Wilmington Townships—Secondary Nonattainment to Attainment

USEPA's criteria for section 107 designations are summarized in the April 21, 1983, memorandum, "Section 107 Designation Policy Summary", by Sheldon Meyers, Director of USEPA's Office of Air Quality Planning and Standards. In general, all available information relative to the attainment status of the area should be reviewed. These data should include the most recent eight consecutive quarters of quality-assured, representative ambient air quality data, plus evidence of an implemented control strategy. Supplemental information, including any available air quality modeling, emission data, etc., should be used to determine if the monitoring data accurately characterize the worst-case air quality in the area. Information submitted to support attainment status redesignations must adequately and accurately reflect long-term operating rates and economic conditions.

In reviewing the proposed redsignations, USEPA reviewed all available information which includes:

1. TSP monitor data (1976–1983) from all sites in or near the areas proposed for redesignation.

2. IEPA reports which provide modeling and emission data.

3. "Recommended Attainment Status Designations for Carbon Monoxide, Lead, Nitrogen Dioxide, Ozone and Total Suspended Particulates" EPA, July 1984.

4. National Emissions Data System (NEDS) data for Illinois.

A discussion of each proposed redesignation follows:

Cook County

West Town, South Town, Cicero, South Stickney and Worth Townships (Primary Nonattainment to Secondary Nonattainment)

The monitor data show no violations of the TSP NAAQS within these townships during 1982 or 1983. However, the following information is of concern:

1. Monitor site #1220–14H01 (3300 S. Michigan), which is the only monitor currently operating in South Town Township, cannot be considered representative of the air quality in the entire central business district of Chicago and the immediate surroundings of the district that are within this township.

2. Monitor sites #1220–36H01 (in West Town Township) and #1220–5H01 (in South Town Township) were discontinued in 1980. Violations of the primary TSP NAAQS were recorded every year of their operation between 1976 and 1979.

3. IEPA's modeling analysis indicates primary nonattainment within much of South Town and West Town Townships. Illinois has not provided evidence either that these modeling data are invalid or that emission reductions from the culpable sources have occurred.

4. Monitor site #0500–1G01 in Worth Township recorded violations of the primary TSP NAAQS annually between 1976 and 1981 and secondary nonattainment since 1981. IEPA should supply information concerning the timing, permanence and enforceability of any emission reductions considered responsible for the air quality improvement and information concerning the representativeness of the existing monitor site.

5. IEPA has not supplied any information to indicate the basis of the observed air quality improvement at the monitors in S. Stickney and Cicero Townships. The information should include the timing, permanence and enforceability of reductions at these or any other sources as well as their resultant impact on air quality.

The available modeling and monitoring data do not support the proposed redesignations of West Town and South Town Townships. Further, the proposed redesignations of South Stickney, Cicero and Worth Townships cannot be finally approved until IEPA provides information of document that permanent, legally enforceable emission reductions are responsible for these observed air quality improvements. USEPA proposes approval of these redesignation requests today with the understanding that the State will provide sufficient additional information during the public comment period to correct the deficiencies in the available technical support. If sufficient information is not provided during the public comment period, USEPA will reject the State's redesignation requests in the final rulemaking.

Palatine, Elk Grove, Wheeling, Maine, Northfield, Niles, Lakeview, Rogers Park and Bloom Townships (Secondary Nonattainment to Attainment)

Three monitor sites operated in these townships during 1982 and 1983 (#0200–1G01, #5540–1G01 and #1220–20H01) and each showed attainment of the TSP NAAQS. These townships are generally suburban areas and the only major TSP source identified within these areas is Stauffer Chemical in Bloom Township. IEPA's modeling analysis predicts attainment in these townships except for secondary nonattainment within all or portions of Niles, Rogers Park, Lakeview and Bloom Townships. However, the following items are of concern:

1. Monitors in Niles (#7160–5G01, #7160–7F01) and Lakeview (#1220–37H01) Townships recorded secondary standard violations just prior to their shutdown in 1979 or 1980. There is no justification for discounting these data.

2. The monitor in Bloom Township (#1240–1G01) showed secondary nonattainment in 1982 and apparently did not operate during 1983. In addition, this or any other current monitor site is not representative of impacts from the only major source in this area, Stauffer Chemical.

Based on the above concerns, the proposed redesignations for Niles, Lakeview, Rogers Park and Bloom Townships are not fully supported by the available data. For these four townships, past monitor data and IEPA's modeling data suggest secondary nonattainment and no clear evidence is available to demonstrate that permanent, legally enforceable emission reductions are responsible for any air quality improvement. USEPA proposed approval of the redesignation of these four townships today with the understanding that the State will provide sufficient additional information during the public comment period to correct the deficiencies in the available technical support. If sufficient information is not provided during the public comment period, USEPA will reject the State's request to redesignate these four townships in the final rulemaking.

USEPA proposes approval of the redesignation of Palatine, Elk Grove, Wheeling, Maine, and Northfield Townships based on the available data.

Jo Daviess County

East Galena, West Galena and Rawlins Townships (Secondary Nonattainment to Attainment)

The only site with more than one full year of data (#2720–2F01, West Galena) has shown attainment since 1980. There is only one major source in these townships and it is located 11 km to the west-northwest of the monitor site. IEPA modeling does not predict nonattainment attributable to this source.

Numerous secondary standard exceedances were recorded at the West Galena site in 1976–1978 and 1980. There is no information available to explain the improvement in air quality at this relatively rural site. Illinois must provide information to document that permanent, enforceable emission

reductions are responsible for the air quality improvement or that past monitor data are not representative of the air quality in these townships. USEPA proposes approval of the redesignation of these three townships today with the understanding that the State will provide sufficient additional information during the public comment period to correct the deficiencies in the available technical support. If sufficient information is not provided during the public comment period, USEPA will reject the State's request to redesignate these three townships in the final rulemaking.

Derinda Township (Secondary Nonattainment to Attainment)

IEPA noted that a proposed redesignation request for Derinda Township was pending with USEPA from the State's January 1982 submittal. USEPA inadvertently omitted this township from the list of townships to be redesignated from secondary nonattainment to attainment in the May 16, 1983, Notice of Final Rulemaking (48 FR 21947). USEPA proposes approval of the State's redesignation request based on technical materials used to support the previous redesignation request.

Kane County

Aurora and Elgin Townships (Secondary Nonattainment to Attainment)

There have been no monitored violations of the TSP NAAOS during this period in these townships. No major TSP sources are located within these townships. IEPA's modeling analysis predicts marginal secondary nonattainment within parts of these townships, however, the modeling is not sufficiently detailed to be considered more representative of this area than the available monitors (particularly given that modeling predictred secondary nonattainment at the (locations of monitored attainment). USEPA proposes to approve these redesignations because USEPA's review of the available information does not support the original designation of these townships as secondary nonattainment. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA.

Kankakee County

Aroma, Bourbonnais, Ganeer, Kankakee, Limestone, Manteno, Momence, Otto, Pembroke, Rockville, St. Anne, Salina, Sumner and Yellowhead Townships (Secondary Nonattainment to Attainment)

The data show either primary or secondary nonattainment through 1981 with attainment in 1982 and 1983. Several large TSP sources are located near the monitor in Bradley. Most of these sources are located downwind of the only monitor.

Illinois should provide information to document that the recent improvement in air quality is attributable to permanent, enforceable emission reductions and that the monitor site is representative of air quality in this area.

USEPA proposes approval of the redesignation of these 14 townships today with the understanding that the State will provide sufficient additional information during the public comment period to correct the deficiencies in the technical support. If sufficient information is not provided during the public comment period, USEPA will reject the State's request to redesignate Bourbonnais, Kankakee, Aroma, and Limestone Townships in the final rulemaking because they contain the major TSP sources as well as the County's population center. USEPA's proposed redesignation of Ganeer, Manteno, Momence, Otto, Pembroke, Rockville, St. Anne, Salina, Sumner and Yellowhead Townships is based on the fact that USEPA's review of the available information does not support the original designation of secondary nonattainment. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA. The State's current redesignation request will not be adversely affected by the State's failure to provide additional information.

LaSalle County

Deer Park, Dimmick, Utica and Waltham Townships (Secondary Nonattainment to Attainment)

There are no monitors within the townships proposed for redesignation. IEPA bases their request on the monitor data collected in Ottawa Township but does not address the data collected in adjoining LaSalle Township which show primary nonattainment. While the monitored violations in LaSalle Township are likely attributable to emissions from Marquette Cement, IEPA has not provided information to determine the extent of this problem (or other problems within LaSalle Township) in adjoining Deer Park and/or Utica Townships. IEPA's modeling analysis predicts secondary nonattainment within LaSalle Township and attainment in the remainder of the county. There are no major TSP sources in Dimmick and Waltham Townships. USEPA proposes approval of the redesignation of these four townships today with the understanding that the State will supply sufficient information during the public comment period to indicate that the air quality problem in LaSalle County has no adverse impact in air quality in Deer Park or Utica Townships. If this information is not provided during the public comment period, USEPA will reject the State's request to redesignate Deer Park and Utica Townships in its final rulemaking. USEPA's proposed redesignation of Dimmick and Waltham Townships is based on the fact that USEPA's review of the available information does not support the original designation of secondary nonattainment. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA. The State's current designation request will not be adversely affected by the State's failure to provide additional information.

McLean County

Bloomington and Normal Townships (Secondary Nonattainment to Attainment)

The monitor data show attainment in 1982–1983 and secondary nonattainment during its three previous years of full-time operation (1976–1978). Ralston Purina, the only major TSP source in these townships, is located 1.1 km to the southwest of the Bloomington monitor. USEPA proposes approval of the redesignation of Bloomington and Normal Townships today with the understanding that the State will provide sufficient additional information during the public comment period to show that the improvement in air quality is attributable to permanent, enforceable emission reductions or that the past monitor data were not representative of air quality in the townships. If additional information is not provided during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Madison County

Wood River Township (Primary Nonattainment to Attainment)

The sole monitor in the township showed primary nonattainment through 1981 and attainment in 1982–1983. The monitor is located generally upwind of several major TSP sources (e.g., IPC Wood River Power Plant, Clark Oil, Amoco and Shell). Illinois' modeling analysis predicts nonattainment with

substantial contributions from Amoco Oil.

USEPA proposes approval of the redesignation of Wood River Township today with the understanding that the State will provide sufficient additional information during the public comment period to remedy the deficiencies in the available technical support. This information must attribute the marked improvement in air quality in recent years to permanent enforceable emissions reductions. A demonstration that the monitor is representative of worst case air quality in this township is also necessary. If sufficient additional information is not provided during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Alton Township (Secondary Nonattainment to Attainment)

The only monitor site still operational in the township showed primary nonattainment through 1980, secondary nonattainment in 1981 and attainment in 1982–1983. Several major TSP sources are located generally downwind of this monitor. IEPA's modeling analysis predicted primary nonattainment in the vicinity of Mississippi Lime and secondary nonattainment elsewhere. IEPA has since indicated that Mississippi Lime's emissions were overestimated in their modeling and that the primary nonattainment predictions are invalid. USEPA proposes to approve the redesignation with the understanding that the State will provide additional information during the public comment period to remedy the deficiencies in the available technical support. This information must demonstrate that permanent enforceable emission reductions are responsible for the improvement in air quality and that the existing monitor site is representative of worst case air quality in this township. If this additional information is not provided during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Collinsville, Fort Russell, Foster, Godfrey and Moro Townships (Secondary Nonattainment to Attainment)

The monitor data show steady improvement from primary nonattainment in 1976 (76 ug/m3) to secondary nonattainment in 1977 and to attainment in 1978–1983. There are no major TSP sources in these townships. IEPA's modeling analysis shows attainment except for Collinsville Township. The steady improvement in air quality in Collinsville and the other townships immediately downwind of the St. Louis metropolitan area was attributed by the Illinois Environmental Protection Agency (IEPA) to the installation of RACT controls throughout the St. Louis area. An original designation of attainment can be supported for Fort Russell, Foster, Godfrey and Moro Townships. USEPA, therefore, proposes to redesignate these townships to attainment.

Peoria County

Hollis, Limestone, Peoria, Richwoods, Kickapoo and Medina Townships (Secondary Nonattainment to Attainment)

Both monitors in Peoria Township showed primary nonattainment through 1980 and attainment in 1981–1983. The site in Richwoods Township shows attainment since 1978. There are no monitors in the other four townships. There are numerous major TSP sources within Peoria and Hollis Townships and the existing monitors are not located in areas of expected maximum impact from these sources. IEPA's modeling analysis predicts nonattainment within Peoria Township and, for the most part, attainment in the remainder of the county. USEPA proposes redesignation of these five townships today with the understanding that the State will provide additional information during the public comment period to remedy the deficiencies in the available technical support. This information must demonstrate that permanent enforceable emission reductions are responsible for the improvement in air quality and that the existing monitors are representative of worst case air quality in Peoria Township. If sufficient information is not provided by the State, USEPA will reject the State's request to redesignate Peoria Township in the final rulemaking. USEPA's proposed redesignation of Hollis, Limestone, Richwoods, Kickapoo and Medina Townships is based on the fact that USEPA's review of available information does not support the original designation of secondary nonattainment. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on overly conservative judgment by the State and USEPA. The State's current designation request will not be adversely affected by the State's failure to provide additional information.

Rock Island County

Blackhawk Township (Primary Nonattainment to Secondary Nonattainment)

The monitor data show primary nonattainment through 1981, attainment in 1982 and secondary nonattainment in 1983. IEPA's modeling analysis predicts primary nonattainment in the vicinity of Allied Stone including portions of Blackhawk and South Rock Island Townships. To support a previous redesignation request for South Rock Island Township, IEPA commented that Allied Stone had implemented a fugitive dust control plan. USEPA proposes to approve the redesignation today with the understanding that the State will provide sufficient additional information during the public comment period to indicate that permanent, federally enforceable emission reductions have been obtained from Allied Stone or other sources. If sufficient additional information is not provided during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Rock Island Township (Secondary Nonattainment to Attainment)

The monitor data show attainment since 1978 except for secondary nonattainment in 1981. IEPA's modeling analysis predicts secondary nonattainment with substantial contribution from Wisconsin Barge Line. IEPA notes that emissions from Wisconsin Barge Line have been reduced from 239 tpy to 77 tpy in recent years. USEPA proposes redesignation of Rock Island Township today with the understanding that the State will provide additional information during the public comment period which indicates that the emission reductions from Wisconsin Barge Line are both permanent and federally enforceable. If sufficient information is not provided during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Hampton and Moline Township (Primary Nonattainment to Secondary Nonattainment)

Monitors for these townships show attainment. Although IEPA's modeling analysis predicts primary nonattainment within these townships, this analysis was influenced by monitor data from a site in South Moline Township which IEPA indicates was sited improperly. There is no valid data to support a designation of primary nonattainment in these townships. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA. USEPA, therefore, proposes to approve IEPA's redesignation requests for Hampton and Moline Townships.

South Moline Township (Primary Nonattainment to Attainment)

In IEPA's public comment (March 12, 1983) on its January 27, 1983, redesignation request, they noted that two full years of data showing attainment were available at the monitor site in South Moline Township and requested that their previous request be amended to attainment rather than to unclassified. USEPA indicated that action would be taken on this request in the future (See the May 16, 1983 Notice of Final Rulemaking, 47 FR 21947). There are no major sources in this township and IEPA's modeling analysis predicts attainment. USEPA, therefore, proposes to approve the redesignation of South Moline Township.

St. Clair County

Shiloh Valley and St. Clair Townships (Secondary Nonattainment to Attainment)

The monitor data show attainment except for marginal primary nonattainment in 1976 and 1980. There are no major TSP sources in these townships. Because the Belleville site is immediately downwind of the St. Louis area, the general improvement in air quality at this site in recent years was attributed by IEPA to the implementation of RACT controls in the St. Louis area. USEPA proposes to redesignate Shiloh Valley and St. Clair Townships.

Sangamon County

Springfield Township (Secondary Nonattainment to Attainment)

This township was redesignated from unclassified to secondary nonattainment upon IEPA's request on May 16, 1983. IEPA's modeling analysis shows secondary nonattainment attributable to area sources and to City Water Light and Power (CWLP), Dallman and Lakeside Plants and to Pillsbury. The only monitor with two years of data showing attainment (#7280-9F01) is not located well with respect to the existing TSP sources or with respect to the shutdown monitor which showed secondary nonattainment in 1976-1977. USEPA proposes to redesignate Springfield Township today with the understanding that the State will provide sufficient additional information during the public comment period to demonstrate that the recent monitor data are representative of the worst case of air quality in Springfield Township. If the State does not provide sufficient additional information during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Tazewell County

Cincinnati, Elm Grove, Fondulac, Groveland, Pekin, Morton and Washington Townships (Secondary Nonattainment to Attainment)

The only monitors are located in Fondulac and Pekin Townships. The site in Fondulac shows primary nonattainment through 1980 and attainment in 1981-1983. The site in Pekin shows attainment since 1979 with either primary or secondary nonattainment before 1979. IEPA's modeling analysis predicts attainment except for certain portions of Fondulac and Pekin Townships. Most of the major TSP sources in Tazewell County are located in Fondulac and Pekin Township. USEPA proposes approval of these redesignations today with the understanding that the State will provide additional information during the public comment period to indicate that the emission reductions resulting in the observed marked improvement of air quality in Fondulac and Pekin Townships are both permanent and federally enforceable. Further, the State must demonstrate that the monitor sites are representative of worst case air quality in Fondulac and Pekin Townships. If sufficient information is not provided during the public comment period, USEPA will reject the State's request to redesignate Fondulac and Pekin Township in the final rulemaking.

USEPA's proposed redesignation of Cincinnati, Elm Grove, Groveland, Morton and Washington Townships is based on the fact that USEPA's review of the available information does not support the original designation of secondary nonattainment. Based on the above information, USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA. The State's current redesignation request will not be adversely affected by the State's failure to provide additional information.

Whiteside County

Clyde, Genesee, Hopkins, Hume, Jordan, Lyndon, Montomerency, Mount Pleasant, Prophetstown and Sterling Townships (Secondary Nonattainment to Attainment)

The last full year of data for either of two sites in the county was 1980 (i.e., Sterling Site) and it showed secondary nonattainment. There were three years of attainment data at the Rock Falls site in 1977-1979. IEPA's modeling analysis predicts secondary nonattainment within much of the county. USEPA proposes redesignation of these townships today with the understanding that the State will provide sufficient additional information during the public comment period to show current attainment at the Sterling monitor site (or which invalidates the earlier data showing secondary nonattainment) and documents the basis for the air quality improvement. If the State does not provide sufficient additional information during the public comment period, USEPA will reject the State's redesignation request in the final rulemaking.

Will County

Crete and Wilmington Townships (Secondary Nonattainment to Attainment)

There are no monitor data for these townships. IEPA's modeling analysis shows attainment in these rural portions of Will County. There are no major TSP sources within these townships. USEPA proposes to approve these redesignations because USEPA's review of the available information does not support the original designation of secondary nonattainment. USEPA now believes that the initial designation of these townships as nonattainment was based on an overly conservative judgment by the State and USEPA.

Public comment is invited on the State's redesignation requests and on USEPA's proposed redesignations. Comments received by the date specified above will be considered in USEPA's final rulemaking action. Further, USEPA will look favorably on requests for extension of the comment period for the purpose of additional comments or submissions from IEPA during the comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407)

Dated: December 26, 1984
Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 85-3330 Filed 2-8-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[WH-FRL-2776-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of data and request for comment.

SUMMARY: On November 12, 1980, the Environmental Protection Agency proposed to amend the listings of two of the hazardous wastes generated by the petroleum refining industry which the Agency promulgated in final form in that same issue of the **Federal Register**. EPA has collected additional information on these wastes and is making these data available for public comment. EPA also is clarifying that any final listing would apply only to wastes from primary wastewater treatment processes, and not to any wastes from secondary wastewater treatment such as sludges from biological oxidation.

DATES: EPA will accept public comment on this notice until March 13, 1985.

ADDRESSES: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Communications should identify the regulatory docket "Petroleum Refining—Section 3001." The public docket for this proposed rulemaking is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at (800) 424-9346 or at (202) 382-3000. For technical information contact Robert Scarberry, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460, (202) 475-6725.

SUPPLEMENTARY INFORMATION:.

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published (in interim final form) a list of hazardous wastes (Subpart D of 40 CFR Part 261), which included five wastes generated by the petroleum refining industry (§ 261.32, 45 FR 33123). Among the listed petroleum refining industry wastes were "Dissolved air flotation (DAF) float from the petroleum refining industry (K048)" and "API separator sludge from the petroleum refining industry (K051)." These wastes are generated as a result of primary treatment of wastewater from petroleum refineries. These particular listings were promulgated in final form in 45 FR 74884, November 12, 1980.

A rulemaking petition was submitted by Envirex, Inc.[1] which argued that any petroleum refining sludge resulting from primary or secondary oil/solids/water separation would be similar in composition regardless of the equipment or method used in the separation step. After evaluating the rulemaking petition, the Agency proposed that the K048 and K051 listings be amended to read: "Secondary (emulsified) oil/solids/water separator sludge in the petroleum refining industry" and "Primary oil/solids/water separation sludge in the petroleum refining industry", respectively.

II. Availability of Data

Since the close of the comment period for the proposed amendment, the Agency has obtained additional data characterizing sludges from API separators and DAF units as well as sludges from other methods of primary wastewater treatment. The supplemental data obtained consists of metal and organic analyses which were performed on primary treatment sludges from the following sources:

- Storm runoff ponds
- Primary settling ponds
- Flocculation tanks
- Sumps
- Emulsion tanks
- Induced air flotation tanks
- Evaporation ponds
- Equalization ponds
- Clarifiers
- Cleaning chemicals pits
- Ponds with an oil skimmer

The sludges from these sources have levels of total chromium and lead similar to those levels which are characteristic of sludge from API separators and DAF units. In addition, the organic analyses on these primary wastewater treatment sludges, as well as organic analyses on the sludges from API separators and DAF units, indicate the presence of toxic organic constituents including benzene and toluene at maximum concentrations of 4600 and 11,000 ppm, respectively. Benzo(a)pyrene, chrysene, and pyrene also are present in these sludges at maximum concentrations ranging from 600 to 1700 ppm.

Copies of these new data are available for public inspection in the RCRA Docket, Room S212A. Comments are solicited only on the new data. These comments must be received by EPA on or before March 13, 1985 to ensure their consideration.

III. Clarification of Scope of Listing

As described above, the Agency proposed to amend the descriptions of the K048 and K051 listings in response to a rulemaking petition submitted by Envirex, Inc. (See 45 *FR* 74893, November 12, 1980). The petitioner argued that the May 19 listing descriptions were under-inclusive since they were specific to particular types of equipment, namely the DAF and API separator. According to the petitioner, any petroleum refining sludge resulting from primary and secondary oil/solids/water separation will be comparably composed regardless of the type of equipment used in the separation step. The petitioner pointed out that other processes such as induced air flotation, parallel plate flotation separators, and dual media filtration separators, perform the same function as the DAF and form a similar solids residue. Likewise, the API separator is only one of the many equipment types which function as a primary oil/solids/water separator (other processes producing similar sludges include corrugated plate separators, inclined plate separators, storm equalization lagoons, and ballast waterholding tanks).

After reviewing and evaluating the rulemaking petition, the Agency concluded that the listings should be modified to reflect the hazardous character of the wastes themselves, rather than the type of equipment or process generating the waste. The Agency has agreed that the May 19 listing was too narrow in specifying API separator sludge and DAF float, thereby omitting other petroleum wastes with similar compositions generated from processes and equipment other than API separators and DAF units. In the November 12, 1980 notice, the Agency proposed to adjust the scope of the K048 and K051 listings by amending the listing descriptions to those recommended by the petitioner: "Secondary (emulsified) oil/solids/water separator sludge in the petroleum refining industry" and "Primary oil/solids/water separation sludge in the

[1] Envirex, Inc. is a manufacturer of sewage, water and waste treatment, and water conditioning equipment for many uses, including applications in the petroleum refining industry.

petroleum refining industry," respectively.

Among other things, the comments received on the November 12, 1980 proposed amendment expressed confusion regarding the scope of the K048 listing. In particular, the commenters were uncertain of the Agency's definition of "Secondary (emulsified) oil/solids/water separator sludge". In regard to the K048 listing, the background listing document [2] specifies the latter of two consecutive *primary* wastewater treatment methods as secondary treatment (*e.g.*, API separator followed by DAF). This use of the term secondary treatment is confusing because biological oxidation of wastewaters is commonly referred to as secondary wastewater treatment, as compared to primary wastewater treatment consisting of physical processes such as sedimentation, flocculation, flotation, and filtration. No discussion of sludge from biological treatment of wastewaters (*e.g.*, activated sludge, trickling filters, etc.) is present in either the background listing document or the Envirex petition. Furthermore, neither of these documents includes sludges from physical oil/solids/water separation processes which follow biological treatment of wastewaters in the K048 listing. To clarify the scope of the K048 and K051 listings, therefore, the Agency intends to consolidate the listings to read, "Sludge from primary wastewater treatment in the Petroleum Refining industry" in a final rule action.[3]

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 5, 1985.

Jack W. McGraw,

Acting Assistant Administrator.

[FR Doc. 85-3331 Filed 2-8-85; 8:45 am]

BILLING CODE 8560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 4, 59a, 63 and 64

National Library of Medicine Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Public Health Service, HHS, proposes to revise the regulations for the programs of the National Library of Medicine. The proposed revisions would: (1) Permit the Regional Medical Libraries to recover part or all of the costs of providing photocopies of biomedical materials, (2) improve readability of the regulations, (3) update references to statutory authorities and uniform administrative requirements, and (4) revoke Part 63 (Traineeships) which is obsolete.

DATES: Written comments must be received on or before April 12, 1985.

ADDRESS: Comments should be sent to: NIH Regulations Officer, National Institutes of Health, Building 31, Room 3B03, 9000 Rockville Pike, Bethesda, Maryland 20205. All comments received are available to the public at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lowell D. Peart, at the above address or (301) 496-4606.

SUPPLEMENTARY INFORMATION: On November 21, 1979, the Public Health Service published a notice of intent to develop regulations in the **Federal Register** (44 FR 66852) covering 42 CFR Parts 4, 59a, 63, and 64. These regulations, which all concern, in whole or part, the National Library of Medicine, were proposed for revision as part of the Department's efforts to simplify and update its regulations.

The regulations would be clarified and condensed by eliminating regulatory provisions that are obsolete or are already set forth in the HHS uniform requirements for the administration of financial assistance in 45 CFR Part 74.

The following substantive changes would be made.

- Section 59a.16(b)(2) of the proposed rules would liberalize the current § 59a.37(b)(2) to permit the Regional Medical Libraries receiving NLM support to charge reasonable fees: (1) For copies to recover expenses and (2) for such other expenses (other than free loan services) as may be appropriate. The present regulations explicitly prohibit Regional Medical Libraries from recovering costs for photocopying. Other than eliminating this prohibition, we are proposing no other new provisions related to cost recovery in these proposed rules. The Department is currently studying the NLM's fee setting policy. However, since NLM fee setting policies are not established through regulations, any recommendations arising from the Department's study will not require a change to these regulations.
- Part 63 would be revoked because NIH no longer has general traineeship authority and the only remaining NLM program is unfunded with no expectation of being funded.
- Part 64 would be revised to eliminate reference to National Institutes of Health Training Grants, as that authority has been superseded by National Research Service Awards, which are covered in 42 CFR Part 66. Also, provisions such as § 64.7 which cover matters now governed by 45 CFR Part 74 would be removed. The reference to review by an advisory council in former § 64.3 has been removed because the programs which require it are no longer in the regulations and section 393 of the Public Health Service Act, which authorizes NLM training grants, does not require it.

The following statements are provided for the information of the public:

1. These regulations revise existing regulations to improve readability, remove obsolete provisions, and permit certain fees to be recovered. The economic impact of this is expected to be minor. For these reasons, the Secretary has determined that this rule is not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

2. Catalog of Federal Domestic Assistance number program affected by this proposed rule is:

13.879 Medical Library Assistance

3. Sections 4.5, and 59a.4, 59a.14, 59a.16, 64.4, and 64.7 of these proposed rules contain information collection requirements. As required by Section 3504(h) of the Paperwork Reduction Act of 1980 [44 U.S.C. 3504(h)], we have submitted a copy of these proposed rules to the Office of Management and Budget for its review of these information collection requirements. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, Attn: Desk Officer for HHS.

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[2] The background listing document and the Envirex rulemaking petition are available in the public docket at the address cited above.

[3] The Agency also is concerned, however, with secondary sludges from biological treatment of refinery wastewaters. To this end, we are currently evaluating these wastes as part of the petroleum refining industry studies program to determine whether they also should be listed as hazardous.

List of Subjects in 42 CFR Parts 4, 59a, 63 and 64.

Educational study programs, Grant programs—education, Grant programs—health, Libraries, Manpower training programs, and Medical research.

Accordingly, it is proposed to revoke Part 63 and to revise Parts 4, 59a, and 64 of Title 42 of the Code of Federal Regulations to read as set forth below.

Dated: January 8, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

Approved: January 31, 1985.

Margaret M. Heckler,

Secretary.

PART 4—NATIONAL LIBRARY OF MEDICINE

Sec.

4.1 To which programs do these regulations apply?
4.2 Definitions.
4.3 Purpose of the Library.
4.4 Use of Library facilities.
4.5 Use of materials from the collections.
4.6 Reference, bibliographic, reproduction, and consultation services.
4.7 Fees.
4.8 Publications of the Library and information about the Library.

Authority: Sec. 215, 58 Stat. 690, as amended, 63 Stat. 835 (42 U.S.C. 216); Sec. 382, 70 Stat. 960, 84 Stat. 66, 67, 85 Stat. 463 (42 U.S.C. 276).

§ 4.1 To which programs do these regulations apply?

(a) The regulations of this part govern access to the National Library of Medicine's facilities and library collections and the availability of its bibliographic, reproduction, reference, and related services. These functions are performed by the Library directly for the benefit of the general public and health-sciences professionals as required by section 382(a)(3)–(5) of the Act (42 U.S.C. 276(a)(3)–(5)).

(b) The regulations of this part do not apply to:

(1) The Library's internal functions relating to the acquisition and preservation of materials and the organization of these materials as required by section 382(a) (1) and (2) of the Act (42 U.S.C. 276(a) (1) and (2)).

(2) The availability of "records" under the Freedom of Information Act or the Privacy Act (5 U.S.C. 552, 552a). These matters are covered in 45 CFR Parts 5 and 5b.

(3) Federal assistance for medical libraries and other purposes which are authorized by sections 390–399 of the Act (42 U.S.C. 280b to 280b–11). (See Parts 59a, 61, and 64 of this chapter.)

(4) The availability of facilities, collections, and related services of Regional Medical Libraries established or maintained under the authority in section 396 of the Act (42 U.S.C. 280b–8). (See Part 59a, Subpart B of this chapter.)

§ 4.2 Definitions.

As used in this part:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

"Collections" means all books, periodicals, prints, audiovisual materials, films, videotapes, recordings, manuscripts, and other resource materials of the Library. It does not include data processing tapes or programs used solely for internal processing activities to generate reference materials, nor does it include "records" of the Library as defined in 45 CFR 5.5. Records of the Library are available in accordance with the regulations under the Freedom of Information Act and Privacy Act. (See 45 CFR Parts 5 and 5b.)

"Director" means the Director of the Library or the Director's delegate.

"Health-sciences professional" means any person engaged in: (1) The administration of health activities; (2) the provision of health services; or (3) research, teaching, or education concerned with the advancement of medicine or other sciences related to health or improvement of the public health.

"Historical collection" means materials in the collections: (1) Published or printed prior to 1871, including manuscripts and prints; (2) the archival film collection of the National Medical Audiovisual Center; and (3) other materials of the collections which, because of age, or unique or unusual value, require special handling, storage, or protection for their preservation, as determined by the Director.

"Library" means the National Library of Medicine, established by section 381 of the Act (42 U.S.C. 275).

"Regional Medical Library" means a medical library established or maintained as a regional medical library under section 396 of the Act (42 U.S.C. 280b–8).

§ 4.3 Purpose of the Library.

The Library's purpose is to assist the advancement of medical and related sciences and aid the dissemination and exchange of scientific and other information important to the progress of medicine and the public health. The Library acquires and maintains library materials pertinent to medicine, including audiovisual materials; compiles, publishes, and makes available catalogs, indices, and bibliographies of these materials, as appropriate; makes available materials, through loan or otherwise; provides reference and other assistance to research, and engages in other activities in furtherance of this purpose.

§ 4.4 Use of Library facilities.

(a) *General.* The Library facilities are available to any person seeking to make use of the collections. The Director may prescribe reasonable rules to assure the most effective use of facilities by health-sciences professionals and to protect the collections from misuse or damage. These rules must be consistent with the regulations in this part and applicable Department regulations and policies on nondiscrimination.

(b) *Reading rooms.* Public reading rooms are available for obtaining and reading materials from the collections. The Director may prescribe reasonable rules designed to provide adequate reading space and orderly conditions and procedures.

(c) *Study rooms.* Upon request a limited number of study rooms may be made available to individuals requiring extensive use of Library materials. Requests for study rooms shall be addressed in writing to the Director. The Director shall give priority, in the following order, for study room use to:

(1) Persons engaged in "special scientific projects" under section 394 of the Act (42 U.S.C. 280b–5),

(2) Health-sciences professionals, and

(3) The general public.

§ 4.5 Use of materials from the collections.

(a) *Unrestricted materials.* Except as otherwise provided in this section, materials from the collections are generally available to any interested person only in facilities provided by the Library for this purpose. The Director may prescribe additional reasonable rules to assure the most effective use of resources by health-sciences professionals and to protect the collections from misuse or damage. The rules must be consistent with the regulations in this part and applicable Department regulations and policies on nondiscrimination. Materials in the collections are available upon each request which assures, to the Director's satisfaction, that the materials will be safeguarded from misuse, damage, loss or misappropriation, and will be returned promptly after use or upon request of the Library.

(b) *Restricted materials.*—(1) *Historical collection.* Materials from the historical collection are available only

as the Director may permit to assure their maximum preservation and protection. Copies of these materials may be made available in the form of microfilm and other copies, for which reasonable fees may be charged.

(2) *Gifts.* Materials in the collections are available only in accordance with any limitations imposed as a condition of the acquisition of those materials, whether the acquisition was by gift or purchase.

(c) *Loans.*—(1) *General.* Requests for loans of materials must assure the Library that (i) the materials will be safeguarded from misuse, damage, loss or misappropriation and (ii) the material will be returned promptly after use or upon request of the Library. The Library may provide copies in lieu of original materials, which need not be returned unless otherwise stated at the time of the loan.

(2) *Loans of audiovisual materials.* Audiovisual materials are available for loan upon request to the Director, National Library of Medicine, Bethesda, MD 20209.

(3) *Loans to other libraries.* Upon request materials or copies are available for use through libraries of public or private agencies or institutions. The requesting library must assure that it has first exhausted its own collection resources, those of other local libraries in the geographic area, and those of the Regional Medical Library network (including Regional and Resource Libraries) before making a request for a loan.

(4) *Loans to health-sciences professionals.* The Director may make loans of materials directly to health-sciences professionals. An individual wishing a loan of library materials must assure to the satisfaction of the Director that the individual is geographically isolated, in terms of distance or available transportation, from medical literature resources likely to contain the desired material.

§ 4.6 Reference, bibliographic, reproduction, and consultation services.

(a) *General.* To the extent resources permit, the Library will make available, upon request, reference, bibliographic, reproduction, and consultation services. Priority will be given to requests from health-sciences professionals for services not reasonably available through local or regional libraries.

(b) *Specialized bibliographic services.* The Director may provide bibliographies on individually selected medical or scientific topics upon request where it is consistent with the Library's purpose. The Director may publish and make available for general distribution by the Library, bibliographic searches determined to be of general interest. The Library may also produce and distribute a limited number of bibliographies on topics of general interest to public or nonprofit health-related professional societies, research organizations, and other group users. These bibliographies may be produced on a regularly recurring or intermittent basis under contract between the Library and public or nonprofit, agencies, when determined in each case by the Director to be necessary to assure more effective distribution of the bibliographic information.

(c) *Information retrieval system computer tapes.* To the extent Library resources permit and in order to futher the Library's purpose, the Director may make available upon request by agencies, organizations, and institutions copies of all or part of the Library's magnetic tapes.

§ 4.7 Fees.

The Director may charge reasonable fees for any service provided by the Library under this part, in accordance with a schedule available at the Library upon request, which are designed to recover all or a portion of the cost to the Library of providing the service.

§ 4.8 Publications of the Library and information about the Library

Lists of bibliographies, Library publications sold by the Government Printing Office, necessary application forms, and other information concerning the organization, operation, function, and services of the Library, are available from the Naional Library of Medicine, Bethesda, MD 20209.

PART 59a—NATIONAL LIBRARY OF MEDICINE GRANTS

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

Sec.

59a.1 To what programs do these regulations apply?
59a.2 Definitions.
59a.3 Who is eligible for a grant?
59a.4 How are grant applications evaluated?
59a.5 Awards.
59a.6 Use of funds or materials.
59a.7 Other HHS regulations that apply.

Subpart B—Grants for Establishment of Regional Medical Libraries

59a.11 To what programs do these regulations apply?
59a.12 Definitions.
59a.13 Who is eligible for a grant.
59a.14 How to apply.
59a.15 Awards.
59a.16 Terms, conditions, and assurances.
59a.17 Other HHS regulations that apply.

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

Authority: Sec. 392, 79 Stat. 1060, as amended, 84 Stat. 66, 67, 88 Stat. 372 (42 U.S.C. 280b–2); Sec. 395, 79 Stat. 1063, as amended, 84 Stat. 63, 64, 67, 87 Stat. 92, 88 Stat. 372, 373 (42 U.S.C. 280b–7).

§ 59a.1 To what programs do these regulations apply?

(a) The regulations of this subpart apply to grants of funds, materials, or both, for establishing, expanding, and improving basic medical library resources as authorized by section 395 of the Act (42 U.S.C. 280b–7).

(b) This subpart also applies to cooperative agreements awarded for this purpose. In these circumstances, references to "grant(s)" shall include "cooperative agreement(s)".

§ 59a.2 Definitions.

Undefined terms have the same meaning as provided in the Act. As used in this subpart:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

"Related instrumentality" means a public or private institution, organization, or agency, other than a medical library, whose primary function is the acquisition, preservation, dissemination, and/or processing of information relating to the health sciences.

"Secretary" means the Secretary of Health and Human Services and any other official of the Department of Health and Human Services to whom the authority involved has been delegated.

§ 59a.3 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit institution, organization, or agency authorized or qualified to carry on the functions of a medical library, or public or private related instrumentality, is eligible for a grant under this subpart.

§ 59a.4 How are grant applications evaluated?

The Secretary shall evaluate grant applications using the officers and employees, and experts, consultants, or groups engaged by the Secretary for that purpose. The Secretary's evaluation shall consider the scope of library or related services for the population and purposes served by the applicant. This evaluation shall include consideration of the following information which must be set forth in the grant application and such other information the Secretary considers pertinent:

(a) Evidence of the applicant's efficiency in providing services,

(b) Amount of available equipment and other resources on hand to satisfy the needs of the area served by the facility,

(c) Extent of coordination with other libraries and related facilities, and

(d) Potential for testing or demonstration of new or improved techniques in health-sciences informational services.

§ 59a.5 Awards.

(a) *General.* Within the limits of funds available, the Secretary may award grants to those applicants whose proposals for establishment, expansion, or improvement will, in the Secretary's judgment, best promote the purposes of section 395 of the Act (42 U.S.C. 280b–7).

(b) *Determination of award amount.* No grant shall be made for less than $1,000, except as the Secretary determines necessary for orderly administration of the grant program. An award may not exceed $200,000 or other amount established by law for any fiscal year. Subject to these limits, the Secretary shall determine the amount of any award on the basis of:

(1) The scope of medical-library or related services provided by the applicant for the population and purposes it serves considering:

(i) The number of graduate and undergraduate students, and physicians and other practitioners in health-related sciences making use of the applicant's library resources;

(ii) The type and availability of library support staff;

(iii) The type, size, and qualifications of the faculty of any school with which the applicant is affiliated;

(iv) The staff of any hospitals or clinics with which the applicant's library is affiliated;

(v) The geographic area served and, within that area, the medical-library or related services otherwise available; and

(2) The amount adequate to insure continuing financial support of the applicant's proposed activity during and after the period of award, considering the support available from other sources. The Secretary shall consider the level of non-Federal support for the proposed activity for periods prior to the fiscal year in which a grant is made. The Secretary shall require the applicant's assurance that non-Federal support will not be diminished as a result of the award and that adequate support for this activity will be continued during and after the period of Federal assistance.

(c) *Project period.* (1) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year at a time and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award for any approved application or portion of an approved application.

§ 59a.6 Use of funds or materials.

The grantee shall expend funds or use materials provided by a grant under this subpart solely for the purposes for which the funds or materials were granted, in accordance with the pertinent provisions of the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles in Subpart Q of 45 CFR Part 74.

§ 59a.7 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D	Public Health Service grant appeals procedure.
45 CFR Parts 6 and 8	Inventions and patents.
45 CFR Part 16	Procedures of the Departmental Grant Appeals Board.
45 CFR Part 74	Administration of grants.
45 CFR Part 75	Informal grant appeals procedures.
45 CFR Part 76	Debarment and suspension from eligibility for financial assistance.
45 CFR Part 80	Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81	Practice and procedure for hearings under Part 80 of this Title.
45 CFR Part 84	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 86	Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 91	Nondiscrimination on the basis of age in Health and Human Services programs or activities receiving Federal financial assistance.

Subpart B—Grants for Establishment of Regional Medical Libraries

Authority: Sec. 392, 79 Stat. 1060, as amended, 84 Stat. 66, 67, 88 Stat. 372 (42 U.S.C. 280b-2); Sec. 396, 79 Stat. 1065, as amended, 84 Stat. 63, 65, 67, 87 Stat. 92, 88 Stat. 372, 373 (42 U.S.C. 280b-8).

§ 59a.11 To what programs do these regulations apply?

(a) The regulations in this subpart apply to grants made under section 396 of the Act (42 U.S.C. 280b-8). Grants are awarded to medical libraries to enable them to serve as regional medical libraries for their geographic areas. The purpose of the program is to develop a national system of regional medical libraries, each of which would have sufficient facilities to supplement the services of other medical libraries in its region.

(b) This subpart also applies to contracts and cooperative agreements awarded for this purpose. In these circumstances, the references to "grant(s)" shall include contract(s) or cooperative agreement(s), except that § 59a.17 shall not apply to contract(s).

§ 59a.12 Definitions.

Undefined terms have the same meaning as provided in the Act. As used in this subpart:

"Act" means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

"Annual operating expenses" means the average annual operating expenses for the actual years of operation or an estimated amount based on the expenses of libraries or institutions of similar size and function.

"Board" means the Board of Regents of the National Library of Medicine established by section 383 of the Act (42 U.S.C. 277).

"Geographic area" means an area that forms an academically and

professionally integrated region. Factors considered are location and extent of communication facilities and systems, presence and distribution of educational and medical and health facilities and programs and other activities which, in the Secretary's opinion, justify the establishment and operation of a regional medical library.

"Modify and increase" means the use of Federal funds or materials to supplement rather than supplant non-Federal funds available for library resources and services.

"Secretary" means the Secretary of Health and Human Services and any other official of the Department of Health and Human Services to whom the authority involved has been delegated.

§ 59a.13 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit organization which is authorized and qualified to operate a medical library is eligible for a grant under this subpart.

§ 59a.14 How to apply.

In addition to any other pertinent information which the Secretary may require, the applicant shall submit a grant application containing a detailed description of a program to provide health-sciences informational services for the geographic area in which it is located. The description shall include:

(a) The need for services;

(b) The adequacy of the applicant's existing or proposed facilities and resources to attain the purposes stated in the application;

(c) The size and nature of the population to be served;

(d) The region to be served;

(e) Cooperative arrangements in effect, or proposed, with other qualified organizations; and

(f) The justification for the funds requested.

§ 59a.15 Awards.

(a) *General.* The Secretary, with the advice of the Board in each case, shall award grants to those applicants whose arrangements and proposed services will, in the Secretary's judgment, have the greatest potential for fulfilling the need for a regional medical library. The Secretary, in determining the priority assigned an applicant, must consider:

(1) The adequacy of the applicant's library in terms of collections, personnel, equipment, and other facilities, and

(2) The size and nature of the population to be served in the applicant's region.

(b) *Project period.* (1) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award for any approved application or portion of an approved application.

§ 59a.16 Terms, conditions, and assurances.

Although the Secretary may approve exceptions which are consistent with program purposes, in addition to other terms, conditions, and assurances required by law, each grantee must meet the following requirements:

(a) *Use of funds.* Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles in Subpart Q of 45 CFR Part 74.

(b) *Library resources.*—(1) *Provision of services.* The grantee shall agree to modify and increase its library resources to provide supportive services to other health-sciences informational activities.

(2) *Access to and fees for services.* The grantee shall agree to provide free loan services to qualified users or, in lieu of loans, to make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain. Reasonable fees may be charged for copies or other services (other than free loan services) provided by a grantee under this subpart, provided that equal access to the health-information resources of the region or of the national network is assured. These fees shall be designed to recover expenses. The grantee's access policies shall determine the qualifications of individuals or organizations for access to the services provided under the grant, so long as those policies are consistent with the mandatory service undertakings of the program. The Secretary may review the grantee's access policies to assure compliance with this requirement.

§ 59a.17 Other HHS regulations that apply.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D.	Public Health Service grant appeals procedure.
45 CFR Parts 6 and 8.	Inventions and patents.
45 CFR Part 16	Procedures of the Departmental Grant Appeals Board.
45 CFR Part 74	Administration of grants.
45 CFR Part 75	Informal grant appeals procedures.
45 CFR Part 76	Debarment and suspension from eligibility for financial assistance.
45 CFR Part 80	Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81	Practice and procedure for hearings under Part 80 of this Title.
45 CFR Part 84	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 86	Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 91	Nondiscrimination on the basis of age in Health and Human Services programs activities receiving Federal financial assistance.

PART 64—TRAINING GRANTS

Sec.

64.1 To whom do these regulations apply?
64.2 Definitions.
64.3 Who is eligible for a grant?
64.4 How to apply for a grant.
64.5 Review of applications.
64.6 Awards.
64.7 Conditions of award; general.
64.8 Expenditures.
64.9 Other HHS regulations that apply.

Authority: Sec. 215, 58 Stat. 690, as amended, 63 Stat. 835 (42 U.S.C. 216); Sec. 393, 79 Stat. 1062, as amended, 84 Stat. 63, 67, 87 Stat. 92, 88 Stat. 372, 373 (42 U.S.C. 280b-4).

§ 64.1 To whom do these regulations apply?

(a) The regulations of this part apply

to grants under section 393 of the Public Health Service Act (42 U.S.C. 280b–4) to public and private nonprofit institutions to assist in developing, expanding, and improving training programs (excluding training in a biomedical speciality and residency training) in library science and the field of communications of information pertaining to sciences relating to health.

(b) The regulations of this part also apply to cooperative agreements awarded for these purposes. References to "grant(s)" shall include "cooperative agreement(s)."

(c) The regulations of this part do not apply to research training support under the National Research Service Awards Program (see Part 66 of this chapter).

§ 64.2 Definitions.

As used in this part:

"HHS" means the Department of Health and Human Services.

"Nonprofit private entity" means an agency, organization, institution or other entity which may not lawfully hold or use any part of its net earnings to the benefit of any private shareholder or individual and which does not hold or use its net earnings for that purpose.

"Other trainee costs" means those costs other than stipends, such as tuition, fees, and trainee travel, which are directly associated with and necessary for the training of individuals receiving stipends and which are incurred within the period of training.

"Project director" means the single individual named by the grantee in the grant application and approved by the Secretary, who is responsible for the management and conduct of the project.

"Secretary" means the Secretary of Health and Human Services and any other official of HHS to whom the authority involved has been delegated.

"Stipend" means a payment to an individual that is intended to help meet that individual's subsistence expenses during training.

"Training grant" means an award of funds to an eligible entity for a project authorized under § 64.1(a).

§ 64.3 Who is eligible for a grant?

Except as otherwise prohibited by law, any public or private nonprofit entity is eligible for a training grant.

§ 64.4 How to apply for a grant.

Applications for grants must include the following information.

(a) *Required information on the proposed project.* (1) The nature, duration, and purpose of the training for which the application is filed.

(2) The name and qualifications of the project director, and any key personnel responsible for the proposed project.

(3) A description of the facilities, staff, support services, and other organizational resources available to carry out the project.

(4) The intended number of trainees and the minimum qualifications and criteria for their selection.

(5) A description of the plan for evaluating the proposed project.

(6) Other pertinent information the Secretary may require to evaluate the proposed project.

(b) *Required information on costs.* (1) A budget for the proposed project and a justification of the amount of grant funds requested.

(2) If institutional expenses are requested, a separate statement of the amounts requested for personal services, equipment, supplies, or other non-personal services.

(3) If stipend costs are requested, a statement for each grant year of the estimated number of individuals to whom stipends will be provided and the length of time for which the stipend support will be provided. If other trainee costs are requested, they must be separately stated and justified.

§ 64.5 Review of applications.

The Secretary shall evaluate applications through the officers and employees, and experts, consultants, or groups engaged by the Secretary for that purpose. The Secretary's evaluation will be for technical merit and shall take into account, among other pertinent factors, the significance of the project, the qualifications and competency of the project director and proposed staff, the adequacy of selection criteria for trainees for the project, the adequacy of the applicant's resources available for the proejct, and the amount of grant funds necessary for completion of its objectives.

§ 64.6 Awards

(a) *Criteria.*

Within the limits of available funds, the Secretary may award training grants to carry out those projects which:

(1) Are determined by the Secretary to be technically meritorious; and

(2) In the judgment of the Secretary best promote the purpose of the grant program as authorized by section 393 of the Act (42 U.S.C. 280b–4) and the regulations of this part (see § 64.1), and address program priorities.

(b) *Notice of grant award.* (1) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for one to five years.

(2) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(3) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

(4) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for that period, the Secretary may adjust the amounts awarded by withdrawing the excess.

§ 64.7 Conditions of award; general.

(a) Grants awarded under this part are subject to the following conditions:

(1) The grantee may not materially change the quality, nature or duration of the project unless the written approval of the Secretary is obtained prior to the change.

(2) The grantee must submit to the Secretary, in the manner prescribed by the Secretary, the name and other pertinent information regarding each individual who is awarded a stipend under a grant.

(b) The Secretary may impose additional conditions prior to the award of any grant under this part if it is determined by the Secretary that the

conditions are necessary to carry out the purpose of the grant.

§ 64.8 Expenditures.

A grantee shall expend funds it receives under this part solely in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the grant award, and the applicable cost principles in Subpart Q of 45 CFR Part 74. The funds may not be expended for:

(a) Remuneration for employment or for the performance of personal services by individuals receiving training and instruction; or

(b) Payments to any individual who does not meet the minimum qualifications for training and instruction established by the grantee and approved by the Secretary or who has failed to demonstrate satisfactory participation in the training in accordance with the usual standards and procedures of the grantee.

§ 64.9 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50, Subpart D.	Public Health Service grant appeals procedure.
45 CFR Part 16	Procedures of the Departmental Grant Appeals Board.
45 CFR Part 74	Administration of grants.
45 CFR Part 75	Informal grant appeals procedures.
45 CFR Part 76	Debarment and suspension from eligibility for financial assistance.
45 CFR Part 80	Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—effectuation of Title VI of the Civil Rights Act of 1964.
45 CFR Part 81	Practice and procedure for hearings under 45 CFR Part 80 of this Title.
45 CFR Part 84	Nondescrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 86	Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.
45 CFR Part 91	Nondiscrimination on the basis of age in Health and Human Services programs or activities receiving Federal financial assistance.

[FR Doc. 85-3267 Filed 2-8-85; 8:45 am]
BILLING CODE 4140-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-1235]

Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action grants an extension of time for filing comments in this proceeding concerning Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans. This action is taken in response to a motion from GTE Service Corporation ("GTE").

DATES: Comments are now due by February 25, 1985 and replies by March 27, 1985.

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

FOR FURTHER INFORMATION CONTACT: Diane Shaw, Tariff Division, (202) 632-6917.

SUPPLEMENTARY INFORMATION: The Proposed Rule in this proceeding was published on January 14, 1985, 50 FR 1881.

Memorandum Opinion and Order

In the matter of guidelines for dominant carriers MTS Rates and Rate Structure Plans; CC Docket No. 84-1235.

Adopted: Janaury 24, 1985.
Released: January 25, 1985.

By the Chief, Common Carrier Bureau.

1. We have before us a motion from GTE Service Corporation ("GTE") for an extension of time until April 9, 1985 to file initial comments requested in the Notice of Proposed Rulemaking in CC Docket No. 84-1235 (FCC 84-564, released January 9, 1985). GTE argues that in light of the importance and difficulty of the issues involved, twenty-two days is not enough time for the parties to develop their views and present them to the Commission.

2. We agree that the issues presented are important and that sufficient time should be allowed the parties to explore those issues. There appears, therefore, to be good cause to grant an extension of time. We find, however, that a postponement of more than two months is unwarranted. Such a postponement would unduly delay the Commission's timely consideration of this matter. Therefore, we shall extend the time for filing comments until February 25, 1985. Reply comments will be due March 27, 1985.

3. So ordered.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-3372 Filed 2-8-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 97

[FCC 85-43, PR Docket No. 85-21]

Rules To Remove Unnecessary Regulations Concerning Amateur Operator Examinations Administered by Volunteers; Amendment

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes to amend FCC amateur radio rules to eliminate the thirty-day wait to retake an amateur operator examination because this rule is no longer necessary with the advent of the volunteer examiner program. It also proposes to eliminate required public notice of examinations intended for less than five people because many of these examinations are not intended to be open to the public.

DATES: Comments are due on or before April 8, 1985. Reply comments are due on or before May 10, 1985.

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

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations.

Notice of Proposed Rule Making

In the matter of amendment of § 97.26 of the Commission's rules to remove unnecessary regulations concerning amateur operator examinations administered by volunteers; PR Docket No. 85-21, RM-4835, FCC 85-43.

Adopted: January 23, 1985.
Released: January 29, 1985.

By the Commission.

1. On July 23, 1984, Phil H. Miller filed a petition for rule making (RM-4835) to amend § 97.26(h) of the Commission's rules (47 CFR 97.26(h)) to permit an applicant who fails an examination element required for an amateur radio license to apply to be examined for the same or higher examination element within seven days of the date the examination was failed. Currently, this section requires an applicant to wait thirty days to re-apply for the same or higher examination element when the applicant has failed an element.

2. The petitioner stated that such a change would be consistent with the increased examination opportunity available under the amateur volunteer examination program. The petitioner

recommended a seven day wait because (1) It would prevent repeated daily examination under a given volunteer examiner team; (2) it would give increased examination access to applicants without being a burden to the volunteer examiners; and (3) it would not add to the workload of the Commission, since generally the Commission only receives applications from candidates who have successfully completed the required examination elements.

3. We received three comments on this petition. James Brunson recommended a fifteen day waiting period because two weeks is sufficient study time before retaking an examination. Harley Gabrielson suggested a twenty-six day waiting period to permit candidates the opportunity to apply for the following month's examination in instances where examinations are administered monthly. The American Radio Relay League (ARRL) opposed the petition on the basis that any reduction in the thirty day waiting period would either: (1) Require VEC's to change examinations weekly to prevent a candidate from taking the examination twice or (2) result in compromise of the volunteer examination program due to prospective applicant abuse of the process by reliance on roté memorization through repeated test taking.

4. The amateur volunteer examination program was proposed and adopted in order to maximize amateur operator examination opportunities and to relieve the Commission of administrative and paperwork burdens. See *Report and Order*, PR Docket No. 83-27, 48 FR 45652 (October 6, 1983); see also *Notice of Proposed Rule Making*, PR Docket No. 83-27, 48 FR 8090 (February 25, 1983). The thirty-day wait rule for retaking a previously failed examination element was based on the administrative requirements of our Field Operations Bureau. We concur with the petitioner that this rule should be revisited.

5. We are not persuaded that VEC's would have to change examinations weekly or that examinations would be compromised if we were to eliminate the Commission imposed thirty-day waiting period. VEC's are already charged with the tasks of maximizing the number of available examinations, frequently changing the questions, and assuring that the same set of examination questions is not used in successive examination sessions. See *Memorandum Opinion and Order*, PR Docket No. 83-27, 49 FR 30310 (July 30, 1984), at para. 7. VEC's could set their own waiting periods for a candidate who fails an examination element based upon their own administrative requirements. VEC's could have more than one test design available in order to accommodate those retaking an examination element. A candiate could take an examination element from an examination coordinated by another VEC with a different design. These and other options for reexamination would provide each candidate and each VEC maximum flexibility to meet their respective personal or administrative needs.

6. For the above reasons, we are of the preliminary view that under the amateur volunteer examiner program no useful purpose may be served by retention of a retest waiting period. We therefore propose to remove paragraph (h) of § 97.26.

7. Also, we note that current § 97.26(a) of the rules requires volunteer examiners to make public announcement for all examination elements except elements 1(a) and 2 (the Novice Class elements). It appears that this has had the unintended result of requiring public notice even for examinations not intended to be open, such as specialized examinations for the handicapped or examinations given to a candidate at home for medical reasons. We are still of the view that public notice of examination opportunities is generally desirable. However, limiting required public announcement to examination sessions intended for five or more people could direct candidates more efficiently to sessions intended for general attendance. We therefore propose to amend paragraph (a) of § 97.26 to require public notice only for examination sessions intended for five or more candiates.

8. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. Presentations are prohibited between the time this public notice is issued until a full text of the order is released, or until it becomes clear that the Commission has postponed final consideration and returned the matter to the staff for further work. Thereafter, in either case, *ex parte* presentations are again permitted. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on 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 prepare a written summary of the presentation; on the day of oral presentation, that written summary must be served 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 must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's rules (47 CFR 1.1231). A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202) 632-7000.

9. Authority for issuance of this Notice is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules (47 CFR 1.415) interested persons may file comments on or before April 8, 1985, and reply comments on or before May 10, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. In accordance with § 1.419 of the Commission's Rules (47 CFR 1.419), formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally

may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

11. In accordance with Section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (See 47 CFR 97.3(b)).

12. It is ordered, That the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this *Notice* to be published in the **Federal Register.**

13. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

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

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. Paragraph (a) of § 97.26 would be revised to read:

§ 97.26 Examination procedure.

(a) Each examination for an amateur operator license shall be administered at a place and time chosen by the examiner(s). Public announcement shall be made before examinations intended for five or more candidates which include elements 1(B), 1(C), 3, 4(A) or 4(B).

* * * * *

2. Paragraph (h) of § 97.26 would be removed and reserved.

[FR Doc. 85–3373 Filed 2–8–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; Fail-Safe Brake Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking filed by Fail-Safe Brake Corporation (Fail-Safe), asking the agency to mandate the installation of that company's "automatic safety brake" on many new vehicles. Since the benefits of requiring such action by vehicle manufacturers appears minimal and the costs appear substantial, the agency is denying the petition.

FOR FURTHER INFORMATION CONTACT: Mr. James Clements, Crash Avoidance Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone (202) 426–1714.

SUPPLEMENTARY INFORMATION: Fail-Safe has filed a petition requesting the agency to mandate the installation of its "automatic safety brake on many types of vehicles. These vehicles included school buses, public transit buses, emergency vehicles, delivery vehicles, and all vehicles equipped with air bags. The automatic safety brake developed by Fail-Safe would activate and produce a controlled braking application when any of several conditions occurred. These conditions as set forth in the Fail-Safe petition included:

1. The driver voluntarily or involuntarily leaving the driver's seat;
2. The engine was overheating;
3. A passenger compartment door was ajar;
4. The hood or trunk lid was ajar;
5. There was low air pressure in the tires;
6. A brake wear warning had been flashed;
7. A partial brake failure had occurred;
8. On tank truck, a hose, valve, or nozzle was unsecured;
9. Weapons or armaments were not properly in place;
10. Cargo doors were not properly shut or latched;
11. A radar collision deterrent system had been activated;
12. The driver had a heart attack or seizure or had died;
13. There was a fire in the vehicle;
14. Buckets or ladder were extended from fire or service trucks;
15. The engine oil pressure was low; or
16. A gasoline or chemical tanker's tractor had separated.

The Fail-Safe automatic brake would be installed between the master cylinder and power booster and the brake pedal with no modification of the existing brake system. The petitioner states that this system could be installed on vehicles for less than $100 per vehicle.

In considering whether to grant or deny this petition, the agency considered the safety benefits and costs which would be associated with requiring this automatic brake system. The agency recognizes that there may be some situations in which the automatic, controlled application of the brakes could have a safety benefit. However, the agency is unable to quantify the safety benefits which would result from the Fail-Safe device. Further, the agency could identify some instances where a controlled braking would not enhance safety. For example, it is not clear that it would be advantageous for the vehicle to automatically begin controlled braking if a driver were to experience an overheating engine or low engine oil pressure while driving in rush hour traffic.

The costs, on the other hand, which would be associated with such a requirement appear to be substantial. Fail-Safe estimates the cost to be $100 per vehicle. There is reason to believe that Fail-Safe's estimate may be understated. For instance, the sensors currently used to detect low tire pressure (number 5 in the list of instances when the Fail-Safe device would be activated) on tractor-trailer trucks now cost between $200 and $500 per vehicle. After considering these factors, NHTSA concludes that the likely safety benefits, if any, resulting from mandating the Fail-Safe device would be minimal. In contrast, the costs associated with such a mandate would be substantial. Therefore, the Fail-Safe petition is denied. The agency would like to note that this is only a denial of a petition to require such devices, and it in no way precludes the voluntary installation of the Fail-Safe brake on other similar equipment on an optional basis, either by vehicle manufacturers or in the aftermarket, if the installation of the device does not affect the vehicle's compliance with any of the Federal motor vehicle safety standards.

List of Subjects in 49 CFR Part 571

Imports, Motor vechicle safety, Motor vehicles, Rubber and rubber products, Tires.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on February 5, 1985.

Barry Felrice

Associate Administrator for Rulemaking.

[FR Doc. 85-3353 Filed 2-8-85; 8:45 am]

BILLING CODE 4810-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status and Critical Habitat for the Inyo Brown Towhee (Pipilo Fuscus Eremophilus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period on the proposed determination of threatened status and critical habitat for the Inyo brown towhee (*Pipilo fuscus eremophilus*) is reopened. This bird is found in the Argus Mountains, Inyo County, California. The reopening of the comment period will allow any additional comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened (49 FR 46174). The comment period, which originally closed on January 22, 1985, now closes March 11, 1985.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the address above or 503/231-6131 (FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Inyo brown towhee is found in the Argus Mountains, Inyo County, California. The population is estimated to include less than 175 individuals. The very limited habitat of the bird has already been altered and could further be adversely impacted by future changes in land use. A proposal of threatened status with critical habitat for the towhee was published in the **Federal Register** (49 FR 46174) on November 23, 1984.

On January 22, 1985, a request for an extension of the comment period for the Inyo brown towhee was received from Mr. H.H. Harrell, Commanding Officer, Naval Weapons Center, China Lake, California. In order to accommodate this request, the Service reopens the public comment period. Written comments may not be submitted until March 11, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 4, 1985.

Richard J. Myshak,

Regional Dirctor.

[FR Doc. 85-3386 Filed 2-8-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Zanthoxylum thomasianum (Prickly-ash)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Serivice proposes to determine a plant, *Zanthoxylum thomasianum* (prickly-ash), to be an endangered species under the authority of the Endangered Species Act, as amended. *Zanthoxylum thomasianum* is only found in seasonally deciduous vegetation formations that occur on limestone and on areas of volcanic origin in northern and central Puerto Rico and southern St. Thomas and St. John, Virgin Islands. Only about 1,050 individuals of the species are known to exist. All five sites that support populations of *Zanthoxylum thomasianum* are located on privately owned land. The continued existence of this species is endangered by its very limited numbers plus potential habitat modifications or destruction due to limestone mining, urbanization, and road maintenance. This proposal, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended, for *Zanthoxylum thomasianum*. The Service seeks data and comments on this proposal.

DATES: Comments from all interested parties must be received by April 12, 1985. Public hearing requests must be received by March 28, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Caribbean Islands Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709-3005. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Agustin P. Valido at the Atlanta Regional Office address, 404/221-3583, FTS 242-3583.

SUPPLEMENTARY INFORMATION:

Background

Zanthoxylum thomasianum was first described by Krug and Urban in 1896, on the basis of a specimen collected by Eggars in St. Thomas (now part of the U.S. Territory of the Virgin Islands) in 1880. The species was not collected again in St. Thomas until 1980 (Vivaldi and Woodbury, 1981). It was collected by Britton and Shafer on St. John, Virgin Islands, in 1913 and found there again by Woodbury in 1983. It was also discovered by Woodbury in the early 1960's at the summit of Piedras Chiquitas (a rocky outcrop between the municipalities of Salinas and Coamo) and along Road 155, north of Coamo, Commonwealth of Puerto Rico. More recently, it was discovered by a high school teacher in the upper part of the Guajataca Gorge in Isabela, Puerto Rico.

The population at Piedras Chiquitas is no longer extant, perhaps destroyed by hurricane winds as recently as 1979, when hurricanes David and Frederick passed near Puerto Rico. The population along Road 155 was partially destroyed as a result of road improvement and maintenance activities. Only two individuals of the species are known to

exist in the Guajataca Gorge locale. The largest known population is located on the southern coast of St. Thomas and consists of several hundred individuals. Recently, about 50 individuals were found at Gift Hill in St. John, and a single specimen was found about ¼ mile north of Salt Pond Bay, also in St. John (Woodbury, personal communication).

Zanthoxylum thomasianum was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps, 1978). In August 1979, the Service contracted with Dr. Jose L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plants considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey recommended that *Zanthoxylum thomasianum* be proposed for listing as an endangered species. *Zanthoxylum thomasianum* was included among the plants being considered for listing as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82479) dated December 15, 1980.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Zanthoxylum thomasianum* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). This proposed rule indicates that the petition action is warranted, and constitutes the required finding in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (49 FR 38900, October 1, 1984, to be codified at 50 CFR Part 424) set forth the precedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Zanthoxylum thomasianum* (Krug and Urban) P. Wilson, prickly-ash, are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* Modification and destruction of habitat appear to be the most serious threats to the species, especially in St. Thomas and St. John, Virgin Islands, and in Coamo, Puerto Rico. The St. Thomas population is located in an area close to the capital, Charlotte Amalie, and to some of the principal hotel complexes serving the tourist trade. The plants are located on property of potential importance to tourism on a small island where land value is high. This particular area has been subdivided into lots, and plans to clear the lots and build are being formulated. The principal St. John site, with about 50 individuals, is located in the Gift Hill area of Fish Bay Estates. This area has also been subdivided into lots. Only one specimen is known to exist in the other location on St. John. The plant occurs on land which is not in use, north of Salt Pond Bay. However, the area has the same development potential and value as the other site in St. John. Subdivision and development of the land, unless done with consideration and care, could either destroy or substantially modify habitat upon which individuals of *Zanthoxylum thomasianum* depend. The Coamo population was partially destroyed by activities related to road improvement and the unauthorized deposit of trash, much of which was burned, near the road. Only four individuals remain of what used to be a much larger population.

Habitat modification can also be expected in the Guajataca Gorge site. Local residents use the area for planting yams, which results in *Zanthoxylum thomasianum* plants being uprooted. Nearby limestone hills are being mined for fill material. The hill where the plants are located could be razed in order to offer limestone fill for sale. These activities could destroy or adversely modify the species' habitat.

B. *Overutilization of commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species, but could easily become so in the future. The species occurs near habitations. Professional cultivation from cuttings has failed, and tissue culture has not been attempted.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of the species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists. If mining activities become involved, the Department of Natural Resources presumably could prohibit such activities in order to save a particular site by making reference to Law 144, June 3, 1976, "Extracción de materiales de la corteza terrestre," which regulates mining activities. However, whether or not this prohibition could be used to control the taking of an endangered plant would depend on the interpretation of the law of Commonwealth courts. There is no established precedent, and the protection this law provides to the species is probably minimal. The government of the Virgin Islands does not have specific rules or legislation to protect endangered or threatened plant species.

E. *Other natural or manmade factors affecting its continued existence. Zanthoxylum thomasianum* is found in small, compact, localized populations. The species is dioecious, the ratio of male to female plants is unknown, and its ecological requirements are poorly understood. The two Puerto Rican populations are small, relict populations and probably too small to guarantee the survival of a dioecious species. Hurricanes have affected the species in the past, as evidenced by the destruction of the former Piedras Chiquitas population. Individuals in exposed areas, such as coastal hills, may be adversely affected by high winds. These factors make *Zanthoxylum thamasianum* even more vulnerable to the previously mentioned threats.

The Service has carefully assessed the best scientific information available, regarding the past, present, and future threats faced by this species, in determining to propose this rule. Based on this evaluation, the preferred action is to list *Zanthoxylum thomasianum* as endangered. With so few known individuals and with such a high risk of damage to the plant and/or its habitat, endangered status seems an accurate assessment of the species' condition. It is not prudent to propose critical habitat because doing so would increase risk for the species, as detailed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under factor B above, *Zanthoxylum thomsaianum* is potentially threatend by collecting, an

activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction; such lands are not involved in this proposal. Publication of critical habitat localities along the road where the species occurs would increase the risk of taking or vandalism. The small sizes of populations exacerbate these risks. Therefore, it would not be prudent to determine critical habitat for *Zanthoxylum thomasianum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, Territory, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, cooperative efforts with the Commonwealth and Territory, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Zanthoxylum thomasianum*, as discussed above, and the only Federal involvement known at this time with habitat it occupies is that of the Federal Highway Administration. In the event that highways are widened or resurfaced in this area, a strong commitment, together with funds, will be needed to protect *Zanthoxylum thomasianum*. Without the protection provided by the Act, the species could be brought to extinction or its habitat substantially modified. Road designers and work crews would need to be alerted so that the plants are taken into consideration in any plans for the reconstruction of nearby roads. Such work should be done with utmost care and would require that the habitat of *Zanthoxylum thomasianum* be left undamaged. It is not known whether there would be any Federal involvement in the proposed subdivision developments. Any Federal authorization, funding, or participation in these projects would be subject to the provisions of Section 7 of the Act, as discussed above.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Zanthoxylum thomasianum*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth and Territory conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International trade and interstate commercial trade in *Zanthoxylum thomasianum* are not known to exist, and the plant is very rare in experimental cultivation. It is anticipated that few trade permits would ever be sought since the species is not common in cultivation or in the wild.

Section 9(a)(2) (B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Zanthoxylum thomasianum*. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that will be made final following public comment. *Zanthoxylum thomasianum* is not known to occur on any Federal lands at this time, so requests for taking permits are not anticipated. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

If this species is listed under the Act, the Service will review its status to determine whether it should be placed on the Annex to the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through Section 8A(e) of the Act, and whether it should be considered under other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack therof) to *Zanthoxylum thomasianum;*

(2) The location of any additional populations of *Zanthoxylum thomasianum* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Zanthoxylum thomasianum.*

Final promulgation of a regulation on *Zanthoxylum thomasianum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Caribbean Islands Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 3005—Marina Station,

Mayagüez, Puerto Rico 00709-3005 (809/833-5760).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Ayensu, E.S., and R.A. DePilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Zanthoxylum thomasianum* (Krug and Urban) P. Wilson. Status Report submitted to the U.S. Fish and Wildlife Service, Mayagüez, P.R. 39 pp.

Author

The primary author of this proposed rule is Mr. Agustin P. Valido, U.S. Fish and Wilflife Service, Suite 1282, 75 Spring Street, S.W., Atlanta, Georgia 30303. Status information and a preliminary draft of the rule were provided by Dr. José L. Vivaldi, Cond. Parque de Las Fuentes, Hato Rey, Puerto Rico. Dr. George Drewry of the Service's Washington Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under Rutaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	*
Rutaceae—Rue Family:						
Zanthoxylum thomasianum (=*Fagara thomasianum*).	Prickly-ash	U.S.A. (PR, VI)	E		NA	NA
* *	*	*	*	*	*	*

Dated: January 18, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-3415 Filed 2-8-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 28
Monday, February 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

National Voluntary Service Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the National Service Advisory Council (Council) will be held on February 26, 1985, from 9:00 a.m.–4:00 p.m. in Washington, D.C. For further details concerning the meeting location, contact James B. Williams, Assistant Director of ACTION for Policy and Planning, at (202) 634–9304.

The purpose of this meeting is to select nominees for the President's Volunteer ACTION Awards for 1985. In accordance with the determination of the Director of ACTION, this meeting will be closed to the public pursuant to subsection (c)(9)(B) of Section 552b of Title 5, United States Code. The determination of the Director of ACTION is available to the public at 806 Connecticut Avenue, NW., Washington, D.C. 20525, during the regular working hours of 8:30 a.m. to 5:15 p.m.

Signed this 5th day of February, 1985, in Washington, D.C.

Thomas W. Pauken,
Director, ACTION.

[FR Doc. 85–3323 Filed 2–8–85; 8:45 am]
BILLING CODE 6050–28–M

COMMISSION ON CIVIL RIGHTS

Utah Advisory Committee; Agenda and Notice of Public Meeting; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Utah Advisory Committee to the Commission originally scheduled for February 7, 1985, at the Howard Johnson Motor Lodge, 122 W. South Temple Street, Salt Lake City, Utah (FR Doc. 85–1903, on page 3582), January 25, 1985, has been cancelled.

Dated at Washington, D.C. February 6, 1985.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 85–3408 Filed 2–8–85; 8:45 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic Development Assistance Programs as Described in Conference Report 98–952, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations, 1985; Availability of Funds

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice; Correction.

SUMMARY: This document corrects a Notice of Availability of Funds FR Doc. 84–26595, that appeared at page 39640 *et. seq.* in the **Federal Register**, October 9, 1984 [49 FR 39640]. The action is necessary to correct e.g. submission dates for proposals and applications, and incorrect percentages and to add requirements for cooperative efforts for projects involving international trade or minority business.

1. Page 39640, column 2, under *Pre-Application Procedures*, correct the second paragraph under item No. 2 to read:

2. * * *

Currently funded grantees should submit proposals to the appropriate EDA Regional Office no later than November 15, 1984, or by the deadline set by the appropriate Regional Office. New applicants should submit their proposals to the appropriate EDA Regional Office no later than March 31, 1985. Proposals postmarked after these dates may not receive consideration.

2. Page 39640, column 2, under *Formal Application Procedures*, after the second paragraph which begins "EDA will evaluate . . .", add the following:

Formal Application Procedures:

* * * * *

"Applications for projects involving international trade must include a letter of support from the appropriate International Trade Administration (ITA) District Office. The EDA Regional Office can furnish the address and telephone number for the ITA District Office for the project area. Applications for projects involving assistance to minority businesses must include a letter from the area Minority Business Development Center providing evidence of coordination on the project. The EDA Regional Office can furnish the address and the telephone number for the Minority Business Development Center for the area."

3. Page 39642, column 2, under *Selection Criteria*, the first paragraph is corrected to read:

"*Selection Criteria:* Priority consideration will be given to the refunding of those 41 Centers which presently make up the University Center program and who meet the selection criteria. Funds which remain will be utilized to fund new Centers who meet the selection criteria and/or special activities of currently funded Centers. EDA will consider the following factors in evaluating proposals:

* * * * *

4. Page 39642, in columns 2 and 3, under *Pre-Application Procedures and Formal Application Procedures* the second paragraph is corrected, the third and fourth paragraphs are combined and corrected, and the first paragraph under *"Formal Application Procedures,* is connected, all to read as follows:

Pre-Application Procedures

A. *Letters of Interest:* * * *

The letters of interest by new applicant colleges and universities should be submitted to the appropriate EDA Regional Office no later than January 31, 1985. Letters postmarked after this date may not be considered.

B. *Proposals:* New applicant colleges and universities selected by EDA for consideration of inclusion of their university or college in the program will be invited to submit a proposal. Interested institutions will be advised no later than April 30, 1985, whether they are to submit a proposal. The Regional Office will provide a proposal package to these applicants.

Formal Application Procedures:

Colleges and universities presently in

the program will be advised by EDA Regional Offices of the steps to follow in submitting a formal application for continued assistance. EDA will evaluate those applications and the authorized proposals from new applicants using the selection criteria mentioned above. Following a review of new project proposals, EDA will invite proponents whose projects are selected for funding consideration to submit a formal application."

* * * * *

5. Page 39643, column 1, under *Pre-Application Procedures*, the second paragraph is corrected to read:

Pre-Application Procedures:

* * * * *

"Proposals should be submitted to the appropriate Economic Development Representative or EDA Regional Office as early in the fiscal year as possible, but no later than March 15, 1985. Proposals postmarked after that date may not receive priority consideration."

6. Page 39643, column 2, under *Formal Application Procedures*, the following paragraph should be added immediately after the first paragraph:

Formal Application Procedures: * * *

"Applications for projects involving international trade must include a letter of support from the appropriate International Trade Administration (ITA) District Office. The EDA Regional Office can furnish the address and telephone number for the ITA District Office for the project area. Applications for projects involving assistance to minority businesses must include a letter from the area Minority Business Development Center providing evidence of coordination on the project. The EDA Regional Office can furnish the address and the telephone number for the Minority Business Development Center for the area."

* * * * *

7. Page 39643, column 2, "*Further Information*" is connected to read as follows:

"Further Information: For further information contact the appropriate EDA Regional Office (see list below)."

8. Page 39644, column 2, under *Application Procedures*, the first paragraph is connected, and a new paragraph is added to, immediately follow the first paragraph as follows:

"*Application Procedures:* Interested applicants should submit one original and two copies of brief concept proposals which should include:

1. A description of the proposed project and workplan:

2. Funding sought including budgetary data;

3. Vita; and

4. General corporate capability data."

"*Eligibility for Specific Solicitations:* In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the course of the fiscal year identify other studies, including program evaluations, it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above no later than April 30, 1985. This information will be used to determine an organization's or individual's eligibility to compete for projects under specific SOAs. Applicants which submit information postmarked after January 31 may not be invited to respond to SOAs this fiscal year."

9. Page 39644, column 3, *"Further Information"* is corrected to read as follows:

"Further Information: For Further Information contact David H. Geddes at (202) 377–4085 in EDA Headquarters in Washington, D.C."

10. Page 39646, column 2, under *Eligible Areas*, items 2.a. and b. are corrected to read as follows:

Eligible Areas: * * *

2. For areas within Standard Metropolitan Statistical Areas:

a. If the unemployment rate of the Standard Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of .5 percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Standard Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of 1 percent of the employed population, or 8,000 direct jobs.

11. Page 39646, column 3 and page 39647, column 1, item No. 2 f., j. and k are corrected to read as follows:

2. *Objectives and Benefits of Proposed Projects:* Priority will be given to projects which can:

* * * * *

f. Support the goals of state and local economic development plans for the area, including the OEDP and the Title IX adjustment strategy, as appropriate;

* * * * *

j. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within 2 years of grant approval;

k. Include a larger matching share than the 25 percent or secure commitments for future funding from other public or private sources; and"

12. Page 39647, column 1, *Effective Management of the RLF*, items 3. a. through d are corrected to read as follows:

3. *Effective Management of the RLF:*

* * *

a. A strong and effective Loan Administrative Board with broad community representation, including appropriate private sector, minority and women's representation;

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing;

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices;

d. Adequate resources to cover administrative costs of the RLF; and"

* * * * *

13. Page 39647, column 3, and page 39648, column 1, the EDA Regional Office addresses are corrected to read as follows:

EDA Regional Offices: The EDA Regional Offices and the States they cover are:

- Philadelphia Regional Office, 4th Floor, Mall Building, 325 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia.
- Atlanta Regional Office, Suite 750, 1365 Peachtree Street, N.E., Atlanta, Georgia 30309, Telephone: (404) 881–7401; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
- Chicago Regional Office, Suite A-1630, 175 W. Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353–7707; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
- Austin Regional Office, Suite 201, Grant Bldg., 611 East Sixth Street, Austin, Texas 78701, Telephone: (512) 482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
- Denver Regional Office, Room 300, Tremont Center, 333 West Colfax Avenue, Denver, Colorado 80204, Telephone: (303) 844–4714, serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
- Seattle Regional Office, Suite 500, Lake Union Bldg., 1700 Westlake Avenue, North Seattle, Washington

98109, Telephone: (206) 442–0596; serving Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

Dated: November 27, 1984.

J. Bonnie Newman,

Assistant Secretary for Economic Development.

[FR Doc. 85–3026 Filed 2–8–85; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Docket No. 3–85]

Foreign-Trade Zone 90, Onondaga County, NY; Application for Subzone; Smith-Corona Typewriter Plant, Cortland County, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Onondaga, New York, grantee of Foreign-Trade Zone 90, requesting special-purpose subzone status for the typewriter manufacturing plant of Smith-Corona Corporation in Cortland County, New York, adjacent to the Syracuse Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 1, 1985. The applicant is authorized to make zone proposals in Onondaga County under County Law Section 224 of McKinney's Consolidated Laws of New York. Legislation is pending concerning Onondaga County's authority to apply for subzones in Cortland County (New York Senate Bill 675).

Smith-Corona, a group within the consumer division of SMC Corporation, is a manufacturer of typewriters, printers, and related supplies.

The proposed subzone will be located at Smith-Corona's 66-acre plant at 839 Route 13 South, Township of Cortlandville, Cortland County. The facility is used to produce portable electric typewriters, employing 1200 persons. It is considered the only such typewriter plant remaining in the U.S., this type of production having moved abroad. In its efforts to compete with foreign typewriters, Smith-Corona sources from abroad certain parts including keyboards, stepper motors, transformers, chokes, crystals, couplers, and switches, which account for up to 20 percent of the value of its product.

Zone procedures would allow Smith-Corona to avoid duty payments on foreign parts, because its finished product is duty free, while most parts are dutiable at 6.1 percent. This will allow the company to take advantage of the same duty-free treatment given to importers of complete typewriters. The cost savings will help Smith-Corona maintain production in the U.S.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer St., Boston, MA 02110; and Colonel Robert B. Hardiman, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara St., Buffalo, NY 14207.

Comments conerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 5, 1985.

Port Director's Office, U.S. Customs Service, Federal Bldg., Room 1219, 100 South Clinton Street, Syracuse, NY 13260

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: February 5, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–3314 Filed 2–8–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C–580–403]

Countervailing Duty Order; Cold-Rolled Carbon Steel Flat-Rolled Products from Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations, the United States Department of Commerce (the Department) and the United States International Trade Commission (ITC) have determined that cold-rolled carbon steel flat-rolled products from Korea are receiving benefits which constitute subsides within the meaning of the countervailing duty law, and that cold-rolled carbon steel flat-rolled products from Korea are materially injuring a United States industry.

Therefore, based on these findings, all entries of cold-rolled carbon steel flat-rolled products from Korea, which are entered, or withdrawn from warehouse, for consumption on or after September 18, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the **Federal Register**, will be liable for the possible assessment of countervailing duties. Furthermore, a cash deposit of estimated countervailing duties must be made on all such entries, and withdrawals from warehouse, for consumption, on or after the date of publication of this order in the **Federal Register**.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1785.

Scope of the Investigation

The products covered by this order are: Cold-rolled carbon steel flat-rolled products which are defined as flat-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width, and 0.1875 inches or more in thickness; as currently provided for in item 607.8302 of the *Tariff Schedule of the United States Annotated*; or over 12 inches in width and under 0.1875 inches in thickness whether or not in coil, as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

In accordance with section 703 of the Act (19 U.S.C. 1671b), on September 18, 1984, the Department published its prliminary determination that there was reason to believe or suspect that cold-rolled carbon steel flat-rolled products from Korea received benefits which constitute subsidies within the meaning of the countervailing duty law (49 FR 36538). In accordance with section 705 of the Act (19 U.S.C. 1671(d)), on December 3, 1984, the Department published its final determination that these imports are being subsidized (49 FR 47284).

On January 15, 1985, in accordance with section 705(d) of the act (19 U.S.C. 1671d(d), the ITC notified the Department that such importations are materially injuring a United States industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act [19 U.S.C. 1671e(a)(1)], countervailing duties equal to the amount of the net subsidy for all entries of cold-rolled carbon steel flat-rolled products from Korea. These countervailing duties will be assessed on cold-rolled carbon steel flat-rolled products from Korea entered, or withdrawn from warehouse, for consumption, on or after September 18, 1984, the date on which the Department published its notice of "Preliminary Affirmative Countervailing Duty Determination" in the **Federal Register.**

On and after the date of publication this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to 3.60 percent *ad valorem* on all entries of the subject merchandise.

This determination constitutes a countervailing duty order with respect to cold-rolled carbon steel flat-rolled products from Korea pursuant to section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 U.S.C. 355.36).

We have deleted from the Commerce Regulations Annex III to 19 CFR Part 355 which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that if requested it will commence an administrative review of this order. For further information regading this review, contact Mr. Richard Moreland (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 30, 1985.

[FR Doc. 85–3313 Filed 2–8–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-401]

Antidumping Postponement of Final Determination; Red Raspberries From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for the respondent Canadian red raspberries processors in this proceeding, that the final determination on red raspberries from Canada be postponed until April 20, 1985, to allow adequate time for a meaningful dialogue concerning the preliminary determination, and that the Department will postpone its final determination as to whether sales of red raspberries from Canada have occurred at less than fair value, until not later than May 2, 1984, as provided for in § 353.44(b) of the Department of Commerce Regulations.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: David Johnston, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2239.

SUPPLEMENTARY INFORMATION: On July 30, 1984, the Department of Commerce published a notice in the **Federal Register** that it was initiating, under section 732(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673a(b)) (the Act), an antidumping investigation to determine whether red raspberries from Canada are being, or are likely to be, sold at less than fair value. On December 18, 1984, the Department published an affirmative preliminary determination (49 FR 49129). The notice stated that if this investigation proceeded normally we would make a final determination by February 23, 1985. Pursuant to section 735(a)(2) of the Act, the responding red raspberry processors requested an extension of the final determination date. They are qualified to make such a request under section 735(a)(2)(A), because they account for a significant proportion of the exports of the merchandise. If exporters accounting for a significant proportion of the exports of the merchandise request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than May 2, 1984.

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination. The hearing originally scheduled for January 23, 1985 at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, will be postponed to March 15, 1985, room 3708 at 10:00 a.m. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 8, 1985.

Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Dated: February 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–3406 Filed 2–8–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-408]

Termination of Countervailing Duty Investigation; Certain Welded Carbon Steel Pipes and Tubes From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 18, 1985, the Committee on Pipe and Tube Imports withdrew its countervailing duty petition, filed on July 17, 1984, on Certain Welded Carbon Steel Pipes and Tubes from Spain. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1784.

SUPPLEMENTARY INFORMATION:

Case History

On July 17, 1984, we received a petition from the Committee on Pipe and Tube Imports filed on behalf of the U.S. industry producing certain welded carbon steel pipes and tubes.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on August 6 (49 FR 32248). On August 31 the ITC found that there is a reasonable indication that imports of Certain Welded Carbon Steel Pipes and Tubes from Spain materially injure, or threaten material injury to, a United States industry. (49 FR 35871). On October 17 we made a preliminary determination that Certain Welded Carbon Steel Pipes and Tubes from Spain was subsidized (49 FR 40628).

Scope of Investigation

The merchandise covered by this investigation is "certain welded carbon steel pipes and tubes," specifically, certain small-diameter circular welded carbon steel pipes and tubes and light-walled rectangular tubing.

Small-diameter circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 4.5 inches and with a wall thickness of not less than 0.065 inch, are currently classified in the Tariff Schedules of the United States, Annotated (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, and 610.3243. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120 and A–135.

Light-walled rectangular (including square) welded carbon steel pipes and tubes having a wall thickness of less than 0.156 inch are currently classified under TSUSA item 610.4928. These products, commonly referred to in the industry as mechanical or structural tubing, are generally produced to ASTM specifications A–500 or A–513.

Withdrawal of Petition

On January 18, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 704(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. These withdrawals are based on arrangements with the Government of Spain to limit the volume of imports of this product. We have assessed the public interest factors set out in section 704(a)(2) of the Act and consulted with potentially affected producers, workers, and consuming interests. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation of petition's withdrawal and our intention to terminate. For these reasons, we are terminating our investigation.

Dated: January 31, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 18, 1985.

The Honorable Malcolm Baldrige
U.S. Department of Commerce, 14th & Constitution Avenue, NW, Room 5854, Washington, D.C.

Chairwoman Paula Stern,
U.S. International Trade Commission, Department of Commerce, 701 E Street, NW, Room 272, Washington, D.C.

Dear Mr. Secretary and Madame Chairwoman: On September 18, 1984 President Reagan announced a comprehensive program for the United States steel industry. Pursuant to that program, the United States Special Trade Representative has negotiated a bilateral surge control arrangement with Spain limiting exports of steel products to the United States. Pursuant to authority contained in the Steel Import Stabilization Act (Pub. L. 98–573) the arrangement will be enforced by the United States Government.

In reliance upon the foregoing arrangement, The Committee on Pipe and Tube Imports hereby withdraws the following antidumping and countervailing duty petitions filed by it on July 17, 1984:

1. Certain Welded Carbon Steel Pipes and Tubes from Spain, ITA #A–469–407, ITC Inv. No. 731–TA–198.
2. Certain Welded Carbon Steel Pipes and Tubes from Spain, ITA #C–469–408, ITC Inv. No. 701–TA–220.

Respectfully Submitted,

The Committee on Pipe and Tube Imports.

Paul W. Jameson

cc: Honorable William E. Brock

[FR Doc. 85–3405 Filed 2–8–85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program; Publication of Quarterly Report (October 1–December 31, 1984)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP quarterly report (October 1–December 31, 1984).

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions for the fourth quarter of 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Manager, Laboratory Accreditation, ADMIN A603, National Bureau of Standards, Gaithersburg, MD 20899 (301) 921–3751.

SUPPLEMENTARY INFORMATION: This report has been prepared in accordance with § 7a.17(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR Part 7).

The following table summarizes NVLAP accreditation actions for the period October 1, 1984 through December 31, 1984.

	TIM	CON	CAR	ACO	STO	CPL	DOS	Total
Initial accreditations	2	0	0	0	0	0	3	5
Terminations	−2	−8	0	0	0	0	0	−10
Balance	36	31	24	10	8	2	19	130

TIM—Thermal Insulation LAP.
CON—Concrete LAP.
CAR—Carpet LAP.
ACO—Acoustical Testing Services LAP.
STO—Stove LAP.
CPL—Commercial Products LAP (Paint, Paper, Mattresses).
DOS—Dosimetry LAP.

The laboratories awarded initial accreditations are:

Thermal Insulation LAP

Technical Micronics, Control Inc., Huntsville, AL
Terralab Engineers, Salt Lake City, UT

Dosimetry LAP

Virginia Electric & Power Co., Surry, VA
Yankee Atomic Electric Co., Framingham, MA
Kansas Gas & Electric Co., Burlington, KS

The laboratories which voluntarily declined renewal of their accreditation are:

Thermal Insulation LAP

Olin Corporation, New Haven, CT

Lander Thermal Conductivity Lab, Minneapolis, MN

Concrete LAP

Tanner Companies, Phoenix, AZ
Western Technologies, Phoenix, AZ
Engineering Testing Lab, Akron, OH
General Testing Laboratories, Inc., Kansas City, MO
Herron Consultants Inc., Cleveland, OH
Standard Testing and Engineering, Oklahoma City, OK
Parratt-Wolff Inc., East Syracuse, NY
Toledo Testing Laboratory, Toledo, OH

Dated: February 5, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 85-3327 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meeting

The Caribbean Fishery Management Council's Administrative Subcommittee will convene a public meeting on February 11, 1985, at approximately 3 p.m., to discuss issues related to the Council's budget, Magnuson Act reauthorization and other Council administrative issues. The meeting will be held at the Council's office, 1108 Banco de Ponce Building, Hato Rey, PR. For further information, contact the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, PR 00918; telephone: (809) 753-4926.

Dated: February 6, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-3343 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

The Gulf of Mexico Fishery Management Council will convene an emergency public meeting at the Westshore Inn, 5303 West Kennedy Boulevard, Tampa, FL, February 18, 1985, at 10 a.m., and adjourn at 5:30 p.m.; reconvene February 19 at 8 a.m., and adjourn at noon to discuss amendments to the Magnuson Fishery Conservation and Management Act and the Council's budget. For further information contact the Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone (813) 228-2815.

Dated: February 6, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-3342 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

The Pacific Fishery Management Council will convene public meetings of its advisory groups as follows, at the Oregon Department of Fish and Wildlife, 506 S.W. Mill Street, Portland, OR:

February 19-22, 1985—The Council's Salmon Plan Development Team will draft a report entitled "1985 Ocean Salmon Fisheries Resource Status, Management Goals and Regulatory Impact Analysis."

February 20-21, 1985—The Council's Salmon Advisory Subpanel, its Salmon Plan Development Team and members of its Scientific and Statistical Committee will convene a special meeting from 1 p.m. on February 20 through noon on February 21, to discuss the projected status of salmon stocks for 1985. For further information, contact Jospeh C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W., Mill Street, Portland, OR, 97201; telephone: (503) 221-6352.

Dated: February 6, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-3341 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

The Western Pacific Fishery Management Council's Bottomfish Plan Development Team will convene a public meeting at 9 a.m., February 7, 1985, at the Council's office, 1164 Bishop Street, Room 1405, Honolulu, HI, to discuss management objectives and optimum yield definitions/revision methods contained in the draft Bottomfish Fishery Management Plan. For further information, contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or FTS (808) 546-8923.

Dated: February 6, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-3344 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Energy Streams, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Energy Streams, Inc., having a place of business at Toivola, Michigan, a partial exclusive right to practice the invention embodied in U.S. Patent 4,431,039, "Involuted Disc Slicer." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, Department of Commerce, National Technical Information Service.

[FR Doc. 85-3383 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Zoecon Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant Zoecon Corporation, having an office in Dallas, Texas, an exclusive right to practice the invention embodied in U.S. Patent Application Serial Number 610,949, "Suffocation-type Insect Trap with Pitfall and Attractants." The patent rights in this invention have been assigned to the United States of America, represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, Department of Commerce, National Technical Information Service.

[FR Doc. 85-3382 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-04-M

National Telecommunications and Information Administration

[Docket Number: 50211-5011]

Comprehensive Study of the Structure and Regulation of the U.S. Telecommunications Industry

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will conduct a comprehensive study of the structure and regulation of the U.S. domestic telecommunications industry in order to identify and promote policies suitable to a changing technological and industry environment.

DATE: Comments in response to this notice must be received by Friday, March 29, 1985, in order to receive full consideration.

ADDRESS: Send comments to: David J. Markey, Assistant Secretary of Commerce for Communications and Information, Telecommunications Policy Study, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert Pepper, Acting Associate Administrator, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-1880.

SUPPLEMENTARY INFORMATION:

Purpose and Scope of NTIA Inquiry

In 1979, NTIA prepared a comprehensive analysis of domestic U.S. common carrier law and regulation. Since that time, much has changed in the telecommunications industry, including technological advances, regulatory reform, increased competition, and the breakup of AT&T. As a result of these dramatic changes, NTIA is now revisiting issues addressed in the earlier study.

The purpose and scope of the current inquiry is to analyze the structure and regulation of the U.S. telecommunications industry in order to provide a basis for recommendations on policies to aid in achieving national policy goals for the industry. These goals include: (1) Nationwide availability of reasonably priced telecommunications services; (2) technological innovation in telecommunications and related industries; and (3) increased contribution of the telecommunications industry to productivity in the U.S. economy and strengthening the competitive position of the United States in world markets.

The U.S. economy mixes reliance on free markets and government intervention to achieve our economic goals. Historically, there has been greater government intervention in the telecommunications industry than in other markets, but many of the factors justifying such an approach have changed in recent years. Recent Federal policies have moved in the direction of greater reliance on market forces. This study will identify potential actions necessary to further U.S. telecommunications policy goals.

Reliance on direct government intervention may have well served telecommunications consumers in the relatively static early decades of the century. Recent events, however, demonstrate that this approach is no longer desirable. Rapid advances in technology have changed the ways in which service can be provided and have created demand for new services. Technological development and user demand arise from the private sector. Government regulators may often impede progress because change in Government policies cannot keep up with changes in technology.

The purpose of this study is to identify and promote policies suitable to the increasingly dynamic telecommunications environment. The fundamental question we seek to answer is: What needs to be done to achieve the goals outlined for the U.S. telecommunications industry?

We seek comments on changes, if any, needed in Government policies to achieve these goals. We intend to address questions including:

- To what extent is greater competition feasible in the telecommunications industry and will it benefit the public?
- What are the implications of technological innovation for public and private telecommunications policies?
- Can Government do anything further to assure superior technical quality of the telecommunications network?
- What structural questions confront the telecommunications industry?
- What can be done by Government to provide more certainty and stability to both the industry and the public?
- How is the AT&T Consent Decree (MFJ) working?
- Does the proliferation of structural separation requirements advance the public interest?
- What is the appropriate relationship between the Federal Government and the states on telecommunications matters?
- What pricing questions face the telecommunications industry?
- What special issues relate to rural telecommunications needs?
- What measures will help the U.S. telecommunications industry compete more effectively given growing foreign competition both at home and abroad?

David J. Markey,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 85-3414 Filed 2-8-85; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Chena River Lakes Flood Control Project Near Fairbanks, AK

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DSEIS.

SUMMARY: The DSEIS will evaluate the socioeconomic and biological impacts of flood regulations at different flow regimes on the Chena River. The results will aid in establishing the river stage which would protect the City of Fairbanks and surrounding area and still protect the fish and wildlife resources of the Chena River basin. The optimal river stage will be included in the Flood Control Regulation Manual for project operations.

2. A scoping meeting was held in November 1984 at Fairbanks with the concerned Federal and State resource agencies. A public scoping meeting is scheduled for March 1985 at Fairbanks.

3. Anticipated subjects to be addressed include but are not limited to:

hydrology; socio-economics; fisheries, anadromous and resident species; water quality; floral flooding tolerance; small mammals; and moose calving.

4. The DSEIS is anticipated to be available for public review in September 1986.

ADDRESS: Questions about the proposed action and DSEIS can be answered by: William D. Lloyd, Chief, Environmental Resources Section, U.S. Army Engineer District, Alaska, P.O. Box 898, Anchorage, Alaska 99506-0898.

Dated: January 28, 1985.

Neil E. Saling,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-3301 Filed 2-8-85; 8:45 am]

BILLING CODE 3710-HL-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 13, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 6, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Vocational and Adult Education

Type of Review Requested: Revision
Title: Financial Status Report and Annual Performance Report for the Adult Education State Administered Program
Agency Form Number: ED 365, 365-1
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 55; Burden Hours: 220
Recordkeeping Burden: Recordkeepers: 55; Burden Hours: 4,400

Abstract: State educational agencies receiving grants under the Adult Education State Administered Program submit Annual Financial Status and Performance Reports as prescribed by the Adult Education Act and by OMB Circular No. A-102. Program officials use the data collected in accounting for the expenditure of funds and for monitoring program activities required by the approved State plan.

Type of Review Requested: Reinstatement
Title: State Plan for Adult Education
Agency Form Number: ED 652
Frequency: Triennially
Affected Public: State or local governments
Reporting Burden: Responses: 54; Burden Hours: 10,800
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Adult Education Act requires State educational agencies to submit State plans every three years in order to receive Federal funds for adult education programs. Program staff review the plans to ensure that the proposed activities comply with the requirements of the Adult Education Act and its implementing regulations.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Financial Status Report for the RSA Basic Support Program and Independent Living Program
Agency Form Number: B20-4P
Affected Public: State or local governments
Reporting Burden: Responses: 328; Burden Hours: 328
Recordkeeping Burden: Recordkeepers: 82; Burden Hours: 82

Abstract: The data reported by State Vocational Rehabilitation Agencies will contain financial information for the Basic Support Program and Part A of the Independent Living Program. Used in conjunction with client data, it affords the capability of measuring accomplishments in these programs.

Office of Bilingual Education and Minority Languages Affairs

Type of Review Requested: Reinstatement
Title: Application for Emergency Immigrant Education Program and Recordkeeeping
Agency Form Number: T85-1P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 8,892
Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 456

Abstract: A State educational agency (SEA) must provide a count of eligible immigrant children and other information contained in an application to receive payment under the Emergency Immigrant Education Act of 1984. The Secretary determines the amount of the payment to an SEA based on the count of eligible children reported. States are authorized to make subgrants to local educational agencies (LEA) for supplementary educational services and costs for eligible immigrant children.

[FR Doc. 85-3396 Filed 2-8-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Survey of Compensation Paid Scientists and Engineers

AGENCY: Office of Industries Relations DOE.

ACTION: Notice of Solicitation for a Grant Application.

SUMMARY: DOE announces that it is conducting negotiations pursuant to 10 CFR 600.7(b) with Battelle Columbus Laboratories (BCL) for a National Survery of Compensation Paid Scientists and Engineers. These negotiations are expected to result in the award of a grant in which DOE will provide $751,201.00 or 100% of the total estimated cost of the study.

Solicitation Number: DE–FG01–85MA00194.

Scope of Study: Accomplish annually for a period of 3 years the following: (1) Conduct and prepare the *National Survey of Compensation Paid Scientists & Engineers in Research & Development;* (2) collect data from 12 DOE laboratories not included in National Survey of Compensation; (3) prepare report comparing salaries of select DOE contractors with those of National Survey of Compensation, (4) provide maintenance of the sampling frame.

The results of the instant survey have wide applicability throughout the Research, Development, and Demonstration Industry. The survey is also utilized by the microchip and other advanced technology industries.

Eligibility for this grant has been restricted to BCL because BCL has in its possession the proprietary trend data which is essential for producing the survey results. In addition, BCL has developed the staff and programs which permit this survey to be produced in an expedited manner.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Opertions, ATTN: Linda Feeney, MA–452.2, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1035.

Issued in Washington, D.C., on February 6, 1985.

David G. Newman,

Director, Office of Procurement Operations.

[FR Doc. 85–3427 Filed 2–8–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. G–232 and CP83–336–00, et al.]

City of Pensacola, FL, et al.; Termination

In the matter of City of Pensacola, Florida v. United Gas Pipe Line Company, Docket Nos. G–232 and CP83–336–000; Utilities Board of the City of Bay Minette, Alabama v. United Gas Pipe Line Company, Docket No. RP83–103–000; City of Brewton, Alabama v. United Gas Pipe Line Company, Docket No. CP83–379–000; and City of Fairhope, Alabama v. United Gas Pipe Line Company, Docket No. RP83–110–000.

February 7, 1985.

On January 14, 1985, notices of withdrawal of the complaints initiating each of the above-indicated proceedings were filed pursuant to settlement agreements entered into by the complainants and United Gas Pipe Line Company. No motion in opposition to the notices of withdrawal has been filed. Accordingly, the complaints are withdrawn as of January 30, 1985, pursuant to Rule 216 of the Commisson's Rules of Practice and Procedure, and the proceedings are terminated.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–3417 Filed 2–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–1–21–000 and TA85–1–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 6, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1985, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1985:

Ninety-seventh Revised Sheet No. 16
Fifth Revised Sheet Nos. 16B and 16C
Thirty-fourth Revised Sheet No. 64
Twelfth Revised Sheet Nos. 64E through 64I

Columbia states that the rates set forth in Ninety-seventh Revised Sheet No. 16 reflects a $1.45 demand decrease and an 11.84¢/dth commodity increase, which results in an approximate decrease of $23.6 million applicable to sales rate schedules for the subject PGA period. This reduction is composed of the net of: (1) A Purchased Gas Adjustment which reflects a decrease in current cost of gas, (2) a net increase in the PGA surcharge, (3) a decrease in the Advance Payment Adjustment, (4) a twelve-month surcharge associated with retroactive payments to Columbia's producer suppliers, and (5) a six-month surcharge relating to take-or-pay reimbursement to Panhandle Eastern Pipe Line Company.

In addition, the Purchased Gas Surcharge amounts set forth on Fifth Revised Sheet Nos. 16B and 16C provide for the flow-through of $193,045 in gas purchase costs over the six-month period ending August 31, 1985, such costs to be returned to customers receiving service under Columbia's Rate Schedule SGES.

Further, Columbia's filing also contains material related to the affiliated entities test provided in section 601(b)(1)(E) of the NGPA and contains a copy of Columbia's Intracompany Operating Statement.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–3422 Filed 2–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI84–29–000]

Jakes Branch Gas Co.; Settlement

February 6, 1985.

On December 14, 1984, as amended January 16, 1985, Kentucky West Virginia Gas Company ("Kentucky West") filed with this Commission a proposed Stipulation and Agreement in settlement of the above-referenced proceeding. This Stipulation and Agreement resolves all issues with respect to the Application of Jakes Branch Gas Company ("Jakes Branch") to abandon sales of natural gas to Kentucky West which heretofore have been made pursuant to Kentucky West Gas Purchase Contract No. 228. This Stipulation and Agreement also provides for Commission approval of a superseding Service Agreement between Kentucky West and the City of Hazard ("Hazard") which reduces Kentucky West's gas delivery obligation to Hazard.

The proposal to reduce Kentucky West's delivery obligation to Hazard requires Commission authorization under section 7 of the Natural Gas Act.

The Stipulation and Agreement will be treated as the filing for the requested abandonment and no separate application will be filed.

Any person desiring to be heard or to make any protest with reference to the proposed settlement should on or before February 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3420 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7468-001]

Kentucky Hydro Associates; Surrender of Preliminary Permit

February 6, 1985.

Take notice that the Kentucky Hydro Associates, Permittee for the proposed Taylorsville Dam Project No. 7468, requested by letter dated January 14, 1985, that its preliminary permit be terminated. The preliminary permit was issued on July 24, 1984, and would have expired on July 31, 1986. The project would have been located on the Salt River in Spencer County, Kentucky.

The Permittee filed the request on January 15, 1985, and the preliminary permit for Project No. 7468 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3419 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-35-003, et al.]

Houston Pipe Line Co., et al.; Extension Reports

February 7, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. Three other symbols are used for transactions pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations. A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; A "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before March 1, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordnace with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter and seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-35-003	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Texas Eastern Transmission Corp.	1-11-85	D	4-11-85
ST81-194-002	Northwest Alabama Gas District, P.O. Box 129, Hamilton, AL 35570	Southern Natural Gas Co.	1-10-85	C	4-10-85
ST81-238-002	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	1-10-85	G	4-10-85
ST81-273-002	Northern Natural Gas Co., 2233 Dodge St., Omaha, NE 68102	Northwest Pipeline Corp.	1-8-85	G	4-30-85
ST81-321-002*	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	United Gas Pipeline Line Co.	1-3-85	G	3-17-85
ST83-315-001*	Western Gas Supply Co., 1050 17th St., Denver, CO 80265	Northwest Pipeline Corp.	1-2-85	G(HT)	2-15-85
ST83-321-001	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Mountain Fuel Resources, Inc.	1-7-85	G	4-6-85
ST83-322-001	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Northern Natural Gas Co.	1-7-85	G	4-7-85
ST83-326-001	Western Gas Supply Co., 1050 17th St., Denver, CO 80265	Mountain Fuel Resources, Inc.	1-3-85	G(HS)	4-8-85
ST83-380-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	United Texas Transmission Co.	1-10-85	B	4-12-85
ST83-382-001	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Coronado Transmission Co.	1-7-85	B	4-7-85
ST83-392-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Westar Transmission Co.	1-15-85	B	4-22-85
ST83-470-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Texas Eastern Transmission Corp.	1-15-85	G	4-20-85
ST84-592-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Natural Gas Pipeline Co. of America	1-15-85	G	4-16-85
ST84-593-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	United Gas Pipe Line Co.	1-15-85	G	4-20-85

*These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-3421 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-68-000]

Mid Louisiana Gas Co.; Filing

Take notice that on January 25, 1985, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing Revised Fifty-First Revised Sheet No. 3a to its FERC Gas Tariff, First Revised Volume No. 1 in compliance with the Federal Energy Regulatory Commission's

December 28, 1984, order, which required Mid Louisiana to separately state purchased gas costs on this tariff sheet. In addition, Mid Louisiana submitted information required to support its production-related costs.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3418 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-49-001 and RP85-49-002]

Northwest Pipeline Corp.; Revision to Annual Compliance Report

February 6, 1985.

Take notice that on January 25, 1985, Northwest Pipeline Corporation (Northwest) filed to revise its Annual Compliance Report and Cost-of-Service Study initially filed on December 14, 1984, pursuant to sections 13 and 14 of its Rate Schedule T-1 as contained in its FERC Gas Tariff, First Revised Volume No. 1.

Northwest's revision if for the purpose of reflecting the level of debt costs applicable to Rate Schedule T-1 in compliance with the method prescribed in the Commission's order of January 16, 1985, in docket No. RP81-47-012.

Also, take notice that on January 31, 1985, Northwest filed Third Substitute Tenth Revised Sheet No. 10-A to its FERC Gas Tariff, First Revised Volume No. 1 to correct Second Substitute Tenth Revised Sheet No. 10-A filed in the revised Annual Compliance Report and Cost of Service Study dated January 25, 1985.

Section B of Second Substitute Tenth Revised Sheet No. 10-A reflected Rate Schedule T-1 Commodity charge of .931¢ per therm. This commodity has been corrected to .929¢ per therm on Third Substitute Tenth Revised Sheet No. 10-A.

Copies of these filings have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3423 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP73-36-012, et al.]

Panhandle Eastern Pipe Line Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

February 6, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, or or before February 15, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
Dec. 21, 1984	Panhandle Eastern Pipe Line Co	RP73-36-012	Report.
Jan. 3, 1985	Texas Eastern Transmission Corp	RP74-41-034	Report.
Jan. 10, 1985	Arkansas-Louisiana Gas Co	TA83-2-31-007	Report.
Jan. 14, 1985	Transwestern Pipeline Co	RP77-19-006	Report.
Do	Columbia LNG Corp	RP80-2-21-012	Report.
Jan. 15, 1985	Columbia Gas Transmission Corp	RP80-2-21-013	Report.
Jan. 16, 1985	Mississippi River Transmission Corp	RP70-1-001	Report.

[FR Doc. 85-3424 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-69-000]

Penn-York Energy Corp.; Proposed Change in Tariff

February 6, 1985.

Take notice that on January 29, 1985, Penn-York Energy Corporation (Penn-York) tendered for filing First Revised Sheet No. 7 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed tariff sheet would increase Penn-York's existing rate under Rate Schedule SS-1 from $1.1851 per Mcf to $1.4460 per Mcf of Annual Storage Volume. An effective date of March 1, 1985 is proposed.

Penn-York submits that the increased rate is required to recover increased costs of providing storage service including increased operating expenses, additional facilities to be in service by August 31, 1985, a change in rate of return, and other adjustments.

Penn-York further states that filing of this proposed rate change is in compliance with ordering Paragraph I of the Commission's June 29, 1982 Order in Docket No. CP76-492-021 (19 FERC § 61,336) which required Penn-York to justify its existing $1.1851 rate pursuant to Rate Schedule SS-1, or make a filing under Section 4 of the Natural Gas Act by April 1, 1985.

Penn-York also filed on this date Third Revised Sheet No. 7 of First Revised Volume No. 1. This tariff sheet is being filed in the event that Second Revised Volume No. 1 filed on this same date is not accepted or the Commission does not grant waiver of its regulations to allow First Revised Sheet No. 7 of Second Revised Volume No. 1 to become effective as proposed. This tariff sheet would also increase Penn-York's existing rate from $1.1851 per Mcf to $1.4460 per Mcf of Annual Storage Volume. An effective date of March 1, 1985 is also proposed.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 13, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3425 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER81-187-007, et al.]

Electric Rate and Corporate Regulation Filings; Public Service Company of New Mexico, et al.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER81-187-007]

February 5, 1985.

Take notice that on January 25, 1985, Public Service Company of New Mexico (PSCNM) submitted for filing a compliance report pursuant to the Commission's order dated December 13, 1984 and letter order dated October 12, 1984.

The refund report corrects two errors in the December Electric Bill package that was sent to the City of Gallup (Gallup). As a result of the recalculation a refund of $288.72 has been returned to Gallup.

Comment date: February 19, 1985, in accordance with Standard paragraph H at the end of this notice.

2. Montaup Electric Company

[Docket No. ER85-250-000]

February 5, 1985.

Take notice that on January 24, 1985, Montaup Electric Company submitted for filing a notice of proposed cancellation of Rate Schedule F.P.C. No. 16.

Montaup requests cancellation of Rate Schedule F.P.C. No. 16, become effective 60 days from the receipt of this filing.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER85-253-000]

February 5, 1985.

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on January 25, 1985, tendered for filing a September 10, 1984 Amendment to its Agreement dated March 7, 1975 for sale by Edison and purchase by Bangor Hydro-Electric of capacity and related energy from Mystic #7 Unit. Edison states that the Amendment provides for the purchase by of Edison of 24 and 25 MW of capacity from Hystic #7 Unit effective September 10, 1984 and November 1, 1984, respectively. Edison further requests that the portion of the Amendment pertaining to the purchase of 24 MW become effective on September 10, 1984 and that the portion of the amendment pertaining to the purchase of 25 MW become effective November 1, 1984. All other terms of the agreement remain unchanged. Edison requests an effective date of September 10, 1984.

Copies of the filing have been served upon Bangor Hydro-Electric and the Massachusetts Department of Public Utilities.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER85-252-000]

February 5, 1985

Take notice that Florida Power & Light Company (FPL) on January 25, 1985, tendered for filing a document entitled "Amendment Number Three to Contract for Interchange Service Between Florida Power & Light Company and Tampa Electric Company." Also enclosed in the filing was a Certificate of Concurrence to the proposed Amendment by Tampa Electric Company (TECO).

In order to facilitate increased interchange power transfer, FPL and TECO have modified and reconfigured the existing Big Bend—Manatee No. 2 interconnection to create a 230 kV interconnection between TECO's Big Bend Station and FPL's Johnson Substation (designated as the Johnson—Big Bend interconnection). In addition, FPL and TECO have constructed an additional 230 kV interconnection between TECO's Big Bend Station and FPL's Manatee Substation (designated as the New Big Bend—Manatee No. 2 interconnection). Accordingly, Exhibit A of the Contract for Interchange Service is being amended to reflect these modifications and additions.

FPL states that the effect on the amount of sales, services, or revenues, if any, brought about by the above described modifications and additions cannot be projected and respectfully requests a waiver of § 35.13(c) of the Commission's Regulations.

FPL requests waiver of § 35.3 of the Commission's Regulations be granted to permit the proposed Amendment Number Three to become effective as of January 25, 1985, the proposed date of commercial operation of the New Big Bend—Manatee No. 2 interconnection.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER85-247-000]

February 4, 1985.

Take notice that on January 18, 1985 Southwestern Public Service Company (SPS) tendered for filing a Petition to Waive Application of Regulation and to Approve Fuel Adjustment Clause. SPS requests an effective date of January 1, 1985. The proposed change would permit SPS to include the total cost of the energy purchases from Public Service Company of New Mexico in its fuel clause.

Copies of this filing have been mailed to all of SPS' affected customers.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Company

[Docket No. ER85-249-000]

February 4, 1985.

Take notice that on January 24, 1985, Idaho Power Company submitted for filing a Service Agreement between it and Utah Power & Light Company covering the sale of non-firm transmission service in accordance with Idaho Power Company's FERC Electric Tariff Original Volume No. 2. It is requested that this Service Agreement become effective as of January 1, 1985.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. El Paso Electric Company

[Docket No. ER85-257-000]

February 4, 1985.

Take notice that on January 28, 1985, El Paso Electric Company ("EPE") submitted for filing Amendment No. Two dated December 31, 1984, to an "Economy Energy and Short-Term Capacity Agreement" between itself and Colorado-Ute Electric Association, Inc. ("Colorado-Ute"), dated as of February 18, 1983.

EPE states that Amendment No. Two to the Agreement has two purposes: (1) It extends the term of the Agreement for one year, through May 31, 1986, and (2) it provides for continued sales of economy energy under the Agreement by Colorado-Ute to EPE.

EPE requests an effective date of April 1, 1985.

EPE also states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and the Colorado-Ute Electric Association, Inc.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. West Texas Utilities Company

[Docket No. ER85-251-000]

February 4, 1985.

Take notice that on January 24, 1985, West Texas Utilities Company ("WTU") tendered for filing unexecuted letter amendments to its electric service agreement with Texas-New Mexico Power Company (formerly Community Public Service Company) and unexecuted letter amendments to contracts for electric service with the Cities of Brady and Coleman, Texas. WTU has proposed a phased rate increase based upon a rate base which includes construction work in progress (CWIP) to the extent permitted under the Commission's regulations. Level B-2 Rates, proposed to be effective on March 27, 1985, would increase revenues from jurisdictional sales based on calendar year 1985 by $761,195 over revenues which would be generated by the settlement rates in WTU's recently concluded rate case. Level A-2 Rates, proposed to be effective on March 26, 1985, would increase revenues from jurisdictional sales by $595,213, based on calendar year 1985. The only difference between the two sets of rates is the return on common equity which the rates are designed to produce.

Copies of the filing have been served on the customers of WTU affected by the filing and upon the Public Utility Commission of Texas.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER85-246-000]

February 4, 1985.

Take notice that on January 23, 1985, Northern Indiana Public Service Company (NIPSCO) tendered for filing Third Revised Sheet No. 3 to its FERC Electric Service Tariff—Fourth Revised Volume No. 1 which has been revised to include additional delivery points for Wabash Valley Power Association at Marshall County and Newton County Rural Electric Membership Corporation. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit B, Sheet B-9, a supplement to the Service Agreement between NIPSCO and the Wabash Valley Power Association, which covers the supply of electric energy for resale at the new delivery point located SE¼ SW¼ Sec. 15, T34N, R1E in Polk Township, Marshall County, Indiana.

Exhibit B, Sheet B-5, a supplement to the Service Agreement between NIPSCO and the Wabash Valley Power Association, which covers the supply of electric energy for resale at the new delivery point located in the E½ Sec. 22, T28N, R8W, in Iroquois Township, Newton County, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCO's FERC Electric Service Tariff—Fourth Revised Volume No. 1 and the Public Service Commission of Indiana.

NIPSCO requests an effective date of December 1, 1984 for Exhibit B, Sheet B-9; November 1, 1984 for Exhibit B, Sheet B-5 and, therefore, requests waiver of the Commission's notice requirements.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3416 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-203-000]

Prince George's County, MD, Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 4, 1985.

On January 23, 1985, Prince George's County, Maryland (Applicant), of 14741 Governor Oden Bowie Drive, Upper Marlboro, Maryland 20772 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located at 13400 Dille Drive, Upper Marlboro, Maryland. The facility will consist of two 850 kW internal combustion engine-generator sets fueled by waste in the form of landfill recovered methane gas. The electric power production capacity of the facility will be 1,700 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3302 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-225-000, et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co., et al.

February 5, 1985.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. 85-225-000]

Take notice that on January 14, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-225-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the Spearhead Ranch Meter Station (SRMS) in Converse County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the current primary function of the SRMS is to measure supplies of natural gas delivered to Mountain Fuel Resources, Inc. (Resources), in the Spearhead Ranch area as part of an arrangement for Resources to supply natural gas to Woods Petroleum Company. It is explained that Resources would purchase SRMS pursuant to an agreement between CIG and Resources dated November 15, 1984. Under the terms of the agreement, CIG would sell SRMS for $36,244. It is asserted that all services currently being performed by the SRMS would continue to be available under Resources' ownership of the facility.

Comment date: February 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP88-179-006]

Take notice that on January 25, 1985, Florida Gas Transmission Company (Petitioner), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP88-179-006, a petition to amend the order issuing a certificate of public convenience and necessity, as amended, pursuant to section 7(c) of the Natural Gas Act in this proceeding so as to authorize the voluntary and temporary relinquishment of all or part of any resale customer's unused Priority 5-9 Annual Volumetric Entitlement (Entitlements) and the transfer of said unused Entitlements by Petitioner to other resale customers of Petitioner who have stated a desire to purchase gas in excess of their Priority 5-9 Entitlements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner submits that the instant proposal allows individual resale customers only, to increase their Priority 5-9 markets, while at the same time preserving the existing Entitlements structure on Petitioner's system. Also, Petitioner states this growth would be controlled and limited by the requirements for termination of the transfers in the event available gas supplies decline, and that the rights of Petitioner's direct sales customers to gas under their respective gas purchase contracts is unaffected. Additionally, Petitioner states that it would credit each releasor 1 cent per therm for each therm released and taken, and charge each receiver 1 cent per therm in addition to Petitioner's current tariff rate for each therm of released volumes taken by receivers.

Comment date: February 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP85-232-000]

Take notice that on January 17, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-232-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain leasehold interests, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest requests that the Commission issue an order granting any permission and approval deemed necessary to permit Northwest to abandon by transfer to Coastal Oil & Gas Corporation (Coastal), effective January 1, 1985, 54 percent of Northwest's working interest in the gas and gas rights under leases which originally were acquired by Pacific Northwest Pipeline Corporation (Pacific Northwest), a predecessor of Northwest, from Colorado Oil and Gas Corporation (COG), predecessor of Coastal, pursuant to a contract dated March 2, 1953, as amended, and a sublease and operating agreement dated April 12, 1955, as amended (hereinafter collectively referred to as the PLA-1 Agreements). It is explained that the proposed transfer of working interest would be effectuated in accordance with a settlement agreement between Northwest, Coastal and El Paso Natural Gas Company (El Paso) dated January 10, 1985.

It is said that under the PLA-1 Agreements, Pacific Northwest agreed to develop the PLA-1 properties and further agreed that as such time as "payout" occurred COG would be entitled to a reconveyance of an undivided one-half of the net working interest in the conveyed properties. Northwest states that Pacific Northwest undertook the development of the PLA-1 properties until the 1960 merger of Pacific Northwest into El Paso and that El Paso, in turn, succeeded to the PLA-1 Agreements until the court-ordered divestiture in 1974, when Northwest took control of the PLA-1 properties and continued their development. Northwest states further that in January 1985, Northwest, Coastal and El Paso entered into a settlement agreement providing for the complete and final settlement and release of their respective claims in litigation concerning the determination of payout occurrence under the PLA-1 Agreements. It is explained that under the settlement agreement, Northwest agreed, upon receiving Commission approval, to assign to Coastal effective as of January 1, 1985, an undivided 54 percent of the working interest conveyed by COG to Pacific Northwest under the PLA-1 Agreements to the extent such working interest is now owned by Northwest.

It is further said that the PLA-1 Agreements cover approximately 31,000 gross acres in Rio Arriba and San Juan Counties, New Mexico and LaPlata County, Colorado. It is asserted that at the present time, there are approximately 360 gas wells associated with the PLA-1 leases in which Northwest has an ownership interest and that for the twelve-month period ending October 31, 1984, Northwest's PLA-1 production from these wells was approximately 1.2 Bcf of gas.

Northwest avers that the subject leasehold production properties are not included in Northwest's rate base and the production therefrom has been deemed to be sold to the transmission division of the company at the wellhead. It is stated that each of the PLA-1 wells in which Northwest has an interest either has received or is pending final Commission approval for a maximum lawful price under section 103 or section 108 of the Natural Gas Policy Act of 1978 (NGPA) or presently is subject to a ceiling price under section 104 of the NGPA.

It is stated that Northwest and Coastal have entered into a gas purchase contract dated January 10, 1985, to provide for the continued purchase by Northwest of volumes of gas to be produced from the PLA-1 interests proposed to be transferred to Coastal and that Coastal has applied in Docket No. CI85-172-000 for

authorization to sell this gas to Northwest.

Comment date: February 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP85-226-000]

Take notice that on January 14, 1985, Columbia Gas Transmission (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-226-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Wayn-Tex, Inc. (Wayn-Tex), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 300 million equivalent of natural gas per day for Wayn-Tex through June 30, 1985. Columbia states that the gas to be transported would be purchased from POI Energy, Inc. (POI), and would be used as boiler fuel in Wayn-Tex's Waynesboro, Virginia, plant.

It is indicated that Columbia has released certain gas supplies of POI and that these supplies are subject to the ceiling price provisions of sections 102, 103 and 107 of the Natural Gas Policy Act of 1978. It is further indicated that Wayn-Tex has made arrangements to purchase this released gas from POI. Columbia states that it would receive the gas from POI and redeliver the gas to Columbia Gas of Virginia, Inc. (CVA), the distribution company serving Wayn-Tex, near Waynesboro, Virginia. Columbia would charge 29.93 cents per dt equivalent of gas as set forth in Rate Schedule TS-1 of Columbia's FERC Gas Tariff. Columbia states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to deliver points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-224-000]

Take notice that on January 14, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-224-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and appurtenant facilities under the certificate issued in Docket Nos. CP83-59-000 and CP83-59-001, as amended in Docket No. CP83-59-002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection

Lone Star proposes to construct and operate a sales tap and appurtenant facilities for the sale and delivery of natural gas in interstate commerce to one commercial customer, Wichtex, in Wichita County, Texas. It is stated that Wichtex would receive service from Line A34 at Station 35+50. Lone Star proposes to sell approximately 2,400 Mcf of gas per year to the commercial customer. It is stated that these sales would be at Lone Star's commercial rates, which are approved by the Railroad Commission of Texas.

Lone Star states that the new customer is not expected to have any significant impact on its peak day or annual system operations. Lone Star states that it is notifying the appropriate office of the Texas Historical Commission of this project for compliance with various laws, including the Endangered Species Act of 1973 and the National Historic Preservation Act of 1966. Lone Star further states that it is complying with the instructions from the U.S. Fish and Wildlife Service set forth in its letter dated March 26, 1984.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP84-260-001]

Take notice that on January 15, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-260-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of OSCO Industries, Inc. (OSCO), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to continue to transport gas to OSCO's Jackson, Ohio, plant through June 30, 1985, under the same terms as authorized in Docket No. CP84-260-000 under the prior notice procedure by notice issued March 14, 1984, except for an increase in the peak day volume from 80 million to 150 million Btu equivalent and a decrease in the annual volume from 29.2 billion to 25.75 billion Btu equivalent. Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by OSCO. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP85-222-000]

Take notice that on January 14, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-222-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to deliver additional volumes of natural gas through an existing sales tap in Dona Ana County, New Mexico, to Southern Union Company (Southern Union) [1] for resale to Delara Estates, under the certificate issued in Docket No. CP84-435-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

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[1] Southern Union's gas utility operations in New Mexico are conducted through Gas Company of New Mexico (Gas Company), a division of Southern Union. Gas Company would act as the local distributor of natural gas to the existing customer, Delores C. Wright, and Delara Estates.

Applicant states that it was authorized by Commission order issued July 17, 1973, as amended, in Docket No. CP73-292, to construct and operate a one-inch tap and valve assembly on its existing 6⅝-inch Alamogordo pipeline in Dona Ana County, New Mexico, to provide natural gas service for residential and irrigation use, through Southern Union, to Delores C. Wright, a right-of-way grantor to Applicant. It is stated that deliveries to Southern Union were made pursuant to the terms of the general tap provisions of the currently effective service agreement dated September 1, 1959, as amended (service agreement), which provides for the sale and delivery of natural gas to Southern Union at various tap locations on Applicant's system.

Pursuant to a request for natural gas service by Southern Union, Applicant proposes to deliver additional volumes through the existing tap presently use to serve Delores C. Wright. It is explained that Delara Estates comprises 37 existing residential customers of Southern Union. Applicant states that it does not plan to install any new facilities to provide this service for Southern Union.[2] Applicant further states that the estimated peak day natural gas requirements during the third calendar year of service would be 38.5 Mcf per day and that the gas would be delivered at a pressure of 100 psig. Applicant proposes to charge Southern Union the ABD-L-New Mexico rate pursuant to the terms of the service agreement.

The additional quantities of natural gas to be delivered would accommodate projected Priority 1 requirements, it is explained. Applicant states that the anticipated Priority 1 load growth, which has precipitated Southern Union's request for service to Delara Estates, would not alter Southern Union's entitlements under Applicant's Permanent Allocation Plan approved in Docket No. RP72-6, *et al.*, which was placed into service on May 1, 1981, and would be consistent with the high-priority load growth provisions as set forth in Applicant's FERC Gas Tariff.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

[2] Applicant is advised that Southern Union would furnish to each resident at Delara Estates all residential meter sets and service lines at its own expense. As to the necessary pipeline extension and delivery regulating equipment required to facilitate deliveries from the existing tap facility, Applicant is advised that Southern Union and Delara Estates would jointly finance these facilities.

8. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP85-223-000]

Take notice that on January 14, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-223-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and appurtenant facilities under the certificate issued in Docket Nos. CP83-59-000 and CP83-59-001, as amended in Docket No. CP83-59-002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate sales taps and appurtenant facilities for the sale and delivery of antural gas in interstate commerce to one residential customer in McCurtain County, Oklahoma, and one commercial customer in Cooke County, Texas. It is stated that Everett Chadwick would receive service from Line E32 + 3 at Station 1864 + 00 and Halliburton, Inc., would receive service from Line G3 at Station 32 + 48. Lone Star proposes to sell approximately 100 Mcf of gas per year to the residential customer and approximately 3,000 Mcf per year to the commercial customer. It is stated that these sales would be at Lone Star's residential and commercial rates, which are approved by the Oklahoma Corporation Commission and Texas Railroad Commission, respectively.

Lone Star states that the new customers are not expected to have any significant impact on its peak day or annual system operations. Lone Star states that it is notifying the appropriate offices of the State Historical Preservation Office and the State Archaeological Society of this project for compliance with various laws, including the National Historic Preservation Act of 1966. Lone Star further states that it is complying with the instructions from the U.S. Fish and Wildlife Service set forth in its letter dated March 26, 1984.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. K N Energy, Inc.

[Docket No. CP85-240-000]

Take notice that on January 22, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85-240-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering stations and appurtenant facilities for and service to certain direct sales customers under authorization issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to abandon the metering station and appurtenant facilities which were installed to deliver natural gas to the following direct sales customers:

Name	Docket No.
City of Alliance Power Plant	G-2392
City of Burwell Power Plant	G-1180
City of Grand Island Pine Street Station	G-259
City of Julesburg Power	G-1683
City of Sargent Power Plant	CP82-215
Consolidated Blenders, Inc.:	
Gibbon, Gothenburg, Loomis and Odessa	G-1857
Minden Plant	G-259
Overton Plant	CP75-168
Gulf Oil (two locations)	CP82-249
Kaw Dehydrating Co., Inc.	G-1857
Midwest Energy Atwood Power Plant	CP70-226
Nebraska Public Power District:	
Alma Power Plant	G-1857
Ogallala Power Plant	G-8562
Superior Oil	CP82-249
Village of Oxford Power Plant	G-259
Wheatland Electric Co-operative Scott City Plant	CP70-226

K N states that deliveries to these customers have ceased and that it has included from each customer a letter notifying K N that the facilities at the respective delivery point are no longer needed and that each customer consents to the abandonment of these facilities.

In its letter advising K N service is no longer required at the Pine Street Station, the City of Grand Island requested that this service be transferred to its Burdick Station. K N states. K N states that it does not believe such a transfer is necessary as the two stations have consistently been treated as a single customer. However, in the event it is required, K N requests authority to reassign volumes to gas from the Pine Street Station to the Burdick Station in accordance with § 157.212 of the Commission's Regulations. It is stated that the total volume to be delivered to the City of Grand Island for electric generation will not exceed the total volume authorized prior to the request. K N further states that the change is not prohibited by K N's existing tariff and that it has sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to its customers.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Arkansas Louisiana Gas Company, a division of Arkla, Inc.

[Docket No. CP85-237-000]

Take notice that on January 22, 1985, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-237-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps on three jurisdictional lines to permit direct retail sales of gas to end-users under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla proposes to construct and operate two sales taps to serve two residential customers, one in Roger Mills County, Oklahoma, and one in Grady County, Oklahoma. Arkla estimates total peak day deliveries of 2 Mcf of natural gas and annual deliveries of 180 Mcf of natural gas. Arkla also proposes to construct and operate a sales tap in St. Francis County, Arkansas, to enable Arkla to deliver gas to Phillips Super Stop and Everett Clegg Auto Repair Shop, which it is estimated would use approximately 5 Mcf of natural gas on a peak day and 2,000 Mcf of natural gas per year for commercial purposes.

Arkla states that these sales would all be retail sales of gas for use and consumption in the ordinary course of its retail gas business in the area and that the gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP85-228-000]

Take notice that on January 15, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-228-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to add an additional point of delivery of natural gas to Northern Illinois Gas Company (NI-GAS) under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to construct and operate minor measuring facilities near Aurora, DuPage County, Illinois, for the purpose of establishing a new sales delivery point to the co-generation gas needs of NALCO Chemical Company (NALCO), an end-user customer of NI-GAS. Natural states that the NALCO delivery point would be located in close proximity to an existing sales delivery point near Aurora, DuPage County, Illinois, designated as Eola Road delivery point. Natural further states that the existing Eola Road delivery point was constructed in such a way as to provide for future attachments; therefore, only minor measuring facilities need be constructed at the proposed NALCO delivery point. Natural asserts that the estimated peak day delivery of natural gas in the first year would be 1,432 Mcf and increase to 5,729 Mcf for peak days in the fifth year.

Natural submits that the proposed deliveries would not exceed NI-GAS' total entitlements and would have no detrimental effect on its ability to serve Northern's other existing customers. Natural states that the estimated $25,000.00 to construct the proposed facilities would be reimbursed by NI-GAS.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP84-228-002]

Take notice that on January 15, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 Alabama Avenue, sometimes thereinafter jointly referred to as Columbia, filed in Docket No. CP84-228-002 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Alumax Mill Products (Alumax), formerly Howmet Aluminum Corporation, under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By notice issued February 13, 1984, pursuant to the prior notice and protest procedure set forth in Section 157.205 of the Commission's Regulations, Comumbia received authorization to transport up to 3 billion Btu equivalent of natural gas per day through November 29, 1984, to Alumax's Lancaster, Pennsylvania, plant.

Columbia proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the existing transportation authority, except that maximum daily volume are to be increased from 3 billion Btu per day to 3.5 billion Btu per day.

Comment date: March 22, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the intent notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or

notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3304 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-219-000, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP85-219-000]

February 1, 1985.

Take notice that on January 11, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-219-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Dana Corporation—Parish Division (Dana) under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is no file with the Commission and open to public inspection.

Columbia proposes to transport up to 750 million Btu equivalent of natural gas per day for Dana through June 30, 1985, pursuant to an October 31, 1984, gas transportation agreement. The application refects that the gas to be transported would be produced in Meigs, *et al.*, Counties, Ohio, and purchased from Trans-Continental Energy (Trans-Continental) pursuant to a May 8, 1984, gas purchase agreement, and would be used as fuel for heat treating/tempering furnaces and frame-heat ovens in Dana's Reading, Pennsylvania, plant.

Columbia indicates that the gas to be transported for Dana is from an off-system source, has never been dedicated to a purchaser, and therefore was not released by Columbia. Columbia states that it would receive the gas from Trans-Continental in Ohio and would redeliver the gas near Reading, Pennsylvania, to UGI Corporation, the distribution company serving Dana. Columbia proposes to charge 29.93 cents per dt equivalent for the transmission of gas, plus the applicable GRI charge, all as set forth in Rate Schedule TS-1 of Columbia's FERC Gas Tariff. Columbia also states that it would retain 2.43 percent of the total quanity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in its Rate Schedule TS-1.

Columbia requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85-215-000]

February 1, 1985.

Take notice that on January 11, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027 (sometimes referred to jointly as Columbia), filed in Docket No. CP85-215-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Genstar Stone Products, Division of Flintkote Company subsidiary of Genstar Corporation (Genstar), under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000 respectively, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to one billion Btu equivalent of natural gas per day for Genstar for a term through June 30, 1985. It is stated that the gas to be transported would be purchased from Exxon Corporation (Exxon) and would be used as process gas in Genstar Cockeysville, Maryland, plant.

It is indicated that Columbia Gulf would receive the gas from Exxon at existing receipt points in Louisiana and redeliver the gas to Columbia Gas, which would then redeliver the gas to Baltimore Gas and Electric Company, the distribution company serving Genstar in Cockeysville, Maryland.

It is further indicated that Columbia Gas would charge the current transportation rate set forth in its Rate Schedule TS-1 and that Columbia Gulf would charge the current transportation rate set forth in its Rate Schedule TS-2. It is explained that Columbia Gas would retain 2.43 percent of the total quantity of gas delivered into its system for company-used and unaccounted-for gas and that Columbia Gulf would retain the applicable percentage as set forth in its Rate Schedule TS-2.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP84-259-001]

February 1, 1985.

Take notice that on January 10, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-259-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to extend the transportation of natural gas on behalf of Stratoflex, Inc. (Stratoflex), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that it began transporting gas to Stratoflex's Green Camp, Ohio, plant on January 6, 1984, pursuant to § 157.209 of the Commission's Regulations for a term extending from January 6, 1984, through January 5, 1985. On February 27, 1984, Columbia filed a request for authorization, *inter alia*, to transport up to 215 million Btu of natural gas per day on behalf of Stratoflex, it is stated. The Commission issued a notice of Columbia's request on March 14, 1984, and, since no protest to the proposed transportation was filed with the Commission, Columbia was authorized to transport gas on behalf of Stratoflex for the term of the transportation agreement which expired January 5, 1985, it is further stated.

Columbia states that Stratoflex has requested that Columbia continue transporting the gas through June 30, 1985. Columbia explains that a new gas transportation agreement is being entered into which would provide for Columbia to continue transporting up to 215 million Btu of natural gas per day on behalf of Stratoflex to its Green Camp plant through June 30, 1985. Columbia avers that Columbia Gas of Ohio, Inc., the distribution company serving Stratoflex, has indicated that it has the capacity to perform the transportation without detriment or disadvantage to its other customers.

Comment date: March 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP85-206-000]

February 1, 1985.

Take notice that on January 7, 1985, Trunkline Gas Company (Applicant), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP85-206-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and redelivery of natural gas on behalf of Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement, dated August 28, 1984, between Applicant and Bridgeline, Applicant would transport up to 27,000 Mcf of natural gas per day on a firm basis and 13,000 Mcf per day on an interruptible basis on behalf of Bridgeline. Applicant states that no new facilities would be required. Applicant states that it would receive the gas at a point of receipt in South Block 147, offshore Louisiana, and deliver at points of interconnection with Riverway Gas Pipeline Company and Columbia Gulf Transmission Company in St. Mary Parish, Louisiana. Applicant further states that Bridgeline would pay a monthly charge of $33,210 for firm volumes and a unit rate of $4.05 per Mcf for interruptible volumes.

It is explained that after four years, Bridgeline would have the right to reduce the firm and interruptible quantities not excluding 50 percent of the initial quantities.

The subject gas, it is explained, would be purchased by Bridgeline from Texaco Inc. and Amax Petroleum Company in the South Timbalier Block 200, offshore Louisiana.

Comment date: February 21, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP82-3-002]

February 1, 1985.

Take notice that on January 14, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP82-3-002 a petition to amend the order issued November 26, 1982, in Docket No. CP83-3-000 pursuant to section 7(c) of the Natural Gas Act so as to add and delete areas of interest specified in a gas transportation and exchange agreement with Mountain Fuel Resources, Inc. (Resources), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the order of November 26, 1982 (21 FERC ¶ 61,197), the Commission issued to CIG a certificate of public convenience and necessity authorizing the transportation and exchange of up to 300,000 Mcf of natural gas per day with Resources, pursuant to a gas transportation and exchange agreement, dated December 8, 1980 (Agreement). CIG states that only gas from supply sources from the areas of interest specified in the Agreement may be transported or exchanged. CIG further states that both it and Resources have acquired new sources of supply outside of the specified areas of interest and that some areas of interest specified in the agreement are no longer producing or have never produced gas. According to CIG, on December 31, 1984, CIG and Resources entered into an amendment, whereby certain areas of interest are either added or deleted from the Agreement. CIG therefore petitions for authorization to amend the order of November 26, 1982, to reflect these additions and deletions.

Comment date: February 21, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Trunkline Gas Company

[Docket No. CP85-208-000]

February 1, 1985.

Take notice that on January 7, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP985-208-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Bridgeline dated August 28, 1984, Applicant states it has agreed to transport up to 120,000 Mcf of gas per day on behalf of Bridgeline in the first year with annual contract reductions through the term. Applicant explains it would receive gas for Bridgeline's account at points of receipt in West Cameron Blocks 536 and 565, offshore Louisiana, using its allocated capacity in the system of Stingray Pipeline Company. Applicant states it would redeliver the gas for Bridgeline's account at points of interconnection with Riverway Gas Pipeline Company in St. Mary Parish, Louisiana, Columbia Gulf Transmission Company in St. Mary Parish, Louisana, and ANR Pipeline at the superior Lowry plant in Cameron Parish Louisina. For this transportation service Bridgeline would pay $5.38 for firm volumes and a unit rate of 17.90 cents per Mcf for interruptible volumes. Applicant states that the gas to be transported would be purchased by Bridgeline from Texaco Inc. in West Cameron Blocks 536-565, offshore Louisiana.

Comment date: February 21, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP84-168-001]

February 1, 1985.

Take notice that on January 15, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue,

Houston, Texas 77027, filed in Docket No. CP84–168–001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of St. Regis Corporation (St. Regis) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants proposes to continue transporting gas to St. Regis' York, Pennsylvania, plant through June 30, 1985, under the same terms as authorized in Docket No. CP84–168–000 under the prior notice procedure by notice issued January 13, 1984, except for an increase in the peak day volume from 3.5 billion to 5.444 billion Btu equivalent of natural gas.

Comment date: March 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85–230–000]

February 1, 1985.

Take notice that on January 15, 1985, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, and Columbia Gulf Transmission Company (Columia Gulf) (jointly referred to as Applicants), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85–230–000 a joint request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR § 157.205) for authorization to transport natural gas for Armstrong World Industries, Inc. (Armstrong), under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport, until June 30, 1985, up to 3,125 million Btu of natural gas per day to Armstrong's Marietta, Pennsylvania, plant and up to 825 million Btu of natural gas per day to Armstrong's Lancaster, Pennsylvania, plant. It is indicated that Armstrong has purchased gas from Exxon Corporation (Exxon) and that Exxon would deliver this natural gas to Columbia Gulf, which Columbia Gulf would transport and deliver to Columbia. It is further stated that in turn Columbia would transport and deliver equivalent volumes of natural gas to UGI Corporation (UGI) at points near Marietta and Lancaster, Pennsylvania. It is stated that UGI is the distribution company serving Armstrong in Marietta and Lancaster, Pennsylvania.

For this transportation Applicants state Columbia Gulf would charge Armstrong, pursuant to Rate Schedule T–2 of its FERC Gas Tariff, various rates and retain various amounts of gas for company-use and unaccounted-for gas. These charges are said to be:

Transportation	Cents per dt	Retainage (percent)
From offshore to Kentucky	23.92	1.69
From onshore lateral to Kentucky	14.26	1.50
From Rayne, Louisiana, to Kentucky	12.76	1.50
From Corinth, Mississippi, to Kentucky	6.38	0.75

Applicants also state that Columbia would charge Armstrong, pursuant to Rate Schedule TS–1 of its FERC Gas Tariff, various rates. These rates are said to be:

For gas received from Columbia Gulf at	Cents per dt
Leach, Kentucky, within Armstrong's total daily entitlement (TDE)	21.16
Points other than Leach, Kentucky, within Armstrong's TDE	29.93
Leach, Kentucky, in excess of Armstrong's TDE	32.50
Points other than Leach, Kentucky, in excess of Armstrong's TDE	41.27

It is stated that in addition Columbia would retain 2.43 percent of the gas for company-use and unaccounted-for gas and would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported for Armstrong.

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 18, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gas Transmission Corporation

[Docket No. CP85–205–000]

January 31, 1985.

Take notice that on January 25, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 McCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–205–000 a letter changing its request under blanket authority relating to proposed transportation of natural gas for an end-user, all as more fully set forth in the letter which is on file with the Commission and open to public inspection.

The original Notice of Request Under Blanket Authority in Docket No. CP85–205–000 filed pursuant to § 157.205 of the Commission's regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of an end-user under the certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act was issued January 10, 1985, with a 45-day due date for protests to the request occurring February 25, 1985. Absent protests to the request to effective date of the proposed activity shall be February 26, 1985.

Columbia Transmission has changed the third paragraph of Section II, which begins at the bottom of page 2 and ends at the top of page 3 of Columbia Transmission's request, to the following:

Columbia Transmission will charge one of the rates set forth in Rate Schedule TS–2 of its FERC Gas Tariff, Original Volume No. 1. The Current rates for Rate Schedule TS–2 are as follows: received from Columbia Gulf at Leach, Kentucky—32.50¢ per Dth; and received from receipt points other than Leach, Kentucky—41.27¢ per Dth. Columbia Transmission also retains for company-use and unaccounted-for gas a percentage, as reflected in rate schedule TS–2, of the total quantity of natural gas delivered into its system hereunder. This percentage is currently 2.43%. In addition to the foregoing transportation charges, PPG is being charged to current General R & D Funding Unit of the Gas Research Institute.

Comment date: February 25, 1985, in accordance with standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-3303 Filed 2-8-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE- FRL-2775-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 USC 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Pesticides and Toxic Substances Programs

- Title: Generic Section 8(a) Chemical Rules (EPA #1198).

Abstract: EPA requires persons to notify EPA if they manufacture, import, or process or propose to manufacture, import, or process the chemical substance or mixture identified in the 8(a) rule. This notice enables EPA to monitor the production, importation, and uses of the identified chemical substance or mixture.

Respondents: Chemical Manufacturers, Importers.

- Title: Surveys of Household Exposure to Common Chemical Products (EPA #1200).

Abstract: EPA is developing surveys to collect information on usage of common chemical products in the home. EPA will use the survey results in the calculation of exposure assessments for chemicals found in common household products.

Respondents: Householders.

* * * * *

Agency PRA Clearance Requests Completed By OMB

EPA #0232, Lead Additive Report for Refineries and Importers; Lead Additive Report for Manufacturing Facility or Site, was approved 1/16/85 (OMB #2060-0066; expires 3/31/87).

EPA #1078, NSPS—Phosphate Rock Plants, was approved 1/16/85 (OMB #2060-0111; expires 9/30/87).

EPA #1129, NSPS—Secondary Brass and Bronze Ingot Production Plants (Subpart M)—Reporting and Recordkeeping, was approved 1/16/85 (OMB #2060-0110; expires 9/30/87).

EPA #0575 and EPA #0586, Amendment to the Health and Safety Rule (8d) to Require Automatic Reporting on ITC "Non-designated" Chemicals; Amendment to the Preliminary Assessment Information Rule (8a) to Require Automatic Reporting on ITC "Non-designated" Chemicals; both were approved 1/25/85. #0575 (OMB #2070-0004) expires 5/31/85; #0586 (OMB #2070-0054) expires 4/30/86.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: February 5, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-3215 Filed 2-8-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 140055; FRL-2776-4]

SYCOM, Inc., Logic Unlimited, Inc., Tolemac; Access to Data by Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Toxic Substances (OTS) has contracted with SYCOM, Inc., which, in turn, has subcontracted with Logic Unlimited and Tolemac, for the development, testing, and modification of software for existing and planned OTS automated information systems. To perform this work, the contractor and its subcontractors will require access to information that has been claimed

confidential under the Toxic Substances Control Act. No confidential data or documents will be removed from OTS premises under this contract.

DATE: The access to confidential data submitted to EPA will occur no sooner than February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800-424-9065), In Washington, D.C. (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances has developed and is using several automated systems for processing information submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). These systems, some of which operate on the confidential OTS computer system, were developed to support the existing chemical review program and the Premanufacture Notice (PMN) review program by providing the capacity to retrieve information about chemical substances similar to those under review. Another of these systems, the Document Tracking System, was developed to control and track all documents containing Confidential Business Information (CBI) received from submitters or produced by Agency personnel in the course of the review process.

Because of the increasing volume of information being received by the Agency and the evolution of its information needs, there is a continual need for technical assistance in the development, testing, and modification of software for these systems as well as for possible new systems. OTS has contracted with SYCOM, Inc., of Chantilly, Virginia, which, in turn, has contracted with Logic Unlimited, of McLean, Virginia, and Tolemac, of Reston, Virginia, under Contract No. 68-01-6919, to perform these functions.

Contractor and subcontractor personnel will not conduct substantive review of any TSCA CBI under this contract; however, execution of its provisions will require that these personnel be given access to TSCA CBI on computer screens in order to evaluate the technical aspects of the OTS computer systems to effect the above-noted improvements. In addition, these personnel will occasionally be required to review CBI documents to compare the hardcopy data to those data elements contained in the computer systems.

Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that access to information submitted to the Agency under sections 5 and 8 of TSCA that may be claimed confidential is necessary for the satisfactory performance by the contractors and subcontractors of the contract noted above. Such access will be permitted only on EPA premises. Because the contractor and subcontractors will be given authorization for access to information that may be claimed confidential, EPA is issuing this notice to all submitters of information under sections 5 and 8 of TSCA.

SYCOM Inc., Logic Unlimited, and Tolemac will be given authorization for access to TSCA CBI under the EPA security manual "Contractor Requirements for Control and Security of TSCA Confidential Business Information." Contractor and subcontractor personnel working on these projects will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before being permitted access to TSCA CBI or computer systems containing such information. These personnel will be required to treat all TSCA CBI in accordance with the "TSCA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated February 1, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-3332 Filed 2-8-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2776-6]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in Conference Room 112, The Lombardy Hotel, 2019 I Street NW., Washington, DC, on February 26-27, 1985. The meeting will begin at 9:00 a.m. and last until approximately 5:00 p.m. each day.

The purpose of the meeting is to continue the Committee's review of Agency criteria for the banning of certain wastes from land disposal, and of a probabilistics methodology for analyzing the impacts of urban runoff on water quality.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Staff Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such comments must contact Mr. Torno prior to February 22, 1985 in order to be placed on the agenda.

Dated: February 5, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-3488 Filed 2-8-85; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974, as Amended; Proposed Privacy Act System of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed Privacy Act Record System EEOC-10, Commission Claims Collection Records.

SUMMARY: Notice is hereby given that the Equal Employment Opportunity Commission proposes to establish a system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The proposed system, EEOC-10, Commission Claims Collection Records, will contain information on individuals who are or have been subject to claims collection actions by the Commission.

DATES: The Commission is publishing this proposed system of records for notice and comment by the public. Comments on the proposed system must be received within 60 days of the date of publication of this notice (April 12, 1985). The Commission proposes to consider submitted comments for a period of at least 10 days before adopting the system.

ADDRESSES: Interested persons are invited to submit written comments on the proposed system to Cynthia Matthews, Executive Officer, Executive Secretariat, EEOC, 2401 E Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco or R. William Mason, Legal Services, Office of Legal Counsel, EEOC, Room 214, 2401 E Street, N.W., Washington, D.C. 20507, tel. (202) 634-6592.

SUPPLEMENTARY INFORMATION: Public Law 97-365, the Debt Collection Act of 1982, was enacted on October 25, 1982. As its legislative history indicates, its

primary purpose is to enhance the capability of Federal agencies to collect money or property owed to them by persons as a result of their participation in Federal programs or activities. To this end, Federal agencies were given new or broader authorities to collect debts by administrative offset or by offset against the salary of Federal employees; by encouraging the use of credit bureaus; by specifically authorizing agencies to contract for commercial collection services; and by assessing interest, processing and handling costs, and penalty charges, under specified conditions. At the same time, the Act provides a number of new procedures and safeguards, designed to assure that alleged debtors will be provided appropriate due process protections if they dispute the merits of the debt or the amount or terms for its collection.

In order to carry out its responsibilities under the Debt Collection Act of 1982 as well as other Federal claims collection statutes, the Commission proposes that all its claims collection records be maintained in a separate centralized system of records at its headquarters office. The proposed system of records, System EEOC–10, Commission Claims Collection Records, is described in the proposed system specified below.

The purpose of this proposed system of records is to maintain separately information necessary for effective and proper collection of claims owed by individuals to the government by salary offset, administrative offset, or other forms of collection actions. These records are utilized by authorized personnel of the Commission and its debt collection service contractors to identify and locate individuals subject to claims of the Commission or other Federal agencies; to determine indebtedness and effect, through proper procedures and proceedings, the recovery of debts owed to the Commission and other Federal agencies; to substantiate compromise, forgiveness, waiver, suspension or termination of claims collection actions; and to provide information for periodic reports on claims collection activities of the Commission.

The Commission is proposing a separate new system of records for claims collection activities rather than revising its systems, EEOC–7 and EEOC–8, Employee Pay and Leave Records and Employee Travel and Reimbursement Records, for several reasons. Claims collection actions generate separate case files on each individual subject to a claim by the government. Each case file contains evidence, determinations, and documentation of actions taken regarding the claim. A new, separate system of records rather than revision of existing systems will more readily reflect the existence of these individual case files and the centralized nature of EEOC's collection procedures. The publication of this proposed system of records as a separate system should also provide much better notice to individuals that the Commission maintains documents and evidence on claims separately from other records, that such evidence is readily accessible for substantiating claims owed to the government and that there are collection procedures, including the use of other government agencies, collection agencies and credit bureaus, available to the government. Thus, resolution and payment of claims should be furthered. Moreover, a separate system of records on claims collection actions should provide an individual better access to these records, thus aiding prompt resolution or payment of a claim as well as assisting in securing access rights to such records as provided in the Debt Collection Act of 1982, Pub. L. 97–365, 31 U.S.C. 3711, 3716.

The maintenance of this separate system of records on claims collection activities should have a positive effect on the privacy and other personal or property rights of the individuals involved. As indicated in the preceding paragraph, the proposed system of records will further information about and access to records on a claim against an individual. This information and access will enhance the accurate and proper resolution of claims. Moreover, the access provided by this system will further due process rights. Both the centralized nature of this system and the security measures provided will assure that information collected remains private. Information in this system will only be disclosed to those entities noted in the "Routine Use" section of the proposed system or as otherwise authorized by the Privacy Act exemptions at 5 U.S.C. 552 a(b).

The Commission is not proposing to exempt this system or records under subsections (j) or (k) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (j) or (k). There is no regulatory impact under Executive Order 12291. Under section 605(b) of the Regulatory Flexibility Act, the Commission further certifies that this proposed system of records will not have a significant impact on a substantial number of small entities.

A report on the new system of records has been submitted to the Office of Management and Budget. The proposed system of records "System EEOC–10, Commission Claims Collection Records" appears below.

Signed at Washington, D.C., this 29th day of January 1985.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

EEOC–10

SYSTEM NAME:

Commission Claims Collection Records.

SYSTEM LOCATION:

These records are located in the Finance Branch, Budget and Finance Division, Financial Management Services, Office of Management, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is determined to be indebted to the United States as a result of his or her interaction or financial activities with the Commission or another Federal agency including, but not limited to, any current or former Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is composed of:

a. Case Files. These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counter-claims, judgments and documents evidencing payment or compromise of the debt.

b. Internal Revenue Service (IRS) Mailing address Index. Consists of cards containing the name and other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this

information was received from the IRS, and the purpose to which the information has been put.

c. Index on Disclosures to Consumer Reporting Agencies. Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type information reported.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR Parts 91–93, 101–105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this system of records is to provide for the effective and proper collection of claims owed to the United States through salary offset, administrative offset, or other collection actions. The records are used by authorized personnel of the Commission and its debt collection service contractors to identify and locate individuals subject to claims of the Commissiom or of other agencies of the United States Government; to determine indebtedness and effect, through proper procedures and proceedings, the recovery of debts owed to the Commission or to other Federal agencies; to substantiate compromise, forgiveness, waiver, suspension or termination of claims collection actions, and to provide information for periodic reports on claims collection activities of the Commission. These records may also be used in disclosing information:

a. To appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To appropriate officials and employees of the General Accounting Office (GAO) for decisions and instructions on waiver requests, for approval of agency claims arising from audit exceptions taken by GAO to agency payments, for resolution and instruction on possibly doubtful agency claims, and for reporting purposes.

c. To appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

d. To another Federal agency for the purpose of collecting a debt owed to the Commission by an individual through salary offset or administrative offset undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

e. To another Federal agency for the purpose of collecting a debt owed to that agency by an individual through salary offset or administrative offset undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

f. Regarding a debtor's name and social security number, to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

g. Regarding mailing addresses obtained from the IRS, to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

h. To a Congressional office made in response to the request of an individual subject of this system.

i. To an agency, whether Federal, State, local or foreign, charged with the responsibility of investigating a violation or potential violation of a law, whether civil criminal or regulatory in nature, and whether arising by general statue or particular program statute, or by regulations, rule or order issued pursuant thereto.

j. To a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

k. To a Federal agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

l. To officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on microfiche and index cards.

RETRIEVABILITY:

These records are indexed by the name of the individual and his or her social security number. The records may be retrieved by either of these indexes.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have acces. Access to an use of these records is limited to those persons whose official duties require such access and to those persons indicated in the listing of routine uses above.

RETENTION AND DISPOSAL:

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

SYSTEM MANAGER AND ADDRESS:

Director, Financial Management Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Room 334, Washington, D.C. 20507.

NOTIFICATION PROCEDURES:

Individuals obtain notification of claims collection records on themselves under statutory procedures for salary offset, administrative offset, and disclosing information to a consumer reporting agency. They may also, pursuant to this Notice, contact the above-noted System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names, and all maiden or alias names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent in order for their records to be located and identified and response to be sent. See 29 CFR Part 1611.

RECORD ACCESS PROCEDURES:

Under statutory procedures for salary offset, administrative offset, and disclosing information to a consumer reporting agency, individuals are encouraged to inspect and copy

government records relating to claims owed by them. They may also, pursuant to this Notice, contact the above-noted System Manager for access to the collection records on themselves.

Individuals must provide their full names, and all maiden or alias names under which records may be maintained, their social security number and a mailing address to which a reply should be sent in order for their records to be located and identified and a response to be sent. They must also follow the EEOC's Privacy Act regulations regarding access to records and verification of identity (29 CFR Part 1611).

CONTESTING RECORDS PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a collection action by the Commission will be limited to determining if the record accurately documents the actions of the agency on the claims against them and will not include a review of any determinations for findings regarding the claims.

Individuals wishing to request amendment to their records to correct factual errors should contact the System Manager noted above, furnish their names, and all maiden or alias names under which records may be maintained, their social security number, and follow the EEOC's Privacy Act regulations regarding amendment to records and verification of identity (29 CFR Part 1611).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By other Federal agencies,

c. From personnel, payroll, travel records, contract records or other records,

d. From administrative hearings,

e. From court records,

f. By consumer reporting agencies.

[FR Doc. 85-3404 Filed 2-8-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 31, 1984.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submissions are available from Terry Johnson, Agency Clearance Officer, (202) 634-1535. Persons wishing to comment on these information collections should contract David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0242
Title: Section 74.604, Frequency Selection to Avoid Interference
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 365 Responses; 365 Hours

OMB Number: 3060-0241
Title: Section 74.633, Temporary Authorizations
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 365 Responses; 1,460 Hours

OMB Number: 3060-0240
Title: Section 74.651, Equipment Changes
Action: Extension
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 365 Responses; 365 Hours

OMB Number: 3060-0157
Title: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA)
Action: Revision
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 150 Responses; 38 Hours

OMB Number: None
Title: Section 76.614, Cable Television System Monitoring
Action: New collection
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 400 Recordkeepers; 32,000 Hours
Description: Cable television operators will be required to provide for regular signal leakage monitoring of their cable television systems and must maintain a log showing the date and location of each leakage source identified, the date on which the leakage was eliminated, and the probable cause of the leakage.

OMB Number: None
Title: Section 76.615, Notification Requirements
Action: New collection
Respondents: Businesses (including small businesses)
Estimated Annual Burden: 400 Responses; 32,000 Hours
Description: Under certain conditions cable television system operators will be required to notify the Commission when transmitting any carrier or other signal component on any new frequency or frequencies in the aeronautical frequency bands.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-3367 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

Agency Information Collection Requirements Under OMB

February 4, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632-7513.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301

The approval on FCC 301 has been extended through 12/31/87. The January 1982 edition with an OMB expiration date of 12/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0041
Title: Application for Authority to Operate A Broadcast Station By Remote Control or to Make Changes in a Remote Control Authorization
Form No.: FCC 301-A

The approval on FCC 301-A has been extended through 12/31/87. The August 1982 edition with an OMB expiration date of 12/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0076
Title: Annual Employment Report
Form No.: FCC 395

The approval on FCC 395 has been extended through 12/31/87. Updated forms will be made available for the report to be filed in 1985.

OMB No.: 3060-0095
Title: Annual Employment Report—Cable Television
Form No.: FCC 395-A

The approval on FCC 395-A has been extended through 12/31/87. Updated forms will be made available for the report to be filed in 1985.

OMB No.: 3060-0107
Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information

Form No.: FCC 405–A

The approval on FCC 405–A has been extended through 12/31/87. The July 1982 edition with an OMB expiration date of 12/31/84 will remain in use until updated forms are available.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–3379 Filed 2–8–85; 8:45 am]

BILLING CODE 6712–01–M

Agency Information Collection Requirements Under OMB Review

February 5, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632–7513.

OMB No.: 3060–0057
Title: Application for Equipment Authorization
Form No.: FCC 731

The approval on form FCC 731 has been extended through 1/31/88. The April 1982 edition with an OMB expiration date of 3/31/85 will remain in use until updated forms are available.

OMB No.: 3060–0085
Title: Employment Inquiry
Form No.: FCC 65

A revised form FCC 65 has been approved for use through 1/31/88. The January 1982 edition with an OMB expiration date of 12/31/84 will remain in use until revised forms are available.

OMB No.: 3060–0097
Title: Fee Refund Program (Phase I)—Refund Request
Form No.: FCC 199–A/199–B

The approval of forms FCC 199–A and 199–B has been extended through 1/31/88. The May 1979 edition will remain in use until the program is terminated.

OMB No.: 3060–0100
Title: Fee Refund Program (Phase II)—Refund Request
Form No.: FCC 199–C

The approval on form FCC 199–C has been extended through 1/31/88. The August 1980 edition will remain in use until the program is terminated.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–3376 Filed 2–8–85; 8:45 am]

BILLING CODE 6712–01–M

Butte Creek Communications Co. et al.; Hearing Designation Order

In re applications of:

William G. Holdinghausen and Nancy Holdinghausen d/b/a Butte Creek Communications Co.	MM Docket No. 84–1315; File No. BPCT–840627KE.
John David Gomez, Gaylene Gomez and Matt V. Tuter d/b/a Gomez Broadcasting.	MM Docket No. 84–1316; File No. BPCT–840828KE.
Garcia Communications	MM Docket No. 84–1317; File No. BPCT–840828KG.
Garry Spire and Lawrence Rogow d/b/a Venture Technologies.	MM Docket No. 84–1318; File No. BPCT–840829KJ.

For Construction Permit Paradise, California.

Adopted: December 20, 1984.
Released: February 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of William G. Holdinghausen and Nancy Holdinghausen d/b/a Butte Creek Communications Co. (Butte Creek), John David Gomez, Gaylene Gomez and Matt V. Tuter d/b/a Gomez Broadcasting (Gomez), Garcia Communications (Garcia), and Garry Spire and Lawrence Rogow d/b/a Venture Technologies (Ventech) for authority to construct a new commercial television station on Channel 46, Paradise, California.

2. The effective radiated power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower heights and locations proposed by Gomez and Ventech would not constitute a hazard to air navigation.[1] Accordingly, an issue regrding this matter will be specified.

4. Section II, question 3(b), FCC Form 301, inquires whether any funds, credits, etc., for the construction, purchase or operation of the station(s) will be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents. Ventech gave a positive answer to question 3(b) but did not include the required exhibit. Ventech will be required to submit the appropriate exhibit in response to question 3(b) to the presiding Administrative Law Judge within 20 days after this Order is released.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues speified below.

6. 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 there is a reasonable possibility that the tower height and location proposed by John David Gomez, Gaylene Gomez and Matt V. Tuter d/b/a Gomez Broadcasting, and Garry Spire and Lawrence Rogow d/b/a Venture Technologies would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that Garry Spire and Lawrence Rogow d/b/a Venture Technologies shall submit the appropriate exhibit to Section II, question 3(b), FCC Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594

[1] The Commission is not in receipt of FAA's determination for the tower proposed by either applicant.

of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-3362 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

Murray Cohen and Edward J. Mallorkey; Hearing Designation Order

In re applications of:

Murray Cohen, d/b/a MATS for a New Local Service (VHF) Public Coast Station at Old Saybrook, Connecticut.	PR Docket No. 184-1312 File No. 353-M-L-83.
Edward J. Mallarkey For a New Local Service (VHF) Public Coast Station at Farmingville, New York.	PR Docket No. 84-1313 File No. 353-M-L-83.

Adopted: December 6, 1984.
Released: February 5, 1985.

1. The applications of Murray Cohen d/b/a MATS and Edward J. Mullarkey propose to establish new local service (VHF) public coast stations at Old Saybrook, Connecticut and Farmingville, New York, respectively. These stations privide ship/shore VHF radiotelephone service which is primarily of a local nature rather than of a regional or high seas nature.[1]

2. Both applications propose to establish service on the same working frequency 161.975 MHz. Section 81.303 of the rules, 47 CFR 81.303, prohibits duplication of service areas by local service (VHF) public coast stations operating on the same frequency. The service areas of the Old Saybrook and Farmingville applications, as computed pursuant to Subpart R of Part 81 of the rules, overlap. Therefore they are mutually exclusive. No other local service (VHF) frequency is available in the area for assignment to a public coast station. Accordingly, these applications must be designated for comparative hearing.

3. Great Eastern Communications Company (Great Eastern) filed a Petition to Deny MATS' application on September 28, 1983. The controversy focused on shadow loss effects when computing coverage areas in accordance with Subpart R of Part 81. However, MATS filed a revised technical proposal and by letter dated October 2, 1984, Great Eastern stated that the amendment mooted its Petition to Deny and requested that it not be made a party to any further proceedings with respect to MATS' application.

4. In view of the foregoing, it is ordered, that pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and § 0.331 of the Commission's rules, 47 CFR 0.331, the above captioned applications are designated for hearing at a time and place to be specified in a subsequent Order on the following comparative issues:

a. To determine the facts with respect to the facilities, personnel, rates, practices, interconnection with land line facilities and services of each applicant, including the geographical area proposed to be served by each.

b. To determine the nature and amount of traffic to be handled by each of the proposed stations and from what sources such traffic will be derived.

c. To determine each applicants' proposed methods of operating local service public coast stations.

d. To determine, in light of the evidence adduced on issues (a), (b) and (c) above and in light of existing service available, which application should be granted in the public interest, convenience and necessity.

5. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants MATS and Mullarkey shall, in accordance with § 1.221(c) of the Commission's rules, 47 CFR 1.221(c), in person or by attorney and within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 85-3364 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

[1] 47 CFR 81.3 (i), (k) and (l).

Susan Harris et al.; Hearing Designation Order

In re applications of:

Susan Harris	MM Docket No. 84-1319; File No. BPCT-840628KH.
Clara Rose Apodaca	MM Docket No. 84-1320; File No. BPCT-840829KI.
Channel 19 Partnership	MM Docket No. 84-1321; File No. BPCT-840829KK.

For Construction Permit for New Television Station Santa Fe, New Mexico.

Adopted: December 20, 1984.
Released: February 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Susan Harris, Clara Rose Apodaca (Apodaca), and Channel 19 Partnership (Partnership) for authority to construct a new commercial television station on Channel 19, Santa Fe, New Mexico.

2. Section V-C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. Susan Harris has not submitted this information. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Susan Harris will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

3. Susan Harris proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15 dB. Susan Harris proposes a directional antenna with a maximum-to-minimum ratio of 40 dB, but no waiver has been requested. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Susan Harris has not supplied this data, and the information submitted by Apodaca is tabulated every 15°. Accordingly, each of these applicants will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy to the TV Branch, Video Services Division, and the Hearing Branch, Enforcement Division, within 20 days after the date of the release of this Order.

5. The information submitted in the applications filed by Apodaca and Partnership regarding each proposed tower does not agree with the information filed with the Federal Aviation Administration. The

application filed by Apodaca specifies 305 feet as the overall antenna height above ground; however, the Commission's records indicate that the FAA has approved 302 feet. The geographic coordinates in the application filed by Partnership do not agree with the coordinates filed with the FAA. Apodaca and Partnership will each be required to submit a clarifying amendment, and, if necessary, to file FAA Form 7460–1 with the FAA.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Susan Harris whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that Susan Harris and Clara Rose Apodaca shall each submit an amendment providing the information required by Section 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the TV Branch, Video Services Division, and Hearing Branch, Enforcement Division, within 20 days after the date of release of this Order.

9. It is further ordered, that Clara Rose Apodaca and Channel 19 Partnership, shall each submit an amendment to eliminate the discrepancies described in Paragraph 5, to the presiding administrative Law Judge within 20 days after the date of the release of this Order.

10. It is further ordered, that Susan Harris submit an amendment specifying the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–3363 Filed 2–8–85; 8:45 am]

BILLING CODE 6712-01-M

Hi Band Broadcasting Co. and Microband Corporation of America; Hearing Designation Order

In re applications of:

Hi Band Broadcasting Company.	CC Docket No. 84–1333; File No. 10438–CM–P–80.
Microband Corporation of America.	CC Docket No. 84–1334; File No. 50043–CM–P–81.

For Construction Permits in the Multipoint Distribution Service for a new station at Fond du Lac, Wisconsin.

Adopted: December 24, 1984.
Released: February 5, 1985.

By the Common Carrier Bureau.

1. For consideraton are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Fond du Lac, Wisconsin. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as result of informal request by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Hi Band Broadcasting Company, Microband Corporation of America and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–3365 Filed 2–8–85; 8:45 am]

BILLING CODE 6712-01-M

WHIS Unlimited Inc. and Garcia Communications; Hearing Designation Order

In re applications of:

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

WHIS Unlimited, Inc.	MM Docket No. 84-1322 File No. BPCT-840702KE.
Garcia Communications	MM Docket No. 84-1323 File No. BPCT-840828KI.

For Construction Permit for New Television Station, Gulf Shores, Alabama.

Adopted: December 20, 1984.
Released: February 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 55, Gulf Shores, Alabama.

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by WHIS would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Section II, Item 5(a), FCC Form 301, requires that Table I be completed with respect to all parties to the application. WHIS has listed several principals, but has failed to specify the office held by each principal. Also, WHIS has failed to specify each principal's percentage of ownership. WHIS shall submit an amendment specifying the office held by each principal and the percentage of ownership to the Administrative Law Judge within 20 days after this Order is released.

4. Section II, Item 8 (a) and (b), FCC Form 301, asks if any member of the immediate family or any party to this application has any interest in or connection with any other broadcast station or pending broadcast application, and if so, the applicant must provide a full disclosure concerning the nature and extent of such interest or connection. WHIS has failed to answer the questions. WHIS shall submit an amendment providing its answer to the presiding Administrative Law Judge within 20 days after this Order is released.

5. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. WHIS has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy each to the TV Branch, Mass Media Bureau, and the Hearing Branch, Enforcement Division, within 20 days after this Order is released.

6. The effective radiated power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. 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 WHIS Unlimited, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that WHIS Unlimited, Inc. shall submit an amendment specifying the office held of each principal and the percentage of ownership to the Administrative Law Judge within 20 days after this Order is released.

10. It is further ordered, that WHIS Unlimited, Inc. shall submit an amendment making full disclosure of the identity of any immediate family member or any party to this application having any interest in or connection with any other broadcast station or pending application, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, that WHIS Unlimited, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the TV Branch, Mass Media Bureau and the Hearing Branch, Enforcement Division, within 20 days after this Order is released.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-3366 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

John R. Hughes & Eve H. Hughes et al.; Memorandum Opinion and Order

In re applications of:

John R. Hughes & Eve H. Hughes, WVNH(AM), Salem, New Hampshire; Has: 1110 kHz, 5kW, DA-D—Req: 1120 kHz, 1kW, 10 kW-LS (5 kW-CH), DA-N, U.	MM Docket No. 85-20 File No. BP-801121AE.
Dawn Broadcasting, Inc., WBIS(AM), Bristol, Connecticut; Has: 1440 kHz, 500 W, D—Req: 1120 kHz, 500 W, 1 kW-LS, DA-N, U.	File No. BP-810410AW.
Walden Communications Company, Inc., Concord, Massachusetts; Req: 1120 kHz, 1 kW, DA-2, U.	File No. BP-810410BD.

For Construction Permit.

Adopted: January 23, 1985.
Released: January 30, 1985.

By the Commission.

1. The Commission has under consideration: (a) the above-captioned mutually exclusive applications for AM broadcast stations; and (b) an application for review filed by WVNH Broadcasting Company, Inc., the previous licensee of WVNH(AM), Salem, New Hampshire,[1] requesting Commission review of a July 29, 1981 staff action denying WVNH Broadcasting Company's motion to dismiss the application of Walden Communications Company, Inc.[2]

2. *Dawn Broadcasting, Inc. (Dawn).* Dawn's proposed nighttime interference-free contour would not encompass the entire community of Bristol, Connecticut in contravention of § 73.24(j) (the coverage requirement) of our Rules. Consequently, Dawn has requested a waiver of this provision.

3. Dawn states that an exhaustive search for an alternative transmitter site was performed and that no alternative sites were available due to severe zoning restrictions and numerous residential areas. In addition, Dawn notes that its nighttime interference-free contour contains 71.26% of Bristol's population and that much of the area outside of the contour is non-residential in nature, including two gold courses and several gravel pits. Dawn's unlimited time proposal would also provide first local nighttime service to Bristol, Connecticut. We will grant Dawn's request for a waiver of § 73.24(j) of our Rules.

4. *Walden Communications Company, Inc. (Walden).*[3] WVNH Broadcasting Company, Inc., the former licensee of WVNH(AM), Salen, New Hampshire, maintains in its application for review that the Walden application, when filed, contained engineering and legal omissions so numerous as to render the application substantially incomplete at that time. Thus, WVNH claims, the Walden application was patently not in accordance with Commission rules and was subject to summary dismissal pursuant to § 73.3566.

5. Section 73.3564(b) of our Rules states that the acceptance of an application for filing means that it has been the subject of a preliminary review by Commission staff as to completeness; such acceptance, however, does not mean that the applicant has demonstrated the qualifications for an ultimate grant of a construction permit. *See Trustees of Dartmouth College*, FCC 73–1308, 29 RR 2d 59, 60–61 (1973). Rather, at the acceptance stage, deficiencies and omissions may still exist so long as the application is deemed to be substantially complete. Such a determination turns on the facts involved and requires a particularized analysis of the specific application's deficiencies. *See, e.g., Henry M. Lesher*, 67 FCC 2d 278 (1977).

6. In the present case, we conclude, based on our analysis of the omissions and deficiencies present in the Walden application, that the application was substantially complete when filed and properly accepted for filing pursuant to our Rules. Thus, the application contained sufficient information to permit the staff to evaluate the technical considerations of interference and overlap required for a preliminary engineering analysis. In addition, the Walden application contained complete ownership information (Section II, FCC Form 301) including the attributable broadcast interests of each of the principals, and a detailed financial showing. The latter included in Section III, FCC Form 301, a balance sheet indicating Walden's assets and liabilities, an estimate of construction and operating costs, a line of credit provided by the proposed equipment supplier, and a bank letter describing the availability of a line of credit to be secured by Walden's principals, each of whom submitted a statement of his net worth and credit references. The Walden application also contained the narrative programming statement required by Section IV, Form 301, and the EEO program required by Section VI, Form 301.[4]

7. These showings were not, it is true, totally free of error or omissions. For example, the Walden application proposed a $30,000 cost for three antenna towers but neglected to include a cost estimate for a proposed fourth tower. In addition, the bank letter submitted by Walden stated that financing would be at "prevailing interest rates" rather than at a specified rate or a certain number of points over the prime rate. Walden also failed to certify its bylaws and to reveal that one of its principals, Lloyd F. Simon was Clerk and Treasurer of WGFP, Webster, Massachusetts (although Mr. Simon did state that he was Vice President, Director, and 25 percent shareholder of the licensee of WGFP). On balance, however, the application was sufficiently complete to permit an initial evaluation of Walden's qualifications vis-a-vis the public interest standard. *Id.* at 281 (1977).[5]

8. We are also guided by the Court of Appeals which has advised that, even in borderline cases, we should "give weight to the interest of the applicant and channel the application through the procedure established with that in view." *Ranger* v. *FCC*, 294 F.2d 240, 242 (D.C. Cir. 1961). Following this guide, we conclude that the public interest would be better served by the designation of the Walden application for hearing than by its dismissal. Consequently, the application for review will be denied.

9. Walden states in its application that its proposed 5 mV/m contour would include 94.8% of the residential area of the Town of Concord, and that the proposed 17 mV/m nighttime interference-free contour would encompass 86.8% of the Town's residential area. Consequently, Walden has requested a waiver of § 73.24(j) (the coverage requirement) of our Rules. When we adopted this rule, we recognized a 90% figure as substantial compliance with this rule and an 80% figure as the minimum level for adequate community coverage as required by this rule. Any figure below 80% was presumed to be inadequate. *See Broadcast Assignment Standards*, 39 FCC 2d 645, 670 (1973). Thus, this 80% figure has become the dividing line between service which generally satisfies our rule requirements and service which is generally considered inadequate for our purposes. We require waivers of Section 73.24(j) only where proposed coverage falls below the 80% mark. Under this standard, Walden

[1] An application for the assignment of the license of WVNH Broadcasting Company, Inc. to the present licensee, John R. Hughes & Eve H. Hughes (BAL–831216FD), was granted on February 24, 1984 and consummated on March 5, 1984.

[2] WVNH Broadcasting, Inc., Dawn Broadcasting, Inc., and Walden Communications Company, Inc. have filed amendments dated May 13, 1983, May 27, 1983, and December 27, 1983, respectively. We will accept these amendments pursuant to Section 1.65 of our Rules, as the amendments reflect the agreement between the United States and Canada permitting the use of the 1120 kHz frequency at Sherbrooke, Quebec, Canada. In addition, Walden's amended engineering exhibit moots all of WVNH's contentions concerning potential problems with the ground system and tower location proposed by Walden.

[3] Walden has filed two petitions for leave to amend, dated January 24, 1984 and April 19, 1984, with accompanying amendments updating the ownership interests of one of Walden's principals. We will grant the petitions and accept these amendments pursuant to Section 1.65 of the Commission's Rules.

[4] Consequently, once we had determined that the application was in fact substantially complete and acceptable for filing, we then permitted Walden to amend its proposal to cure any omissions or deficiencies. *See James River Broadcasting Corporation* v. *FCC*, 399 F.2d 581 (D.C. Cir. 1968).

[5] In addition, we note that our conclusion in this instance is consistent with the policy enunciated in our Public Notice concerning incomplete and patently defective applications, FCC 84–386, released August 2, 1984.

requires no waiver and we will dismiss its request as moot.

10. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.[6] Since the proposals are mutually exclusive, however, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal (or combination of proposals) would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

11. 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: (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 (or combination of proposals) would best provide a fair, efficient, and equitable distribution of radio service.

2. To determine, in the event it is concluded that 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, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the application for review filed by WVNH Broadcasting Company, Inc., is denied.

13. It is further ordered, That the amendment filed by WVNH Broadcasting Company, Inc. on May 13, 1983, is accepted.

14. It is further ordered, That the amendment filed by Dawn Broadcasting Company, Inc. on May 27, 1983, is accepted

15. It is further ordered, That the request for waiver of § 73.24(j) of the Commission's Rules filed by Dawn Broadcasting Company, Inc., is granted.

16. It is further ordered, That the amendment filed by Walden Communications Company, Inc. on December 27, 1983, is accepted.

17. It is further ordered, That the request for waiver of § 73.24(j) of the Commission's Rules filed by Walden Communications Company, Inc., is dismissed as moot.

18. It is further ordered, That the petitions for leave to amend filed by Walden Communications Company, Inc. on January 24, 1984 and April 19, 1984, are granted and the accompanying amendments, are accepted.

19. 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 Mangement Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

20. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

21. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-3374 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

[6] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

MTS and WATS Market Structure, Phase III; Erratum

In the Matter of: MTS and WATS Market Structure, Phase III: Establishment of Physical Connections and Through Routes among Carriers; Establishment of Physical Connections by Carriers with Non-Carrier Communicatons Facilities; Planning among Carriers for Provision of Interconnected Services, and Emergency Communications Services; and Regulations for and in Connection with the Foregoing: CC docket No. 78-72, Phase III.

Released: January 30, 1985.

The Memorandum Opinion and Order (FCC 85-21) (50 FR 4792: February 1, 1985) released in this docket on January 17, 1985, contained an incorrect submittal deadline in paragraph 3. Attached is the corrected paragraph.

Federal Communications Commission.

William J. Tricarico,

Secretary.

* * * * *

3. In this Order, we find that while there may be instances in which a forum of the resolution of equal access interconnection problems would prove desirable, the specific approach proposed by petitioner has certain inadequacies. We endorse, instead, the forum approach recommended by the Exchange Carriers Standards Association (ECSA) and direct ECSA to submit to this Commission, as soon as is practical, a detailed plan for implementing its proposal, which should include a clarification of certain issues related to the proposed operations of the forum approach it has recommended.

* * * * *

[FR Doc. 85-3375 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

Offshore Broadcasting and T.N. Robinson; Construction Permit, Block Island, Rhode Island; Hearing Designation Order

[MM Docket No. 84-1324 File No. BPCT-840629KP and MM Docket No. 84-1325 File No. BPCT-840629KR]

Adopted: December 20, 1984.
Released: February 5, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 69, Block Island, Rhode Island.

2. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the

areas and populations which would be within the predicted 64 dBU (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

4. There is the potential for a television station operating on Channel 69 to cause objectionable interference to existing land mobile radio facilities operating in the 806–816 MHz band. Section 73.687(i)(1) of the Commission's Rules imposes upon the television station permittee the obligation to take adequate measures to identify and substantially eliminate such interference. This obligation may require the expenditure of substantial resources by the winning applicant for whatever corrective measures may be necessary. *See, e.g., Jack Straw Memorial Foundation*, 35 F.C.C. 2d 397, *recon. denied*, 37 F.C.C. 2d 544 (1972); *Sudbrink Broadcasting of Georgia*, 65 F.C.C. 2d 691 (1977). Therefore, a grant of either of these applications will be subject to an appropriate condition.

5. Offshore Broadcasting proposes to operate from a site located within 250 miles of the Canadian Border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of the United States television stations located with 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of this application, the construction permit shall contain a condition precluding station operation with maximum, visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

6. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. T.N. Robinson has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy each to the TV Branch, Mass Media Bureau, and the Hearing Branch, Enforcement Division, within 20 days after this Order is released.

7. T.N. Robinson proposes to use a directonal antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15 db. Mr. Robinson proposes a directional antenna with maximum-to-minimum ratio of 20 db. A waiver has been requested. In support of the waiver request T.N. Robinson states that the purpose of suppressing the antenna pattern which results in a maximum-to-minimum ratio exceeding the 15 db limit is to alleviate concerns of Block Island residents about excessive radiation. We note that most of signal suppression is over water and that a minimum 90 dBu signal is provided over all of the Island (a full 10 dB above the required city grade coverage). In these circumstances, the public interest will be served by a waiver of the rule, and no issue will be specified.

8. Section V–C, Item 15, FCC Form 301, requires the use of the standard method prescribed by § 73.684 of the Commission's Rules in predicting service contours, but, where the terrain in one or more directions from the antenna site departs widely from the average elevation of the 2 to 10 mile sector, a supplemental showing may also be submitted. T.N. Robinson submitted a supplemental showing, but did not submit predictions made by use of the standard method, as required by § 73.684(f). In addition, Robinson included a terrain roughness factor in his calculations, but the effective date of § 73.684(h) through l), which provides for the use of a roughness factor, has been stayed indefinitely. 42 FR 25738, published May 9, 1977. Accordingly, Robinson will be required to submit an amendment to the prescribing Administrative Law Judge within 20 days of the date of release of this Order, showing the predicted service contours calculated in accordance with the provisions of § 73.684.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to T.N. Robinson whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is furthered ordered, That, in the event of a grant of the application of Offshore Broadcasting, the construction permit shall be conditioned as follows: Subject to the condition that operation with effective radiated visual power in excess of 1000 kW after October 1, 1986 is subject to a further extension of consent by Canada.

12. It is further ordered, That, in the event of a grant of either of the applications, the construction permit shall contain the following condition: During equipment tests, authorized by § 73.1610 of the Commission's Rules, the permittee shall take adequate measures to identify and substantially eliminate objectionable interference which may be caused to existing land mobile radio facilities in the 806 to 816 MHz band. Documentation that objectionable interference will not be caused to existing land mobile facilities shall be submitted along with the application for a license. Program tests shall not be commenced under § 73.1620(a) of the Rules and may only be started after specific authority is granted by the Commission.

13. It is further ordered, That T.N. Robinson shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

14. It is further ordered, That T.N. Robinson shall submit an amendment to show predicted coverage calculated in accordance with § 73.684 of the Commission's Rules, to the presiding Administrative Judge within 20 days after the date of the release of this Order.

15. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief Video Services Division, Mass Media Bureau.

[FR Doc. 85-3350 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-1326, File No. BPCT-840625KE and MM Docket No. 84-1327, File No. BPCT-840705KF]

John R. Powley and Haynes Communications Co.; Hearing Designation Order

Adopted: December 20, 1984.
Released: February 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John R. Powley and Haynes Communications Co. for authority to construct a new commercial television station on Channel 10, Helena, Montana.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations that each proposes to serve. Consequently, the areas and populations which would be within the predicted 50 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, 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 which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to §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.

6. It is further ordered, That the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Steward,

Chief Video Services Division, Mass Media Bureau.

[FR Doc. 85-3351 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

South Rowan Broadcasting Co., Inc. et al.; Hearing Designation Order

In re Applications of:

South Rowan Broadcasting Co., Inc. WRNA, China Grove, North Carolina. Has: 1140 kHz, 0.25 kW, D Req: 1030 kHz, 1 kW, D	MM Docket No. 84-1306 File No. BP-831222AA.
Golden Rule Organization Workshop, Inc. Lewisville, North Carolina. Req: 1040 kHz, 10 kW, DA-D	MM Docket No. 84-1307 File No. BP-840430AF.
Virginia L. Baker d/b/a Mint Hill Media, Mint Hill, North Carolina. Req: 1030 kHz, 10 kW, DA-D	MM Docket No. 84-1308 File No. BP-840430AG.

For Construction Permit

Adopted: December 20, 1984.
Released: February 5, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new and modified AM broadcast stations.

2. The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by Virginia L. Baker d/b/a Mint Hill Media. Hence, an appropriate issue will be specified.

3. Except as indicated by the issue 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. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, 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 there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location of the antenna towers proposed by Virginia L. Baker d/b/a Mint Hill Media.

2. To determine: (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.

3. To determine, in the event it be 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.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

6. 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, N.W., Washington, D.C. 20554.

7. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-3352 Filed 2-8-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Proposed New Routine Use to Existing System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed routine use to existing system of records.

SUMMARY: The purposes of this notice are to add a new routine use to an existing system of records entitled, "FEMA/FIA, Federal Crime Insurance Program" and to add the FEMA Regional Offices as a system location in an existing system of records entitled, "FEMA/SEC-1, Security Management System."

The Federal Crime Insurance Program routine uses were amended at 49 FR 26145 on June 26, 1984. the purpose of the amendment was to make the names and addresses of Federal Crime Insurance policyholders available to State facilities and private insurers for direct solicitation to the policyholders in order to make crime insurance coverage available to them after the expiration of the Federal program which is to expire at the end of this fiscal year. The purpose of this notice is to revise this routine use to permit the release of Federal Crime Insurance Program policyholder names and addresses to insurance agents and brokers for direct solicitation to the policyholders in order to make crime insurance coverage available to them after the expiration of the Federal program.

EFFECTIVE DATE: The inclusion of the FEMA Regional Offices as a system location in the system of records entitled, "FEMA/SEC-1, Security Management System" is effective immediately. The proposed routine use will become effective, without further notice, on March 13, 1985 unless comments dictate otherwise.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub.L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular No. A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to a system notice that does not require such a report need only be described in a Federal Register notice, without the necessity of publishing the complete text of the notice.

On November 26, 1982, (47 FR 53494), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/SEC-1, Security Management System." Revisions to this system of records were published on November 21, 1983, (48 FR 52637). The complete text of the system of records entitled, "FEMA/FIA-1, Federal Crime Insurance Program" was published on October 7, 1981 (46 FR 49740) and revisions were published on October 25, 1983 (48 FR 49377), and June 26, 1984 FR 26145).

The changes to the system notices are being printed in italics for easy reference.

Dated: February 5, 1985.

Russell B. Clanahan,

Acting Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/SEC-1

SYSTEM NAME:

Security Management System.

* * * * *

SYSTEM LOCATION:

Revise to read: *Primary System: Federal Emergency Management Agency, Office of Security, Washington, D.C. 20472; all Regional Offices, addresses listed in Appendix AA. Secondary System: Federal Emergency Management Agency, Emergency Operations Directorate, Washington, D.C. 20472.*

* * * * *

FEMA/FIA-1

SYSTEM NAME:

Federal Crime Insurance Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the servicing company for the contract and insurance adjustment firms retained by the servicing company for billing, verification of coverage, claims, adjusting and issuance of policies; to property loss reporting bureaus; to State Insurance Departments and insurance companies investigating fraud or potential fraud in connection with burglary or robbery claims; to State property insurance facilities, private sector property insurers, *and insurance agents and brokers* for the purpose of providing crime insurance to Federal crime insurance policyholders prior to and following the expiration of the Federal Crime Insurance Program. Additional routine uses may include Nos. 1, 2, 3, 5, and 8 of Appendix A.

* * * * *

[FR Doc. 85-3317 Filed 2-8-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Alliance Federal Savings and Loan Association; Kenner, LA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act, as amended, 12 U.S.C. 1464(d)(A) (1982), the Federal Home Loan Bank Board appointed John J. Daly as conservator for Alliance Federal Savings and Loan Association, Kenner, Louisiana, effective January 31, 1985.

Dated: February 6, 1985.

J.J. Finn,

Secretary.

[FR Doc. 85-3393 Filed 2-8-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First Guthrie Bancshares, Inc., et al.; Formation of; Acquision by; and Mergers of Bank Holding Companies

The companies listed in this notice have applies for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Intersted persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 4, 1985.

A. **Federal Reserve Bank or Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Guthrie Bancshares, Inc.*, Guthrie, Oklahoma; to acquire 9.9 percent of the voting shares or assets of Liberty State Bancshares, Inc., Tahlequah, Oklahoma, thereby indirectly acquiring The Liberty State Bank of Tahlequah, Oklahoma,Tahlequah, Oklahoma.

2. *McHugh Investment Company*, Murdock, Nebraska; to become a bank holding company by acquiring at least 80 percent of the voting shares of Corn Growers State Bank, Murdock, Nebraska.

3. *Skiatook Bancshares, Inc.*, Skiatook, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bancshares, Inc., Skiatook Oklahoma, thereby indirectly acquiring The Exchange Bank, Skiatook, Oklahoma.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Victoria Bankshares, Inc.*, Victoria, Texas; to acquire 100 percent of the voting shares or assets of Nolte Bancshares, Inc., Sequin, Texas, thereby indirectly acquiring The First National Bank of Sequin, Sequin, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Corporation of Alaska*, Anchorage, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate Bank of Alaska; Anchorage, Alaska.

2. *Founders Bank Corporation*, Scottsdale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Founders Bank of Arizona, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, February 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3307 Filed 2-8-85; 8:45 am]

BILLING CODE 60210-01-M

Pacific Regency Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of intrests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green,Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pacific Regency Bancorp*, El Toro, California; to engage *de novo* through its subsidiary, Inner Bank Leasing, El Toro, California, in full payout personal property leasing.

Board of Governors of the Federal Reserve System, February 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3308 Filed 2-8-85; 8:45 am]

BILLING CODE 6210-01-M

SouthTrust Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless

otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to acquire Finance South, Incorporated, Florala, Alabama, thereby engaging in making or acquiring, and servicing loans and other extensions of credit such as made by a finance company; acting as an insurance agent or broker with respect to any insurance that is directly related to an extension of credit by a bank or bank related firm or is directly related to the provision of other financial services by a bank or such bank related firm; leasing personal property where the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property, the property to be leased is acquired specifically for leasing, the lease is a non-operating lease, no lease shall run for more than 40 years, and at the expiration of the lease all interest in the property shall be either liquidated or released on a non-operating basis as soon as practicable.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Montgomery County Financial Corporation,* Independence, Kansas; to retain its credit related life accident and health insurance agency activity.

Board of Governors of the Federal Reserve System, February 5, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3309 Filed 2-8-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77D-0219]

Additional Standards for Anti-Human Globulin; Revocation of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking an existing guideline and minimum requirements for Anti-Human Globulin because they are no longer needed. Elsewhere in this issue of the **Federal Register,** FDA is establishing additional standards for Anti-Human Globulin.

EFFECTIVE DATE: April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: Anti-Human Globulin consists of a preparation of serum or protein-rich fluid containing one or more antiglobulin antibodies. The preparation is used as a reagent in antiglobulin tests to demonstrate that red blood cells have been coated with immunoglobulin molecules or complement components.

Under section 351 of the Public Health Service Act (42 U.S.C. 262), biological products, including Anti-Human Globulin, offered for sale in interstate commerce must be licensed and meet standards that ensure their continued safety, purity, efficacy, and potency. Product licenses for Anti-Human Globulin were first issued based on compliance with a document entitled "Minimum Requirements: Anti-Human Serum for the Anti-Human Globulin Test" which included details of production, specific testing procedures, and labeling and release requirements. The document was published in 1949 by the Division of Biologic Standards of the National Institutes of Health (precursor of FDA's Bureau of Biologics which, because of several reorganizations, the latest on March 19, 1984 (49 FR 10168), is now part of FDA's Center for Drugs and Biologics). In 1960, these requirements were amended to update certain labeling requirements regarding antibody specificities. In 1977, FDA made available a guideline to supplement these requirements **Federal Register** of August 19, 1977; 42 FR 41920). The guideline entitled "Anti-Human Serum Labeling and Lot Release Requirements" concerned anticomplement testing of Anti-Human Globulin.

The agency now believes that the technology for manufacturing Anti-Human Globulin has developed to a point where codification of additional standards for the product is appropriate to increase the assurance that Anti-Human Globulin is safe and effective and because such additional standards are not expected to need revision soon. Therefore, elsewhere in this issue of the **Federal Register,** the agency is establishing in 21 CFR Part 660 Subpart F codified additional standards for Anti-Human Globulin. FDA is basing its codified standards on its review of current product licenses, to assure that such standards reflect recent experience and scientific knowledge in the use of these products. Accordingly, the existing minimum requirements and the guideline for Anti-Human Globulin made available in 1977 are obsolete, are no longer needed, and are hereby revoked, as prescribed in 21 CFR 10.90(b)(2) of FDA's administrative practices and procedures regulations. This notice is effective April 12, 1985.

Dated: January 10, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-3306 Filed 2-8-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of the Disapproval of an Arkansas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 12, 1985, in Dallas, Texas, to reconsider our decision to disapprove Arkansas State Plan Amendment 84-11

CLOSING DATE: Requests to participate in the hearing as a party must be received by February 26, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore,

Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Arkansas State Plan Amendment 84–11.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Arkansas's request to provide for an increase in the dispensing fee in the State's Prescribed Drug Program from $3.58 to $3.87 per prescription violates section 1902(a)(30) of the Social Security Act and 42 CFR 447.331.

Section 1902(a)(30) of the Act states in part, "A State plan for medical assistance must . . . assure that payments are consistent with efficiency, economy, and quality of care." Under regulations at 42 CFR 447.331(a) reimbursement for drugs is limited to the lower of the ingredient cost of the drug plus a reasonable dispensing fee or the provider's usual and customary charge to the general public. Arkansas states that its request for the increased dispensing fee is based on the results of a survey of the costs of the pharmacy operation. HCFA determined that the cost finding methodology used in the report was questionable because it inflates the cost of the pharmacy area and therefore, the cost of the dispensing fee. Therefore, HCFA determined that Arkansas' proposed plan amendment was in violation of section 1902(a)(30) and regulations at 42 CFR 447.331.

The notice to Arkansas announcing an administrative hearing to reconsider our disapproval of the State Plan Amendment reads as follows:

Mr. Curtis L. Ivery,
Commissioner, Arkansas Department of Human Services, P.O. Box 1437, Little Rock, Arkansas 72203.

Dear Mr. Ivery: This is to advise you that you request for reconsideration of the decision to disapprove the Arkansas State Plan Amendment 84–11 was received on January 7, 1985. You have requested a reconsideration of the disapproval of whether this plan amendment, which would provide for an increase in the dispensing fee in the State's Prescribed Drug Program from $3.58 to $3.81 per prescription, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on March 12, 1985, at 10 a.m., in Room 1105, 2535 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: February 5, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–3324 Filed 2–8–85; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of New Federal Onshore Oil and Gas Lease Form; Exception for Certain Leases in the National Petroleum Reserve—Alaska To Utilize Lease Form 3130–7

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of Previous Notice of Availability of New "Offer to Lease and Lease for Oil and Gas" Form; Revision Necessary to Utilize Lease Form 3130–7 for Certain Leases Offered in the National Petroleum Reserve—Alaska Sale No. 831.

SUMMARY: This document revises a notice of availability of a new lease form that was published in the **Federal Register** on April 19, 1984 (49 FR 15641), that states at the top of column three, first full sentence: "Therefore, effective July 1, 1984, the following numbered forms are obsolete and shall not be accepted or used by the Bureau: 3110–1, 2, and 3, 3120–1, and 7, and 3130–4, 5, and 7."

A special exception, however, should have been made in the case of Lease Form 3130–7. In the Notice of Sale for the National Petroleum Reserve—Alaska Oil and Gas Lease Sale No. 831, that was published in the **Federal Register** on June 20, 1983 (48 FR 28137–28143), instructions are given at page 28141, column two, eighth paragraph which read, "Special Stipulations: The following lease stipulations attached to and made a part of this lease are in addition to the terms and requirements contained in Lease Form 3130–7." Therefore, Lease Form 3130–7 should be utilized to allow certain leases to be issued as a result of Sale No. 831, when specifically requested by a prospective lessee.

FOR FURTHER INFORMATION CONTACT: Mona Schermerhorn or Lois Mason (202) 653–2190.

SUPPLEMENTARY INFORMATION: On October 4, 1983, the Bureau of Land Management (BLM) accepted certain bids as a result of Sale No. 831, held on July 20, 1983. Due to pending litigation, the leases could not be issued at that time. Under normal circumstances, the leases would have been issued on Lease Form 3130–7. During this elapsed period of time, however, a new lease form, Lease Form 3100–11, was implemented to take the place of Lease Forms 3110–1, 2, and 3, 3120–1, and 7, and 3130–4, 5, and 7. On January 13, 1984, the Ninth Circuit Court of Appeals allowed the BLM to issue leases resulting from Sale No. 831. However, the Ninth Circuit required that no surface disturbing activities take place on the leases pending its final decision. Shell Oil Company, Amoco Production Company, and Union Oil Company of California have requested that the following leases be issued on Lease Form 3130–7, pursuant to language stated in the Notice of Sale:

Leases AA–51222 and AA–51224 (Shell only)
Lease AA–51195 (Amoco, Union and Shell)
Lease AA–51209 (Shell and Union)
Lease AA–51215 (Shell and Amoco)

The subject leases are to be offered for lease by the Bureau of Land Management on Lease Form 3130–7 to conform to the Notice of Sale provisions.

Dated: February 5, 1985.

James M. Parker,

Acting Director.

[FR Doc. 85-3300 Filed 2-8-85; 8:45 am]

BILLING CODE 4310-84-M

[SAC 605 WR, CA 7003 WR, CA 7006 WR, CA 7009 WR, CA 7011 WR, CA 7015 WR, CA 7016 WR, CA 7018 WR, CA 7019 WR, CA 7020 WR; 4-19952-ILM]

Proposed Continuation of Withdrawals; California

Correction

In FR Doc. 85-1669, beginning on page 3033, in the issue of Wednesday, January 23, 1985, make the following corrections:

1. On page 3033, in the second column, under *"CA 7003 WR"*, in the sixth line, "9, S½" should read "Sec. 9, S½".

2. Also on page 3033, in the third column, under *"CA 7019 WR"*, in the third line, "D½" should read "E½".

BILLING CODE 1505-01-M

Bureau of Reclamation

Hungry Horse Project, MT; Intent To Prepare an Environmental Statement: Withdrawal

The Bureau of Reclamation published a Notice of Intent to Prepare a Draft Environment Statement on the Hungry Horse Powerplant Enlargement and Reregulating Reservoir, Hungry Horse Project, Montana, on April 22, 1982. Planning efforts on this project have been terminated because a comprehensive action proposal appears unjustified at the present time. An environmental statement will not, therefore, be prepared. Investigations will continue on one segment of the original study, the uprating of the existing generating facilities. Should National Environmental Policy Act compliance be required at a later time, appropriate action will then be taken.

Dated: February 4, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-3175 Filed 2-8-85; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Grant Grove and Redwood Mountain; Development Concept Plan; Sequoia-Kings Canyon National Parks; Intent To Prepare an Environmental Impact Statement

Summary: Pursuant to section 102(2c) of the National Environmental Policy Act, the National Park Service, Department of the Interior, will prepare an Environmental Impact Statement to assess the potential impacts of future development options in conjunction with the Development Concept Plan for the Grant Grove area of Sequoia-Kings Canyon National Parks.

The National Park Service, after concluding a planning effort for the Grant Grove and Redwood Mountain areas, published an Environmental Assessment/Development Concept Plan in May 1983. Review of the public response to the specific site proposals led to the conclusions that one or more of the alternative plans had the potential for significant impacts and would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an EIS is deemed appropriate.

The National Park Service will investigate a number of alternatives ranging from no action to various levels and types of increased visitor accommodations provided through either refurbishment of existing facilities and/or construction of new facilities. Alternatives are presently being formulated and will probably consist of the following range of actions:

Alternative 1: No Action (Existing Condition); retention of 52 units with a mix of some units with baths and some with central baths.

Alternative 2: No Action Alternative with implementation of health and safety conditions such as water and sewer system reconstruction as well as a replacement in kind of deteriorate structures.

Alternative 3: Increase lodging (to approximately 100 units) and retain dispersed character in a variety of duplexes, fourplexes and two-story eightplexes. Support services will be concentrated north of the meadow.

Alternative 4: Increases lodging (to approximately 150 units) and concentrate in a 75-unit hotel plus smaller multiunit structures. Support services concentrated in hotel and area north of meadow.

Federal, State and local agencies, and other individuals or organizations who may be interested in, or affected by, the future development of Grant Grove are invited to participate in refining or identifying issues to be considered.

Written comments and suggestions concerning preparation of the EIS should be sent to: Boyd Evison, Superintendent, Sequoia-Kings Canyon National Parks, Three Rivers, California 93271, by April 15, 1985. Questions on this matter should also be directed to the same address.

Howard H. Chapman, Regional Director for the Western Region in San Francisco, California is the responsible official.

Preparation of the EIS is expected to take about 23 months. The draft EIS should be available for public review by October 1985. A final EIS will be prepared after considering comments received on the draft EIS. Also, public meetings will be held prior to issuance of the final EIS. The final EIS and Record of Decision is expected to be completed by summer 1986.

Dated: January 31, 1985.

W. Lowell White,

Acting Regional Director, Western Region, National Park Service.

[FR Doc. 85-3309 Filed 2-8-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6; Sub-No. 210]

Railroads; Burlington Northern Railroad Co.; Abandonment; in LaSalle, Bureau and Whiteside Counties, IL; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 47.10-mile rail line between Mendota (milepost 1.0) and Denrock (milepost 48.10) in LaSalle, Bureau and Whiteside Counties, IL. 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 assistanee 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 on 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. 85-3389 Filed 2-8-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-231]

Railroads; the Staten Island Railroad Corp.; Abandonment and Discontinuance of Service in Richmond County, NY and Union County, NJ; Findings

The Commission has issued a certificate authorizing the Staten Island Railroad Corporation to abandon its 16.68-mile rail line between St. George (milepost 0.00) and Cranford Junction (milepost 12.09); between Port Ivory (milepost 0.00) and the end of the line near Howland Hook (milepost 0.94); and between Arlington Yard (milepost 0.00) and the end of the line at or near Travis (milepost 3.65); and to discontinue service over 14.48 miles of line of the Staten Island Rapid Transit Operating Authority between St. George (milepost 0.00) and Tottenville (milepost 14.48), in Richmond County, NY and Union County, NY. The amandonment 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. 85–3388 Filed 2–8–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30609]

Rail Services; Southern Pacific Transportation Co.; Trackage Rights Exemption

On January 16, 1985, Southern Pacific Transportation Company (SPT), filed a notice of exemption concerning the renewal of the trackage rights agreement between the State of Louisiana, the Public Belt Railroad Commission and certain of SPT's predecessors in interest, Morgan's Louisiana and Texas Railroad and Steamship Company and the Texas and New Orleans Railway Company, first approved by the Commission in *Texas & New Orleans Railroad Company Operation*, 189 I.C.C. 184 (1932).

The transaction involves an extension in time of the trackage rights previously authorized by the Commission and comes within that class of transactions described in 49 C.F.R. 1180.2(d)(4) which has been exempted from Commission regulation. The extension will not result in changes in service levels, significant operation changes, or a change in the competitive balance with other carriers.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected pursuant to *Norfolk and Western Ry. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.–Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: January 31, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–3387 Filed 2–8–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–5123 et al.]

Proposed Exemptions; Bryce Corp., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bryce Corporation Pension Plan and Trust (the Pension Plan) and Bryce Corporation Profit Sharing Plan and Trust (the Profit Sharing Plan; Together, the Plans) Located in Memphis, Tennessee

[Application Nos. D–5123 and D–5124]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the lease by the Plans to Bryce Corporation (Bryce) of certain real property (the Land) located at 3861 Delp Street, Memphis, Tennessee, which was entered into on August 1, 1974, provided the terms of the lease were not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party; and (2) the sale of the Land by the Plans to Bryce or parties related to Bryce for $98,000 in cash, or the fair market value of the Land on the date of sale, whichever amount is greater.

The lease was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption for the lease will be effective from January 1, 1975 through June 30, 1984.

Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with approximately 326 participants. The Pension Plan is a defined benefit plan with approximately 212 participants. Bryce, the sponsor of the Plans, is a Tennessee corporation engaged in the manufacture of bags for food products.

2. On March 1, 1972, Bryce entered into a 10 year lease agreement with Memphis Trust Company for certain improved real property located at 3861 Delp Sheet, Memphis, Tennessee. Under the agreement, Bryce rented the property from the owner, Memphis Trust Company, until August 1, 1974. Memphis Trust Company subsequently changed its name to Memphis Bank and Trust Company and later to Midland Bank & Trust (Midland).

3. On August 1, 1974, the lease agreement was terminated when Bryce purchased from Midland for the sum of $483,523.97, the improvements erected on the Land. Also on August 1, 1974, the trustee for the Plans purchased the Land on their behalf for $62,217.18. The investment by each Plan for its one-half of the Land was $31,108.59.

4. On the same date, the Plans entered into a 35 year lease with Bryce for the Land. The rental was to be $7,500 per year, payable monthly at $625 (i.e., $3,750 per year at $312.50 per month to each Plan). The lease was a net ground lease, with Bryce responsible for all taxes, assessments and insurance. At the time the lease was entered into, the Plans' trustee was Midland, which continues to serve as the trustee of both Plans. Both Midland and the Plans' administrator have represented that they determined at the time the lease was entered into that the lease provided for a fair market rental to the Plan.

5. Prior to the Plans' purchase of the Land, Bryce was leasing the Land and improvements for an annual rental of $33,871.92 ($2,822.66 per month) pursuant to an arm's-length lease agreement with Midland. The total purchase price on August 1, 1974 for the Land and improvements was $545,741.15, of which 11.4% was attributable to the Land and 88.6% for the improvements. Using this percentage allocation, the prior annual rental of $33,871.92 for both the Land and the improvements would constitute $30,010.56 annual rental for the improvements and $3,861.36 annual rental for the Land. The determination of $7,500 annual rental for the Land for the subject lease was made by Midland and Bryce based upon this consideration, as well as the annual return to the Plans of 11.86%. As stated in (4) above, both Midland and the Plans' administrator determined that the lease provided for a fair market rental to the Plan. The terms of the lease agreement have been faithfully and timely adhered to by the parties from its inception on August 1, 1974 until the present.

6. The Plans now wish to sell the Land to Bryce or to parties related to Bryce. The sale would be for cash. Mr. John S. Palmer, an independent appraiser in Memphis, Tennessee, has appraised the Land as having a fair market value of $98,000 as of June 23, 1984. Such appraisal was for the value of the Land only, without regard to the existing lease on the property. The proposed sale price for the Land will be $98,000 or the fair market value on the date of sale, whichever is greater. No commissions will be paid on the sale.

7. Bryce recognizes that the subject lease does and will constitute a prohibited transaction from July 1, 1984 until such time that the Land is sold, and that no exemption will be granted for this time period. Accordingly, Bryce agrees to pay within 60 days from the date of the granting of this exemption, the applicable excise tax with respect to such prohibited transaction for this non-exempted period. In addition, Bryce represents that it will pay to the Plans the excess, if any, of the fair market rental value for the Land over the lease rental actually agreed upon and paid pursuant to the terms of the lease agreement for the period from July 1, 1984 until the date of the sale.

8. The applicants, including Midland, the Plans' trustee, have represented that under Tennessee law, if the lease were held to be void or voidable as of January 1, 1975, the effective date of the prohibited transaction restrictions of section 406 of the Act and section 4975 of the Code, ownership of the improvements on the Land would not be deemed to have passed from Bryce to the Plans as of that date.

9. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The terms of the lease were determined to be fair market terms by Bryce, the Plans' administrator, and Midland, the Plans' trustee; (2) all lease payments have been made in full and on schedule per the lease agreement, and the lease will be terminated by the sale; (3) the sale will be a one-time transaction for cash, and no commissions will be charged with respect to the sale; and (4) the Plans' trustee determined that both transactions were appropriate for the Plans and in the Plans' best interests.

Finally, the applicants represent that the lease was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicants realized that the lease had become a prohibited transaction, the applicants submitted a good faith request for an exemption instead of terminating the lease transaction.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Midelfort Clinic, Ltd. Profit Sharing Plan (the Plan) Located in Eau Claire, Wisconsin

[Application No. D–5163]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proportionate distribution of the assets of a corporation (Building, Inc.) to parties in interest with respect to the

Plan, in connection with the liquidation and dissolution of Building, Inc., provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in similar transactions between unrelated parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with approximately 268 participants and net assets of approximately $10,179,236 on December 31, 1983. First Wisconsin National Bank of Eau Claire, Wisconsin is the sole trustee (the Trustee) of the Plan and has full investment authority with regard to Plan assets. Midelfort Clinic, Inc. (the Clinic), the sponsor of the Plan, is a professional service corporation organized under Wisconsin law which has its principal place of business in Eau Claire, Wisconsin. The Clinic is owned by physicians with each physician-shareholder owning an equal number of shares. Generally, after two years of employment a physician is offered stock in the Clinic.

2. In 1927, the Clinic organized Buildings, Inc., the principal purpose of which has been the ownership of certain improved real property (the Property). Initially, all clinic shareholders were required to be shareholders in Building, Inc. However, due to the increasing values of the Clinic and Building, Inc., the applicants state that it became economically impossible to both continue this requirement and to attract qualified physicians to the Clinic. A decision was made to rescind the requirement that Clinic shareholders also be shareholders of Building, Inc. Since the adoption of this policy, but prior to January 1, 1975, the Plan acquired 1,450 of the 2,000 authorized and outstanding shares of Building, Inc. stock representing 72.5% of the stock of Building, Inc. This stock currently represents approximately 20.18% of the Plan's assets. The remaining 27.5% of the stock of Building, Inc. is owned by individual shareholders, all but one of whom are parties in interest, including fiduciaries, with respect to the Plan.

3. Until the Property was sold by Building, Inc., on June 29, 1984, it had been leased by Building, Inc. to the Clinic.[1] The Property consists of two contiguous parcels of improved land situated on the southeast corner of Clairmont Avenue and Stein Boulevard in the city of Eau Claire, Wisconsin. A clinic building is situated on the west half of the Property and the east half is used primarily for parking but includes some undeveloped land which could be used for expansion of the clinic building. The clinic building currently contains approximately 57,339 square feet of space. The Property was appraised on March 8, 1983, by Mr. Dennis A. Gray, manager of the health care division of American Appraisal Company, Milwaukee, Wisconsin, who determined the fair market value of the Property as of March 8, 1983, to be $3,911,000. An earlier appraisal by Donald L. Evans, an M.A.I. appraiser and president of D.L. Evans, Inc., Madison, Wisconsin, showed the fair market value of the Property as of December 31, 1982, to be $3,750,000.

4. The Midelfort Clinic Building Partnership (the Partnership), a Wisconsin general partnership consisting of all the physician-shareholders of the Clinic, and a party in interest with respect to the Plan, purchased the Property from Building, Inc. on June 29, 1984, for cash in the amount of $4,026,000.[2] The applicants state that both appraisals of the Property were updated within 30 days of the closing date of the sale and that the purchase price was determined by the Trustee, based upon the updated appraisals of the Property. No real estate commissions were incurred with respect to the sale of the Property. The Partnership will continue to lease the Property to the Clinic.

5. Prior to the consummation of the sale above, Building, Inc. adopted a plan of liquidation. The net proceeds received by Building, Inc. from the sale of the Property have been placed in short-term interest bearing investments pending their distribution upon the liquidation of Building, Inc. After the payment of any corporate debts, Building, Inc. will distribute its assets proportionately among its shareholders according to their respective rights and interests under the laws of the State of Wisconsin.

6. Mr. Dale Wood, a certified public accountant with McMahon, Schleifer & Wood, Certified Public Accountants, Eau Claire, Wisconsin, has been appointed to act as an independent fiduciary for the Plan with respect to the liquidation and dissolution of Building, Inc. Mr. Wood and McMahon, Schleifer & Wood are independent of Building, Inc., the Clinic, the Partnership and the individual shareholders of Building, Inc. Mr. Wood represents that he is knowledgeable about the Act and about the needs of employee benefit plans and has consulted with an attorney regarding his liabilities and responsibilities under the Act as an independent fiduciary for the Plan. He has also assisted numerous clients with corporate liquidations and dissolutions. Mr. Wood states that the liquidation of Building, Inc. is in the best interest of the Plan in that it will substantially increase the Plan's liquidity and will result in tax savings to the Plan of approximately $103,023 per annum, in addition to eliminating administrative problems associated with owning a controlling interest in a corporation where all but one of the other shareholders are parties in interest with respect to the Plan. Mr. Wood notes also that there will be income tax imposed upon Building, Inc. for its sale of the Property if the corporation is not liquidated prior to June 4, 1985. This additional tax would reduce the Plan's portion of the 1984 income of Building, Inc. by approximately $498,000. Mr. Wood represents that approximately 20.18% of the Plan's assets are concentrated in its ownership of Building, Inc. and that by liquidating Building, Inc. the Plan will be better able to diversify its investments. As all the assets of Building, Inc., which after the sale of the Property and the repayment of outstanding debts, consist of approximately $3,230,000 in cash or cash equivalents, Mr. Wood states that there will be no problems associated with valuing the assets for liquidation purposes. Mr. Wood will monitor the liquidation on behalf of the Plan, will approve the plan of liquidation adopted by Building, Inc. prior to any such liquidation, will cause the corporate assets to be converted entirely to cash and to be distributed to shareholders in accordance with the laws of the State of Wisconsin and in proportion to the 72.5% stockholdings of the Plan and the 27.5% stockholdings of the individual shareholders of Building, Inc. Mr. Wood will also undertake any enforcement actions necessary, including the institution of a lawsuit if deemed appropriate, to protect the rights and interests of the Plan and its participants and beneficiaries.

7. The applicants have requested an

[1] The applicant represents that the lease between Building, Inc. and the Clinic satisfied the requirements of section 414(c)(2) of the Act. The Department expresses no opinion as to whether the requirements of section 414(c)(2) of the Act were met with respect to the lease.

[2] The applicants state that the sale of the Property to the Partnership was encompassed by the transitional rules of section 414 of the Act. The Department expenses no opinion as to the applicability of section 414 of the Act with regard to the sale.

exemption for the proportionate distribution of the assets of Building, Inc. to the individual shareholders of Building, Inc. because of their concern that such assets may constitute Plan assets.

8. In summary, the applicants represent that the statutory criteria of section 408(a) of the Act hve been met because: (a) an independent fiduciary has determined that the proposed distribution of the assets of Building, Inc. is in the best interest of the Plan and its participants and beneficiaries; (b) the assets of Building, Inc. consist entirely of cash and cash equivalents since the sale of the Property and the proportionate distribution of the assets will be conducted and monitored by the independent fiduciary for the Plan; and (c) the Plan will be able to reinvest the proceeds of the liquidation and dissolution of Building, Inc. in more liquid investments.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Money Purchase Pension Plan and Trust (the Plan) Located in Reno, Nevada

[Application No. D–5174]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase by the Plan from Dr. Richard J. Cavell (Dr. Cavell) of a 17.273% interest (the Interest) in a certain royalty interest (the Property) in a gold mine located in Hawthorne, Nevada, for $38,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.[3]

Summary of Facts and Representations

1. The Plan is a defined contribution plan with one participant, Dr. Cavell. As of October 31, 1984, the Plan had assets having a fair market value of approximately $153,264. Dr. Cavell, who is the sole shareholder of the Employer, is also the trustee of the Plan. The applicant represents that in the event any other eligible employee is subsequently retained by the Employer, a separate plan will be created for such employee so that Dr. Cavell will be the only participant affected by the subject transaction.

2. In March 1977 Dr. Cavell acquired the Property from unrelated parties for $50,000. The Property consists of a 1.275% undivided, overriding royalty interest in a gold mine known as the Borealis Mine, located in Hawthorne, Nevada. The mine is operated by Tenneco Minerals, a Tenneco Corporation subsidiary.

3. Dr. Cavell now wishes to sell an undivided 17.273% interest in the Property to the Plan. As trustee for the Plan, Dr. Cavell wants to acquire the Interest in the Property because it is a good investment. Dr. Cavell, as trustee, believes that the appreciation in value of the Property will be substantial. The Plan will hold its Interest in the Property for investment purposes.

4. Dr. John W. Whitney of Whitney & Whitney, Inc., independent management consultants for mining industry and government, located in Reno, Nevada, has appraised the Property as having a fair market value of $220,000 as of November 28, 1984. Thus, a 17.273% interest in the Property would have a fair market value of $38,000.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The transaction involves less than 25% of the Plan's assets; (2) the Plan will be paying the fair market value of the Interest in the Property as determined by an independent appraiser; and (3) Dr. Cavell is the only participant in the Plan to be affected by this transaction, and as Plan trustee he has determined that it is appropriate for the Plan and in the Plan's best interest.

Notice to Interested Persons: Because Dr. Cavell is the sole stockholder of the Employer and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **Federal Register**.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Lone Star Company Profit Sharing Trust (the Profit Sharing Plan) and the Lone Star Company Pension Plan (the Pension Plan; Collectively, the Plans) Located in Dallas, Texas

[Application Nos. D–5208 and D–5209]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation, Past June 30, 1984, of: (1) A loan (the New Loan) in the amount of $3,042,000 by the Plans to Lone Star Company (the Employer); and (2) a lease (the New Lease) of certain improved real property (the Real Property) by the Pension Plan to the Employer, provided the terms and conditions of the New Loan and the New Lease are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Effective Date of Exemption: This exemption, if granted, will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plans consist of the Profit Sharing Plan and the Pension Plan. As of January 6, 1984, the Profit Sharing Plan had 518 participants and total assets of $8,029,320. On that same date, the Pension Plan had total assets of $15,790,889 and 675 participants. The trustee of the Plans and decision-maker with respect to the Plans' investments is MBank Dallas National Association (MBank) located in Dallas, Texas.

Among the assets of the Profit Sharing Plan, are 9,000 shares of common stock of the Employer valued at $1,960,650 and 9,000 shares of common stock of L&S Land Company (L&S), an affiliate of the Employer, valued at $60,390. In addition, the Profit Sharing Plan owns two parcels of real property (the Amarillo and Austin Properties) which are leased to the Employer and are collectively valued at $979,000.[4]

[3] Since Dr. Cavell is the sole stockholder of Richard J. Cavell, M.D., Ltd. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] The exemption application states that the securities and real property held by the Profit Sharing Plan constitute qualifying employer securities and qualifying employer real property within the meaning of section 407 (d)(4) and (d)(5) of the Act. As such, the application states that the transactions are statutorily exempt under section

Continued

2. The Employer, a Texas corporation maintaining its principal place of business in Dallas, Texas, is engaged in the wholesale liquor business. As part of its regular business, the Employer makes a limited amount of credit sales to retailers pursuant to the Texas Alcoholic Beverage Code (TABC). Under TABC section 102.32, a retailer who makes purchases during the first 15 days of the month is required to pay the . . . wholesaler by the twenty-fifth day of the same month. If the retailer makes a purchase during the remainder of the month, the retailer must pay the wholesaler by the tenth day of the following month. Should the retailer fail to remit payment, the wholesaler is not permitted to make further sales to the retailer. Failure to remit payments may eventually result in the retailer's losing its permit to sell alcoholic beverages.

3. To facilitate the Employer's credit arrangements with liquor retailers, the Plans made a loan (the Loan) to the Employer in the amount of $3,042,000 more than twenty-five years ago.[5] The Loan is evidenced by a promissory note in which the Pension Plan has a 49.90138 percent interest (totaling $1,518,000) and the Profit Sharing Plan has a 50.09862 percent interest (totaling $1,524,000). Since 1975, the Loan amount has remained unchanged although the interest rate has been adjusted periodically to reflect MBank's prevailing prime interest rate. MBank has monitored the terms of the Loan.

The Loan is secured by an assignment to the Plans of the Employer's accounts receivable (the Receivables) representing amounts due from retailers as described in item 2 above. To perfect the Plans' security interest in the Receivables, the appropriate UCC financing statements have been filed with the Texas Secretary of State. Over the past five years, the Employer has collected more than 99 percent of its Receivables. For the year ending June 30, 1984, the Employer's Receivables averaged in excess of $14 million per month, an amount well above the Loan amount. Over the five years analyzed, the Receivables have been consistently in excess of 200 percent of the amount of the Loan.

4. An exemption is requested to allow the plans to redocument the Loan as the New Loan. The New Loan, which became effective on July 1, 1984, is evidenced by a promissory note and secured by the Employer's Receivables. The New Loan is for a term of five years and it has an original principal amount of $3,042,000. Over the five year amortization period the New Loan is in effect, principal reductions of $608,000 are due each June 30th, commencing June 30, 1985 through June 30, 1989. On June 30, 1989, the unpaid principal and any accrued and unpaid interest is to be paid in full.

The New Loan is allocated between the Plans with the Pension Plan having 75 percent of the loaned funds (or $2,281,500) and the Profit Sharing plan having 25 percent of the New Loan amount (or $760,500). Each annual reduction of the New Loan principal is to be divided between the Plans on a pro rata basis in accordance with their interests in the New Loan.

The interest rate on the New Loan is a floating rate that is tied with the prime rate of MBank. The interest rate also features a floor of 9 percent per annum. Each time MBank changes its prime rate and at the end of every calendar quarter, interest is due and payable. In addition, MBank will be empowered to call the New Loan and require the Employer to pay the outstanding balance in full at any time the interest rate on the New Loan exceeds the usury limit as set forth in the promissory note.

According to the exemption application, the interest rate is based on arm's length negotiations between the Plans and the Employer. In determining the applicable interest rate to charge for the New Loan, MBank has relied on the Employer's credit history, the collection history of the Employer's Receivables, the Employer's financial ability to pay the debt and the current future management of the Employer. Based upon these factors, MBank asserts that the interest rate charged on the New Loan is the fair market rate for this loan. MBank explains that if it were to make the New Loan under similar or the same circumstances, it would charge its prime rate.

As stated above, the New Loan is secured by the Employer's Receivables. If the value of the Receivables ever falls below 200 percent of the outstanding New Loan balance, the Employer is required to pledge additional collateral.

5. An exemption is also requested to permit the Employer to continue leasing an office-warehouse facility located at 4724 Starway Street, Houston, Texas from the Pension Plan. The Employer has leased the Real Property from the Pension Plan since December 19, 1966, shortly after it sold the Real Property to the Pension Plan.[6] The New Lease, which commenced on July 1, 1984, is a triple net lease for two option terms, each of five years' duration. The renewals may be made (with MBank's approval as independent fiduciary) under the same terms and conditions except for the amount of the lease payments. During the initial three years the New Lease is in effect, the annual rental is $208,945, the fair market rental value of the Real Property as determined by Mr. William B. Brown (Mr. Brown), an independent appraiser. At the end of each five year lease term and at three year intervals into each lease term, the Real Property is to be reappraised by an independent appraiser selected by MBank. The lease payments for the Real Property will then be adjusted upward by MBank. In no event will the rent charged the Employer be reduced if the subsequent appraisal determines the fair market rental value of the Real Property is lower than a prior appraisal.

6. In conjunction with the New Lease provisions, the Employer replaced the roof covering the office-warehouse facility that is located on the Real Property. The cost to replace the roof was $183,000 and this amount was paid entirely by the Employer.

Because the Employer has replaced the roof, it is proposed that the Pension Plan give the Employer a monthly rental credit for the five years of the primary New Lease term. The amount of the credit is $4,136 per month.[7] MBank endorses the credit for roof repairs. It asserts that under the prior lease, the Employer was not required to repair the roof or structure of the leased premises. MBank explains that the repairs on the Real Property have been arranged and completely handled by the Employer. MBank also represents that the credit for repairs has been negotiated as part of an arm's length transaction on the total lease of the Real Property.

7. As stated previously, the Real Property was valued by Mr. Brown, an M.A.I. appraiser who is affiliated with National Realty Consultants, Inc. of Houston, Texas. In an appraisal report dated November 15, 1983, Mr. Brown

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408(e) of the Act. However, the Department expresses no opinion on whether these provisions of the Act have been met.

[5] The exemption application states that the loan complies with section 414(c)(1) of the Act. However, the Department expresses no opinion on whether this provision has been satisfied.

[6] According to the exemption application, the leasing of the Real Property has complied with the conditions of section 414(c)(2) of the Act. However, the Department expresses no opinion on whether this provision has been satisfied.

[7] The exemption application states that the $183,000 total expense for the roof repairs was amortized over the term of the New Lease using a monthly schedule discounted at 12 percent, the current Treasury Bill rate at the time the New Lease was assigned in order to arrive at the appropriate monthly credit schedule. The credit schedule was then subtracted from the amount due each month in order to determine the lease payments per month.

placed the fair market value of the Real Property at $1.65 million and the fair market rental value of the Real Property at $208,945 per year as of October 15, 1983.

8. With respect to both transactions, the exemption application imposes the following conditions: (a) In no event will the Profit Sharing Plan's part of the principal amount of the New Loan exceed 25 percent of the fair market value of the Profit Sharing Plan's total assets minus the fair market value of its qualifying employer securities (currently consisting of the L&S stock and the Employer's common stock) and the fair market value of its qualifying employer real property (currently consisting of the Amarillo and Austin Properties; and (b) in no event will the Pension Plan's part of the principal amount of the New Loan plus the fair market value of the Real Property exceed 25 percent of the fair market value of its total assets minus the fair market value of its qualifying employer securities and the fair market value of its qualifying employer real property. (At present, the Pension Plan does not hold either qualifying employer securities or qualifying employer real property.)

9. As discussed above, MBank has agreed to serve as the independent fiduciary for the New Loan and the New Lease. Although MBank and the Employer have no common officers or directors, there is a commercial banking relationship existing between both entities. The average deposits of the Employer in MBank average less than one percent of MBank's total average deposits. MBank also has outstanding loans to the Employer totaling $29 million as of December 30, 1983 and representing less than one percent of MBank's outstanding loans.

MBank has reviewed the New Loan and New Lease terms and it has represented that these transactions are appropriate investments for the Plans and in the best interests of their participants and beneficiaries. MBank also believes the New Loan and the New Lease satisfy the cash flow needs and diversification requirements of the Plans and that the terms and conditions contained in the transactions reflect the fair market rate for similar loan and lease transactions in the prevailing markets.

On behalf of the Plans, MBank is monitoring all of the terms and conditions of the New Loan and the New Lease transactions to ensure that all increases and decreases in the New Loan's interest rate and all increases in the New Lease payments are made and timely collected. In addition, MBank is to take whatever steps are necessary and proper to enforce and protect the interests of the Plans and their participants and beneficiaries.

10. In summary, it is represented that the transactions satisfy the terms and conditions of section 408(a) of the Act because: (a) The New Loan and the New Lease are being monitored by MBank as independent fiduciary; (b) MBank believes the New Loan and the New Lease are in the best interests of the Plans and protective of their participants and beneficiaries; (c) the New Loan is secured by the Employer's Receivables which will at all times be valued at more than 200 percent of the amount of the New Loan; (d) the initial rental due under the New Lease is based on the fair market value of the Real Property as determined by an independent appraiser; (e) at MBank's direction, the Real Property will be independently appraised and the rental will be adjusted upward at three year intervals into the original lease term and each renewal term; (f) MBank will approve each renewal term of the Lease; (g) the Profit Sharing Plan's interest in the principal amount of the New Loan will not exceed 25 percent of the fair market value of the Profit Sharing Plan's total assets minus the fair market value of its qualifying employer securities and its qualifying employer real property; and (h) the Pension Plan's interest in the principal amount of the New Loan plus the fair market value of the Real Property will not exceed 25 percent of the total fair market value of its assets minus the fair market value of its qualifying employer securities and the fair market value of its qualifying employer real property.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Mid-Continent Mud Sales, Inc. Pension Plan (the Pension Plan) and Profit-Sharing Plan (the Profit Sharing Plan) (collectively, the Plans) Located in Oklahoma City, Oklahoma

[Application No. D-5374]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan of $100,000 by the Plans to B&N Development Company, a party in interest with respect to the Plans, provided the terms of this transaction are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party at the time of the consummation of the transaction.

Summary of Facts and Representations

1. The Plans are a defined benefit pension plan with six participants and a profit sharing plan with six participants. The Plans has total assets of $435,697 as of November 30, 1983. The trustees of the Plans are Gerald and June Bolding (the Boldings). The Boldings are also participants in the Plans and Gerald Bolding (Mr. Bolding), is the sole shareholder of Mid-Continent Mud Sales, Inc. (the Plans' Sponsor). The Plans' Sponsor is a corporation engaged in the selling of a special "mud compound" used in drilling oil wells.

2. Mr. Bolding owns 50 percent of the capital interest and profit interest of B&N Development Company (B&N), a partnership. B&N owns certain real property and improvements located at 934 West Main Street, Yukon, Oklahoma (the Property), which is currently being leased to the Plan Sponsor and Lincoln Petroleum, an unrelated party. The Property is now being financed by the Investors Federal Savings and Loan Association. The current loan (the Mortgage) is being amortized over a period of 25 years, with an interest rate of 15¾%.

3. B&N wishes to have the Plans refinance the Mortgage. The proposed mortgage will be in the amount of $100,000 (the New Mortgage). This amount represents approximately 23 percent of the total assets of the Plans. The Pension Plan will invest approximately $69,970, representing approximately 23 percent of its assets, and the Profit Sharing Plan would invest $30,030, representing approximately 23 percent of its assets. The New Mortgage will have a term of 10 years at an initial interest rate of 14 percent per annum with monthly amortization of principal and interest. The New Mortgage will contain provisions for adjustment of the interest rate every three years based on the then prevailing interest rate for comparable loans.

4. The Plans will have as collateral for the New Mortgage a first mortgage (the Collateral) on the Property. An independent appraisal of the Property performed by R. Howard Sears, MAI/SREA, established the fair market value of the Property at $160,000 as of January 31, 1984. The Collateral will be insured

in an amount not less than the outstanding balance of the New Mortgage. Each of the respective Plans will be named as loss-payee of said insurance to the extent of their respective interests. A perfected security interest in the Collateral will be evidenced by a mortgage duly recorded under Oklahoma State law.

5. The Citizens National Bank and Trust Company will serve as the independent fiduciary (the Independent Fiduciary) for the New Mortgage. The Plans have established a special retirement trust whose only asset, at inception, will be the New Mortgage. The Independent Fiduciary will serve as the trustee for this special retirement trust. The Independent Fiduciary has no relationship to the Plans, the Plans' Sponsor, nor B&N.

6. The Independent Fiduciary has performed a review of the current portfolios of the Plans in order to determine the prudence of the proposed transaction in light of the future liquidity needs of each of the Plans, the potential risks, and the potential return on the New Mortgage. The Independent Fiduciary has made the following representations:

(a) that the New Mortgage will have no impact upon the liquidity needs of the Plans;

(b) that it will monitor repayment of the New Mortgage and will be empowered to call in the Collateral in the event of default;

(c) that the New Mortgage will be initially collateralized at 160 percent of its face amount;

(d) that it will require that, at all times, the value of the Collateral will remain at least 150 percent of the outstanding balance of the New Mortgage, and will require B&N to provide additional collateral if the value of the Collateral falls below 150 percent of the outstanding balance of the New Mortgage;

(e) that the interest rate of 14 percent reflects the current rate of interest for similar commercial real estate loans; and

(f) that it will have the sole authority and responsibility for the adjustment of the interest rate every three years to reflect the then prevailing interest rate for comparable real estate loans.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408 of the Act because:

(1) the proposed transaction involves approximately 23 percent of the assets of the Plans;

(2) the New Mortgage will be adequately secured;

(3) the Plans will receive a fair market value interest rate; and

(4) the Independent Fiduciary has evaluated all aspects of the proposed loan and has determined that it is in the interest of and protective of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Retirement Plan for Employees of National Bank of Commerce (the Plan) Located in Memphis, Tennessee

[Application No. D-5564]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of real property by the Plan to the National Bank of Commerce (the Employer), a party in interest with respect to the Plan, provided that such lease is on terms and conditions at least as favorable to the Plan as those obtainable by the Plan in an arm's length transaction with an unrelated person.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan having 703 participants and net assets of $12,216,417 as of December 31, 1983. The Employer serves as trustee of the Plan.

2. The Plan owns a parcel of real property located at 2684 North Watkins, Memphis, Tennessee (the Property). The Plan acquired the Property from the Employer on August 1, 1967 for $115,887. The Property contains approximately 22,150 square feet and is improved by a one-story branch bank building.

3. The Plan leased the Property to the Employer for a term of 20 years beginning August 1, 1967. The lease provided for monthly rental payments of $983 and required the Employer to pay all taxes and other expenses on the Property.*

4. The Plan desires to sell the Property and has placed the Property on the market for sale with the firm of Wilkinson and Snowden, Inc., of Memphis, Tennessee. The Property is listed at an asking price of $170,000. To date the Plan has been unable to sell the Property.

5. The applicant recognizes the fact that as of July 1, 1984, the lease between the Plan and the Employer constituted a prohibited transaction. However, in order to keep the Property from being vacant while the Plan attempts to sell it, the Plan and the Employer have requested an exemption to enter into a new lease (New Lease) for a period of 18 months. The applicant has agreed to pay any excise taxes which may be due as a result of continuing the old lease past July 1, 1984.

6. The New Lease provides for monthly payments of $1,260 and requires the Employer to pay all taxes and expenses on the Property. The monthly lease rental payments to be paid under the New Lease were determined pursuant to an appraisal performed on July 25, 1984 by Mr. William R. Carrington Jones, an independent MAI appraiser with the Carrington Jones Company located in Memphis, Tennessee. The New Lease provides that the Employer has the right to cancel the lease if the Plan sells the Property.

7. The Plan has retained the Wyatt Company to act as independent fiduciary in connection with the leasing of the Property to the Employer. The Wyatt Company is a national actuarial and consulting firm having a branch office in Memphis, Tennessee. The Wyatt Company conducts the actuarial work for the Plan, however, other than this service the Wyatt Company is unrelated to, and independent of, the Employer.

The Wyatt Company represents that it has examined the terms and conditions of the New Lease, including the appraisal of the fair market rental value of the Property, and it is their opinion that the terms and conditions of the New Lease are equivalent to an arms length transaction between unrelated parties. The New Lease contains adequate protections for the participants and beneficiaries of the Plan and the New Lease constitutes a prudent investment for the Plan. Further, the Plan's execution of the New Lease does not adversely affect the Plan's liquidity needs and, with the New Lease, the Plan is appropriately diversified.

The Wyatt Company will monitor the performance of the Employer under the New Lease and will represent the Plan in the enforcement of the terms and

* The applicant represents that the lease was covered by the statutory exemption provided by section 414(c)(2) of the Act until June 30, 1984. The Department expresses no opinion as to the applicability of section 414 of the Act to this lease.

conditions of the New Lease. As fiduciaries selected to represent the Plan participants with respect to this transaction, the Wyatt Company represents that the New Lease is in the best interest of the Plan participants. This conclusion is based upon the fact that the Employer is paying fair market value rental for the Property and that it is unlikely that any other potential tenant would be willing to pay a larger rent.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) The rental to be paid to the Plan was determined pursuant to an independent appraisal;

(b) The terms and conditions of the New Lease have been approved and will be monitored and enforced by the Wyatt Company; and

(c) The Wyatt Company represents that the New Lease is in the best interests of the Plan's participants.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

McCree, Gahagan, McLean & Ketterhagen, M.D., P.A. Amended and Restated Employee Money Purchase Pension Plan and Trust (the Plan), Located in Naples, Florida

[Application No. D-5884]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the individually directed account (the Account) of Thomas G. Gahagan, M.D. (Dr. Gahagan) in the Plan to Dr. Gahagan, a trustee of the Plan, for the appraised fair market value of the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with 18 participants. The Plan had assets of $905,201.06 as of September 30, 1983. The trustees of the Plan (the Trustees) are Dr. Gahagan, Douglas G. McCree, M.D., Wallace W. McLean, M.D., and Donald W. Ketterhagen, M.D. The Plan permits each participant to select the investment medium in which his or her account, or portion thereof, shall be invested. Among the investments permitted to be directed by the individual participants are certificates of deposit, Treasury bills, undeveloped real property, and stocks. As of September 30, 1983, Dr. Gahagan's account in the Plan had assets of $258,102.87 including the subject real estate.

2. The Property is an unimproved waterfront lot located at lot 34, Spyglass Island Section of Port Royal, in Naples, Florida. The Plan purchased the Property on behalf of the Account on April 10, 1981 for $220,000 in cash and deferred payment, which has been paid, from Christine Montgomery, an unrelated party with respect to the Plan. The applicant represents that the Property was purchased for investment, as it is located in a desirable waterfront area that was appreciating rapidly at the time.

3. The applicant represents that the Property's rate of appreciation has slowed substantially and that the Sale is in the best interests of the Plan because the Account will be able to realize a more liquid and diversified investment program providing a higher rate of growth.

4. Dr. Gahagan proposes to purchase the Property from the Account for cash at the higher of: (a) Its appraised fair market value; or (b) the total expenditures incurred by the Account in connection with the acquisition and holding of the Property. Dr. Gahagan represents that the Account will bear no expense with respect to the Sale.

5. The applicant represents that since the purchase of the Property to September 14, 1984, the Account has paid $970.04 in closing costs, $4,602.26 in Property taxes, $16,902.13 in interest on the mortgage, and $436.00 in maintenance and legal fees. As of September 14, 1984, the Account's total cost to acquire and hold the Property amounted to $242,910.43.

6. On September 18, 1984, Richard P. Webster, Certified Appraiser-Senior, American Association of Certified Appraisers and independent of Dr. Gahagan, appraised the Property and determined that it had a fair market value of $255,000.

7. In summary, the applicant represents that the proposed Sale meets the statutory criteria of section 408(a) of the Act because: (a) This is a one time transaction for cash; (b) the Account will receive the greater of the fair market value for the Property as determined by an independent, qualified appraiser or the total costs incurred by the Account in connection with the acquisition and holding of the Property; (c) the Plan will incur no expenses in connection with the Sale; and (d) the only person affected by the transaction is Dr. Gahagan and he desires that the transaction be consummated.

Notice to Interested Persons: Because Dr. Gahagan is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the date of publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

United Technologies Corporation Master Trust (the Master Trust) Located in Hartford, Connecticut

[Application No. D-5641]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The purchase by the Master Trust from United Technologies Corporation (UTC) of all of the outstanding shares (the Stock) of UTC's wholly owned subsidiary, United Properties, Inc. (UPI), the assets of which consist primarily of certain real property (the Real Property), provided the price paid for the Stock is not more than its fair market value at the time the transaction is consummated; (2) the leasing (the Lease) of a portion of the Real Property by the Master Trust to UTC, provided the terms and conditions of the Lease are at least as favorable to the Master Trust as those obtainable in an arm's length transaction with an unrelated party; and (3) other transactions associated with the acquisition, holding and possible disposition of the Real Property, provided the terms and conditions of these transactions are not less favorable to the Master Trust as those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. UTC and its subsidiaries are a large multi-industry group of corporations that are engaged in a variety of industries which include aerospace technology, heavy equipment design and production, and the manufacture, installation and servicing of components and equipment used in commercial and residential buildings. UTC's securities are listed on the New York Stock Exchange. UTC maintains its principal place of business in Hartford, Connecticut.

2. As of December 31, 1983, UTC and its subsidiaries maintained a total of 51 domestic defined benefit pension plans (the Plans) having $3.45 billion in total assets and covering approximately 130,000 participants. Some or all of the assets of 45 of the Plans are invested in the Master Trust which held $3.42 billion in total assets and covered approximately 128,000 participants as of December 31, 1983. Also as of December 31, 1983, the total value of the assets of the six Plans that did not invest in the Master Trust was approximately $34 million.

The trustee of the Master Trust is Citibank, N.A. (the Trustee). Investment decisions for the Master Trust are made by the Pension Committee (the Pension Committee), the Pension Investment Committee and a number of independent investment managers who are appointed (and may be removed) by the Pension Committee.

3. UTC requests an administrative exemption in order to engage in a number of transactions with the Master Trust. Following is a description of these transactions.

a. *Sale of UPI Stock.* UTC proposes to sell to the Master Trust all of the outstanding Stock of UPI. The assets of UPI that underlie the Stock comprise the Real Property. The Real Property consists of an office building (the Building); a parking garage (the Garage); a fee simple interest in a small contiguous parcel of land (the Side Parcel);[9] and a leasehold interest (the Ground Lease) in the land (the Land) on which the Building and the Garage are situated. Also associated with the Real Property is an agreement to purchase the land (the Land Contract).

The Building, which is located at 699–755 Main Street, Hartford, Connecticut, was completed in 1974 under the name of One Financial Plaza. The Building is a 26-story office tower with a roof helicopter pad. Adjoining the Building is the Garage which contains approximately 1,100 parking spaces. The Building was developed by Connecticut Financial Associates (CFA), a limited partnership whose general partners were the New York Life Insurance Company (New York Life) and Mr. David T. Chase (Mr. Chase). (CFA, Mr. Chase, New York Life and the limited partners are not parties in interest with respect to the Master Trust.)

In December 1982, UPI purchased the Building and the Garage from CFA for a total purchase price of $50,742,014. The Building and the Garage were subject to a mortgage held by New York Life in the amount of $26,516,809 and bearing an interest rate of 8⅜ percent. The remaining period of the mortgage at the time of the purchase was approximately 19 years. The total purchase price included a cash payment of approximately $23,225,205. UTC provided UPI with the financing. CFA also assigned its rights in the Building and the Garage and certain service contracts to UPI along with certain warranty rights obtained by CFA in litigation against the manufacturer and installer of the glass wall units (the Window Units) enclosing the Building. Concurrently with the acquisition of the Building and Garage, UPI purchased the Side Parcel in fee simple from Mr. Chase for $1.5 million. UPI also subsequently leased additional space in the Building to UTC. UTC currently occupies approximately 127,000 square feet (or 21 percent of the rentable space) in the Building and uses approximately 500 spaces in the Garage which is operated by Schwartz Parking, Inc. (Schwartz), an unrelated entity.

In connection with these real estate acquisitions, UPI entered into the Ground Lease with CFA for the Land under the Building and Garage. The term of the Ground Lease is of 99 years duration and it has no renewal period. The basic ground rent payable to CFA is $1,028,492 per year, payable in advance. In addition, the basic ground rent is indexed to UTC's 30-day commercial paper rates with a floor and ceiling of 10 percent on the amount of the annual increase or decrease in the rent.

At the time of the acquisition of the Real Property, UPI and CFA also entered into the Land Contract under which UPI agreed to purchase the Land for $9,747,986 on February 1, 1985. The Land Contract also provided options to accelerate the closing date before February 1, 1985 to both CFA and UPI, with or without the assessment of a $500,000 acceleration penalty, depending on whoever initiated the transaction.

In March 1983, CFA obtained a loan (the Loan) for $8,750,000 from Connecticut National Bank (CNB), which is not a party in interest, and it pledged the Land under the Building and Garage as security for the Loan. UPI, CNB and CFA then entered into an agreement (the Agreement) under which CFA assigned to CNB its rights under the Ground Lease and the Land Contract. The Agreement provides that if CFA defaults on the repayment of the Loan, CNB must give UPI the option to purchase CNB's rights under the Agreement for an amount equal to the outstanding balance of the Loan.

The Master Trust will purchase the Stock of UPI (and its underlying asset—the Real Property) for the lesser of (a) the net book value of all of the outstanding shares of the UPI Stock (the shareowners' equity) adjusted for the cost of certain planned capital improvements (the Capital Improvements) to the Building and the Garage or (b) the fair market value of the Real Property, which will be reduced to the extent necessary to reflect the Real Property's after tax value to the Master Trust as of the closing date. Pursuant to the formula, the purchase price for the Real Property including the Land will be approximately $63.1 million. This amount is less than the fair market value of the Real Property as determined by Landauer Associates (Landauer Associates), the independent appraiser, and as approved by Landauer Advisors (Landauer Advisors), the independent fiduciary responsible for these transactions. (See below.) The Master Trust will not be required to pay any real estate fees or commissions in connection with the transactions. UTC will pay all closing costs that are applicable to both the buyer and the seller including the cost of retaining Landauer Advisors, Inc.

Landauer Associates, Inc., a nationally known investment and real estate management firm with its principal offices located in New York City, appraised the Real Property on January 1, 1983. Landauer Associates has extensive experience in appraising commercial real estate and in managing real estate properties for investors. Landauer Associates has performed two unrelated appraisals for the Master Trust but it maintains no ongoing commercial relationship with the Master Trust or UTC.

In performing its appraisal, Landauer Associates valued the Real Property unencumbered by UTC's current below-market leases and it assumed that UTC

[9] According to the exemption application, the Side Parcel is presently non-income producing property. However, the application states that it is appropriate for the Master Trust to acquire this property because its future development will enhance the value of the Master Trust's investment in the remainder of the Real Property.

would pay rent for its space in the Real Property at the rate provided in the proposed Lease (See item 3c. below.) between UPI and UTC. Landauer Associates also assumed that neither UPI, as tenant of the Land, nor the landlord would exercise the option to sell or purchase the Land prior to February 1985. After considering several approaches to valuing the Real Property, Landauer Associates reconciled the various figures derived by its analysis and determined that the fair market value of the Real Property (including the Land) as of January 1, 1983 was approximately $70 million. Landauer Associates then subscribed $8.5 million (the then present value of the cost of purchasing the Land for $9,757,986 on February 1, 1985) from the $70 million combined value of the Land and the rest of the Real Property, and concluded that the fair market value of the Real Property (i.e., the Building, Garage and Side Parcel) excluding the Land was approximately $61,500,000.

Coldwell Banker, Inc. (Coldwell Banker) also inspected the Building and reviewed the appraisal performed by Landauer Associates and certain related information. Coldwell Banker, a nationally known real estate firm with extensive experience in evaluating all types of commercial properties, is not a party in interest. Coldwell Banker agreed that the fair market value of the Real Property (excluding the Land) was approximately $61,500,000.

As indicated above, Landauer Associates determined that the fair market value of the Real Property including the Land was approximately $70 million. Landauer Advisors subsequently determined that the after-tax value of the Real Property to the Master Trust was approximately $67.1 million. Also as indicated above, the total cost of the investment to the Master Trust was projected at $63.1 million.

Although the fair market value of the assets of UPI may exceed the total purchase price paid by the Master Trust, UTC does not intend to claim a Federal income tax deduction for the contribution to the Master Trust of the excess (if any) of the fair market value of the Real Property over the purchase price. However, should UTC and its subsidiaries be required in the future to recognize gain, for Federal income tax purposes, with respect to any excess of the fair market value of the assets of UPI over the purchase price, they may treat this excess value as a contribution toward satisfaction of their minimum funding obligations to the Master Trust under section 302 of the Act and section 412 of the Code, and in that event, UTC and its subsidiaries also would claim a deduction under section 404(a) of the Code in an amount that would not exceed the lesser of (a) the amount of gain on the transaction that UTC and its subsidiaries are required to recognize, or (b) the maximum deduction allowed under section 404(a) of the Code.

b. *UTC's Guarantees to the Master Trust.* In connection with the proposed acquisition, UTC will pay all costs related to the replacement of defective Window Units in the Building that are not covered by a warranty agreement with the manufacturer and installer or an escrow account established by UPI in December 1982. This guarantee is effective as long as the Master Trust owns the Real Property. If the Master Trust sells the Real Property after 1994 (when the warranty expires), any potential costs related to replacing defective Window Units will likely result in a reduction in the sales price. In opining on the price to be paid for the Real Property, Landauer Advisors has considered the potential costs relating to the replacement of the Window Units.

In addition, UTC has agreed to indemnify the Master Trust for any loss incurred on the sale of the Stock of UPI or of the Real Property at any time within ten years after the closing date at a price which is less than the sum of (a) the price paid by the Master Trust for the UPI Stock, (b) the aggregate principal payments made after closing with respect to the existing mortgage on the Real Property (or the entire principal balance of the mortgage as of the closing date, should the outstanding mortgage have been prepaid in full prior to the sale of the Real Property), and (c) the cost to UPI of purchasing the Land if the purchase occurs after the closing date. UTC has further undertaken to reimburse the Master Trust for any income tax liability that the Master Trust or UPI may incur on account of depreciation deductions taken by UPI while it was a wholly owned subsidiary of UTC.

c. *Lease of Space in the Building by UTC and Its Subsidiaries.* The Lease between UPI and UTC, which was negotiated on behalf of the Master Trust by Landauer Advisors, will permit UTC to occupy the space that it presently leases in the Real Property at a rent that is not less than the fair market rental value of the space, as determined at the time the lease was negotiated. The annual rental has been established at $2,410,980. As the landlord, UPI will pay taxes on the Real Property and the costs of utilities, insurance and other operating expenses. However, UTC will pay its *pro rata* share of any increases in taxes or in the costs of utilities, insurance and other operating expenses over the initial levels of such taxes and other expenses in effect during the base period specified in the Lease. The initial term of the Lease is five years, and UTC has options to renew for three additional five-year periods. UTC's rent will be renegotiated every five years to adjust the rent to the then current fair market rental value of the space occupied by UTC, but in no event will the rental rate be less than the original rental rate.

d. *Use of Parking Spaces in the Garage.* UTC and certain parties in interest will continue to pay fees for the use of parking spaces in the Garage through arrangements with Schwartz, the Garage concessionaire. Some of the UTC employees and other individuals who use parking spaces in the Garage are parties in interest. It is contemplated that these parking arrangements will continue and may change from time to time in accordance with the tenants' needs.

The Parking Garage Management Agreement provides that UPI, as the present owner of the Garage, has the authority to set the rates charged for parking in the Garage. The terms and conditions concerning the fees paid and the use of parking spaces by UTC and other parties in interest will be negotiated at arm's length between UTC (and other parties in interest) and Landauer Advisors on behalf of the Master Trust.

e. *Existing Subleases to UTC.* UTC currently subleases space on the second and thirteenth floors of the Building from tenants that are not parties in interest. Because the existence of these subleases may constitute prohibited transactions if the Master Trust acquires the Real Property, UTC requests that this exemption extend to cover the subleases that exist between UTC and tenants in the Building.

f. *Future Expansion of UTC Within the Building.* In the future, UTC may wish to expand its space in the Building. Therefore, UTC requests that the exemption permit it and its subsidiaries to expand their occupancy of the Real Property by leasing new space under terms substantially similar to those contained in the Lease, except that the rental rate will be not less than the greater of the then current fair market rental value of the new space or the rate that UTC will pay for space on the same floor during the initial term of the Lease. Similarly, UTC requests that it be allowed in the future to sublease space in the Building from other tenants.

g. *Leases With Other Parties in Interest.* At present, three tenants in the Building are known to be, or to have been in the past, parties in interest with respect to the Master Trust. They are Towers, Perrin, Forster & Crosby (TPF&C); Price, Waterhouse and Company (PW); and Farmer, Wells, McGuinn & Sibal (Farmer, Wells).

1. *TPF&C.* TPF&C is an actuarial consulting firm that performs actuarial services for some of the Master Trust Plans. Since April 1983, TPF&C has sub-subleased (the Sub-Sublease) approximately 4,500 square feet of space in the Building from Travelers Corporation, an unrelated entity, (which subleases approximately 15,408 square feet in the Building from the Hartford Steam Boiler Inspection and Insurance Company, another unrelated entity). The Sub-Sublease will expire on April 30, 1988 and there are no renewal or expansion options.

2. *PW.* PW is a nationally known accounting firm that serves as the corporate auditor for UTC and for some of its subsidiaries. PW also performs various accounting services for the Master Trust from time to time. PW occupies 22,685 square feet of office space in the Building under a ten-year lease which it entered into in January 1978. The lease contains an option to renew for an additional five-year period, with the rental to be renegotiated. Also, PW has an option to expand its occupancy of the Building for the final two years of the lease.

3. *Farmer, Wells.* Farmer Wells is a law firm that represents UTC in a number of legal matters. Although the firm has not undertaken any matters involving the Master Trust for several years, it has represented the Master Trust in the past and may do so in the future. Although UTC believes that Farmer, Wells is not currently a party in interest, because it has been a service provider in the past, it may become one in the future.

The Farmer, Wells lease has a four-year term with no renewal options. The lease expires on February 15, 1986.

Due to the size of the Master Trust and the number of plans, employees and parties in interest related to it, other future tenants of the Building may be parties in interest, to whom the leasing of space would be a prohibited transaction. Therefore, UTC requests that the exemption permit the continuation and the possible renewal, extension, expansion or other modification of the current leases to parties in interest, and the leasing of additional space in the Real Property to other parties in interest, subject to the following conditions:

(a) To the extent not inconsistent with the terms of any renewal option under the lease, any renewal, extension, expansion or other modification of an existing lease with a party in interest shall provide for rent and other lease terms that are not more favorable to the party in interest lessees than the terms then available to similarly situated, unrelated parties occupying similar space in the Real Property;

(b) Any future lease with a party in interest for space in the Real Property shall provide for rent and other lease terms that are not more favorable to the party in interest lessee than the terms then available to similarly situated, unrelated parties occupying similar space in the Real Property; and

(c) Any such renewals, extensions, expansions, other modifications or future leases of space to parties in interest shall be negotiated and monitored on behalf of the Master Trust by Landauer Advisors.

h. *Building Service Contracts.* Two wholly-owned subsidiaries of UTC, Carrier Corporation (Carrier) and Otis Elevator Company (Otis) which are also sponsors of several plans in the Master Trust, currently provide maintenance services and related equipment for the Real Property under the terms of service contracts which were assigned by CFA to UPI. The two contracts entail a current annual cost to UPI of approximately $170,000 (Otis) and $14,000 (Carrier), or a total of less than 6 percent of the Real Property's approximately $3.2 million total operating costs (including general administrative expenses) for 1983. The Otis contract expires on February 28, 1989, and the Carrier contract expires on December 1 of any year, provided the terminating party gives the other party at least 30 days notice prior to the December 1 termination.

It is proposed that Landauer Advisors be allowed to continue the current contracts or to enter into alternative arrangements with Otis and Carrier if Landauer Advisors subsequently determines that such alternative arrangements would be in the interests of the participants and beneficiaries of the Master Trust. The service providers will be paid not more than reasonable compensation for their services.[10]

i. *Property Management Services by Landauer Advisors.* In addition to its role as the independent fiduciary, Landauer Advisors has agreed to serve as an independent property manager on behalf of UPI. Landauer Advisors will have the authority to make all decisions with respect to the management of the Real Property. No other plan fiduciary or party in interest will have discretionary authority over the management of the Real Property. In connection with its role as investment manager for the UPI shares and for the Real Property, Landauer Advisors will execute an agreement with UPI in which UPI will authorize Landauer Advisors to exercise complete discretion in fulfilling the terms of the Investment Management Agreement. No additional fees will be paid to Landauer Advisors for rendering such services.[11]

j. *Capital Improvements to the Building and Garage.* UPI currently is planning to improve the Building and Garage so as to enhance the attractiveness of the Real Property to tenants. Most of the Capital Improvements already have been or will soon be completed, but a few have not yet been approved by UPI. The total estimated cost of the Capital Improvements is approximately $2.7 million. Some of these projects will take several months to complete and may not be completed at the time that the Master Trust acquires the Stock of UPI. Landauer Advisors has taken into account the various completed and prospective Capital Improvements to the Building and Garage in its consideration of the proposed transactions and it has determined that the Capital Improvements are in the best interests of the participants and beneficiaries of the Master Trust. The costs of Capital Improvements that have been incurred by UPI before the closing will constitute part of the adjusted net book value of the UPI Stock as of the closing date. Any remaining Capital Improvements contracted for and payable by UPI, but not yet paid for as of the date of closing, will be added on as an adjustment in determining the final purchase price for the UPI Stock. UTC will pay the costs of any such remaining Capital Improvements, thereby relieving UPI of that obligation. Landauer Advisors will have full responsibility for supervising the completion of the Capital Improvement contracts that remain to be performed at the time the Master Trust acquires the Stock.

Two of the planned Capital Improvements projects involve the use of equipment and services provided by subsidiaries of UTC, which are parties in interest. Because the performance of the Capital Improvement contracts by the parties in interest would constitute prohibited transactions if the Master

[10] The Department is not proposing an exemption for the provision of services beyond that which is provided in section 408(b)(2) of the Act.

[11] See Footnote 10 above.

Trust becomes the owner of the Real Property, it is requested that this exemption extend to these transactions.[12]

4. As previously stated, Landauer Advisors, a subsidiary of Landauer Associates, will serve as the independent fiduciary for the Master Trust. Landauer Advisors is an investment manager registered under the Investment Advisers Act of 1940. Landauer Advisors has had no prior relationship to UTC or the Master Trust.

As the independent fiduciary, Landauer Advisors will be vested with full discretionary authority in monitoring the transactions that are described in detail above and in taking all actions that are necessary and proper on behalf of the Master Trust. Landauer Advisors will hold the Stock, exercise voting rights with respect to these shares and dispose of the Stock (and Real Property) as it may consider appropriate. Landauer Advisors will manage the Real Property, decide when it is appropriate for the Master Trust to pay off the mortgage and oversee the leases. Landauer Advisors will maintain accurate and detailed records of such transactions.

Landauer Advisors has performed a thorough study of the proposed transactions. Based on its analysis, Landauer Advisors has concluded that the proposed transactions are in the best interests of the Master Trust and their participants and beneficiaries and are protective of the participants' and beneficiaries' rights. Moreover, Landauer Advisors has concluded that the Real Property "is an investment which, if available for purchase, we would recommend without hesitation to other pension funds seeking equity investment in real property."

In considering the proposed transactions, Landauer Advisors has performed a number of analyses designed to protect the interests of the participants and beneficiaries of the Master Trust. First, Landauer Advisors has conducted an investment analysis of the Real Property, taking into account the background of the proposed transactions, the projected rate of return on the Real Property, the effect of the failure of the Window Units on the value of the investment, the planned Capital Improvements to the Building and Garage, UTC's guarantees to the Master Trust, and the effect of unrelated business income tax on the purchase price of the Real Property. Based on these analyses, Landauer Advisors has concluded that the price at which the Master Trust will purchase the Real Property, including the Land "represents a very attractive price for the Master Trust."

Landauer Advisors also has reviewed the proposed transactions in light of the diversification, cash flow, liquidity and investment needs of the Master Trust. Landauer Advisors has concluded that, in light of its review of the investment portfolio of the Master Trust and its discussion of the liquidity needs of the Master Trust with Towers, Perrin, Forster & Crosby, actuaries of the Master Trust, "the purchase of the Real Property will not adversely affect the liquidity requirements of the Master Trust nor cause it to be inadequately diversified." In addition, Landauer Advisors has reviewed the real estate holdings of the Master Trust in light of the Master Trust's investment objectives and diversification needs. Based on these analyses, Landauer has stated that "it is our opinion that the proposed investment is consistent with the abovementioned investment guidelines, with the diversification and liquidity needs of the Master Trust and with the quality and type of the other real estate investments currently held by the Master Trust."

If Landauer Advisors resigns or is discharged, the Pension Committee will appoint as successor independent fiduciary only an organization that satisfies all of the following requirements: (a) The successor may not be a party in interest with respect to the Master Trust and may not have any affiliation with UTC or its subsidiaries or with any other part in interest that participates in the transactions in question; (b) the successor may not have any other relationship or interest that could affect in any way its ability to serve as a truly independent fiduciary on behalf of the Master Trust and to fulfill its statutory obligation to manage the Real Property in a prudent manner and for the exclusive benefit of the Master Trust's participants and beneficiaries; (c) the successor must be an organization that has recognized competence and extensive experience in the management of real estate properties for investors; and (d) the successor must be granted the same full discretionary authority to manage the Real Property that has been granted to Landauer Advisors.

If a successor independent fiduciary is appointed, the Pension Committee will advise the Department's Office of Regulations and Interpretations (ORI) in writing within sixty days of the date on which the resignation or replacement takes effect. This notification will identify the successor independent fiduciary. In the event that the Pension Committee has replaced Landauer Advisors, the notification will also inform ORI of the reason for the action taken by the Pension Committee.

5. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) UTC has provided the Master Trust with a guarantee against any loss upon resale of the Stock and assets of UPI; (b) UTC has provided the Master Trust with additional guarantees or undertakings relating to the replacement of defective Window Units, Capital Improvements and income tax liability on account of UPI's depreciation deductions; (c) UTC's Lease as well as all leases with parties in interest will provide for rent that has been determined on the basis of arm's length negotiations between UTC or the parties in interest and Landauer Advisors; (d) UTC's rent will be renegotiated every five years to reflect the current fair market rental value (but it will never be less than the original rent); (e) UTC will pay its *pro rata* share of any increases, over the levels in effect during the base period specified in the Lease, in the Real Property's operating expenses and taxes; (f) Landauer Advisors, which will monitor the proposed transactions, has certified that the proposed transactions are in the best interests of the Master Trust and its participants and beneficiaries and are protective of the participants' and beneficiaries' rights; (g) if Landauer Advisors resign or is discharged, the Pension Committee will select a successor independent fiduciary based on structured guidelines and advise the Department of the new appointment; and (h) the conditions that will govern future leasing of space, renewals, modifications and extensions of leases to UTC and existing tenants, leases to tenants who are parties in interest, service contracts with parties in interest, and Capital Improvements to the Real Property are based on arm's length negotiations between such parties and Landauer Advisors.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

[12] See Footnote 10 above.

Drs. Meara and Pansino, Oral and Maxillofacial Surgery, P.C. Employees' Pension Plan (the Plan) Located in Lansing, Michigan

[Application No. D-5799]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the purchase of a diamond (the Diamond) by Dr. John W. Meara, Jr. (Dr. Meara), for the cash consideration of $11,200 plus carrying costs, from Dr. Meara's individual account (the Account) in the Plan, provided the price paid for the Diamond is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Respresentations

1. The Plan is a pension plan whose assets are administerd on an individual account basis such that each participant's account is segregated from the accounts of the other participants and each participant directs his/her own investments. The trustees of the Plan are Dr. Meara and Dr. Frank Pansino. As of July 31, 1983, the Plan had total assets having a fair market value of $1,354,221. As of July 31, the Plan had 6 participants and Dr. Meara had approximately $725,000 in his Account.

2. Dr. Meara is an officer, director, more than 10 percent shareholder and highly compensated employee of the Drs. Meara and Pansino Oral and Maxillofacial Surgery, P.C., a professonal corporation located at 701 North Logan Avenue, Lansing, Michigan.

3. On June 18, 1980, Dr. Meara's Account acquired a 2.14 carat unmounted Marquise diamond from Wright-Kay Jewelers (Wright-Kay) of Birmingham, Michigan. Wright-Kay is an unrelated entity. Dr. Meara's Account paid $34,675 for the Diamond. Following acquisition, Dr. Meara placed the Diamond in a safe deposit box at the Frandor Branch of Michigan National Bank, Lansing, Michigan. The bank has charged Dr. Meara's Account an annual rental fee of $400 and an annual insurance premium of $200. Neither Dr. Meara nor any other participant in the Plan has ever made use of the Diamond since it has been held by Dr. Meara's Account.

4. According to the exemption application, the Diamond represented aproximately 38 percent of the assets held in Dr. Meara's Account at the time of purchase. However, due to a saturated world market for diamonds, the Diamond has declined dramatically in value. The exemption application states that experts believe the diamond market will remain in a depressed condition for some time despite efforts by some diamond firms to reverse this downward trend.

5. On February 21, 1984, the Diamond was valued by two independent appraisers. Mr. George Lederer (Mr. Lederer) an appraiser from San Francisco, California, who is a member of the Appraisers Association of America, valued the Diamond at its replacement value of $11,200 which is based on the cost of replacing the Diamond under current market conditions. In valuing the Diamond, Mr. Lederer advises that he considered the purchase and sale prices of diamonds of comparable quality and size.

Mr. Scott Heller (Mr. Heller), a graduate gemologist affiliated with Baron Jewelers of San Leandro, California also valued the Diamond and placed its replacement value at $10,900. In a subsequent appraisal dated May 5, 1984, Mr. Heller maintained that the replacement value of the Diamond had remained unchanged.

6. Dr. Meara proposes to purchase the Diamond from his Account for $11,200, the greater of the appraised values. Dr. Meara will reimburse his Account for all carrying costs resulting from the acquisition. Further, Dr. Meara's Account will not be charged any fees or commissions in connection with the proposed transaction.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) It will be a one-time transaction for cash; (b) the purchase price for the Diamond will be based on the higher of two independently appraised values and it will include all carrying costs borne by the Account in its ownership of the Diamond; (c) Dr. Meara's Account will not be required to pay any fees or commissions in connection with the purchase; and (d) Dr. Meara, who is the only person who will be affected by the proposed purchase, desires that the transaction be consumated.

Notification of Interested Persons: Since Dr. Meara is the only Plan participant affected by the proposed transaction, it has been determined that there is no need to distribute notice of the proposed exemption to interested persons. Written comments and hearing requests are due 30 days after the date the proposed exemption is published in the **Federal Register.**

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 5th day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-3283 Filed 2-8-85; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

One-Time Grant Award: Announcement

AGENCY: Legal Services Corporation.

ACTION: Announcement of One-Time Grant Award.

SUMMARY: The Legal Services Corporation (LSC) announces that it is intending to award a one-time grant of $80,000 to the Florida Justice Institute, Inc. for the purpose of continuing the operations of the National IOLTA Clearinghouse. This grant will be awarded on a non-recurring basis under the authority of sections 1006(a)(1)(B) and 1006 (a)(3) of the Legal Services Corporation Act of 1974, as amended in 1977. The grant will cover the period beginning March 11, 1985 and ending December 31, 1985. There will be no refunding rights for this one-time grant under section 1011 of the Legal Services Corporation Act or Part 1625 of the Corporation's Regulations. This public notice is issued pursuant to section 1007(f) of the Legal Services Corporation Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. This grant will not become effective and funds will not be distributed prior to the expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development Unit of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, IOLTA Project Coordinator, Office of Field Services/Program Development Unit, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005 (202) 272-4356.

SUPPLEMENTARY INFORMATION: This grant represents the third grant awarded to the Florida Justice Institute for the purpose of continuing the operations of the National IOLTA Clearinghouse. The Clearinghouse was originally funded in April 1983 and performs a variety of activities including the provision of technical assistance to legal services organizations and bar associations developing and implementing state-wide interest on lawyer trust account (IOLTA) programs.

Under an IOLTA program, attorneys holding client funds which are "nominal in amount" or being held for a "short period of time" pool these funds in trust negotiable order of withdrawal (NOW) accounts. Traditionally, such funds have been placed in non-interest bearing accounts. The interest generated by the NOW accounts is transferred to a not-for-profit corporation which disburses the funds to appropriate law-related public service projects. Before an IOLTA program can be established in a state, it must be approved by either the state's Supreme Court or its Legislature.

Thomas Opsut,

Interim President, Legal Services Corporation.

[FR Doc. 85-3337 Filed 2-8-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel (Services/Centers Section); Amended Notice of Meetings

The meeting of the Music Advisory Panel (Services/Centers Section) to the National Council on the Arts which will be held on February 19, 1985 from 9:00 am–6:00 pm and on February 20, 1985 from 9:00 am–4:00 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506 has had a change in the portion of the meeting open to the public. The portion of this meeting open to the public will be on February 20, 1985 from 1:30 pm–3:00 pm to discuss policy and guidelines.

The remaining sessions of this meeting on February 19, 1985 from 9:00 am–6:00 pm, February 20, 1985 from 9:00 am–12:30 pm, and February 20, 1985 from 3:00 pm–4:00 pm will be closed.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 5, 1985.

[FR Doc. 85-3338 Filed 2-8-85; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel (Individual Artists Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Individual Artists Section) to the National Council on the Arts will be held on February 27-28, 1985, from 9:00 a.m.—5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 5, 1985.

[FR Doc. 85-3339 Filed 2-8-85; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel (Visual/Media/Design Literary Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual/Media/Design/Literary Section) to the National Council on the Arts will be held on February 27-March 1, 1985, from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public on February 27, from 9:00-10:30 a.m. for introductions and to discuss program overview.

The remaining sessions of this meeting on February 27, from 10:30-5:30 p.m., and on February 28 and March 1, from 9:00 a.m.-5:30 p.m. are for the purpose of panel review, discussion,

evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 5, 1985.

[FR Doc. 85–3340 Filed 2–8–85; 8:45 am]

BILLING CODE 7537-01-M

POSTAL RATE COMMISSION

[Docket No. C85–1; Order No. 604]

Complaint of Advo-System, Inc.; Notice and Order Establishing Opportunity To Comment, Fixing Schedule for Comments and Appointing Officer of the Commission To Represent the Interests of the General Public

February 5, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Introduction

On December 27, 1984, Advo-System, Inc. (Advo) filed with us a Complaint Concerning Abuse of Second-Class Postal Rates by Daily Newspaper Publishers. The Complaint states that it is filed under 39 U.S.C. 3662. To summarize briefly, it urges that "Total Market Coverage" (TMC) products issued to nonsubscribers by some daily newspapers are either (i) sections (that is, "incomplete copies") of the newspaper concerned, and hence should pay third- or fourth-class rates under DMM § 425.1; or (ii) are separate publications, rather than issues of the newspaper, and hence should be separately entered and separately subject to limitations on nonsubscriber circulation. Advo has asked for proceedings under section 3624 and urges that we issue a recommended decision calling for changes in the Domestic Mail Classification Schedule to prevent what it states is an abuse of second-class mailing privileges and rates.

Pursuant to section 84 of our rules of practice, the Postal Service, on January 28, 1985, filed its Answer to Complaint and Suggestion that the Complaint Does Not Lie Within Commission Jurisdiction. The Service addresses the various paragraphs of the Complaint, admitting some propositions, denying some, and stating that it is without information on others.

Both of these documents (together with Advo's Library References, comprising examples of daily newspapers and of TMC products issued by the publishers thereof) are available for public inspection in the Commission's Docket Section.

Jurisdictional questions

The Postal Service's suggestion (Answer, at 6–9) that the Commission lacks jurisdiction over the Complaint rests, in brief, on the arguments that (i) the matter really involves Postal Service operating rules rather than any part of the DMCS, and (ii) the practice Advo objects to is not a nationwide problem, but only "sporadic alleged incidents involving individual newspapers distributed through their local post offices." *Id.*, at 8. It argues that under our rule 82 (39 CFR 3001.82) Advo's complaint is not of the kind the Commission generally considers appropriate for section 3662 consideration.

The Service's arguments raise a material question respecting the future handling of this complaint. In the belief that other persons besides Advo and the Service may have significant interests in this entire issue, we are requesting comments to assist in its resolution. We also appoint Stephen A. Gold, Director of our Office of Consumer Advocate, to represent the interests of the general public in this docket. Any person wishing to file such comments may do so—serving copies thereof on the Postal Service, the Consumer Advocate, and Advo, pursuant to section 12 of the rules of practice—within 28 days of the date of this Notice. These comments will, likewise, be publicly available in the Docket Section. Reply comments may be filed within seven days from the due date of the initial comments.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85–3390 Filed 2–8–85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23590; 70–6171]

Appalachian Power Co.; Roanoke, VA, Supplemental Notice Related to Pollution Control Financing

February 5, 1985.

Appalachian Power Company ("Appalachian"), Appalachian Power Co.; Roanoke, Virginia, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

By order dated June 30, 1978 (HCAR No. 20610), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County") concerning the financing of pollution control facilities at Appalachian's Mountaineer Plant and Phillip Sporn Plant. Under the Agreement the County would issue and sell its pollution control revenue bonds, in one or more series. The proceeds would be deposited by the County with the trustee ("Trustee") under the indepture ("Indenture") between the County and Trustee, pursuant to which the revenue bonds would be issued and secured. The proceeds would then be applied to the payment of the costs of construction of the facilities, then estimated at $120,000,000. The Agreement provides for the sale of the facilities to Appalachian and the payment by Appalachian of the purchase price in installments.

The County has issued and sold five series of bonds, Series A, B, C, D and E. (HCAR Nos. 20610, 21103, 21927, 23208 and 23277). "It is proposed that the County will issue and sell an additional series of Bonds in the aggregate principal amount of up to $30,000,000 ("Series F Bonds"), the proceeds of which will be used to provide for the refunding on April 1, 1985, of $30,000,000 aggregate principal amount of bonds which were issued and sold by the County on April 10, 1984 ("Series E Bonds"). It is contemplated that the Series F Bonds (Bonds) will be issued pursuant to a Fifth Supplemental Indenture of Trust between the County and the Trustee, with terms specified by Appalachian and the sale arranged by underwriters represented by Goldman, Sachs and Company.

Appalachian proposes that the Bonds will bear interest semi-annually and will mature not more than 30 years from the

date of their issuance. The bonds may be subject to mandatory redemption, a sinking fund provision, or may be redeemable: (i) At the option of each owner thereof on one or more specified dates prior to maturity not earlier than March 1, 1988 and not more frequently than once every three years thereafter, and/or (ii) at the option of the County in whole or in part at any time prior to maturity on or after a specified date not earlier than March 1, 1988. The Bonds will be on a parity with and secured in the same manner as the other Series issued pursuant to the Indenture.

Appalachian understands that interest on the Series F Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954 as amended.

The application 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 March 4, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3436 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

[File No.: 22-13523]

Citicorp; Application and Opportunity for Hearing

February 5, 1985.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of Section 310(b) (1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures and a Pooling and Servicing Agreement dated as of November 1, 1984 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which Applicant is the obligor. The Indenture, dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the Indenture date as of March 15, 1977 invovled the issuance of various series of unsecured and unsubordinated Notes, the Indenture dated as of August 25, 1977 invovled the issuance of Rising-Rate Notes, Series A and the Indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said Indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four Indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On November 29, 1984, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1984 (the "1984 Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 29, 1984 Mortgage Pass-Through Certificates Series 1984-A, 13.50% Pass-Through Rate (the "Series 1984-A Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgate loans the ("1984 Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $74,214,858.40 at the close of business on November 1, 1984, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1984-A Certificates. On November 29, 1984, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1984 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1984-A Certificates, to be liable for 7.50% of the initial aggregate principal balance of the 1984 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1984 Guaranty. The 1984 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1984 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1984-A Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S-11 and S-3, File No. 2-80415) as part of a delayed or continuous offering of $150,000,000 amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1984-A Certificates were offered by a Prospectus Supplement dated November 1, 1984, supplemental to a Prospectus dated September 20, 1984. The Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1984 Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exists between the provisions of the Indentures and the 1984 Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1984 Agreement.

(5) Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of

Practice of the Commission in connection with the matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth, NW., Washington, D.C.

Notice is further given that any interested person may, not later than March 1, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3428 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23591; 70-7054]

Transok, Inc.; Proposal To Form Subsidiary To Acquire Partnership Interest in Interstate Natural Gas Pipeline System

February 5, 1985.

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma, 74101, a subsidiary of Central and South West Corporation ("CSW"), a registered holding company has filed a proposal with this commission pursuant to Section 6(a), 7, 9(a), 10(a), (c) (1) and (2) 11(b) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 16, 44 and 45 thereunder.

Transok has proposed the formation of a subsidiary corporation, Transok Ventures, Inc. ("Ventures"), which will acquire a ⅓ general partnership interest in a partnership ("Partners") formed to acquire the Texoma Line, an interstate natural gas pipeline ("Texoma"). Texoma is a 30-inch pipeline extending from a point near Cushing, Oklahoma to a point near Beaumont, Texas with a 16-inch lateral pipeline beginning at a point near Allen, Oklahoma and terminating at a point near Wynnewood, Oklahoma.

By prior Commission order, Transok was authorized to purchase the Oklahoma portion of Texoma (HCAR 23340, June 26, 1984). The remaining portions are owned by MidCon Corp. ("MidCon") and Houston Natural Gas Corporation ("HNG"). Transok, along with the co-owners, MidCon and HNG, propose to transfer their respective interests in the middle or interstate segment of Texoma to Partners.

The aggregate cash purchase price for Transok's share of the Texoma Line will be $59 million, inclusive of anticipated conversion costs and modifications for Transok's existing system. Transok expects that Ventures' contribution to the partnership will be approximately $23 million. Ventures may be subsequently required to expend additional monies for expansion of capacity through installation of compression, etc., all in accordance with the determination of the partnership. It is currently anticipated that, upon acquisition of the partnership interest through Ventures, up to 50 percent of such value will be contributed to Ventures as equity and, in exchange for up to the remaining 50 percent of value, Ventures will issue a promissory note to Transok equal in terms to Transok's cost of short-term funds through the CSW "Money Pool" or Transok's cost of debt capital issued for the Texoma Line when Transok permanently finances its share of the project, subject to commission approval.

Partners and its co-owners, MidCon and HNG, will not be subject to the Act pursuant to Rule 16 under the Act; and Ventures will be incorporated under the laws of the State of Oklahoma.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 1, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegate authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3434 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13564]

Application and Opportunity for Hearing; the Western Union Telegraph Co.

February 4, 1985.

Notice is hereby given that The Western Union Telegraph Company (the "Applicant") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (herein sometimes referred to as the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder"), a corporation duly organized and existing under the laws of the State of New York, under certain indentures of The Wester Union Telegraph Company (the "Company") which were heretofore qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to prevent Schroder from acting as trustee under any of such indentures.

The Company has issued and outstanding, as of January 28, 1985, the following debt securities secured by the following indentures, in each case, to be between the Company and Schroder, as trustee, all of which are the subject of its application:

(i) $11,493,000 principal amount of 5¼% Sinking Fund Debentures Due 1987, under an Indenture dated as of February 1, 1962 (the "1962 Indentures");

(ii) $14,912,000 principal amount of 6½% Sinking Fund Debentures Due 1989, under an Indenture dated December 15, 1966 (the "1966 Indenture");

(iii) $26,820,000 principal amount of 8.45% Sinking Fund Debentures Due March 15, 1996, under an Indenture dated as of March 15, 1971 (the "1971 Indenture");

(iv) $38,163,000 principal amount of 7.90% Sinking Fund Debentures Due May 15, 1997, under an Indenture dated as of March 15, 1972 (the "1972 Indenture");

(v) $36,597,000 principal amount of 8.10% Sinking Fund Debentures Due August 15, 1998, under an Indenture dated as of March 1, 1973 (the "1973 Indenture");

(vi) $16,676,000 principal amount of 10% Notes Due August 1, 1986, under an Indenture dated as of August 1, 1976 (the "1976 Indenture");

(vii) $31,962,000 principal amount of 9¼% Sinking Fund Debentures Due December 1, 1997, under an Indenture dated as of December 1, 1977 (the "1977 Indenture");

(viii) $75,000,000 principal amount of 16% Notes Due June 15, 1991, under an Indenture dated as of June 15, 1981 (the "1981 Indenture");

(ix) $100,000,000 principal amount of 13¼% Sinking Fund Debentures Due October 1, 2008, under an Indenture dated as of July 1, 1983 (the "1983 Indenture"); and

(x) $50,000,000 principal amount of 13⅝% Notes Due 1994, under an Indenture dated as of March 15, 1984 (the "1984 Indenture", which, together with all the previously mentioned Indentures, shall hereinafter be referred to collectively as the "Indentures" and individually as an "Indenture").

The original trustee (the "Resigning Trustee") under each of the Indentures is resigning and the Company is duly appointing Schroder as successor trustee, which appointment Schroeder is accepting, all pursuant to Instruments of Resignation, Appointment and Acceptance, among the Company, the Resigning Trustee and Schroeder. Manufacturers Hanover Trust Company is the Resigning Trustee under each of the 1966 Indenture, the 1971 Indenture, the 1977 Indenture, the 1981 Indenture, the 1983 Indenture and the 1984 Indenture; Morgan Guaranty Trust Company of New York is the Resigning Trustee under the 1976 Indenture; and The Chase Manhattan Bank, N.A. is the Resigning Trustee under each of the 1962 Indenture, the 1972 Indenture and the 1973 Indenture.

Section 310(b) of the Act (which is included in Section 7.8 of the 1962 Indenture, Section 608 of the 1966 Indenture and Section 7.08 of each of the other Indentures) provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (b)(1) of this section provides, with certaind exceptions stated therein, that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The present application, filed pursuant to clause (ii) of Section 310(b)(1) of the Act (as set forth in Section 7.8 of the 1962 Indenture, Section 608 of the 1966 Indenture and Section 7.08 of each of the other Indentures) seeks to exclude the Indentures from the operation of Section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of Section 310(b)(1) of the Act on the matter of the present application is such that the Indentures may be excluded from the operation of Section 310(b)(1) of the Act if the Company shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeship of Schroeder under the Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroeder from acting as trustee under any Indenture.

The Applicant alleges that:

(1) The Indentures are wholly unsecured and the debt securities secured by the Indentures rank *pari passu inter se*. The only material differences between the Indentures and between the rights of the holders of the debt securities secured by the Indentures relate to aggregate principal amounts, dates of issue, certain financial covenants of the Company, Events of Default as defined in the Indentures, maturity and interest payment dates, interest rates, redemption prices and procedures, sinking fund provisions, and other provisions of a similar nature.

(2) In each case where a Resigning Trustee was the original trustee under more than one Indenture, each Indenture specifically describes each previously executed Indenture having the same original trustee, in accordance with one of the exceptions provided in Section 310(b)(1) of the Act and the corresponding section of each such Indenture.

(3) No default has at any time existed under any Indenture.

(4) Such differences as exist among the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as trustee under any one or more of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commisssion with respect to its application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time after March 8, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than March 8, 1985, at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission, his or her views of any additional facts bearing upon this application or the desirability of a hearing thereon. Any such comments or requests should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3435 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organization, Boston Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 5, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Calfed, Inc.

Common Stock, $1.00 Par Value, File No. 7-8264

Calfed, Inc.

$4.75 Cum. Conv. Pref., No Par Value, File No. 7–8265
B.A.T. Industries PLC
American Depository Receipts, No Par Value, File No. 7–8266
Central Hudson Gas & Electric Corp.
Common Stock, No Par Value, File No. 7–8267
Continental Illinois Holding Corp.
Common Stock, $1.00 Par Value, File No. 7–8268
Home Depot, Inc.
Common Stock, $.05 Par Value, File No. 7–8269
La Quinta Motor Inns, Inc.
Common Stock, $.10 Par Value, File No. 7–8270
National Education Corp.
Common Stock, No Par Value, File No. 7–8271
Omnicare, Inc.
Common Stock, $1.00 Par Value, File No. 7–8272
Phillips Van Heusen Corp.
Common Stock, $1.00 Par Value, File No. 7–8273

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 85–3432 Filed 2–8–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 5, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Alabama Power Company
11% Cum. Pref., $100 Par Value, File No. 7–8281
American Brands, Inc.
$2.75 Cum. Pref., No Par Value, File No. 7–8282
American General Corp.
12.65% Cum. Adj. Rate A Pref., $1.50 Par Value, File No. 7–8283
Bowater Inc.
Common Stock, $1.00 Par Value, File No. 7–8284
Burlington Northern Inc.
11.05% Cum. Adj. Rate Pref., No Par Value, File No. 7–8285
Cameron Iron Works
Common Stock, $.2083 Par Value, File No. 7–8286
Columbia Gas System
10.96% Cum. B Pref., $50 Par Value, File No. 7–8287
Continental Illinois Corp.
Common Stock, $1.00 Par Value, File No. 7–8288
Detroit Edison Co.
$2.75 Cum. B Pref., $1.00 Par Value, File No. 7–8289
$2.75 Cum. F Pref., $1.00 Par Value
Duke Power Co.
8.84% Cum. Pref., Series N, $100 Par Value, File No. 7–8290
El Paso Natural Gas Co.
9.40% Depository Receipt, File No. 7–8291
Elscint, Inc.
Ordinary .04 Shekels Par Value, File No. 7–8292
Fedders Corp.
Common Stock, $1.00 Par Value, File No. 7–8293
FPL Group Inc.
Common Stock, No Par Value, File No. 7–8294
Indiana & Michigan Electric Co.
$2.75 Cum. Pref., $25 Par Value, File No. 7–8295
John Hancock Income Securities Trust
Capital Stock, $1.00 Par Value, File No. 7–8296
Korea Fund, Inc.
Common Stock, $.01 Par Value, File No. 7–8297
Maxxam Group Inc.
Common Stock, $.08 ⅓ Par Value, File No. 7–8298
McDermott Inc.
$2.60 Cum. B Pref., $1.00 Par Value, File No. 7–8299
Northwest Pipeline Corp.
$2.36 Cum. Pref., $1.00 Par Value, File No. 7–8300
$2.50 Cum. Pref., $1.00 Par Value
Occidental Petroleum Corp.
$14.625 Cum. Pref., $1.00 Par Value, File No. 7–8301
$15.50 Cum. Pref., $1.00 Par Value
Ohio Power Company
14% Cum. A Pref., $1.00 Par Value, File No. 7–8302
14% Cum. Pref., $100 Par Value
Public Service Co. of Colorado
8.40% Cum. Pref., $25 Par Value, File No. 7–8303
RCA Corp.
$3.65 Cum. Pref., No Par Value, File No. 7–8304
Reynolds (R.J.) Ind., Inc.
$4.10 Cum. A Pref., No Par Value, File No. 7–8305
$11.50 Cum. B Pref., No Par Value
SCANA Corp.
Common Stock, $4.50 Par Value, File No. 7–8306
Tenneco Inc.
$7.40 Cum. Pref., No Par Value, File No. 7–8307
Trancontinental Gas Pipe Line Corp.
$2.50 Pref., No Par Value, File No. 7–8308
$6.65 Cum. Pref., No Par Value
$10.32 Cum. Pref., No Par Value
U.S.G. Corp.
Common Stock, $4.00 Par Value, File No. 7–8309
Lynch Communications Systems Inc.
Common Stock, $1.00 Par Value, File No. 7–8310
Marmon Group Inc.
$2.35 A Pref., $1.00 Par Value, File No. 7–8311
Puget Sound Power & Light Co.
9.36% Cum. Pref., $25 Par Value, File No. 7–8312

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3433 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory, Organizations; Midwest Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 5, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Maxxam Group, Inc.
Common Stock, $.08 ⅓ Par Value, File No. 7-8276

ICM Property Investors Inc.
Common Stock, $1.00 Par Value, File No. 7-8277

Canadian Marconi Company
Common Stock, No Par Value, File No. 7-8278

AMC Entertainment Inc.
Common Stock, $1.00 Par Value, File No. 7-8254

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, The Commission will approve the Applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

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[Release No. 21710; SR-NYSE-82-20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

February 4, 1985.

I. Introduction

On November 12, 1982, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY, 10005, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 [2] thereunder, to allow, among other things, NYSE specialists to use listed options to hedge the risks of making markets in stocks in which they are registered as specialists. On June 20, 1983, the NYSE submitted Amendment No. 1 to the proposed rule change amending, among other things, the hedging formula contained in the proposal.[3] On October 11, 1984, the Commission held a public meeting to consider whether the NYSE proposal was consistent with the Act and indicated that the NYSE proposal would be consistent with the Act if amended in certain respects. On November 14, 1984, the NYSE submitted Amendment No. 2 to the proposed rule change modifying and clarifying the proposed rule change.[4] The Commission received numerous comments on the NYSE proposal, including a letter from the NYSE itself; the proposal, as amended, and these comments are described below.

II. Background

In 1935, at the request of the Commission, all national securities exchanges (including regional exchanges) adopted rules that prohibited any specialist from acquiring, holding or granting any interest in an option on his specialty stocks. The Commission requested the adoption of these rules because of certain abuses associated with options granted to specialists and other floor traders. These abuses consisted chiefly of the formation of "pools" by specialists and others for the purpose of manipulating the specialists' specialty stocks. The granting of options to specialists and their confederates was found to be at the heart of many of these manipulative operations.[5]

In 1973, the Chicago Board Options Exchange, Incorporated ("CBOE"), with the Commission's approval, opened the first market for the trading of standardized options. That same year the Commission issued a release inviting comments on the broad question of whether and to what extent specialists should be permitted to have an interest in options on their specialty stocks.[6]

In 1976, the Commission approved proposals by several regional stock exchanges (the Midwest ("MSE"), Pacific ("PSE"), and Philadelphia ("Phlx") Stock Exchanges) to allow stock specialists on these exchanges to take positions—not limited to hedging positions—in listed options on their specialty stock.[7] The Commission reasoned that each regional exchange's market share was so small that the regional exchange specialists' informational advantages or manipulative abilities appeared relatively insignificant.

In 1976, the NYSE also proposed to allow its specialists to take positions (also not limited to hedging positions) in listed options on their specialty stocks.[8] Because of perceived informational advantages and manipulative abilities of NYSE specialists relative to other market participants (including regional exchange specialists), the NYSE proposal raised significant issues.[9] The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4 (1984).

[3] The proposed rule change and Amendment No. 1 were noticed in Securities Exchange Act Release No. 19984, July 19, 1983, 48 FR 34377, July 28, 1983.

[4] Amendment No. 2 was noticed in Securities Exchange Act Release No. 21526, November 28, 1984, 49 FR 47667, December 6, 1984.

[5] These concerns were so great, in fact, that early drafts of the Act would have outlawed all purchases or sales of options through an exchange or in connection with exchange-traded securities. *See* Section 8(a)(9) of H.R. 7852 (February 10, 1934). Congress, however, decided to give the Commission plenary authority to regulate exchange options trading under Sections 9 (b) and (c) of the Act, rather than to prohibit such trading. For a more complete description of the abuses that led to the prohibition against specialists' and other floor professionals' use of options, *see* S. Rep. No. 1455, 73d Cong., 2d Sess. (1934) ("Pecora Commission Report").

[6] Securities Exchange Act Release No. 10312, August 1, 1973, 38 FR 21459.

[7] *See* Securities Exchange Act Release Nos. 13016 (November 30, 1976), 41 FR 53383 (Phlx); 13044 (December 8, 1976), 41 FR 54783 (MSE); and 13269 (February 16, 1977), 42 FR 10754 (PSE).

[8] File No. SR-NYSE-76-54, noticed in Securities Exchange Act Release No. 12924, October 27, 1976, 41 FR 48430, November 3, 1976.

[9] Perhaps because most interested persons already had commented on the issues raised by the NYSE proposal by responding to Securities Exchange Act Release No. 10312, *supra*, note 6, only two comment letters were received in response to publication of notice of this NYSE proposal. One letter supported the NYSE proposal (letter from John P. Duffy, Spear Leeds & Kellogg, to John Phelan, Jr., President, NYSE, dated November 21, 1980). The other letter suggested that NYSE specialists be allowed to use options only for "bona fide hedging" purposes and suggested defining "*bona fide* hedges"

Continued

NYSE proposal remained pending up to 1977, when the options moratorium began. Like other potentially expansionary options proposals, this NYSE proposal was dormant for the duration of the options moratorium.

The NYSE did not actively pursue its proposal immediately upon the termination of the options moratorium in 1980.[10] Instead, the NYSE waited until November 1982, when it submitted the proposal currently under consideration and withdrew its 1976 proposal.

III. Description of the NYSE Proposal

NYSE Rule 105 [11] currently prohibits an NYSE specialist from having any interest in an option on any of this specialty stocks.[12] The NYSE proposes to amend Rule 105 to allow a specialist to acquire and hold, in his specialist trading account, a position in listed options [13] on any of his specialty stocks "where appropriate * * * to offset the risk of making a market in the underlying stock." [14] Amended Rule 105 would specify that a specalist may not hold a position in an option on any of its specialty stocks that is "excessive" in terms either of (1) the specialist's "existing position in the underlying specialty stock" or (2) a "reasonable estimate of potential loss" in an existing specialty stock position.[15] Amended Rule 105 also would state that (1) all options transactions effected under the Rule must be made in accordance with the "Guidelines for Specialist's Specialty Stock Option Transactions pursuant to Rule 105" ("Guidelines");[16] (2) "any opening transaction that does not conform to the * * * Guidelines and any failure to take required action to liquidate options positions within the time periods specified in the Guidelines shall be deemed to be a violation of Rule 105," [17] and (3) an options transaction otherwise in conformity with the Guidelines shall be deemed to be in violation of Rule 105 if the specialist has engaged in the options transactions "for manipulative or other purposes not related to offsetting the risk of making a market in the underlying specialty stock." [18]

The Guidelines reiterate the restrictions contained in Rule 105 and provide guidance on the application of the Rule. The Guidelines require that an opening options transaction (1) result in an options position "entirely on the opposite of the market from the underlying specialty stock position;" [19] (2) be established "solely to offset the risk of making a market in the underlying specialty stock position;" and (3) result in an options position that does not exceed the number of contracts permitted by specified "hedge ratios." [20] These hedge ratios are 1 to 1 in the case of "in-the-money" options, [21] 1.5 to 1 in the case of "at-the-money" options [22] and 2 to 1 for "out-of-the-money" options.[23] Options at the same strike price, or combinations of options at different strike prices, may be used, provided the overall options position thereby established conforms to the hedge ratios.[24] According to the NYSE, these hedge rations derive from the ratios that would be specific for offsetting transactions by formulas widely used in the industry.[25] These

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to include only opposite side options positions that offset stock positions on a one to one (*i.e.*, one options contract per 100 share) basis. Letter from Joseph W. Sullivan, President, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated January 24, 1977.

[10] During the moratorium, the *Report of the Special Study of the Options Market*, H.R. Rep. No. IFC-3, 96th Cong., 1st Sess. (Comm. Print 1978) ("Options Study") was published. The Options Study, like CBOE in 1977, *supra* note 9, suggested imposing a legitimate hedging limitation on a primary market specialist's use of options on his specialty stocks. *Id.* at 924–25. The Options Study, however, did not define exactly what might constitute "legitimate" hedging.

[11] NYSE Rules (CCH) (1984).

[12] NYSE Rule 105 also currently prohibits other members, allied members, "approved person" (*e.g.*, parent corporations), officers or employees ("associated persons") of the specialist organization from acquiring an interest in an option on any of the specialist's specialty stocks. The NYSE also proposes to amend Rule 105 to allow associated persons of the specialist to use options on the specialist's specialty stocks, subject to the same restrictions (both as to acquisitions and liquidations) as would be imposed on the specialist by the proposed rule change. Thus, while the description of the NYSE proposal below refers to the "specialist," the proposal applies in the same manner to associated persons of the specialist.

The NYSE is also proposing to amend NYSE Rule 102 to allow registered odd-lot dealers (and their associated persons) to use options on stocks in which the odd-lot dealer is registered as an odd-lot dealer subject to the same restrictions as would be imposed by the proposed rule change on a specialist's use of options on the specialist's specialty stocks. In this regard, the NYSE notes that Rules 102 and 105 have become duplicative for all practical purposes because today the specialist is also the NYSE-registered odd-lot dealer in its specialty stock. Thus, while the discussion of the NYSE proposal below focuses on Rule 105, this discussion is equally applicable to the proposed amendments to Rule 102.

[13] A "listed option" would be defined in amended Rule 105 to mean an option issued by the Options Clearing Corporation and traded on a national securities exchange. Thus, NYSE specialists still would be prohibited from holding any interest in conventional non-standardized options on their specialty stocks.

[14] Associated persons, of course, are not limited to options positions that offset market making risks; rather, associated persons are required to comply with the specified hedge ratios and liquidation requirements (*see* text accompanying notes 21–29, *infra*) contained in the proposal.

[15] Amended Rule 105 as originally submitted also would have allowed a specialist to acquire an options position not "excessive *.*.*" in terms of the specialist's reasonably anticipated position" in the underlying specialty stock. Amendment No. 2 deleted this language from amended Rule 105 to make it clear that a specialist will not be allowed under amended Rule 105 to engage in so-called "anticipatory hedging," *i.e.*, the acquisition of an options position on the same side of the market as an existing stock position, or in the absence of a stock position, in anticipation of changes in the stock position.

[16] The "Guidelines" are a part of the NYSE proposed rule change and are described below. Accordingly, although the "Guidelines" are not a part of Rule 105, any change to the Guidelines would be a rule change under Section 19(b) of the Act [*See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27), and Rule 19(b)(4) under the Act, 17 CFR 240.19b–4], and would, therefore, have to be made pursuant to Section 19(b) and Rule 19(b)(4).

[17] This portion of amended Rule 105 was added by Amendment No. 2 principally to make clear that if a specialist establishes an options position outside of the hedge ratios set forth in the Guidelines it violates Rule 105, even if the position is arguably established to offset marketmaking risk.

[18] This portion of amended Rule 105 was added by Amendment No. 2 principally to make clear that even if a specialist's options transactions nominally conform to the hedge ratios specified in the Guidelines, the options transactions are permitted only if engaged in for reasons related to risk management.

[19] Thus, a specialist may purchase puts or sell calls if he is long the underlying specialty stock, and may purchase calls or sell puts if he is short the underlying specialty stock. Gains (or losses) in "opposite-side" options positions will offset, in whole or in part, gains (or losses) in the stock position being offset. In contrast gains (or losses) in "same-side" options positions amplify the effects of gains (or losses) in the underlying stock.

[20] The Guidelines also specifically forbid the establishment of spreads, straddles or similar combination options positions, and also forbid an opening transaction in an option series that is more than one strike price "out-of-the-money." The term "out-of-the-money" is defined in the Guidelines, *see* note 23, *infra*.

[21] Thus, one "in-the-money" option contract may be acquired for each 100-share stock position. An example of "in-the-money" options as defined in the Guidelines would be a call option exercisable at $55.00 when the market price of the underlying stock is $60.00.

[22] Thus, one and one-half "at-the-money" option contracts may be acquired for each 100-share stock position. An example of an "at-the-money" option as defined in the Guidelines would be a call option exerciseable at $55.00 when the market price of the underlying stock is $55.00.

[23] Thus, two out-of-the-money option contracts may be acquired for each 100-share stock position. An example of an out-of-the-money option as defined in the Guidelines would be a call option exerciseable at $60.00 when the market price of the underlying stock is $55.00.

[24] For example, a specialist with a 2,000 share long position in a specialty stock could use a combination of 10 in-the-money options, nine at-the-money options, and 8 out-of-the-money options. As described above, however, the Guidelines specifically prohibit spreads, straddles or other simultaneous options positions on opposite sides of the market.

[25] Letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated March 20, 1984 ("NYSE letter"), at 5.

ratios are intended to roughly approximate how changes in stock prices affect the prices of their overlying options. In other words, these ratios are designed to limit specialists to aggregate options position that move approximately point-for-point with changes in the price of the underlying stock.[26]

If the size of a specialist's stock position (long or short) decreases by more than 25% and this results in an offsetting options position that exceeds the hedge ratios but is on the opposite side of the market from the stock position, the Guidelines require the specialist to take "prompt action" to liquidate the excess options position.[27] "Prompt action" in this circumstance is defined to mean that a specialist shall enter an order [28] to liquidate the excess options position not later than two hours from the time when the specialist knew or should have known that he was in excess of hedge ratios.

If the stock positiion of a specialist with an offsetting options position is completely eliminated or changes so that the stock and options positions are on the same side of the market, the specialist also must take "prompt action" to liquidate the excess.[29] In this circumstance, "prompt action" is defined to require the entry of an order to liqidate the excess options position within one hour of the time when the specialist knew or should have known of the excess.

The Guidelines also contain prohibitions on "frontrunning [30] and "dual market making." [31] Finally, the Guidelines impose certain recordkeeping and reporting requirements on the specialist.[32]

IV. Comments on the NYSE Proposal

The Commission received comments on the NYSE proposal from the Options and Derivative Products Committee of the Securities Industry Association ("SIA Committee"); [33] four broker-dealers;[34] the four other options exchanges; [35] the NYSE itself;[36] and two individuals.[37] The Commission also has received a request from the CBOE that the Commission reconsider its "decision of October 11, 1984 to approve" the NYSE proposal.[38]

The SIA Committee stated that it approves in concept permitting NYSE specialists to hedge using options. The SIA Committee expressed doubts, however, about the need for NYSE specialists to hedge via options on their specialty stocks in light of the other derivative products, such as stock index options and futures, available as hedging mechanisms. Moreover, the SIA Committee opposed the NYSE proposal because the SIA Committee believes that it does not adequately restrict the specialists use of options on his specialty stocks to "bona fide hedging" transactions. In particular, the Committee expressed concerns about the possibility that NYSE specialist's will be free under the NYSE proposal to "trade" options within the specified hedge ratios.[39]

Three broker-dealers opposed the NYSE proposal. Two of these broker-dealers, Prudential-Bache and Andco Securities, stated that the "hedging" limitations contained in the proposal would be difficult to enforce and would not prevent NYSE specialists from making unfair use of the informational advantage they have as a result of their market position.[40] The third broker-dealer—Cygnet V—opposed the NYSE proposal because of concerns relating to the NYSE specialist's ability and "responsibility" to move stock over the short term, as well as concerns relating to the specialist's possession of "material, non-public information." Cygnet also asserted that approval of NYSE specialist's use of options on their specialty stocks was not required to enhance the liquidity in the options market because the options markets have no liquidity problem. The fourth broker-dealer—Raffensperger, Hughes & Co.—urged caution in allowing NYSE specialists to trade options.[41] The two

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[26] Thus, because some in-the-money options move point-for-point with changes in the underlying stock, only one in-the-money options may be used to offset an equivalent (*i.e.*, 100 share) stock position. On the other hand, because out-of-the-money options rarely move point-for-point with changes in the underlying stock, and thus are usualy much less responsive to price changes in the underlying stock than in-the-money options, two out-of-the-money options may be used to offset an equivalent (100 share) stock position.

[27] An exception to this requirement allows a specialist to maintain his excess options positions if the excess options position is ten or fewer contracts.

[28] The Guidelines, thus, require prompt order entry in these circumstances, not prompt execution. While the Guidelines specify that specialists need not use market orders for these purposes, and may use orders that may be "worked" by an independent broker, they also prohibit the specialist from giving specific instructions to such independent brokers as to how the order is to be worked.

[29] The Guidelines in this circumstance do provide a ten contract exception.

[30] The NYSE's "frontrunning" proscription makes it improper "for a member or person associated wih a member who has knowledge of a block transaction in any security underlying an option or of a block transaction in an option covering that security, before information concerning the block transaction has been made publicly available, to take advantage of the non-public information * * * to buy or sell an option on the underlying, while in possession of nonpublic information concerning a block transaction in the underlying stock, or to buy or sell an underlying security, while in possession of non-public information concerning a block transaction in an option covering that security." *See* NYSE Information Memo No. 80-38 (September 11, 1980), incorporated into paragraph (e) of the Guidelines.

[31] "Dual market making" as used in the NYSE proposed rule means serving both as specialist or market maker in an option and as specialist in the underlying stock. *See* paragraph (j) of the Guidelines.

[32] The NYSE proposal originally also would have excepted from the restrictions of amended Rule 105 options on so-called "19c-3 stocks," *i.e.*, stocks that are not subject to the NYSE's off-board trading restrictions because of Rule 19c-3 under the Act [17 CFR 240.19c-3 [1984]]. Amendment No. 2 deleted this exception.

[33] *See* letter from Howard Brenner, Chairman of the SIA Committee, ("SIA letter"), to Secretary of the SEC, dated September 18, 1984.

[34] Letter from L. Gene Tanner, President, Raffensperger, Hughes & Co., to George A. Fitzsimmons, Secretary, SEC, dated January 4, 1984; letter from Richard J. Scheuer, Chairman, and S. Paul Posner, President Andco Securities, Inc., to George A. Fitzsimmons, Secretary, SEC, dated January 19, 1984; letter from Leland B. Paton, Executive Vice President, Equity Group, Prudential-Bache Securities, to George A. Fitzsimmons, Secretary, SEC, dated February 16, 1984; and letter from Morris Propp, Senior Partner, Cygnet V, to John S.R. Shad, Chairman, SEC, dated October 11, 1984.

[35] Letter from Robert J. Birnbaum, President, American Stock Exchange, Inc. (Amex), to George A. Fitzsimmons, Secretary, SEC, dated October 4, 1983; letters from Anne Taylor, Secretary, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated October 3, 1983 and April 23, 1984, letter from Anne Taylor, Secretary, CBOE, to Shirley E. Hollis, Acting Secretary, SEC, dated November 13, 1984, and letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to John Wheeler, Secretary, SEC, dated January 10, 1985; letter from Jim Gallagher, President, PSE, to George A. Fitzsimmons, Secretary, SEC, dated October 25, 1983; and letter from Nicholas Giordano, President, Phlx, to George A. Fitzsimmons, Secretary, SEC, dated October 14, 1983. In addition, these four option exchanges each submitted identically worded letters regarding the surveillance issues raised by the NYSE proposal. Letter from Richard O. Scribner, Executive Vice President, Amex, dated April 18, 1984; letter from Bruce J. Simpson, Special Advisor, CBOE, dated April 19, 1984; letter from Jerry M. Gluck, Vice President and General Counsel, PSE, dated April 19, 1984; and letter from Robert B. Gilmore, Vice President, Phlx, dated April 20, 1984; all addressed to George A. Fitzsimmons, Secretary, SEC (collectively, the "April 1984 Surveillance Letters").

[36] NYSE Letter, *supra* note 25.

[37] Letter from Martin Kraft, Counsellor at Law, to John Shad, Chairman, SEC, dated October 18, 1984; and letter from John A. M. Rowe, to John Shad, Chairman, SEC, dated November 14, 1984.

[38] *See* CBOE's November 13, 1984 and January 10, 1985 letters, *supra* note 35.

[39] *See* SIA letter, *supra* note 33. The SIA apparently used the term "trading" here to mean the acquisitions or liquidation occurring within hedge ratios but not engaged in for purposes of offsetting risk. This concern is more fully described at note 44 *infra*.

[40] Prudential-Bache did suggest, however, that an effectively designed hedging proposal would be in the interest of the public. *See* Prudential-Bache letter, *supra* note 34.

[41] *See* Raffensperger, Hughes & Co. letter, supra, note 34.

individuals who commented were opposed to the NYSE proposal for similar reasons, *i.e.*, due to concerns with NYSE specialists having unfair advantages in their use of options.[42]

The United States Department of Justice, while not commenting on the specifics of the NYSE proposal, stated that it supports allowing NYSE stock specialists to use the options market for hedging purposes.[43]

The four options exchanges were all opposed to the NYSE proposal. While their positions varied, all four options exchanges shared the same basic concern, namely that any proposal to allow NYSE specialists to trade options on their specialty securities must be carefully designed to prevent the specialist from making use of the informational and price administration advantages NYSE specialists have in the market for their specialty securities. While these four options exchanges all indicated that they would favor a proposal that would limit NYSE specialists to the use of options for "legitimate" hedging purposes, none of these exchanges felt that the NYSE proposal would so limit the NYSE specialist.

For example, AMEX suggested that a legitimate hedging limitation would: (1) Allow the specialist to buy or sell only one option contract for each 100-share stock position being offset; (2) prohibit the specialist from liquidating an options position prior to a "material" change in the stock position being offset, thus prohibiting the unrestricted trading of options within hedge ratios; and (3) require the identification in the options trading crowd of all NYSE specialists' orders for options on their specialty stock as orders of NYSE specialists.[44] The CBOE proposed even more rigorous limitations on the specialists' options activities. It suggested that NYSE specialists: (1) Be permitted to initiate an options order only at the same time they establish the stock position intended to be offset; [45] (2) not be allowed to dispose of an options position until they have disposed of the offsetting stock position; (3) be compelled to dispose of their options position promptly (within 60 seconds) after the offsetting stock position is eliminated; (4) be permitted to use only certain types of orders in liquidating options positons; and (5) be required to adhere strictly to whatever hedge ratios are specified. CBOE also specifically suggested that, in order to prevent the misuse by specialists of their informational advantage, the NYSE specifically prohibit "options activity by specialists which are in possession of non-public information" [46] and should require specialists to maintain adequate records respecting their receipt of non-public information.[47]

All four exchanges suggested that an effective surveillance plan and system are an essential precondition to approval of any proposal to allow NYSE specialists to trade options on their specialty stocks and that any such plan must include an automated audit trail (or data capture) system.[48]

In its March letter, the NYSE argues that changes in the securities markets have reduced the informational and price administration advantages the other options exchanges claim the NYSE specialist possesses. In any event, the NYSE argues that other market participants (*e.g.*, block traders) possess similar informational advantages but are not subject to any restrictions on their options trading activity. In addition, the NYSE argues that the hedging limitations contained in the proposal restrict the specialist's ability to make unfair use of any advantages he may have while leaving him the flexibility he needs to hedge his market making risks effectively.[49]

As indicated above, the CBOE also has formally requested that the Commission reconsider "its decision of October 11, 1984, to approve" the NYSE proposal.[50] In its November, 1984 letters, the CBOE states that, "according to reports of the discussion at this meeting, the Commission's decision was based on the faulty premise that NYSE specialists no longer have significant or unique information advantages with respect to their specialty stocks." The CBOE argues that such a conclusion is "unsupported by any evidence and . . . arbitrary" [51] and that, in any event,

[42] Letters from Martin Kraft and John A.R. Rowe, *supra* note 37.

[43] *See* Comments of the United States Department of Justice, In the Matter of NYSE Trading of Listed Options, dated June 15, 1984, File No. SR–NYSE–84–3.

[44] As described above, the NYSE prohibits any options transactions, even those that are within the hedge ratios, that are engaged in "for manipulative or other purposes not related to the offsetting of risk . . . ." *See* text accompanying note 18, *supra*. Because AMEX does not believe that this subjective limitation is subject to effective surveillance and enforcement, AMEX argues that the NYSE proposal in effect permits unrestricted specialist trading within the hedge ratios. AMEX's suggested restrictions are intended to address this concern. AMEX's October 1983 and April 1984 letters, *supra* note 35. The other options exchanges made similar arguments and suggestions.

[45] CBOE, like AMEX (*see* note 44, *supra*), argued that objective limitations on options trading within hedge ratios are necessary. In CBOE's view, however, objective limitations on the acquisition as well as on the liquidation of options positions are required. CBOE's October 1983 and April 1984 letters, *supra* note 35.

[46] The CBOE argues that because NYSE's frontrunning rule (1) applies only when the specialist has knowledge of block transactions and (2) prohibits in any event only the "taking advantage" of material non-public information concerning block transactions (as opposed to the act of trading while in possession of such information), the NYSE specialist is not expressly prohibited under the NYSE proposal from trading options while in possession of material, non-public information.

[47] CBOE stated that it would not oppose the hedging ratios set forth in the NYSE proposal if the ratios were expressed as objective limits rather than as "safe harbors." CBOE October 1983 letter, at 23. Since the submission of this CBOE comment, the NYSE has amended its proposal to make it clear that the hedge ratios are indeed objective limits and not "safe harbors." *See* description of the NYSE proposal above, note 17. PSE and Phlx also suggested that associated persons of the specialist—*e.g.*, employees and "approved persons" of the specialist or his organization—who have access to the specialist's time and place advantages either should not be allowed to trade options on the specialist's specialty stocks or should be subject to the same restrictions imposed on the specialist. PSE's October 1983 letter and Phlx's October 1983 letter, *supra* note 35. Since the submission of these comments, the NYSE has amended its filing to make it clear that all associated persons of specialists are subject to the same restrictions as are imposed on specialists. *See* note 12, *supra*.

[48] The exchanges have made other specific suggestions as to the intra-market and inter-market surveillance procedures required by the NYSE proposal. *See*, particularly, the October 14, 1983 Phlx letter, and the four exchanges' April 1984 Surveillance Letters, *supra* note 35.

[49] As previously discussed, the NYSE disputes the claim that the NYSE specialist "would be allowed to trade options freely" under its proposal. The NYSE argues that the proposal on its face prohibits "free trading," (*i.e.*, trading not related to the offsetting of risk) and that it will be able to surveil and enforce compliance with this prohibition. In the NYSE's view, therefore, it is unnecessary to incorporate the stricter, more objective limits (such as a 1:1 hedge ratio or a prohibition on the liquidation of options position prior to change in the stock position being offset) proposed by Amex and the CBOE as measures to restrict the specialist's ability to trade options within hedge ratios. *See* NYSE letter, *supra* note 25, at 26–32.

[50] *See* CBOE November 1984 letter, supra note 35, at 1 and January 1985 letter, *supra* note 35.

[51] In support of its position, CBOE cites, among other things, the results of a CBOE survey of firm traders' views on the NYSE proposal. The CBOE sent these results to the Commission on September 13, 1984. These results consist of the anonymous responses of approximately 50% (14 respondents) of the survey recipients. Thirteen out of 14 respondents indicated that they believe that NYSE specialists have access on a regular basis to information that indicated whether the prices of their specialty stocks are about to change; 12 of 14 respondents indicated that they believe that such information permits the specialists to predict the direction and probable extent of such price changes; and 11 of 14 respondents indicated that they believe that NYSE specialists would have an unfair advantage over participants in the options markets in establishing and liquidating options positions under the NYSE proposal. The NYSE has indicated that it believes that the survey questions were worded unfairly and that the selection of respondents by the CBOE has further skewed the results. Telephone conversation of September 25, 1984, between Santo Famularo,

Continued

such a conclusion is basically a factual one, which should be resolved on "determined fact." CBOE requests a hearing for this purpose.[52] The CBOE also reiterates the argument that, "given the informal and undocumented nature of much of the specialists' information, abuses by NYSE specialists in options activity under the NYSE proposal will not be susceptible to surveillance." [53] Finally, in both its November 1984 and January 1985 letters, CBOE argues that the NYSE will be incapable of gathering the data necessary to make useful the six-month monitoring report the Commission determined to require at its October 11, 1984 meeting,[54] and that, in any event, the Commission should specifically require the NYSE to include in this monitoring report (1) data correlating options use under the NYSE propsoal with possessions of non-public information by the specialist and (2) information relating to specialists' profits from options trading.

V. Discussion

A. Benefits of the NYSE Proposal

Section 19(b) of the Act requires the Commission to approve the proposed rule change if the Commission finds it to be consistent with the purposes of the Act. Section 6(b) of the Act requires, in pertinent part, that a proposed rule change of a national securities exchange must be designed to "prevent manipulative and fraudulent acts and practices," "promote the maintenance of fair and orderly markets," and "protect the interests of investors and the public." [55]

The proposed rule change gives NYSE specialists the ability to use options on their specialty stocks to offset their market making risks. As a result, the Commission finds that it has the potential to enable specialists to add to overall stock market liquidity and depth by taking specialty stock positions they might not otherwise assume, or by reducing risk on positions they are required to assume.[56]

The use by NYSE specialists of options also could arguably enhance the quality of the options markets as well. First, if specialists do in fact use options to hedge positions in their specialty stocks, this could contribute to an increase in the depth and liquidity of the markets for the underlying stocks, which could result in greater efficiency in pricing the underlying stock. This, in turn, should result in greater efficiency in derivative pricing of the option. Second, this NYSE specialist options activity could result in increased volume in the markets for the overlying options, and this in turn may result in greater overall depth and liquidity in the options markets.[57]

B. Regulatory Concerns

In determining whether to approve the NYSE proposed rule change, the Commission must weigh the potential benefits of the proposal described above against possible regulatory concerns. The major sources of concern discussed by the commentators related to the NYSE specialists' perceived "price administration' abilities and "information advantages." As discussed below, we believe the restrictions integrated into the NYSE proposed rule change, coupled with surveillance procedures the Exchange has proposed to monitor specialist options trading, should be sufficient to meet the concerns of the commentators in these areas.

1. Stock/Option Manipulation

Some commentators suggested that NYSE specialists have unique abilities to affect the prices of their specialty stocks, and that allowing these specialists to use options on their specialty stock would provide them extra incentives to abuse this ability by engaging in mini-manipulations [58] and other stock/options manipulations.[59] The NYSE responded to these arguments in part by contending that NYSE specialists' "price administration" abilities have diminished substantially over recent years.[60]

In evaluating the proposed rule change, the Commission finds it unnecessary to determine whether or to what extent NYSE specialists do in fact have the ability to administer the prices of their specialty stocks. Even assuming NYSE specialists have such capabilities under some circumstances, the Commission finds that the NYSE proposal substantially reduces the specialists' incentives to abuse such capabilities in order to profit from options positions allowed under the proposal and also provides for surveillance adequate to detect any stock/options manipulations that may nonetheless be attempted.

By limiting the specialist to options positions that are on the opposite side of the market from his stock position and that fall within hedge ratios designed only to allow positons that move approximately on a point-for-point basis with changes in the price of the underlying stock, the proposal substantially ensures that any manipulation of the price of the stock by the specialist would have approximately a point-for-point, adverse effect on the opposite side options position.[61] Thus,

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NYSE, and Richard T. Chase, Associate Director, Division of Market Regulations, SEC.

[52] CBOE also suggested the need for such a hearing in its April 27, 1984, letter, *supra* note 35. Because the Commission finds below that the NYSE proposal and surveillance plan appropriately address any informational advantages NYSE specialists may have, it is unnecessary to resolve the dispute over the survey findings or to hold hearings in this matter.

[53] As indicated above, in its January 1985 letter, CBOE specifically suggests that NYSE require specialists to submit records "respecting their receipt of non-public information."

[54] At its October 11 meeting, the Commission preliminarily determined that, should the Commission eventually approve the NYSE proposal, the NYSE would be required to prepare and submit to the Commission a report describing the first six-months experience under the NYSE proposal. The desired scope of this report is described in a letter to Santo Famularo, Assistant vice president, NYSE, from Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated November 27, 1984, contained in File No. SR-NYSE-82-20.

[55] Section 6(b) of the Act, 15 U.S.C. 78f(b)(5).

[56] The Commission notes that several of the commentators, as well as the Options Study, suggested that NYSE specialists' use of options on their specialty stocks could be projected to have this effect. *See* Options Study, *supra* note 10, at 876-79. The SIA did argue that products such as index options also could be expected to provide this type of benefit. It did not dispute, however, that options on a specialist's individual specialty stocks also would be potentially useful, and indeed appear to be more efficient, hedging vehicles. *See* SIA letter, *supra* note 33.

[57] *See also* Options Study, *id.* at 876-79. Some commentators also have argued that the use of options by NYSE specialists will harm the options markets rather than enhance them. These commentators argue that the specialists' real or perceived unfair advantages in using options will cause options market makers to protect themselves by widening their spreads, and will cause other current or potential options market participants to avoid the options markets altogether. *See, e.g.*, the SIA and CBOE comments, *supra* notes 33 and 35. For the reasons discussed below, however, the Commission does not believe that NYSE specialists will have material unfair advantages over other options market participants in using options under the proposed rule change.

[58] A mini-manipulation involves an effort by a trader over a short period of time to move the price of a stock to benefit a previously established options position. Once the price of the stock has moved up or down, the trader seeks to liquidate the options position at a profit.

[59] *See, e.g.*, Cygnet V Letter, *supra*, note 34.

[60] *See* NYSE letter, *supra*, note 25.

[61] As noted above, see text accompanying notes 27-29, *supra*, the proposal provides some flexibility in unwinding options hedge positions after a change in the specialist's position in the underlying stock. It allows the specialist one hour to enter orders to liquidate an options position that become on the same side of the market as a stock position as a result of changes in the stock position; provides the specialist two hours to enter orders to liquidate certain "opposite side" options positions that come to exceed the hedge ratios; and even allows the specialist to maintain some *de minimis* opposite side positions that come to exceed the hedge ratios. These provisions are designed to facilitate the practical problems specialists would encounter if required constantly to adjust their options positions in resopnse to their constantly changing stock

Continued

rather than being able to move the price of the stock to benefit a simultaneously held options position, the NYSE proposal should ensure that any gains on the stock from a manipulation would be offset by losses in an options position on the opposite side of the market.

Furthermore, the NYSE has proposed a comprehensive surveillance program in connection with the proposed rule change. The NYSE presently requires its specialists to record daily information concerning each transaction in each specialty stock, including the time of the trade, the number of shares bought or sold and the price. Under the NYSE proposal, the specialist would be required to record equivalent information concerning transactions in options on his specialty stocks.[62] This information will enable the NYSE to construct on an automated basis a fully integrated journal of the specialist's stock and options trades.[63] With this integrated data, the NYSE will be able to assure specialists' conformance with the proposed hedge ratios. This data also will enable the NYSE to detect unusual patterns of trading that might be indicative of manipulative activities. In this regard, the Commission notes that under the NYSE's proposed surveillance plan, surveillance for stock/option manipulations by specialists will be comparable to the option exchanges' current surveillance procedures for stock/option manipulations.[64] In sum, the Commission finds the NYSE's proposed surveillance plan adequate to detect attempted stock/options manipulations despite the substantial disincentives to such activity contained in amended Rule 105 and the Guidelines.[65]

2. The NYSE Specialists' "Information Advantages"

The central focus of concern regarding the NYSE proposal related to the "information advantages" commentators believe NYSE specialists to possess. Several commentators argue that NYSE specialists, because of their central position in the primary market for their specialty stocks, have unique access to information concerning the supply and demand for those stocks that gives them an advantage over other market participants in predicting short-term changes in the prices for these stocks.[66] These commentators believe that under the NYSE's proposal NYSE specialists can take advantage of these "information advantages" in option trades within hedge ratios that are not engaged in for "purposes related to the offsetting of risk," because the NYSE will not be capable of monitoring or enforcing compliance by NYSE specialists with this limitation.[67] The NYSE does not dispute that its specialists may on occasion have information on the possible direction and magnitude of stock price moves not possessed by other market participants.[68] It contends, however, that those information advantages have diminished over time and that other participants have similar information advantages and are able to trade options without the kinds of restrictions it has proposed to impose.

Commentators have expressed concerns to the Commission that NYSE specialists often enjoy significant informational advantages over other participants in the market. Because the NYSE specialist acts as the focal point of the market in most listed stocks, he has unique access to information regarding orders in his limit order book and interest in the crowd. Moreover, his central position often dictates that he is consulted by off-floor participants prior to their execution of large trades. The Commission has concluded, however, that the NYSE proposal and surveillance plan appropriately address these information concerns.

The Commission finds that any risk that NYSE specialists could abuse their informational advantage via options trades is substantially limited by the requirements that trading occur within the NYSE's hedging ratios and that all options trading activity be related to offsetting market making risk. For the same reason that opposite side options positions do not provide attractive incentives to manipulation, they generally are not useful vehicles for trading on market information.

The commentators' primary concerns focused on specialists trading options within the hedge. For example, a specialist holding a 20,000 share long postion might delay writing call options to hedge that position until he became aware of information that substantial selling interest would soon enter the market. Subsequently, commentators worried the specialist might close out his hedge based on information of a surplus of buy orders. The Commission recognizes that such activity might occur, but believes that the plain language of both the proposed rule and guidelines would prohibit it. Moreover, the Commission believes that such unexplained trading can be detected by the NYSE's present surveillance program. Therefore, the Commission does not believe that the additional

positions. While some commentators (*e.g.*, CBOE) have recommended that the two and one hour time periods be reduced, in part to reduce the manipulative potential inherent in these situations, the Commission sees no basis for concluding that the NYSE proposal is inadequate in this respect. In particular, the Commission finds that the limited, *de minimis* exceptions to the opposite-side hedge ratio restrictions found in the NYSE proposal represent an appropriate accommodation of the practical needs of the specialist if it is to be allowed to use options on its specialty stocks effectively for hedging purposes. Furthermore, as discussed in the text below, the Commission finds that the NYSE proposed surveillance is adequate to detect any stock/options manipulation that may be attempted by the NYSE specialist. *See* text accompanying notes 62–64, *infra*. In this connection, the Commission expects NYSE surveillance to focus particularly on those occasions when the specialist holds an "excepted" options position.

[62] While initially this information will be recorded and submitted to the Exchange on paper, the Exchange promptly will enter it into its computer system for surveillance purposes. We understand that the NYSE eventually will require the daily submission of this data on computer tapes.

[63] In this connection, the Commission notes that the NYSE's equity audit trail is currently capable of enhancing surveillance of specialist activity under amended Rule 105 by allowing spot checks of the data the NYSE will be receiving via the specialists' reports described above. The Commission emphasizes, however, that fully effective surveillance of all aspects of trading on the NYSE, including specialist activity under amended Rule 105 and the Guidelines, eventually will require a more completely developed equity audit trail than the NYSE currently possesses. Thus, while the Commission finds that the surveillance procedures described above are adequate, the Commission expects that the NYSE will include in the six months monitoring report discussed below (*see* text at note 72 *infra*) a report on the status of the development of its equity audit trail.

[64] In this connection, the Commission notes that the NYSE has stated that it supports having NYSE specialists' options orders designated as such for surveillance purposes. NYSE letter *supra* note 25, at 28.

[65] The Commission notes that the manipulative schemes that led to the existing ban on specialists holding options on their specialty stocks involved the use of conventional over-the-counter options on the same side of the market as underlying stock positions. *See, e.g.*, the Pecora Commission Report, *supra*, note 5, at 40–55; and H.R. Rep. No. 1383, 73d Cong., 2d Sess. at 10–11 (1934). As discussed above, gains in "same-side" options positions amplify gains in the underlying stock, while gains in opposite side options positions should be offset by losses in the underlying stock. Thus, the NYSE proposal addresses the manipulation concerns underlying the original ban by (1) allowing only opposite side positions that fall within hedge ratios and (2) not allowing even opposite side positions in conventional options, due to the difficulty in monitoring such activity.

[66] In those commentators' view, the sources of this information include the specialist's limit order book and his observations of trading interest in the crowd. *See, e.g.*, CBOE October 1983 letter, *supra* note 35.

[67] Thus, while the commentators agree that in concept NYSE specialists informational advantages can be addressed by imposing a "legitimate" hedging restriction on the specialists' use of options, they also argue that the NYSE proposal does not so limit the specialists. Instead, these commentators argue that the more objective limitations they propose (*see* text accompanying notes 44–45, *supra*) are needed to ensure that specialists use options for legitimate hedging purposes only.

[68] *See* NYSE letter, *supra* note 25, at 15–16.

regulatory restrictions suggested by commentators which may reduce substantially the flexibility of the specialist in hedging his stock positions, are necessary.[69]

In the Commission's view, assessing the hedging limitations and related restrictions in the NYSE proposal involves drawing a balance between restricting the clearly unfair and avoidable use by NYSE specialists of their possible informational advantages (by forbidding the use of such information in options trades engaged in for purposes not related to the offsetting of risk) and allowing NYSE specialists (and the markets for their stocks) to benefit from the use of options on their specialty stocks for purposes that are related to the offsetting of risk. Given the absence, at this time, of any evidence suggesting that the NYSE specialists' informational advantages are so great, or would be subject to such abuse, that their use of options under the terms of the NYSE proposal would materially affect the options markets adversely, the Commission finds the balance drawn in the NYSE proposal to be appropriate. Should the results of the NYSE's monitoring program [70] or other information suggest otherwise, the Commission, of course, would be prepared to revisit this question. Similarly, the Commission also would be prepared to reconsider this matter if evidence suggested that relaxation of certain of the NYSE's proposed restrictions was appropriate.

In summary, the Commission finds that the use by NYSE specialists of options on their specialty stocks as proposed by the NYSE will offer substantial benefits to the markets for these stocks and possibly to the markets for the options themselves. The Commission further finds that, taking into consideration the NYSE's surveillance plans, the proposal adequately addresses the possible regulatory concerns raised by commentators. In both cases, the Commission finds that these concens are outweighed by the possible benefits to be obtained under this proposal.[71]

VI. Conclusions

For the reasons discussed above, the Commission finds that the NYSE proposal is designed "to prevent fraudulent and manipulative acts and practicies" and, in general, "to protect investors and the public interest," and, is, therefore, consistent with the requirements of the Act applicable to a national securities exchange, and in particular, section 6(b)(5).

While we find that the NYSE proposal is consistent with the Act, we are also aware that approval of the use by NYSE specialists and their approved persons of options on the specialists' specialty stocks represents the elimination of the long-established prohibition. We also recognize that elimination of this prohibition has been and continues to be preceived by certain members of the public as a troublesome development. Accordingly, the Commission requests the NYSE to submit to the Commission a monitoring report describing the specialist's options-related hedging activity that occurs during the first six months of the program.[72]

It is therefore ordered that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3437 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

[69] *See* notes 44–45, *supra*. For these reasons, the Commission also finds inappropriate CBOE's suggestion that the NYSE directly prohibit "options activity while in possession of non-public information." First, the Commission believes that the NYSE's prohibition against the "taking advantage" of material non-public information concerning block transactions is adequate in the context of a regulatory regime that effectively limits the options positions specialists may take to positions entered to hedge pre-existing stock positions. Furthermore, as discussed in the text above, the potential for misuse by specialists of material, non-public information in other contexts is limited because (1) the range of trades permitted specialists under the proposal is restricted to ones that come within hedge ratios and are engaged in for purposes of offsetting risk, and (2) the NYSE has developed surveillance systems that appear adequate to monitor compliance with these restrictions. Second, because NYSE specialists arguably come into possession of material information that is, at least momentarily, not available to the general public on virtually a continual basis, imposition of such an absolute prohibition on specialists could effectively prohibit them from using options even for legitimate hedging purposes, a result the CBOE itself says it does not oppose. CBOE's October 1983 letter. The Commission notes that no other market participants—even ones who, like block positioners or upstairs market makers concededly may have access on a recurring basis to material, non-public access concerning even non-block transactions—are subject to such an absolute prohibition. Similarly, the CBOE's suggestion that the NYSE specialist be required to "maintain adequate records of their receipt of non-public information" appears unnecessarily burdensome in the absence of clear indications that the procedures proposed by the NYSE to monitor specialists options activity will be ineffective. In the Commission's view, under these procedures, the NYSE should be able adequately to surveil compliance with its restrictions on specialists options use, and these restrictions effectively limit the ability of the specialist to misuse material, non-public information.

[70] *See* text accompanying note 72, *infra*.

[71] As indicated above (*see* note 12, *supra*), these findings are equally applicable to proposed amendments to NYSe Rule 102 (use of options by odd-lot dealers). As also described above (*see* note 47, *supra*), the NYSE has addressed the comments received regarding the portion of the proposal relating to the use of options by associated persons who may share the specialist's time and place advantages by subjecting all associated persons of the specialist to the same restrictions as are imposed on the specialist himself. Thus, these findings are also applicable to the proposed amendments to Rule 105 that relate to the use of options by associated persons of the specialist.

[72] As discussed above, *see* note 54 *supra*, the NYSE already has been informed of the desired scope of this report. The NYSE has assented to providing a six month monitoring report to the Commission. *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, SEC, from David Marcus, Senior Vice President, NYSE, dated December 31, 1984. For the reasons discussed above, *see* note 69, *supra*, the Commission is not adopting CBOE's suggestion that the NYSE include in its report a "correlation of options transactions with non-public information possessed by the specialist when initiating options transactions."

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 5, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Barnett Banks of Florida
Common Stock, $2.00 Par Value, File No. 7–8255

Cox Communications
Common Stock, $1.00 Par Value, File No. 7–8256

Edwards (A.G.), Inc.
Common Stock, $1.00 Par Value, File No. 7–8257

Knight-Ridder Newspaper
Common Stock, $.25 Par Value, File No. 7–8258

Ocean Drilling & Exploration
Common Stock, $.50 Par Value, File No. 7–8259

Sanders Associates
Common Stock, $1.00 Par Value, File No. 7–8260

Echo Bay Mines, Ltd.
Common Stock, No Par Value, File No. 7–8261

Sparkman Energy
Common Stock, $.01 Par Value, File No. 7–8262

Tultex Corporation
Common Stock, $1.00 Par Value, File No. 7–8263

Sea-Land Corporation
Common Stock, No Par Value, File No. 7–8279

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

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Self-Regulatory Organizations; Philadelphia Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 5, 1985.

The above named national securities exchange had filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Gerber Scientific, Inc.
Common Stock, $1.00 Par Value, File No. 7-8274
SCANA Corporation
Common Stock, No Par Value, File No. 7-8275

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 27, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applicaitons are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3429 Filed 2-8-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

SBA Form 1086, Secondary Participation Guaranty and Certification Agreement; Revised

Agency: Small Business Administration.
Action: Notice.
Summary: The Small Business Administration (SBA) has revised SBA Form 1086, Secondary Parcticipation Guaranty and Certification Agreement. This revised agreement may be used immediately and *must* be used for all secondary market sales where SBA executes the form on or after February 15, 1985.

On July 2, 1984, (49 FR 27232) SBA published in the **Federal Register** a proposed version of this form. Five comment letters were received, mostly suggesting minor changes. The only suggestion received from more than one writer was in regard to a provision in the form that would allow lenders to approve one deferment of borrower payments for a period of up to three months without obtaining the investor's permission. This provision is designed to give selling lenders some flexibility to respond to borrowers' requests for short term payment relief.

SBA has decided to include this provision in the final version because SBA believes this servicing flexibility will be beneficial for small business borrowers. This change should benefit the small business community without significantly harming the secondary market as the investor will continue to accrue interest during the deferment period.

The following is a brief review of major changes in the revised form.

1. Lenders must mark the interest accrual method on the form.

2. Lenders must state the date to which interest is paid.

3. Lenders ar required to provide the fiscal and transfer agent with ten business days advance notice of prepayment for any loan approved on or after February 15, 1985.

4. The form contains a certification by the lender that any prepayment comes from borrower funds and is not a unilateral repurchase by the lender.

5. Investors are required to agree in advance to one deferment for a period of up to three months if granted by the lender upon borrower's request.

6. The form contains a notice to investors that any premium paid is not guaranteed by SBA.

For Further Information Contact: James W. Hammersley, (202-653-5954) or Robert I. Wise, (202-653-6900), 8th floor, Small Business Administration, 1441 L St. NW, Washington, D.C. 20416.

Dated: February 5, 1985.

James C. Sanders,

Administrator.

OMB No. 3245-0185

OMB Expiration Date 3-31-85

SBA Loan Number _____
SBA Servicing Office Number _____

Secondary Participation Guaranty and Certification Agreement (SBA Form 1086)

(Use this form to apply for initial issuance of an SBA Guaranteed Interest Certificate in the case where no SBA Form 1084 is outstanding)

The Small Business Administration, an Agency of the United States Government ("SBA") and the Lender named below ("Lender") enter into a guaranty agreement on SBA From 750 ("750 Agreement") applicable to a loan ("Loan") made by Lender in participation with SBA to the Borrower ("Borrower") named below evidenced by Borrower's Note and any modification thereto ("Note") a copy of which is attached hereto and incorporated by reference. Lender is the beneficiary under the terms and conditions set forth in the 750 Agreement of SBA's guarantee of the specified percentage of the outstanding balance of the Loan ("Guaranteed Interest").

Lender _____
Address _____

_____

Zip _____
Date of 750 Agreement _____
Date of Note _____
Borrower _____
Address _____

_____

Zip _____
Percent of SBA's Guarantee _____
Original Face Amount of Note $ _____

Lender Hereby Assigns the Guaranteed Interest to Purchaser Named Below:

Purchaser _____
Address _____

Zip ———

Lender certifies the following as of the date hereof:

Outstanding principal amount of loan $———
Price paid for the Guaranteed Interest $ ——
Outstanding principal amount of Guaranteed Interest $ ———
Interest is paid to but not including: (Date) —

Interest is calculated on
(Check one): —— 30/360 —— Actual Days/365 —— Other (specify) ———

This interest accrual method shall be maintained for the life of the loan.

SBA Form 1086 (12/84)

Lender's servicing fee as computed on the unpaid principal amount of the Guaranteed Interest for the period of actual services performed by Lender shall be: ———% per annum.

Registered Holder requests SBA to issue through the Fiscal and Transfer Agent (FTA) a Guaranteed Interest Certificate ("Certificate") evidencing ownership of the Guaranteed Interest in the name of: (if blank, FTA will register to Purchaser):

Registered Holder: ———
Address ———
Zip ———

(such person or entity, or any subsequent transferee, during its respective period of ownership of the Certificate, to be called "Registered Holder").

SBA, Lender and Registered Holder (for itself and each subseqent Registered Holder) agree to the appointment by SBA of FTA to serve as the agent to transfer Certificates and to receive from Lender loan repayment made by Borrower and transmit such payment to Registered Holder.

All Payments by Lender Must Be Remitted to FTA and Not to Registered Holder

A written notification to or demand upon SBA pursuant to this Agreement shall be made to:

SBA Servicing Office ———
Address ———
Zip ———

The FTA may request purchase directly from the SBA Central Office when a purchase demand is made where the transcripts of the lender and registered holder agree.

In consideration of the mutual promises herein contained, the parties agree to all the provisions of this Agreement, including those set forth above and those set forth in the Terms and Conditions starting on the next page.

In witness whereof, the parties have executed this multi-page Agreement this —— day of ———, 19——, (SBA Warranty Date) at ———, ——.

(Purchaser) ———
By: ———
Title: ———
(Lender) ———
By: ———
Title: ———

Small Business Administration
By: ———
Title: ———

Agreed to and Accepted by Fiscal and Transfer Agent

Bradford Trust Company, P.O. box 54, Bowling Green Station, New York, New York 10004.

Note.—The Guarantee of SBA relates to the unpaid principal balance of the guaranteed portion and the interest due thereon. Any premium paid by the registered holder for the Guaranteed Interest is not covered by SBA's guarantee and is subject to loss in the event of prepayment or default.

Terms and Conditions

1. *Lender's Sale of Guaranteed Interest.* Lender has sold the Guaranteed Interest and acknowledges that is has received value for the Guaranteed Interest. Lender has given notice and acknowledgment of the transfer of the Guaranteed Interest by completing the following legend on the Note:

The guaranteed portion of this Note has been transferred to a Registered Holder for value.

Dated: ———
(Lender) ———

Lender has delivered or hereby delivers to SBA or its agent, the FTA, a photocopy of the Note and any modifications thereto with the legend, and such photocopy shall be incorporated into this Agreement. This legend shall also serve as notification for any future transfer of the Guaranteed Interest.

2. *Loan Servicing.* Lender shall remain obligated under the terms and conditions of the 750 Agreement, and shall continue to service the Loan in the manner set forth in the 750 Agreement. Modifications in the 750 Agreement or to the Note not affecting repayment terms of the Note may be effected by Lender or SBA without the consent of Registered Holder (for itself and each subsequent Registered Holder). To aid the orderly repayment of Borrower's indebtedness, Lender, at the request of the Borrower, may grant one deferment of Borrower's scheduled payments for a continuous period not to exceed three (3) months of past or future installments. Lender shall immediately notify FTA and SBA in writing of any deferment approval, the term of such deferment, and the date Borrower is to resume repayment of its obligation. Registered Holder may not demand repurchase of the Guaranteed Interest during the deferment period, or before borrower's failure to pay the first scheduled installment following the deferment period. Lender shall not authorize any additional deferment or an extension of Loan maturity without the prior written consent of the Registered Holder. No change in the terms and conditions of repayment of the Note other than the deferment authorized in this paragraph shall be made by Lender or SBA without the prior written consent of Registered Holder.

3. *Obligations and Representations of Lender.* Lender hereby certifies that the Loan has been made and fully disbursed and that the full amount of the guaranty fee has been paid to SBA. SBA acknowledges receipt of the guaranty fee, and acknowledges that the outstanding principal amount of the Guaranteed Interest and date to which interest is paid thereon as certified by Lender are accepted by SBA and have been warranted by SBA to the Registered Holder as of the SBA warranty date; provided, however, that Lender shall be liable to SBA for any damage to SBA resulting from any error in the certified principal amount, percentage of the Guaranteed Interest, or date to which interest is paid. Lender represents that as of the execution of this Agreement neither it nor any of its directors, officers, employees, or agents has or should have, through the exercise of reasonable diligence, any actual or constructive knowledge of any default by Borrower or has any information indicating the likelihood of a default by Borrower or the likelihood of prepayment of the Loan (by refinancing or otherwise). Lender hereby acknowledges that it has no authority pursuant to this Agreement to unilaterally repurchase the Guaranteed Interest from Registered Holder.

4. *Obligations and Representations of Registered Holder.* Pursuant to this Agreement, SBA shall purchase the Guaranteed Interest from Registered Holder regardless of whether SBA has any knowledge of possible negligence, fraud or misrepresentation on the part of Lender or Borrower, provided neither Registered Holder nor any person or entity having the beneficial interest in the Guaranteed Interest participated in, or at the time it purchased the Guaranteed Interest had knowledge of, such negligence, fraud or misrepresentation. Subject to the provisions of 18 U.S.C. s1001 (relating, among other things, to false claims), Registered Holder and any person or entity having the beneficial interest therein hereby warrants that, it was not the Borrower, Lender, or an "Associate"

of the lender (as defined in Title 13, Code of Federal Regulations, Part 120), and anyone standing in the same relationship to the Borrower, and had neither participated in nor been aware of any negligence, fraud or misrepresentation by Lender or Borrower with respect to the underlying Note or related Loan documentation. Neither execution hereof by SBA, or purchase by SBA from Registered Holder shall constitute any waiver by SBA of any right of recovery against Lender, Registered Holder, or any other person or entity. Registered Holder (for itself and each subsequent Registered Holder) hereby acknowledges that the Loan may be terminated on a date other than its maturity date, in which case the Certificate will be called for redemption and will cease to accrue interest as of the date of such termination.

5. *Issuance of Guaranteed Interest Certificates.* SBA, Lender, and Registered Holder (for itself and each subsequent Registered Holder) agree that ownership of the Guaranteed Interest shall be evidenced by a Certificate to be issued by SBA. SBA shall issue such Certificate, either through its own facilities or by designating and authorizing such issuance by FTA.

FTA shall be the custodian of the executed original of this Agreement; it shall be delivered to FTA by SBA immediately after execution by SBA. A conformed copy shall be retained by SBA, and a conformed copy shall be delivered to Lender by SBA. Each Registered Holder shall receive the Certificate described herein. Upon request therefor and payment of a reproduction fee, a Registered Holder may obtain from FTA a copy of the executed SBA Form 1086 pertaining to the Guaranteed Interest represented by the Certificate.

Upon completion of execution of this Agreement, SBA, through FTA, shall issue to Registered Holder (or, if FTA is timely so notified in writing by Registered Holder, to Registered Holder's assignee) a Certificate evidencing the ownership of the Guaranteed Interest of the Loan. If Registered Holder is not the person or entity having the beneficial interest in the Certificate, Registered Holder hereby represents that it has obtained from the person or entity, having the beneficial interest in the Certificate, authorization appointing Registered Holder as the agent of such person or entity with respect to all transactions arising out of the performance of their respective obligations under SBA Form 1086. The Certificate shall identify the Loan and shall state, among other things: (i) The name of the Registered Holder, (ii) the Principal Amount of Guaranteed Interest as of the SBA Warranty Date, (iii) the Certificate Interest Rate, and (iv) the Borrower's Payment Date. Transfer of the Guaranteed Interest by Registered Holder may be effected by the transferee (i) obtaining from the transferor the execution of the assignment form on the reverse of the Certificate or, alternatively, on a form of detached assignment approved by SBA, (ii) presenting the Certificate and assignment to FTA for registration of transfer and issuance of a new Certificate to the transferee, and (iii) paying to FTA a Certificate issuance fee to be set from time to time by SBA, and (iv) presenting the following information: Certificate number; original principal amount of the Certificate; exact spelling of the name in which the new Certificate is to be issued; complete address and tax identification number of the new Registered Holder; name and telephone number of the person handling the transfer; and complete instructions for the delivery of the new Certificate. The new Certificate shall state, (i) the Principal Amount of Guaranteed Interest due transferee, and (ii) the date from which interest will accrue to transferee as reflected in FTA's accounting records.

6. *Obligations of Lender.* Lender shall have the obligation to account to FTA as follows:

(a) On the last business day of each month in which a payment is due and payable under the Note by Borrower (except when such payment is received on the last business day prior thereto, in which case then within two business days of receipt by Lender), Lender shall send to FTA a statement of account which shall state whether or not Borrower's payment has been received for such month. If payment has been received: (i) The statement of account shall also state (A) the total amount received from Borrower under the Note, (B) the date on which such payment was received, (C) the pro rata share of interest due FTA with respect to the Guaranteed Interest (less Lender's servicing fee), (D) the pro rata share of principal due FTA, with respect to the Guaranteed Interest, (E) the total amount to be remitted to FTA, and (F) the remaining outstanding principal balance of the Guaranteed Interest; (ii) Lender shall send to FTA with the statement of account the pro rata share of such payment with respect to the Guaranteed Interest (less only Lender's servicing fee deducted from the interest payment by Borrower) as stated on the statement of account. If the statement of account received from Lender fails to specify the date on which Borrower's payment was received, then FTA may apply such payment as if Borrower's payment was received by Lender on the date due under the Note.

(b) If a payment by Borrower is received by a Lender in a month other than the month in which due and payable under the Note, the Lender shall send to FTA within two business days of receipt by Lender: (i) A statement of account as described in subparagraph 6(a), and (ii) the pro rata share of such payment with respect to the Guaranteed Interest (less only Lender's servicing fee deducted from interest payments by Borrower).

(c) If Lender fails to make timely remittance to FTA of the pro rata share of any payment received from Borrower, Lender shall pay FTA (i) interest on the unremitted amount at the rate provided in the Note (less the rate of Lender's servicing fee), plus (ii) a late payment charge of 1% per month (or any part thereof) on the unremitted amount, such interest and charge to be remitted to FTA with such pro rata share.

7. *Obligations of FTA.* FTA shall have the obligation, with respect to payments received from Lender pursuant to Paragraph 6 above, to remit to Registered Holder any such payment (less applicable fees, and any late payment charges due FTA if such charge has been collected from Lender) as follows:

(a) Any payment (other than a prepayment of principal) received by FTA before the fifteenth day of the month following Borrower's scheduled payment month will be remitted to Registered Holder by the fifteenth day of such following month. In such case, any additional interest and late payment charge paid by Lender pursuant to paragraph 6 hereof shall be retained by and shall become the property of FTA.

(a) Any payment (other than a prepayment of principal) not received by FTA by the fifteenth day of the month following Borrower's scheduled payment month will be advanced by FTA if FTA has been notified by Lender before the fifteenth day of such fullowing month that Borrower's payment has been received, and provided that Lender is not then in arrears in remitting to FTA any payment by the same Borrower. In such case, any additional interest and late payment charge paid by Lender pursuant to paragraph 6 hereof shall be retained by and shall become the property of FTA.

(c) Any payment (other than a prepayment of principal) received by FTA on or after the fifteenth day of the month following Borrower's scheduled payment month but not advanced by FTA pursuant to subparagraph 7(b) above will be remitted to Registered Holder within two (2) business days of receipt by FTA. In such case, any additional interest received by FTA pursuant to paragraph 6 hereof and allocated to the period after the fifteenth day of such following month plus any late payment charge received by FTA shall be remitted to Registered Holder, and the balance of any such additional interest received by FTA shall be retained by and shall become the property of FTA.

(d) Other amounts received by FTA from Lender which are not prepayments subject to Paragraph 15, may be held by FTA and applied as required herein.

(e) Upon presentation by Registered Holder of the Certificate, amounts received by FTA from Lender or SBA which would constitute a full redemption of the Certificate, or a prepayment suject to Paragraph 15, shall be remitted by FTA to Registered Holder by wire transfer within two (2) business days of receipt of immediately available funds by the FTA in accordance with Registered Holder's instructions.

(f) Each Remittance by FTA to Registered Holder shall be accompanied by a statement of the amount allocable to interest, the amount allocable to principal, and the remaining principal balance as of the date on which such allocations were calculated.

(g) If FTA fails to make timely remittance to Registered Holder in accordance with the above provisions, FTA shall pay to Registered Holder (i) interest on the unremitted amount at the rate provided in the Note less the rate of Lender's servicing fee and any other applicable fees, plus (ii) a late payment charge of 1% per month (or any part thereof) on the amount of such payment.

8. *Transferability of Guaranteed Interest.* Each Registered Holder maintains under this Agreement the right to assign the Guaranteed Interest. Each Registered Holder of the Guaranteed Interest shall be deemed to have represented that, to the best of its knowledge, it has, and so long as it is a Registered Holder it will have no interest in the Borrower, in the Note, or in the collateral hypothecated to the Loan, other than the Guaranteed Interest held under this Agreement, and that it will not service or attempt to service the Loan or secure or attempt to secure additional collateral from Borrower. Registered Holder, without the prior consent of SBA, Lender, or FTA, may transfer the ownership of the Guaranteed Interest to a subsequent transferee, (other than Borrower, or Lender, or an "Associate" of the lender as defined in Title 13, Code of Federal Regulations, Part 120) or anyone standing in the same relationship to the Borrower. The effective date of any such transfer of the Guaranteed Interest shall be the date on which such transfer is registered on the books of FTA. If Lender, FTA or SBA shall have made any payment to, or taken any action with respect to, the transferor Registered Holder prior to the effective date of the transfer of the Guaranteed Interest, such payment or action shall be final and fully effective. Neither SBA, FTA nor Lender shall have any further obligation to the transferree Registered Holder with respect to such payment or action; and any adjustment between the transferor and the transferee resulting from any such payment or action by Lender, SBA or FTA shall be the responsibility and obligation solely of the transferor and the transferee. On payment date, FTA will remit payments to the person or entity which, on the books of FTA, is the Registered Holder as of the close of business on the record date, which is the third business day of the month. Any other adjustment by and between the transferor and transferee shall be solely their responsibility and obligation. At any given time there shall be only one Registered Holder entitled to the benefits of ownership of the Guaranteed Interest, and each transferor, upon the transfer of the Guaranteed Interest, shall cease to have any right in the Guaranteed Interest or any obligation or commitment under this Agreement, except as to any appropriate adjustment of funds between the transferor and the transferee. FTA shall serve as the central registry of Certificate ownership.

9. *Certicates Lost, Destroyed, Stolen, Mutilated or Defaced.* Procedures for claim on account of loss, theft, destruction, multilation or defacement of a certificate are found in Title 13, Code of Federal Regulations, Part 122. The FTA, upon written request, shall provide such procedures.

10. *Repurchase by Lender.* If Borrower shall default on any payment of principal or interest due under the Note for sixty (60) calendar days or more, FTA, on behalf of Registered Holder, shall make written demand first upon Lender to purchase the Guaranteed Interest, and if Lender fails to make such repurchase, upon SBA.

(a) When demand for repurchase is made upon Lender, Lender shall, within ten (10) business days after receipt of the written demand, have the option to repurchase the Guaranteed Interest for an amount equal to the outstanding principal balance and interest at the Note rate (less Lender's servicing fee) due FTA as of the repurchase date, plus an amount equal to the pro rata share with respect to the Guaranteed Interest of any payments by Borrower not remitted by Lender to FTA, plus any additional interest and late payment charges thereon pursuant to paragraph 6 of paragraph 7 above. If Lender chooses to repurchase, it shall (i) transmit written notice of such intention to FTA within ten (10) business days after receipt of FTA's written demand, and (ii) provide FTA with a certification that Borrower has incurred an uncured default under the Note for sixty (60) calendar days or more, and repurchase is being made pursuant to this paragraph.

(b) FTA shall, upon receipt of such notice, advise Lender of the repurchase date (which shall not be more than five (5) business days after FTA's receipt of Lender's notice), the outstanding principal amount, the accrued interest due FTA as of settlement date, and any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On repurchase date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer or in immediately available funds. FTA is not required to accept any repurchase except as described herein.

(c) Written demand by FTA upon SBA for the purchase of the Guaranteed Interest shall be made not later than one hundred fifty (150) calendar days after the first date of an uncured default by Borrower. If FTA does not make such demand by such 150th day, interest shall cease to accrue on the Certificate after the end of such period. For the purposes of this subparagraph, the written demand shall include the items described in paragraph 11(i) through (iv).

(d) Upon receipt of the purchase amount from Lender or SBA, FTA shall remit in accordance with paragraph 7 to Registered Holder such amount (less applicable fees, any advances and interest thereon remitted by FTA to Registered Holder), and any additional interest or late payment charges due FTA pursuant to Paragraphs 6 or 7 hereof. FTA may also deduct from such amount a final transfer charge for the final transfer and redemption of the Certificate, the amount of such final transfer charge not to exceed the normal transfer charge. Upon repurchase of the Guaranteed Interest by Lender, the rights and obligations of Lender, FTA and SBA shall be governed by the 750

Agreement and any continuing provisions of this Agreement (as applicable). FTA shall send written notification to SBA of (i) the repurchase by Lender, (ii) the repurchase date, and (iii) the outstanding balance of principal and accrued interest owed by Borrower as of Lender's repurchase date.

11. *Purchase by SBA.* If Lender shall fail for any reason to repurchase the Guaranteed Interest as set forth in Paragraph 10 hereof, SBA shall purchase the Guaranteed Interest within thirty (30) business days after receipt of (i) written notice from FTA of Lender's failure to repurchase, together with (ii) a copy of the written demand made upon Lender, and (iii), a transcript and final statement of account of the Guaranteed Interest satisfactory to SBA. The payment of accrued interest to the date of purchase on a fixed rate note shall be at the rate provided in the note less the lender's servicing fee. On those loans with a fluctuating interest rate, SBA's payment of accrued interest shall be at that rate in effect at the time of borrower default where a default has occurred or at that rate in effect at that time of pruchase where no default has occurred less the lender's servicing fee. If Lender fails to furnish a current transcript statement as required by paragraph 13(i) and (ii) within two (2) business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment in settlement will be made as expeditiously as possible. Under no circumstances shall SBA be liable for any amount attributable to any late payment charges which may be due FTA or Registered Holder. Upon written demand by SBA, Lender shall immediately repay to SBA the amount, if any, by which the amount paid by SBA exceeds the amount of SBA's obligation to Lender under the 750 Agreement, and the amount paid by SBA for any payments by Borrower which were not remitted by Lender to FTA (including accrued interest thereon), plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest from the date of said purchase by SBA to the date of repayment by Lender. Upon purchase of the Guaranteed Interest by SBA, the rights and obligations of Lender and SBA shall be governed by the 750 Agreement and any continuing provisions of this Agreement, and SBA shall be deemed a transferee of the Guaranteed Interest and the final Registered Holder thereof with all the rights and privileges of such Registered Holder under this Agreement.

12. *Default by Lender.* In the event Lender shall fail for any reason to remit to FTA the pro rata share with respect to the Guaranteed Interest of any payment made by Borrower, pursuant to Paragraph 6 hereof, for a period of seventy-five (75) calendar days or more from the date such payment was due, Lender, after receipt of FTA's written demand, shall repurchase, through FTA, the Guaranteed Interest from Registered Holder pursuant to the terms stated in Paragraph 10 hereof. If Lender does not so repurchase from Registered Holder as provided in this Paragraph, then SBA, within thirty (30) business days after receipt by SBA of written notice from FTA of Lender's failure to repurchase as provided in this Paragraph, shall purchase (through FTA) the Guaranteed Interest from Registered Holder pursuant to Paragraph 11, hereof, provided, however, that under no circumstances shall SBA be liable for any amount attributable to any late payment charge. If SBA purchases from Registered Holder pursuant to this Paragraph, and if Borrower has not been in uncured default in any payment due under the Note for sixty (60) calendar days or more, Lender, within ten (10) business days after written demand by SBA, shall repurchase the Guaranteed Interest from SBA for an amount equal to the amount paid by SBA to Registered Holder plus accrued interest (at the interest rate provided in the Note) from the date of the SBA purchase to the date of Lender's repurchase. If, on the date SBA purchases the Guaranteed Interest from Registered Holder pursuant to this Paragraph, Borrower shall be in uncured default of any payment due on the Note for sixty (60) calendar days or more, then the provisions of Paragraph 11 hereof shall become applicable, including the obligation of Lender to repay to SBA (i) the amounts paid by SBA to Registered Holder in excess of the amount of SBA's obligation to Lender under the 750 Agreement, and (ii) any payments by Borrower which were not remitted by Lender to FTA, plus accrued interest (at the interest rate provided in the Note) computed on the unpaid balance of the Guaranteed Interest. If Lender fails to furnish a current transcript statement as required by paragraph 13(i) and (ii) within two (2) business days after SBA's request therefor, then SBA may rely on the certified statement of account, with supporting documentation, from FTA. If any such information shall be inaccurate, whether inadvertently or otherwise, an appropriate adjustment and settlement will be made as expeditiously as possible.

13. *Other Obligations of Lender.* Lender hereby consents to the purchase of the Guaranteed Interest by SBA in accordance with Paragraphs 11 and 12 hereof, and shall, within two (2) business days of a request therefor, furnish to SBA and to FTA (i) a transcript of account, (ii) a current certified statement of the unpaid principal and interest then owed by Borrower on the Note, and (iii) a statement covering any payments by Borrower not remitted by Lender to FTA. Upon request by FTA at any time, Lender shall issue a certified statement of the outstanding principal amount of the Guaranteed Interest and the effective interest rate on the Note as of the date of such certified statement. Lender agrees that purchase of the Guaranteed Interest by SBA does not release or otherwise modify any of Lender's obligations to SBA arising from the Loan or the 750 Agreement, and that such purchase does not waive any of SBA's rights against Lender. Lender also agrees that SBA, as the final owner of the Guaranteed Interest under this Agreement, in addition to all its rights under the 750 Agreement with Lender, shall also have the right to set-off against Lender all rights inuring to SBA under this Agreement against SBA's obligation to Lender under the 750 Agreement. After any purchase of the Guaranteed Interest by SBA, Lender shall assign, transfer and deliver the Note and related loan documents to SBA upon the written request of SBA.

14. *Default by Fiscal and Transfer Agent.* In the event FTA receives any payment from Lender or SBA which FTA fails to remit to Registered Holder pursuant to this Agreement, Registered Holder shall have the right to make written demand upon FTA for any payment unremitted by FTA. If FTA fails to remit any such payment within ten (10) business days of such demand, Registered Holder shall have the right to make written demand upon SBA therefor. SBA shall make such payment to Registered Holder within thirty (30) business days of receipt of such written demand, provided SBA can verify the non-payment by FTA within thirty (30) business days, or otherwise immediately after such verfication. SBA shall make such payment directly to Registered Holder in the amount of the unremitted payment plus interest at the Certificate rate to the date of payment by SBA. FTA shall repay SBA for such payment by SBA to Registered Holder within ten (10) business days after receipt of

written demand by SBA in an amount equal to the payment by SBA to Registered Holder plus interest (at the interest rate provided in the Certificate) computed on the unpaid balance of the Guaranteed Interest, from the date of SBA's payment to Registered Holder to the date of FTA's repayment to SBA.

15. *Prepayment or Refinancing by Borrower.* For loans approved by or on behalf of SBA on or after February 15, 1985, Lender shall transmit notice to FTA of Borrower's intent to make (by refinancing or otherwise and pursuant to the terms of the Note) a partial prepayment of principal subject to this paragraph, or a total prepayment of principal. Such notice shall be received by FTA at least ten (10) business days prior to prepayment date. The "prepayment date" is the date prior to maturity that Borrower has established on which immediately available funds shall be used to make the prepayment. Lender's notice to FTA shall contain the following: (a) The prepayment date, (b) the principal amount being prepaid, and (c) a certification by Lender that to the best of its knowledge and belief the prepayment funds are either Borrower's own funds, or funds borrowed by Borrower (whether or not guaranteed by SBA) pursuant to a separate transaction, and the prepayment is in accordance with the terms of this paragraph and the Note, and applicable law. This certification is intended to guard against Lender's unilateral repurchase of the Guaranteed Interest from the Registered Holder.

A partial prepayment of principal subject to this paragraph is any payment which is greater than 20% of the principal balance outstanding at the time of prepayment. FTA is not required to accept any prepayment except as described herein. FTA shall upon receipt of notice pursuant to this paragraph advise Lender of the outstanding principal amount and the accrued interest due FTA as of prepayment date, plus any additional interest and late payment charges pursuant to paragraph 6 or 7 hereof. On prepayment date, Lender shall remit to FTA the total amount to be paid to FTA by wire transfer or immediately available funds.

For loans approved prior to February 15, 1985, Lender shall forward any prepayment to the FTA in immediately available funds within two business days of receipt of the prepayment from the borrower.

16. *Option to Purchase by SBA.* Pursuant to the 750 Agreement, SBA shall at any time have the option to purchase the Guaranteed Interest. Failure by Registered Holder to submit the Certificate to FTA for redemption by the date specified by SBA or FTA will not entitle Registered Holder to accrued interest beyond such date.

17. *Separate or Side Agreements.* No other separate or side agreement between Lender and Registered Holder, between a Registered Holder and a subsequent transferee, between FTA and Lender, or between FTA and any Registered Holder, shall in any way obligate SBA to make any payment except as provided herein, nor shall it modify the nature or extent of SBA's rights or obligations under the terms of this Agreement or of the 750 Agreement.

18. *Idemnity and Force Majeure.* Each party to this Agreement (including FTA), for itself and its successors and assigns, agrees to indemnify and hold harmless any other party (including FTA) against any liability or expense arising under this Agreement which is due to its negligence and/or breach of contractual obligation, except that no party hereto (including FTA) shall be liable to any other party or to Registered Holder for any action it takes, suffers or omits that is (i) authorized by this Agreement or (ii) pursuant to a communication received by such party (including FTA) from any other party or from Registered Holder which is not contrary to this Agreement and which a prudent person in like circumstances would reasonably believe to be genuine, lawful and duly authorized by the sender. If any party hereto (including FTA) is in doubt as to the applicability of this Agreement to a communication it has received, it may refer the matter to SBA for an opinion as to whether it may take, suffer or omit any action pursuant to such communication. Under no circumstances, however, shall any party hereto (including FTA) be held liable to any person or entity for special or consequential damages or for attorneys' fees or expenses in connection with its performance under this Agreement. If any party hereto (incuding FTA) shall be delayed in its performance hereunder or prevented entirely or in part from completing such performance due to causes or events beyond its control (including and without limitation, Act of God; postal mulfunction or delay; interruption of power or other utility, transportation or communication services; act of civil or military authority; sabotage; national emergency; war; explosion, flood, accident, earthquake or other catastrophe; fire; strike or other labor problem; legal action; present or future law, governmental or order, rule or regulation; or shortage of suitable parts, materials, labor or transportation) such delay or non-performance shall be excused and the reasonable time for performance in connection with this Agreement shall be extended to include the period of such delay or non-performance.

19. *Inconsistent Provisions and Caption Headings.* Any inconsistency between this Agreement and the 750 Agreement shall be resolved in favor of this Agreement. Any inconsistency between this Agreement and Title 13, Code of Federal Regulations, shall be resolved in favor of Title 13. The caption headings for the various paragraphs herein are for ease of reference only and are not to be deemed part of these Terms and Conditions. Required to obtain benefit.

[FR Doc. 85-3441 Filed 2-8-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0318]

License Surrender; Glover Capital Corp.; California

Notice is hereby given that Glover Capital Corporation, 1000 E. Dominguez Street, Carson, California 90746 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Glover Capital Corporation was licensed by the Small Business Administration on March 29, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on December 7, 1984, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 4, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3440 Filed 2-8-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan area No. 6282]

Designation of Federal Action Economic Injury Loan Area; Virginia

Rockingham County in the State of Virginia constitutes an economic injury area as a result of the following Federal action pursuant to section 7(b)(3), as amended, of the Small Business Act.

Federal quarantine on movement of live poultry and fertile eggs as a result of a major outbreak of Avian Influenza.

The date of said Federal action is January 26 thru September 14, 1984. Eligible small businesses without credit elsewhere may file applications for economic injury until the close of business on November 5, 1985, at the address listed below:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring Street, SW, Suite 822, Atlanta, GA 30303

or other locally announced locations. The interest rate for eligible small business applicants is 8%.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 5, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-3439 Filed 2-8-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-5358]

Losco Investment and Finance Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Losco Investment & Finance Corporation.

Address: 1543 West Olympic Boulevard, Suite 344, Los Angeles, California 90015.

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
John H. Ahn, 8592 Los Coyotes Drive, Buena Park, CA 90621.	President/General Manager/Director.	50
Hyun S. Ahn, 8592 Los Coyotes Drive, Buena Park, CA 90621.	Vice President/ Secretary Treasurer/ Director.	50
Stuart Ahn, 1543 West Olympic Blvd. Los Angeles, CA 90015.	Director	(1)

[1]None.

The Applicant, a California corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Los Angeles, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 4, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3312 Filed 2-8-85; 8:45 am]

BILLIND CODE 8025-01-M

Monsey Capital Corp.; Issuance of Small Business Investment Company License

On November 27, 1984, a Notice was published in the **Federal Register** (46608) stating that an application had been filed by Monsey Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1985)] for a license as a small business investment company (SBIC) under section 301(d) of the Act.

Interested parties were given until the close of business December 27, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5474 to Monsey Capital Corporation to operate as a SBIC.

Dated: January 29, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3311 Filed 2-8-85; 8:45 am]

BILLING CODE 8025-01-M

Ratification

Pursuant to the authority vested in me by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, I hereby ratify all actions taken by the Associate Deputy Administrator for Management and Administration; Director, Office of Personnel; Director, Office of Equal Employment Opportunity and Compliance; Assistant Administrator for Administration, Director, Office of Administrative Services, Director, Office of External Awards; Comptroller, Director, Office of Accounting Operations, Chief, Accounting Section, Chief, Fiscal Section; and Director, Office of Public Communications during the period from August 6, 1982 to January 30, 1985, and also ratify all actions taken by the Director, Office of Program Analysis and Review during the period from September 30, 1983 to January 30, 1985.

Actions

Contractual authority for supplies, printing, and other services for the Agency pursuant to Chapter 4 of Title 41, U.S.C., subject to limitations contained in section 257 (a) and (b) of that chapter.

Execution of grants and cooperative agreements authorized by Federal Statute except section 7(j) of the Small Business Act subject to the limitations contained in Pub. L. 95-224 and OMB Circulars A-110 and A-102.

Approval authority on actions resulting from any Federal Tort claims subject to the provisions of 28 U.S.C. 2672.

Agency Seal usage certifying true copies of books, records, papers, or other documents on file with the Small Business Administration; to certify extracts from such material; to certify the non-existence of records on file; and to cause the Seal of the Small Business Administration to be affixed to all such certifications.

Assignment, endorsement, transfer, deliver or release (but in all cases without representation, recourse, or warranty) promissory notes, bonds, debentures, and other obligating instruments on all loans or investments made or serviced by SBA when paired in full or when transferred to the Department of Justice for liquidation.

Dated: January 24, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-3310 Filed 2-8-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/811]

American Private Sector; Overseas Security Advisory Council (OSAC); Establishment

Under the provisions of the Federal Advisory Committee Act, dated October 6, 1972 and in accordance with the interim regulations published in 41 CFR Part 101-6 the Department of State announces the creation of the overseas security advisory council.

The purpose of the council is to foster cooperation between the private sector and the U.S. Government relative to the overseas security of our installations and personnel. The council is tasked in its charter with formalizing the exchange of information, recommending operational and planning coordination and developing other programs of mutual benefit. Council members will be representative of all elements of government and the American private sector overseas.

Dated: February 5, 1985.

David C. Fields,

Chairman, Overseas Security Advisory Council.

[FR Doc. 85-3394 Filed 2-8-85; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/813]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 9, 1985 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in June 1984, the announcement of gifts, loans, and financial contributions for calendar year 1984, and a report on the two completed architectural improvement projects.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 4, 1985, telephone (202) 632-0298 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: February 4, 1985.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 85-3395 Filed 2-8-85; 8:45 am]

BILLING CODE 4710-38-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-011]

Exemption From International Convention on Load Lines, 1966

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard has made the determination that five 730-foot triple deck trailer barges owned by Crowley Maritime Corporation embody features of a novel kind. Some of the provisions of the International Convention on Load Lines, 1966, would seriously impede the development of such features on vessels engaged in international voyages. The proportions of each barge are such that the geometric freeboard for a B-100 assignment with a 25 percent reduction for unmanned operation is approximately one half of the depth of the barge. The Coast Guard is prepared to exempt the barges from the Convention freeboad requirements under Article 6 of the Convention and under 46 CFR 42.03-30. The actual freeboard to be applied to these barges will be determined based upon model tests and analysis showing that the barges have adequate safety at a deeper draft.

EFFECTIVE DATE: January 9, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Spencer, Office of Merchant Marine Safety, U.S. Coast Guard, (G-MTH-5/13), Room 1308, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-2187.

SUPPLEMENTARY INFORMATION: Crowley Maritime Corporation of San Francisco has asked the Coast Guard, under paragraph (2) of Article 6 of the International Convention on Load Lines, 1966, for an exemption from standard freeboard requirements for five of their barges. These 730 feet x 99 feet 6 inches x 20. feet triple deck trailer barges are the PONCE, SAN JUAN, MIAMI, TMT JACKSONVILLE, and TMT FORTALEZA. Under the freeboard requirements of Convention, the maximum permissible draft of these barges is 10 feet 1¾ inches, based upon a B-100 freeboard for meeting a two compartment damage stability standard, with a 25 percent freeboard reduction for unmanned operation. This limiting draft of approximately one-half of the vessel's depth prohibits full use of the barges according to the owner's intentions and prevents development of long and shallow barges for ocean transportation. The Coast Guard has determined that the freeboard requirements of the Load Line Convention are not appropriate for these barges because the barges have the following novel features:

1. The length to depth ratio is nearly 37 to 1 for these barges. The Load Line Convention is based upon a standard length to depth ratio of 15 to 1.

2. The depth of the barges to the strength deck is nearly three times the depth to the freeboard deck. For most vessels, the strength deck and the freeboard deck are the same or within close proximity.

3. The beam to depth ratio for the barges is 5 to 1. For most vessels, the beam to depth ratio is between 2 and 3 to 1.

4. The vertical center of gravity of the barges in all loading conditions is well above the freeboard deck. For most vessels, the vertical center of gravity in all loading conditions is below the freeboard deck.

5. The space used for cargo above the freeboard deck is mostly enclosed on these barges, where on other vessels the space above the freeboard deck is usually open.

6. The draft to depth ratio for these barges is well below that for most vessels.

The Coast Guard has not determined what freeboard assignment will be appropriate for these vessels. In order to receive a freeboard assignment less than that provided for by the Convention, Crowley Maritime must demonstrate, by means of model tests and analysis, that the barges have adequate intact and damage stability, strength, and seakeeping at the operating draft. The barges will be limited to routes where the environmental conditions are similar to those assumed in the analysis.

Dated: February 6, 1985.

Clyde T. Lusk Jr.,

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

[FR Doc. 85-3349 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-006]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, 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. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 27 February 1985 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m. The agenda for the meeting follows:

1. TSAC discussion and/or recommendations concerning the following past agenda items:
(a) IMO Future Global Distress Safety System;
(b) Intervals for Drydocking and Tailshaft Requirements on Inspected Vessels (84–024);
(c) Boundary Lines (81–058);
(d) River Service Dry Cargo Barges; Loadline Regulations (84–058);
(e) Air Quality: Vapor Control/Vapor Recovery;
(f) Vertical Sector Requirements for Lights on Unmanned Barges (84–049);
(g) Qualifications of Persons in Charge of Oil Transfer Operations/Tankerman Requirements (79–116 and 79–116a);
(h) Vessel Bridge to Bridge Radiotelephone Communications on the Great Lakes (84–040);
(i) Computerized Certificates of Inspection;
(j) National Transportation Safety Board Recommendation on City of Greenville Barge Collision;
(k) Documentation of Vessels (84–027);
(l) Licensing of Pilots; Manning of Vessels-Pilots (84–060);
(m) Inspection Intervals for Pressure Vessels and Cargo Tanks; and
(n) Compatibility of Cargoes (83–047).
2. New agenda items:
(a) Bridge Lighting and Other Signals (84–022);
(b) Exposure Suits; Requirements for Mobile Offshore Drilling Units and Other Oceangoing and Coastwise Vessels (84–090 and 84–090a);
(c) Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts (80–113); and
(d) Vessel Terminology Change.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Secretary no later than the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Executive Secretary, Towing, Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593, (202) 426–1477.

Dated: February 5, 1985.

E.H. Daniels,

RADM, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 85–3347 Filed 02–08–85; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement; Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed bicycle system in the Westwood Village/West Los Angeles area.

FOR FURTHER INFORMATION CONTACT: Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440–2804.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation and the Los Angeles County Public Works Department, will prepare an environmental impact statement (EIS) on a proposed bicycle system in the Westwood Village/West Los Angeles area. The bicycle system (referred to as the Veloway), is intended to facilitate bicycle travel, reduce conflicts between motor vehicles and bicycles, and alleviate traffic demand on the local street system from origins in West Los Angeles and Santa Monica to the Westwood Village and UCLA campus areas. The bicycle system would consist of a 34-mile bikeway network with grade-separated and at-grade elements. Alternatives to the project are:

1. A system of at-grade Class I and Class II bikeways along the ame routes of the proposed Veloway.
2. A similar mix of grade-separated and at-grade bicycle facilities situated along different portions of the rights-of-ways of the proposed Veloway route.
3. A similar mix of grade-separated and at-grade bicycle facilities situated along different transportation corridors.
4. No Project—this alternative will evaluate the continued operation of existing bicycle routes in the vicinity of the proposed project.

As part of the scoping process a public meeting will be held on Tuesday, March 5, 1985, at 7 p.m. It will be held at the North Campus Student Center on the campus of UCLA. To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Date issued: February 4, 1985.

Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 85–3385 Filed 2–8–85; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. IP83–14; Notice 2]

Ford Motor Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Ford Motor Company of Dearborn, Michigan to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.125 Motor Vehicle Safety Standard No. 125 *Warning Devices*, on the ground that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on August 18, 1983 and an opportunity afforded for comment. (48 FR 37565).

Standard No. 125 applies to devices without self-contained energy sources intended to be carried in motor vehicles and used to warn approaching traffic of the presence of a stopped vehicle. Ford Motor Company has provided approximately 1,400 warning triangles in optional Traveler's Assistance Kits that do not comply with the standard. The device is not marked with any of the information required by section 5.1.4. (name of manufacturer, month and year of manufacture, DOT certification symbol). Its configuration does not meet the requirements of section 5.2. It is not intended to be erected on level ground but to be hung from the vehicle. Its dimensions are less than the minimum specified by the standard; two legs of 9½ inches connect with a base 8¾ inches rather than the 17 to 22 inches for each side that the standard requires. Ford does not possess information relating to color specifications, reflectivity, luminance, or durability of the device.

Ford argued that the noncompliance is inconsequential as it relates to motor vehicle safety because the device may be hung from the vehicle without the necessity of an occupant having to get out in the path of oncoming traffic. Its ease of carrying and erection increases

the likelihood that it will be available and used when needed. While it may not provide as much advance warning as a complying device, "it is unquestionable that suspension of this device from the side window of a passenger car conveys greater warning to on-coming drivers than if the device were not present." Nevertheless, Ford has now discontinued providing the triangles, which were sold only between February and April 1983.

The comment was received on the petition, from Truck Safety Equipment Institute (TSEI), which opposed it. TSEI believes that the public has become accustomed to the standardized warning triangle, and to recognize its meaning. It is concerned that the Ford device will create confusion among motorists. Finally, TSEI believes that granting the petition would lead to an erosion of the standard.

The agency has carefully considered the arguments of Ford for granting the petition and of TESI for denying it. On balance, NHTSA has concluded that there is better reason to grant the petition than to deny it. Although the device is literally within the definition of the equipment item covered by Standard No. 125, it departs so greatly from the design parameters that it supports Ford's contention that it never intended the triangle to meet the standard, as a device erected in the roadway, but as a device to be stowed in compact form in the vehicle, and hung from its window without the driver's exposure to traffic. Thus the intent was to provide a form of safety. Given the small number of devices and the infrequency of use, NHTSA has concluded that the noncompliance is inconsequential.

To address TSEI's concerns, the agency would like to comment that it believes the likelihood of confusion is diminished because the triangular shape itself has come to be associated with hazard (it is the identifying symbol for the hazard warning signal control). Further, the device is not likely to be used alone but in conjunction with the hazard warning signal lights. Further, the agency would be concerned about lowering the performance level of Standard No. 125 if Ford had intended in the first place for its device to conform with it and simply misjudged some of the specifications.

Accordingly, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance with Standard No. 125 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

The engineer and attorney primarily responsible for this notice are Ken Rutland and Taylor Vinson respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority as 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3357 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 83-15; Notice 2]

Ford Motor Co., Grant of Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

This notice grants the petition by Ford Motor Company of Dearborn, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on August 30, 1983, and an opportunity afforded for comment (48 FR 39330).

Tail lamps and stop lamps must comply respectively with SAE Standard 585e *Tail Lamps (Rear Position Light)*, September, 1977, and SAE Standard 586c *Stop Lamps*, August 1970. These standards are incorporated by reference in Federal Motor Vehicle Safety Standard No. 108. Paragraph 4 of each of the SAE Standards requires that, when installed on a vehicle, tail lamp and stop lamp signals shall be visible through a horizontal angle from 45 degrees to the left to 45 degrees to the right. Further, "to be considered visible, the lamp must provide an unobstructed projected illuminated area of outer lens surface, excluding reflex, at least 2 sq. in. in extent, measured at 45 deg. to the longitudinal axis of the vehicle."

Ford has manufactured approximately 4000 1984-model Bronco II vehicles which appear not to comply with the visibility requirements. These vehicles are equipped with the optional "Outside Swing-Away Spare Tire/Wheel carrier and with optional P205/75R-15SL size spare tires." Ford reports a partial obstruction of the right side lens by the rear mount spare tire, when viewed from the left, as from a position in an adjacent traffic lane to the rear of the Bronco II. When viewed at 45 degrees to the left, approximately 1.1 square inches of illuminated lens area is available, although the requisite minimum of 2 square inches is met at 42 degrees. The nonconformity has been corrected by repositioning the spare tire on the carrier by two inches.

As part of its submission Ford presented mathematical data to support its contention that the eyes of a driver following in the same lane as a Bronco II could not reach or surpass a cut-off boundary of 42 to 45 degrees for the right side lamp unit, even in a bumper to bumper situation (where the angle would be 27 degrees). For vehicles overtaking or trailing the Bronco II in adjacent lanes to the left, the difference in trailing distances are approximately 1¾ feet at one lane over and 4¼ feet at two lanes over when the following driver's eyes are at the 42 versus the 45 degrees cut-off lines. This difference, Ford believes, is insignificant as it relates to the "ability of a driver to discern and react to the stop lamp signal, even when traveling under city vehicle traffic separation and speed conditions." Ford argues that the lamps in question perform their intended function in a manner indistinguishable for all practical purposes from those on vehicles that meet the standard.

One comment was received on the petition, from the Truck Safety Equipment Institute, which supported it.

NHTSA has reviewed Ford's mathematical analysis of the effect of the noncompliance upon visibility of the lamp from different positions, including the worst viewing angle, and has concluded that this analysis is correct. Even under the worst case, at 45 degrees over half the required minimum illuminated area of the taillamp would be visible, and it is totally visible at 42 degrees. Given the fact that the obstruction is not total, a certain portion of the lamp will always be visible. Accordingly, in consideration of the foregoing, the agency finds that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3355 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP83-12; Notice 2]

Olin Corp.; Grant of Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

Olin Corporation of New Haven, Connecticut, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids* (49 CFR 571.116) on the basis that it is inconsequential as it relates to motor safety.

Notice of the petition was published on August 11, 1983, and an opportunity afforded for comment (48 FR 36558).

Paragraph S5.1.9(a)(3) of Standard No. 116, establishing requirements for water tolerance at low temperature, specifies that after testing "if cloudiness had developed, the wet fluid shall regain its original clarity and fluidity when warmed to room temperature." Olin Corporation discovered that fluid in a lot of over 8,000 gallons had a cloudy appearance. The lot was shipped to Wagner Electric Corporation on September 10, 1982, for repackaging and distribution to the Atlas Division of Amoco, Inc. Before shipment, the lot was tested to Standard No. 116 and found to comply with all requirements, including those of S5.1.9(a)(3). Petitioner analyzed its retained sample and determined that the cloudiness was due to the presence of polyethylene glycol. That chemical was among the contaminants which formed because a solvent (TMPE) routinely added to the brake fluid during the manufacturing process apparently was not within specification. The sample, however, was found to comply with all of the performance requirements of the standard. Thus, petitioner argued that the noncompliance was inconsequential as it related to motor vehicle safety. Although it recalled all the fluid remaining in Wagner's possession, it believed that a minor portion of it may have been sold.

Two comments were received on the petition, from Ms. Patricia Hill whose view was that a provable noncompliance did not exist, and from Volkswagen of America which argued that the condition might present a hazard to safety. In VW's opinion, there is uncertainty about the effect upon a brake system, especially on the boiling point of brake fluid and the interaction with seals and hoses. Without undertaking an extensive test program, VW said that it could not be certain that the Olin fluid would not have an adverse effect.

After review, the agency has concluded that the fluid in question should not have any adverse effects on safety. All DOT 3 brake fluids are, in general, polyglycol-based. If polyglycols in general were damaging to rubber components, the alleged damage-causing characteristic, if it existed, would show up, not only in heavy molecular weight material but also in base material. The component which caused cloudiness to appear is also a polyglycol, though heavier in molecular weight. It is expected to have similar characteristics and is not expected to cause any different effect upon rubber parts than the base polyglycols.

No problems have been reported from the market place concerning the Olin fluid. The noncompliance is technical in nature, and the fluid meets all performance specifications of the standard.

In consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and the petition is granted.

The engineer and attorney principally responsible for this notice are Vern Bloom and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-494, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3356 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-15 Notice 2]

U-Haul International; Denial of Petition for Determination of Inconsequential Noncompliance

U-Haul International of Phoenix, Arizona, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a noncompliance with 49 CFR 571.120, Motor Vehicle Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on September 24, 1984, and an opportunity was afforded for comment (49 FR 37500).

U-Haul International is the importer of certain utility trailer kits manufactured by Ever Young Industries, Co. Limited of Taiwan. As an importer for resale, U-Haul International is a "manufacturer" as defined by 15 U.S.C. 1391(5), and accordingly, responsible for notification and remedy of noncompliance with the Federal motor vehicle safety standards in the products that it imports. U-Haul International discovered noncompliances with Motor Vehicle Safety Standard No. 120 in approximately 920 kits which were distributed to its affiliates for sale to the general public.

Specifically, the rims were not marked with any of the five items of information required by paragraph S5.2. These are a designation which indicate the source of the rim's published nominal dimensions, the rim size designation, the symbol DOT constituting a certification of compliance, a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and the date of manufacture.

Petitioner argued that the noncompliance is inconsequential as it relates to motor vehicle safety because the wheel rims otherwise comply with Federal requirements, and the absence of markings in its opinion, does not pose a threat of personal injury to the user. If the petition is not granted, U-Haul International proposed to remedy the noncompliance by sending decals to purchasers of the kits, and by replacing nonconforming rims in the unsold kits with conforming ones.

No comments were received on the petition.

The National Highway Traffic Safety Administration does not concur with the petitioner's arguments. Rim size designation is important to assure proper tire/rim matching. Other information is required for the successful conduct of notification and remedy campaigns at a time when the trailer may have passed into the hands of owners subsequent to the initial purchaser. Accordingly, petitioner has failed to sustain its burden of persuasion that the noncompliance with Motor Vehicle Safety Standard No. 120 herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

The engineer and attorney primarily responsible for this notice are A.Y. Casanova and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3358 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-13; Notice 2]

Union City Body Co., Inc.; Grant of Petition for Inconsequential Noncompliance

This notice grants the petition by Union City Body Company Inc., of Union City, Indiana, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, *Controls and Displays*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on September 7, 1984, and an opportunity afforded for comment (49 FR 35462).

Union City Body Company produces "package cars" for United Parcel Service (UPS). In the period beginning apparently in 1981 and ending August 17, 1983, the petitioner manufactured 3411 such vehices that did not comply with two requirements of Standard No. 101 that became effective September 1, 1980. The symbol shown in Table 2 for turn signal telltales is a pair of arrows, one pointing left and the other to the right; Union City's vehicles simply have circular telltales. The heater controls lack the fan symbol required but have "illuminated verbage." [sic]

The company argued that the noncompliance was inconsequential as the drivers of UPS vehicles have found the panel control to be "adequately identified." The uniformity of UPS vehicles insures that drivers will not be confused if they shift to another vehicle.

No comments were received on the petition.

A principal function of the turn signal indicator is to verify that the turn signal system is operative; when a turn signal flasher fails, either no signal is emitted through the indicator, or the signal is steady-burning. This function is not affected by the noncompliance described in the petition. The chance that an operator will depress the turn signal lever to indicate a right turn rather than lift it, or lift to indicate a left turn rather than depress it is minimal, as the operation of the switch follows accepted ergonomic principles. Therefore, the provision of circular indicators, rather than directional ones may be deemed inconsequential. The identification of the heating control is through wording, which Standard No. 101 permits in addition to the required symbol. This identification reduces the impact of the failure to identify the control with the required symbol. The noncomplying vehicles covered by the petition are operated only by employees of UPS, trained in their operation, and no confusion is likely to result.

Accordingly, petitioner has met its burden of persuasion that the noncompliances with Standard No. 101 herein described are inconsequential as they relate to motor vehicle safety, and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 5, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-3354 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Docket No. NPDA-2]

City of New York; Application for Non-Preemption Determination; Extension of Comment Period; Correction

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau (MTB).

ACTION: Notice of extension of comment period; Correction.

SUMMARY: This document corrects a typographical error which appeared in the notice which the MTB published on February 4, 1985 (50 FR 4934). The new deadline for submission of public comment on docket no. NPDA-2 is April 15, 1985, as shown in the sections entitled **SUMMARY** and **DATES.** The date of April 5, 1985, which appeared in the last sentence of the notice (50 FR 4935) is incorrect and should be changed to April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel: 202/755-4972).

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-3361 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 26, 1985.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2000-X	U.S. Department of Energy, Washington, DC	2000
3109-X	Raytheon Co., Lowell, MA	3109
3353-X	Kerr-McGee Chemical Corp., Oklahoma City, OK	3353
5022-X	The Boeing Co., Seattle, WA	5022

Application No.	Applicant	Renewal of exemption
5022-X	Aerojet Strategic Propulsion Co., Sacramento, CA.	5022
5206-X	Allas Powder Co., Dallas, TX.	5206
6126-X	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6126
6267-X	Alden Leeds, Inc., South Kearny, NJ.	6267
6296-X	Platte Chemical Co., Fremont, NE.	6296
6443-X	Montana Sulphur & Chemical Co., Billings, MT.	6443
6484-X	Dow Chemical Co., Freeport, TX [1].	6484
6752-X	Pennwalt Corp., Philadelphia, PA.	6752
7451-X	Union Carbide Corp., Danbury, CT.	7451
7489-X	Micor Company, Inc., Milwaukee, WI.	7489
7495-X	Brewer Chemical Corp., Honolulu, HI.	7495
7505-X	Platte Chemical Co., Greeley, CO.	7505
7513-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	7513
7526-X	Dow Chemical Co., Freeport, TX.	7526
7721-X	Applied Environments Corp., Woodland Hills, CA.	7721
7725-X	Economics Laboratory, Inc., St. Paul, MN.	7725
7769-X	Brunswick Corp., Lincoln, NE.	7769
7822-X	Air Products and Chemicals, Inc., Allentown, PA.	7822
7823-X	Allied Corp., Morristown, NJ [3].	7823
7835-X	AGA Burdox, Inc., Cleveland, OH.	7835
7957-X	Process Engineering, Inc., Plaistow, NH.	7957
8129-X	Chemical Waste Management, Inc., Oak Brook, IL.	8129
8129-X	Mine Safety Appliances Co., Evans City, Pa.	8129
8129-X	GTE Network Systems Inc., Albuquerque, NM.	8129
8129-X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	8129
8129-X	Stauffer Chemical Co., Westport, CT.	8129
8129-X	CECOS International, Inc., Buffalo, NY.	8129
8129-X	Burroughs Wellcome Co., Greenville, NC.	8129
8129-X	Hewlett-Packard Co., Palo Alto, CA.	8129
8196-X	Eurotainer, Paris, France	8196
8220-X	Applied Environments Corp., Woodland Hills, CA.	8220
8221-X	Applied Environments Corp., Woodland Hills, CA.	8221
8225-X	Hoover Universal, Inc., Beatrice, NE.	8225
8232-X	Eurotainer, S.A., Paris, France.	8232
8308-X	American Priority Enterprises, Inc., Floral Park, NY.	8308
8539-X	Aero Taxi-Rockford, Inc., Rockford, IL.	8539
8550-X	ESA, Inc. (Formerly Environmental Sciences Assoc.), Bedford, MA.	8550
8551-X	Streamline Manufacturing, Inc., vice Huber Mfg., Gulfport, MS.	8551
8552-X	Brenner Tank, Inc., Fond du Lac, WI.	8552
8563-X	Ashland Oil, Inc., Columbus, OH.	8563
8577-X	Micor Company, Inc., Milwaukee, WI.	8577
8602-X	Minnesota Valley Engineering, Inc., New Prague, MN.	8602
8620-X	Polar Tank Trailer, Inc., Holdingford, MN.	8620
8682-X	Beall Trans-Liner, Portland, OR.	8682
8723-X	Pacific Motor Transport, Inc., Tenino, WA.	8723
8723-X	Pacific Powder Co., Tenino, WA.	8723
8755-X	U.S. Department of Interior, Anchorage, AK.	8755
8877-X	Union Carbide Corp., Danbury, CT.	8877
8877-X	KTI Chemicals, Inc., Danbury, CT.	8877
8877-X	Allied Chemical, Morristown, NJ.	8877
8877-X	Mallinckrodt, Inc., Paris, KY.	8877
8888-X	Nalco Chemical Co., Oak Brook, IL.	8888
8897-X	Kerrco, Inc., Hastings, NE.	8897
8914-X	Amerijet International, Fort Lauderdale, FL.	8914
8936-X	Great Lakes Chemical Corp., El Dorado, AR.	8936
8937-X	Amax Specialty Metals Corp., Salt Lake City, UT.	8937
8946-X	U.S. Department of Defense, Washington, DC.	8946
8960-X	Sunshine Aero Industries, Inc., Crestview, FL.	8960
8962-X	HTL Industries, Inc., Duarte, CA.	8962
8964-X	Larson Tool and Stamping Co., Attleboro, MA.	8964
8978-X	A/S Hellesens, Soborg, Denmark.	8978
8982-X	Olin Corp., Stamford, CT.	8982
8991-X	Lea-Ronal, Inc., Freeport, NY.	8991
9001-X	Chesterfield Cylinder Co., Enid, OK.	9001
9034-X	Union Carbide Corp., Danbury, CT.	9034
9034-X	Airco Industrial Gases, Riverton, NJ.	9034
9298-X	Eli Lilly and Co., Indianapolis, IN [5].	9298
9329-X	Baker Sand Control, Anchorage, AK [4].	9329

[1] To authorize butylene oxide to be returned in the same cargo tank which previously contained a nitromethane-butylene oxide mixture.
[2] To authorize an alternate method of testing to determine yield strength, tensile strength and elongation of material.
[3] To authorize an additional two non-DOT specification tanks and to allow fluoroshield to be used as a coating on the tanks.
[4] To renew exemption previously issued as an emergency to provide for routine shipments and to convert it from air carrier to shipper type exemption.

Application No.	Applicant	Parties to exemption
3768-P	Vanchem, Inc., Lockport, NY.	3768
4354-P	Vanchem, Inc., Lockport, NY.	4354
4453-P	Ladshaw Explosives, Inc., New Braunfels, TX.	4453
5876-P	BASF Wyandotte Corp., Parsippany, NJ.	5876
6126-P	Chemie Linz U.S. Inc., Fort Lee, NJ.	6126
6267-P	Hydrotech Chemical Corp., Marietta, GA.	6267
6589-P	International Safety Devices, Inc., Hesperia, CA.	6589
7052-P	Southwest Electronics, Inc., Stafford, TX.	7052
7052-P	Datasonics, Inc., Cataument, MA.	7052
7929-P	Austin Powder Co., Beachwood, OH.	7929
8131-P	Lockheed Space Operations Co., Lompoc, CA.	8131
8184-P	Austin Power Co., Beachwood, OH.	8184
8445-P	U.S. Department of Defense, Washington, DC.	8445
8445-P	Hughes Aircraft Co., Fullerton, CA.	8445
8870-P	Em Science, Cincinnati, OH [1].	8870
9001-P	TI Chesterfield, Ltd., Derbyshire, England.	9001
9108-P	Austin Powder Co., Beachwood, OH.	9108

[1] Request party status and to authorize organic peroxide as an additional commodity.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-3359 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes March 13, 1985.

Address comments to: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9377-N	Atlas Powder Co., Dallas, TX	49 CFR 173.64(a)(5)	To authorize shipment of certain high explosive emulsion products containing over 5% moisture to be packaged in polyethylene coated kraft paper tubing overpacked in DOT Specification 12H fiberboard boxes (modes 1, 2, 3, 4).
9380-N	ARCO Pipe Line Co., Independence, KS	49 CFR 173.119, 173.304, 173.315	To authorize shipment of hydrocarbon products classed as flammable liquid or flammable gas in non-DOT specification displacement meter proving units, to be affixed to a truck or trailer (mode 1).
9382-N	Aquatech, Inc. Cleveland, OH	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable, corrosive, or poison waste liquids or semi-solids (mode 1).
9383-N	Pressed Steel Tank Co., Inc., Milwaukee, WI	49 CFR 173.302, 173.304, 178.42	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3E cylinders, for shipment of various flammable and nonflammable compressed gas (mode 1).
9384-N	Bemis Company, Inc., Chicago, IL	49 CFR 172.407(b)	To authorize use of approximately 20,474 bags, for shipment of ammonium nitrate mixed fertilizer showing an oxidizer label measuring 3⅞ inches on each side instead of the required 4 inches (modes 1, 2).
9385-N	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m) (13), (14)	To authorize shipment of certain flammable liquids which are also corrosive liquids in DOT Specification 111A100W4, 112A200W or 114A340W tank car tanks (mode 2).
9386-N	HTL Industries, Inc., Duarte, CA	49 CFR 173.302, 175.3, 178.44	To manufacture, mark and sell non-DOT specification girth welded stainless steel cylinders similar to DOT Specification 3HT, for shipment of nitrogen, classed as nonflammable gas (modes 1, 2, 4, 5).
9387-N	Virginia Chemicals, Inc., Portsmouth VA	49 CFR 173.334	To ship a less than 20% organic phosphate charged with nonflammable compressed gas in DOT Specification 2P containers; to ship a charged mixture not exceeding 40% organic phosphate in DOT Specification 3B 150 and 3B 300 cylinders (modes 1, 4).
9388-N	Cominco American Inc., Spokane, WA	49 CFR 173.314(e)	To determine the anhydrous ammonia content in tank cars by a metering device instead of by calculating the weight (mode 2).

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 4, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-3360 Filed 2-8-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0710
Form Number: IRS Forms 5500, 5500-C, 5500-R
Type of Review: Revision
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules

Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office fo Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-3384 Filed 2-8-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.
ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department of Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 4, 1985.
By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Medicine and Surgery.
2. Reapplication for Medical Benefits.
3. VA Form 10-10r.
4. Non-recurring.

5. Individuals or households.
6. 630,000 responses.
7. 50,400 hours.
8. Not applicable.

* * * * *

1. Department of Medicine and Surgery.
2. Application for Medical Benefits.
3. VA Form 10–10.
4. Non-recurring.
5. Individuals or households.
6. 1,792,800 responses.
7. 298,800 hours.
8. Not applicable.

[FR Doc. 85–3315 Filed 2–8–85; 8:45 am]
BILLING CODE 8320–01–M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Miami Marriott Hotel, 1201 NW. LeJeune Road, Miami, Florida 33126, on February 26 and 27, 1985. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on February 26 and 27, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to February 22, 1985.

The meeting will be closed from 8:00 a.m. to 6:20 p.m. on February 26, and from 8:00 a.m. to 10:15 a.m. on February 27, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United Sttes Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: January 31, 1985.

By direction of the Administrator.

Rosa Maria Fontanex,

Committee Management Officer.

[FR Doc. 85–3316 Filed 2–8–85; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 28
Monday, February 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Communications Commission	1, 2
Federal Energy Regulatory Commission	3
Federal Reserve System	4

1

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, February 14, 1985

February 6, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 14, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—*Title:* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I. *Summary:* The Commission will consider petitions seeking reconsideration of the *ECA Tariff Order*, FCC 84-54 (released Feb. 17, 1984); the *Non-ECA Tariff Order*, Mimeo No. 2802 (released Mar. 7, 1984); the *April 27th Order*, FCC 84-188 (released Apr. 27, 1984) and the *Cost Order* FCC 84-201 (released May 15, 1984).

Common Carrier—2—*Title:* Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Part I (Special Access). *Summary:* The Commission will consider the Special Access tariffs filed by the National Exchange Carrier Association and local exchange carriers on December 3, 1984.

Common Carrier—3—*Title: Memorandum Opinion and Order; In the Matter of MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286. *Summary:* The Commission will consider measures related to implementation of alternative tariff provisions to recover carrier common line costs and measures to ensure that the subcriber line charge revenues are flowed through to consumers in the form of toll rate reductions.

Mass Media—1—*Title:* Modification of television licenses and switch of channel reservations pursuant to exchange agreements. *Summary:* The Commission will consider adopting a *Notice of Proposed Rule Making* amending its Rules to provide for modification of licenses and switch of channel reservations pursuant to exchange agreements between commercial and noncommercial educational television licensees.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-3511 Filed 2-7-85; 3:55 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold a Closed Commission Meeting Thursday, February 14, 1985

February 6, 1985.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, February 14, 1985, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Items No., and Subject

Hearing—1—Motion to Reopen Record and Application for Review in the Jonesboro, Arkansas FM proceeding (Docket Nos. 82-641, 82-643 and 82-645).

This item is closed to the public because it concerns Adjudicatory Matters See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Office of Congressional and Public affairs and members of his staff.

Action by the Commission February 6, 1985. Commissioners Fowler, Chairman; Quello, Dawson, Rivera, and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-3512 Filed 2-7-85; 3:55 pm]

BILLING CODE 6712-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

February 6, 1985.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b:

TIME AND DATE: 10:00 a.m., February 13, 1985.

PLACE: Room 9306, 825 North Capitol Street, NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda: However, all public documents may be examined in the division of Public Information.

Consent Power Agenda—807th Meeting, February 13, 1985, Regular Meeting (10:00 a.m.)

CAP-1. Project No. 8014-000, Sterling Enterprises, Inc.
CAP-2. Project No. 8777-001, New Jersey Water Supply Authority
CAP-3. Project No. 3351-003, Sonoma County Water Agency
CAP-4. Project Nos. 6775-007 and 008, Winchester Water Control District and Elektra Power Corp.
CAP-5. Project No. 3492-004, City of Haines, OR
CAP-6. Project Nos. 2738-010, 007 and 008, New York State Electric & Gas Corp.
CAP-7. Project No. 8314-001, Town of Index, WA
CAP-8. Project No. 7339-001, Cross-O-Ranch, Inc. and Hat Creek Corp.
CAP-9. Project No. 7801-002, Southern California Edison Co.; Project No. 8343-003, City of Vernon, CA
CAP-10. Project No. 8117-002, City of Yakima, WA
CAP-11. Project No. 8083-001, Briggs Hydroelectric

CAP-12. Project No. 9287-001, Western Power, Inc.
CAP-13. Project No. 8167-002, Synergics, Inc.
CAP-14. Project No. 2696-002, Niagara Mohawk Power Co.
CAP-15. Project No. 6707-002, Graves, Arkoosh & Arkoosh
CAP-16. Project No. 7800-000, Turlock Irrigation District and Modesto Irrigation District
CAP-17. Omitted
CAP-18. Docket No. EL78-030 (Phase II), Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York; Docket No. EL78-003 (Phase II), Village of Ilion, New York v. Power Authority of the State of New York
CAP-19. Docket No. ER85-194-000, Southwestern Electric Power Co.
CAP-20. Docket No. ER85-204-000, South Carolina Generating Co. Inc.
CAP-21. Docket Nos. ER84-560-000 and 002, Union Electric Co.
CAP-22. Docket Nos. ER82-462-001, ER82-539-000, ER82-734-000, ER82-810-000, ER83-127-000, ER83-540-000, ER83-573-000, ER83-748-000, ER84-163-000, ER84-042-000, ER84-347-000 and ER84-403-000, Portland General Electric Co.; Docket Nos. ER82-448-001, ER82-715-000, ER83-044-000, ER83-045-000, ER83-046-000, ER83-187-000, ER83-334-000, ER83-541-000, ER83-56-000, ER83-706-000, ER84-040-000, ER84-198-000 and ER84-305-000, Puget Sound Power & Light Co.; Docket Nos. ER82-618-001, ER82-622-000, ER83-661-000, ER83-241-003, ER83-867-000 and ER83-712-000, Idaho Power Co.; Docket Nos. ER83-382-001, ER84-026-000 and ER84-156-000, Montana Power Co.
CAP-23. Docket Nos. ER83-523-001 and 004, Florida Power & Light Co.
CAP-24. Docket Nos. ER84-546-000, 001, ER84-606-000 and 001, Pacificorp Pacific Power & Light Co.; Docket Nos. ER84-610-000 and 001, CP National Corp.
CAP-25. Docket No. ER84-450-000, Arizona Public Service Co.
CAP-26. Docket No. ER84-569-000 and 001, Interstate Power Co.
CAP-27. Docket No. ER84-146-000, Union Electric Co.
CAP-28. Docket No. QF84-379-000, CTI

Consent Miscellaneous Agenda

CAM-1. Docket Nos. RM84-14-021 through 024, deregulation and other pricing changes on January 1, 1985, under the Natural Gas Policy Act
CAM-2. Omitted
CAM-3. Docket No. GP80-112-000, Wessley Energy Corp.
CAM-4. Docket No. GP83-14-000, Kansas Corp. Commission, Section 102(c)(1)(C) NGPA Determinations, TXO Production Corp., Zuercher No. 3 Gas Well, Muir "D" No. 1 Gas Well, Kansas Docket Nos. NGPA-K-81-1235 and NGPA-K-81-1236, JD Nos. 83-11339 and 83-11340

Consent Gas Agenda

CAG-1. Docket No. RP85-47-003, East Tennessee Natural Gas Co.
CAG-2. Docket No. RP85-37-001, High Island Offshore System
CAG-3. Docket Nos. RP85-5-002, 003 and CP78-123-024 (Western Leg), Northwest Alaskan Pipeline Co.
CAG-4. Docket No. RP83-137-015, Transcontinental Gas Pipeline Corp.
CAG-5. Docket Nos. RP83-68-005 and RP84-19-002, Natural Gas Pipeline Co. of America
CAG-6. Docket Nos. RP80-55-008, 009, RP80-118-010 and 011, Sea Robin Pipeline Co.
CAG-7. Docket No. TA85-1-59-003, Northern Natural Gas Co., Division of Internorth, Inc.
CAG-8. Docket Nos. TA85-1-32-000, TA84-1-32-000, 002, TA83-1-32-002, Colorado Interstate Gas Co.
CAG-9. Docket No. TA84-2-9-006, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG-10. Docket No. RP85-65-000, Northwest Pipeline Corp.
CAG-11. Docket No. RP85-66-000, Trailblazer Pipeline Co.
CAG-12. Docket No. RP85-67-000, National Fuel Gas Supply Corp.
CAG-13. Docket Nos. RP84-87-001 and 002, Mississippi River Transmission v. United Gas Pipe Line Co.
CAG-14. Docket No. TA85-1-53-002, KN Energy, Inc.
CAG-15. Docket Nos. RP84-120-001 and TA 85-1-35-002, West Texas Gas, Inc.
CAG-16. Docket No. RP84-47-000, Equitable Gas Co.
CAG-17. Omitted
CAG-18. Docket No. RP84-72-000, Eastern Shore Natural Gas Co.
CAG-19. Docket No. TA85-1-53-003, KN Energy, Inc.
CAG-20. Docket Nos. TA85-1-54-000 and 001, Louisiana-Nevada Transit Co.
CAG-21. Docket Nos. TA85-1-55-000, 001 and 002 (PGA85-1a), Mountain Fuel Resources, Inc.
CAG-22. Docket No. TA84-1-27-002, North Penn Gas Co.
CAG-23. Docket No. CP84-335-020, Transcontinental Gas Pipe Line Corp.
CAG-24. Docket Nos. RI77-32-000 and RP73-35-013, Trunkline Gas Co.
CAG-25. Docket Nos. RI84-6-000, Texas Production Co., FERC Gas Rate Schedule No. 1; Docket No. RI84-7-000, Pinto, Inc., FERC Gas Rate Schedule No. 1; Docket No. RI84-8-000, ECEE, Inc., FERC Gas Rate Schedule No. 1
CAG-26. Docket No. RI80-13-004, Amoco Production Co.
CAG-27. Docket Nos. RI74-188-046 and RI75-21-041, Independent Oil & Gas Association of WV
CAG-28. Docket Nos. RI74-188-048 and RI75-21-043, Independent Oil & Gas Association of WV
CAG-29. Docket No. CI84-350-002, McCommons Oil Co.
CAG-30. Docket No. CI80-106-000, Shell Oil Co.
CAG-31. Docket No. CI85-156-000, Conoco Inc.
CAG-32. Docket No. G-10139-002, Cities Offshore Production Co.; Docket Nos. G-2712-004, G-4579-027, CI60-418-000, CI61-1332-000, CI65-561-000, CI67-864-001, CI68-311-001, CI71-207-001, CI73-845-000, CI77-402-001, CI83-168-002 and CI68-1322-002, Cities Service Oil & Gas Corp.; Docket Nos. CI67-861-002, CI60-345-001, CI68-1302-002 and CI76-629-005, Conoco Inc.; Docket Nos. CI67-862-000, CI68-1306-003 and CI77-364-002, Getty Oil Co.
CAG-33. Docket Nos. CP84-393-001 and CP83-083-007, Panhandle Eastern Pipe Line Co.
CAG-34. Docket No. CP83-502-014, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG-35. Docket No. CP83-91-000, Superior Offshore Pipelines Co.
CAG-36. Docket No. CP84-728-000, Consolidated Gas Transmission Corp.
CAG-37. Docket No. CP85-77-000, Arkansas Louisiana Gas Co., a Division of Arkla, Inc.
CAG-38. Docket No. CP85-58-000, Texas Eastern Transmission Corp.
CAG-39. Docket No. CP84-644-000, Natural Gas Pipeline Co. of America
CAG-40. Docket Nos. CP84-132-000, CP84-133-000, CP84-134-000 and CP84-196-000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and Columbia Gulf Transmission Co.; Docket Nos. CP84-387-000 and CP84-622-000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Docket No. CP84-552-000, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and Southern Natural Gas Co.
CAG-41. Docket No. CP83-400-001, United Gas Pipe Line Co.
CAG-42. Docket No. RP84-79-000, Gas Gathering Corp.

I Licensed Project Matters

P-1. Omitted
P-2. Project No. 2854-007, City of Vidalia, LA
P-3. Project No. 5799-002, New York State Energy Research and Development Authority

II. Electric Rate Matters

ER-1. Reserved

Miscellaneous Agenda

M-1. Reserved
M-2. Reserved
M-3. Omitted
M-4. Docket Nos. RM84-6-015 through 026, refunds resulting from Btu measurement adjustments
M-5. Docket No. RO84-6-000, Gulf Oil Corp.

I. Pipeline Rate Matters

RP-1. Docket Nos. RP83-35-000, RP81-109-000, RP82-37-000 and RP74-41-016, Texas Eastern Transmission Corp.
RP-2. Omitted
RP-3. Docket No. ST84-630-001, Delhi Gas Pipeline Corp.; Docket No. ST84-898-001, PGC Pipeline, a Division of LPC Energy, Inc.
RP-4. Docket Nos. ST80-298-000, 002, 003, 004, 005, ST82-287-000, 001, 002, 003, 004, ST82-397-000, 001, 002, 003, ST84-703-000, 001, 002, ST84-847-000, 001 and 002, Mississippi Fuel Co.

II. Producer Matters

CI-1. Docket No. CI78-704-002, Mitchell Energy Corp.
CI-2. Docket Nos. CI83-269-000 through 023, Tenneco Oil Co., Houston Oil & Minerals Corp., Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd., Tinco, Ltd., and

Tenneco West, Inc.; Docket Nos. RP83–11–000 through 026 and RP83–30–000, Transcontinental Gas Pipe Line Corp.; Docket No. RP83–279–002, Producer-Suppliers of Trans-Continental Gas Pipe Line Corp.; Docket No. CP83–340–003, Producer-Suppliers of Transco Gas Supply Co.; Docket Nos. CP83–428–001 through 014, Producer-Suppliers of Transco Supply Co. and Transcontinental Gas Pipe Line Corp.; Docket Nos. CP83–452–000 through 015, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Corp.; Docket Nos. CP83–502–000 through 004, CP83–502–008 and CP83–502–013, Tennessee Gas Pipe Line Co., a division of Tenneco Inc.; Docket Nos. CP83–333–000 through 018, Panmark Gas Co.; Docket No. CP83–342–000, Trunkline Gas Co.; Docket No. CP83–343–000, Panhandle Eastern Pipe Line Co.; Docket No. CP83–354–000, Trunkline Gas Co. and Panmark Gas Co.; Docket No. CP83–355–000, Panhandle Eastern Pipe Line Corp. and Panmark Gas Co.; Docket Nos. CP84–244–000 and 001, Texas Eastern Transmission Corp. and Producer-Suppliers of Texas Eastern Transmission Corp.; Docket Nos. CI84–332–000 through 003, Cities Service Oil & Gas Corp., Cities Offshore Production Co. and Oxy Petroleum, Inc.; Docket No. CI84–374–000, TXP Operating Co.; Docket No. CI84–485–000, Amoco Production Co.; Docket No. CI84–539–000, El Paso Natural Gas Co.

CI–3. Docket No. CI84–565–000, Yankee Resources, Inc.

CI–4. Docket No. CI85–94–000, Tenngasco Corp., Tenneco Oil Co., Houston Oil & Minerals Corp., Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd. and Tenneco West, Inc.; Docket No. CI85–95–000, Tenngasco Exchange Corp.

III. Pipeline Certificate Matters

CP–1. Docket No. CP84–1–001, Natural Gas Pipeline Co. of America

CP–2. Docket Nos. CP82–487–000, 001, 002 and 003, Williston Basin Interstate Pipeline Co. and Montana-Dakota Utilities Co.; Docket No. CP84–504–000, Montana-Dakota Utilities Co.; Docket No. RP84–62–001, Montana-Dakota Utilities Co.; Docket No. SA84–19–000, Williston Basin Interstate Pipeline Co.; Docket No. TA84–2–49–000, Montana-Dakota Utilities Co.; Docket Nos. TA85–1–49–000 and 001, Montana-Dakota Utilities Co.; Docket No. RP84–93–000, Montana-Dakota Utilities Co.; Docket No. CP85–220–000, Williston Basin Interstate Pipeline Co.; Docket No. CP85–221–000, Frontier Gas Storage Co.

CP–3. Docket Nos. CP79–224–005 and RP85–58–000, El Paso Natural Gas Co.

CP–4. Docket No. CP84–348–000, Mississippi River Transmission Corp.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–3426 Filed 2–6–85; 5:09 pm]

BILLING CODE 6717–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, February 14, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–3442 Filed 2–6–85; 5:09 pm]

BILLING CODE 6210–01–M

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Vol. 50, No. 28

Monday, February 11, 1985

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Code of Federal Regulations

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Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

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United States Government Manual 523-5230

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Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4621-4846 1
4847-4956 4
4957-5058 5
5059-5224 6
5225-5362 7
5363-5546 8
5547-5732 11

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12504 4849
Proclamations
5295 4621
5296 4623
5297 4847
5298 5059
5299 5363

7 CFR

Ch. XXXII 5498
Ch. XXXIV 5498
301 4851
354 4625
443 4625
449 4629
504 5365
701 4634
907 ..... 4853, 4957
910 ..... 4634, 5365
920 4854
1136 5061
1434 4635
1711 5366
Proposed Rules:
Ch. IV 4693
978 5593
1004 4694
1789 5395

8 CFR

100 5063
238 5369
Proposed Rules:
103 4957
212 ..... 4865, 5396

9 CFR

78 5547
81 5225
113 5063
318 5226

10 CFR

1 5548
50 5567
53 5548
210 4957
Proposed Rules:
30 5600
40 5600
50 5600
51 5600
70 5600
71 4866
72 5600

12 CFR

5 5567
561 5232
563 5232
701 4636
Proposed Rules:
701 4698

14 CFR

21 5369
39 ..... 4857, 5374, 5375, 5376, 5568, 5569, 5570
71 ..... 4857, 4966, 5377, 5378, 5379
73 4966
97 4639
103 4968
150 5063
Proposed Rules:
39 ..... 4867-4870, 5396, 5397, 5625, 5626, 5627
65 5046
71 ..... 5046, 5398, 5399
91 ..... 5046, 5054
93 5046
103 5046
105 5046
251 5214
261 5214
287 5214
291 5214
296 5214
298 5214
299 5214
303 5214
380 5214

16 CFR

Proposed Rules:
13 ..... 4980, 4983, 4987, 4990

17 CFR

1 5380
143 5383
200 5064
249 5234
270 5234

18 CFR

35 4970
271 ..... 4640, 5384
Proposed Rules:
157 4871
271 5400
284 4871

19 CFR

101 4973
Proposed Rules:
101 5628
134 5629

20 CFR

345 5234
416 ..... 5571, 5573

Proposed Rules:
404 ..... 4948, 5264

21 CFR
5 4858
81 ..... 4641, 4642
175 4643
176 4643
178 4859
510 5385
520 5385
544 5385
610 5574
660 5574
864 ..... 5352, 5358
Proposed Rules:
341 4872

24 CFR
205 4646
207 4646
213 4646
220 4646
221 4646
232 4646
234 4646
242 4646
244 4646
250 4646
251 4646
255 4646

26 CFR
Proposed Rules:
1 ..... 4701, 4702

29 CFR
20 ..... 5202, 5204, 5209
1601 4648
1910 4648

30 CFR
935 5236
Proposed Rules:
104 5470
936 5080
942 4704

31 CFR
103 ..... 5064, 5065

33 CFR
100 4860
110 5580
165 4860

34 CFR
222 4862
682 5506
Proposed Rules:
327 5080
682 5539

36 CFR
Proposed Rules:
223 4992

37 CFR
1 5158
2 5158
10 5158

38 CFR
17 4974
Proposed Rules:
14 4708

39 CFR
111 ..... 5580, 5581
Proposed Rules:
111 4709

40 CFR
52 ..... 5236, 5237, 5246
60 4975
61 5190
65 ..... 5251, 5252, 5582
81 5069
145 5253
180 ..... 4975, 5070
271 ..... 5259, 5260
Proposed Rules:
30 5544
52 ..... 5265, 5630
65 5267
81 5632
155 5084
261 5637
264 5268
468 4872
471 4872
761 5401
799 5084

41 CFR
Ch. 101 5386

42 CFR
Proposed Rules:
4 5638
59a 5638
63 5638
64 5638

43 CFR
Public Land Orders:
2634 (Revoked in part by 6587) 5262
6586 5262
6587 5262
Proposed Rules:
2720 5269

44 CFR
65 ..... 5071, 5072
Proposed Rules:
67 ..... 5084, 5105, 5270

46 CFR
Proposed Rules:
12 4875
67 4877
572 5401

47 CFR
1 4649
2 4650–4658
15 4664
22 5583
73 ..... 4658–4685, 5073, 5391, 5392, 5393, 5394, 5583
74 4655
76 4658
81 ..... 5073, 5590
83 5590
87 5590
95 5074
97 ..... 4686, 4976, 5079
Proposed Rules:
Ch. I 4711, 5644
73 ..... 4712, 4713, 5402, 5404
97 5644

48 CFR
Ch. 5 4862

49 CFR
1312 4863
Proposed Rules:
172 5270
173 5270
531 ..... 4993, 5405
533 4993
571 5646

50 CFR
17 4938
661 4977
Proposed Rules:
17 5647
20 4994
21 4877
23 5279

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 14, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1984
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
46-51	12.00	Jan. 1, 1984
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.00	Jan. 1, 1984
200-1199	13.00	Jan. 1, 1984
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	13.00	Jan. 1, 1984
400-End	12.00	Jan. 1, 1984
16 Parts:		
0-149	9.00	Jan. 1, 1984
150-999	9.50	Jan. 1, 1984
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	14.00	Apr. 1, 1984
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
425–End	14.00	July 1, 1984
41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10–17	9.50	July 1, 1984
18, Vol. I, Parts 1–5	13.00	July 1, 1984
18, Vol. II, Parts 6–19	13.00	July 1, 1984
18, Vol. III, Parts 20–52	13.00	July 1, 1984
19–100	13.00	July 1, 1984
101	15.00	July 1, 1984
102–End	9.50	July 1, 1984
42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

Title	Price	Revision Date
43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1983
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1983
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
*3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1983
178–199	13.00	Nov. 1, 1983
200–399	13.00	Oct. 1, 1984
400–999	13.00	Oct. 1, 1984
1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.00	Oct. 1, 1983
200–End	13.00	Oct. 1, 1983
CFR Index and Findings Aids	17.00	Jan. 1, 1984
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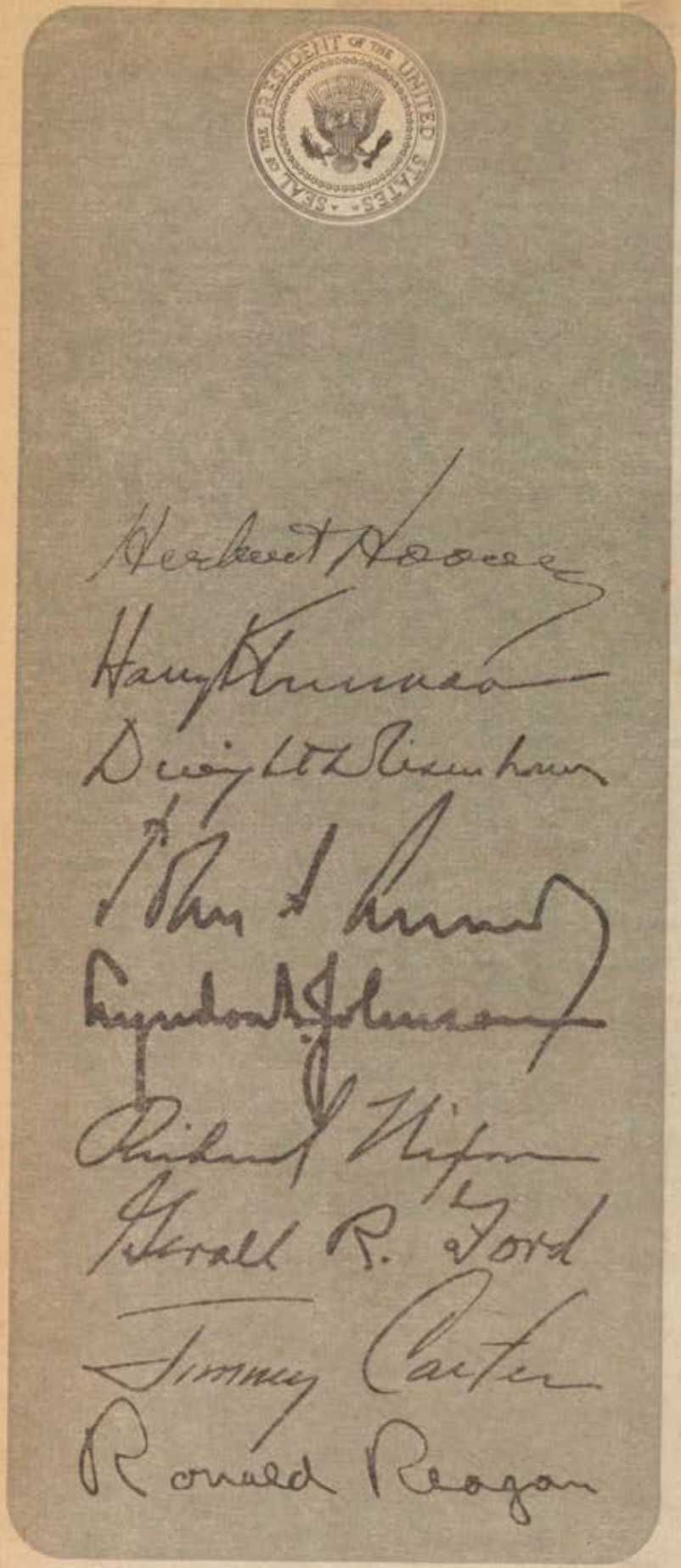

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