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Thursday
February 21, 1985

Selected Subjects

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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.

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-28-AD; Amdt. 39-5003]

Airworthiness Directives; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114, and 114A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Models 112 and 114 Series airplanes. This AD supersedes existing AD 77-16-09 and requires modification of the front seat base structure and relocation of the shoulder strap anchor. During some accident impacts, failures of the front seat rollers and release of the seats have been reported on airplanes which had complied with AD 77-16-09. This increases the possibility of serious injury or fatality during what otherwise might have been survivable accidents. The modification required herein will improve retention of the seat on the track and occupant restraint during such an accident.

EFFECTIVE DATE: March 25, 1985.

COMPLIANCE: Required within the next 100 hours after the effective date of this AD unless already accomplished.

ADDRESSES: Gulfstream Aerospace Service Bulletin Nos. SB-112-70 and SB-114-21 both dated September 7, 1984, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, Post Office Box 22500, Oklahoma City, Oklahoma 73123 or the Rules Docket at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-28-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airplane Certification Branch, ASW-150, FAA, Southwest Region, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-2075.

SUPPLEMENTARY INFORMATION: To improve front seat retention during hard landings or minor crash impacts, Rockwell International General Aviation Division (the former Type Certificate holder) redesigned the front seat bases and incorporated the new design in seats installed in its subsequently produced Models 112, 112TC and 114 airplanes. It also made available in Rockwell Service Bulletin Nos. 112-45A and No. 114-6A both dated April 7, 1977, instructions and parts for incorporation of equivalent improvements on already produced airplanes of these models. The FAA made compliance with these service bulletins on in-service airplanes mandatory by AD 77-16-09, Amendment 39-3004 (42 FR 41105).

Since the issuance of AD 77-16-09, the FAA and the manufacturer have determined that on airplanes modified per this AD and subsequently type certificated Models 112B, 112TCA and 114A airplanes the retention of front seats under impact conditions should be further improved. Investigation of two accidents involving airplanes in compliance with AD 77-16-09 revealed that the front seat attachment rollers failed and released the seat. The FAA and the manufacturer believe that fuselage deflections, associated with certain impact loadings, may increase the bending moment on the rollers thereby causing failure of the rollers and release of the seat from the seat track. To reduce the possibility of this occurrence, Gulfstream Aerospace Corporation (the present Type Certificate holder) has developed modifications to (1) strengthen the seat base structure in the mounting area and (2) relocate the shoulder harness anchor from the seat to the airplane cabin roof. These modifications will further improve seat retention to the airplane structure and transfer some passenger impact restraint loads from the seat to the airplane cabin structure. Gulfstream Aerospace has made parts and instructions for accomplishing the above modifications available in Service Bulletin Nos. 112-70 (applicable to Model 112 series airplanes) and 114-21 (applicable to the Model 114 series airplanes) both dated September 7, 1984.

Since the condition described herein is likely to exist or develop in other Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114 and 114A airplanes of the same design, the FAA proposed an AD which would supersede AD 77-16-09 and require modification of the above mentioned airplanes in accordance with Gulfstream Aerospace Corporation Service Bulletin Nos. 112-70 or 114-21 as applicable. The proposal was published in the Federal Register on October 9, 1984 (49 FR 39565, 39566). Interested persons have been afforded an opportunity to participate in the making of this amendment.

In response to the proposal, only one comment was received. The Aircraft Owners and Pilots Association (AOPA), objected to the proposal because it implied uncertainty as to the effectiveness of the proposed corrective action.

In response to this comment, the FAA states that on the basis of the two accident findings, it is apparent that the previous modification required by AD 77-16-09 did not protect the occupants from serious injury because the seats did not remain attached and thus did not afford the occupants the full protection inherent in the fuselage structure. Based on test findings provided by the airplane manufacturer, the FAA concludes that the proposed AD will result in a seat configuration which will provide the desired seat retention. Accordingly, the proposal is being adopted without change.

The FAA has determined there are approximately 1,390 airplanes affected by the AD. The cost of modifying the front seats and relocating the shoulder harness anchor in accordance with the AD is estimated to be $1,495 per airplane. The total cost is estimated to be $2,078,050 to the private sector. It would be necessary for a small entity to own more than two of the affected airplanes to incur a significant cost of compliance with this action and few if any small entities affected by the AD own more than one of the affected airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979) and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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 AD:

Gulfstream Aerospace (Rockwell): Applies to Models 112 and 112B (S/Ns 3 through 344 and 13000); Models 112TC and 112TCA (S/Ns 13001 through 13309); and Models 114 and 114A (S/Ns 14000 through 14540) airplanes certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To improve seat retention and passenger restraint during crash landing or accident impact, accomplish the following:

(a) Modify the front seat base and relocate the front seat shoulder harness anchor in accordance with Gulfstream Aerospace Service Bulletin Nos. 112–70 or 114–21 both dated September 7, 1984, as applicable.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76101; Telephone (817) 877–2074.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This AD supersedes AD 77–16–09, Amendment 39–3004.

This amendment becomes effective on March 25, 1985.

Issued in Kansas City, Missouri, on February 8, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85–4266 Filed 2–20–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWA–11]

Alteration of VOR Federal Airways; Robbinsville, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises and adds new segments to VOR Federal Airways V–213, V–214, V–249 and V–445 between Baltimore, MD, and Albany, NY. Most of the changes are in the vicinity of Robbinsville, NJ. Air carrier and general aviation operators have been experiencing increasing delays in arrivals and departures at airports in the New York, NY, area. This action, in conjunction with revised air traffic management procedures, will increase air traffic control system capacity and reduce air traffic delay in the New York area.

DATES: *Effective date*—0901 GMT, April 11, 1985.

Comments must be received on or before May 31, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–11, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule and was not preceded by notice and public procedure; comments are invited. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to increase the capacity of all airways in the New York metropolitan area by readjusting and extending VOR Federal Airways V–213, V–214, V–249 and V–445. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The current air traffic flow in the New York metropolitan area involves departure delays at the gate and on the taxiways and long arrival delays which controllers are required to manage. This amendment will reduce delay experienced by individual users as a result of the additional system capacity and the revised air traffic control (ATC) procedures which the additional airway capacity allows.

In response to increasing user delays in the New York area in 1984, the FAA initiated several actions, one of which was a study of airways and ATC procedures for aircraft approaching New York area airports. As a result of that study, new procedures were developed for arrivals to LaGuardia and Newark Airports and to satellite facilities in New Jersey: Teterboro, Morristown, and Caldwell Airports. Implementation of these procedures will require the establishment of several new airway segments and the minor readjustment of some existing segments. This amendment establishes and revises the airway segments necessary to implement the improved procedures. The FAA estimates that the new airway segments and associated ATC procedures will increase the airway system capacity in the New York area by approximately 15–20 percent. Benefits of the new airways are an immediate reduction in the frequency and duration of delays experienced by arriving aircraft in the New York area and the more efficient use of FAA's air traffic control resources. The FAA foresees no negative impact on system users as a result of this amendment.

FAA technical review and flight checks of the new airway segments have been completed, and ATC facility radar equipment will be modified to display the new airways prior to the next publication of en route low altitude navigation charts on April 11, 1985. Accordingly, the amendments can take effect on that date. Because of the essential need to increase ATC system capacity in the northeast corridor, and because air traffic is projected to increase in the next three months due to seasonal factors, the FAA has determined that there is an immediate need to amend the regulations to provide the additional airway capacity. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. However, the FAA will accept comments on the rule through May 31, 1985. If, as a result of comments received and operational experience under the rule, the FAA finds tha changes in the rule are warranted, rulemaking will be initiated to amend the rule at that time.

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

List of Subjects in 14 CFR Part 71

VOR Federal Airways, Airspace, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V-213 [Amended]

By removing all of the words after "Woodstown, NJ;" and substituting the words "Robbinsville, NJ; INT Robbinsville 014° and Sparta, NJ, 174° radials; Sparta; to Albany, NY. The airspace within R-4005 and R-4006 is excluded."

V-214 [Amended]

By removing the words "to Baltimore." and substituting the words Baltimore; INT Baltimore 093° and Dupont, DE, 223° radials; Dupont; Yardley, PA; to Teterboro, NJ.

V-249 [Amended]

By removing the words "From Sparta, NJ; INT Sparta NJ," and substituting the words "From Robbinsville, NJ; INT Robbinsville 320° and Solberg, NJ, 161° radials; Solberg; Sparta, NJ; INT Sparta"

V-445 [Amended]

By removing the words "From LaGuardia, NY," and substituting the words "From INT Washington, DC, 065° and Baltimore, MD, 197° radials; INT Baltimore 093° and Dupont, DE, 223° radials; Dupont; Yardley, PA; INT Yardley 073° and Canarsie, NY, 239° radials;" INT Canarsie 239° and LaGuardia, NY, 209° radials; LaGuardia;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on February 14, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-4265 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24465; Amdt. No 1288]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO)-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

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

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

SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Air Traffic control.

Adoption of the Amendment

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

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

** * * Effective April 11, 1985*

Kipnuk, AK—Kipnuk, VOR RWY 15, Orig.
Kipnuk, AK—Kipnuk, VOR RWY 33, Orig.
Flippin, AR—Marion County Regional, VOR-A, Amdt. 11
Mountain Home, AR—Baxter County Regional, VOR-A, Amdt. 7
Muscatine, IA—Muscatine Muni, VOR RWY 23, Amdt. 4
Muscatine, IA—Muscatine Muni, VOR RWY 5, Amdt. 4
Muscatine, IA—Muscatine Muni, VOR RWY 30, Amdt. 4
Muscatine, IA—Muscatine Muni, VOR/DME 12, Amdt. 4
Olathe, KS—Johnson County Executive, VOR RWY 35, Amdt. 9
Grand Island, NE—Hall County Regional, VOR RWY 13, Amdt. 16
Grand Island, NE—Hall County Regional, VOR RWY 17, Amdt. 20
Grand Island, NE—Hall County Regional, VOR/DME RWY 31, Amdt. 4
Grand Island, NE—Hall County Regional, VOR/DME RWY 35, Amdt. 12
Muskogee, OK—Davis Field, VOR RWY 31, Amdt. 2

** * * Effective March 28, 1985*

Newport, AR—Newport Muni, VOR/DME RWY 18, Orig.
Newport, AR—Newport Muni, VOR/DME-A, Amdt. 2, Cancelled
Rogers, AR—Rogers Muni Airport-Carter Field, VOR/DME RWY 19, Amdt. 6
Tifton, GA—Henry Tift Myers, VOR RWY 27, Amdt. 7
Tifton, GA—Henry Tift Myers, VOR RWY 33, Amdt. 9
Lawrence, MA—Lawrence Muni, VOR RWY 23, Amdt. 9
Albion, NY—Pine Hill, VOR/DME-A, Amdt. 1
Buffalo, NY—Buffalo Airpark, VOR RWY 24, Amdt. 6
Potsdam, NY—Potsdam Muni/Damon Fld, VOR/DME RWY 24, Amdt. 3
Watertown, NY—Watertown New York Intl, VOR RWY 7, Amdt. 12

** * * Effective March 14, 1985*

Pineville, LA—Pineville Muni, VOR-A, Amdt. 2, Cancelled

** * * Effective February 1, 1985*

North Bend, OR—North Bend Muni, VOR/DME RWY 4, Amdt. 7

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

** * * Effective April 11, 1985*

Olathe, KS—Johnson County Executive, LOC RWY 17, Amdt. 5
Lebanon, MO—Floyd W. Jones Lebanon, SDF RWY 36, Amdt. 2
Grand Island, NE—Hall County Regional, LOC/DME BC RWY 17, Amdt. 6

** * * Effective March 28, 1985*

Laconia, NH—Laconia Muni, LOC RWY 8, Amdt. 8
Houston, TX—William P. Hobby, LOC BC RWY 22, Amdt. 1
Green Bay, WI—Austin Straubel Field, LOC BC RWY 24L, Amdt. 15

** * * Effective March 14, 1985*

Bangor, ME—Bangor Intl, LOC RWY 15, Orig., Cancelled

** * * Effective February 1, 1985*

San Luis Obispo, CA—San Luis Obispo County, LOC RWY 11, Amdt. 2

The FAA published an Amendment in Docket No. 24447, Amdt. No. 1287 to Part 97 of the Federal Aviation Regulations (VOL 50 FR No. 22 Page 4639; dated Friday, February 1, 1985) under Section 97.25 effective April 11, 1985, which is hereby amended as follows:

Hays, KS—Hays Muni, Loc RWY 34, Amdt. 1, eff 11 APR 85 by changing Hays, KS—Hays Muni, LOC RWY 34, Amdt. 1 effective date to March 14, 1985.

The FAA published an Amendment in Docket No. 24429, Amdt. No. 1286 to Part 97 of the Federal Aviation Regulations (VOL 50 FR No. 14 Page 2777; dated January 22, 1985) under Section 97.25 effective February 28, 1985, which is hereby amended as follows:

Watertown, SD—Watertown Muni, LOC/DME RWY 17, Amdt. 6, eff 28 Feb 85, title of procedure should read Watertown, SD—Watertown Muni, LOC/DME BC RWY 17, Amdt. 6

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

** * * Effective April 11, 1985*

Farewell, AK—Farewell, NDB RWY 8, Amdt. 1, Cancelled
Farewell, AK—Farewell, NDB-A, Orig.
Iliamna, AK—Iliamna, NDB RWY 35, Amdt. 3
Mekoryuk, AK—Mekoryuk, NDB RWY 23, Orig.
Mekoryuk, AK—Mekoryuk, NDB/DME-A Orig.
Chicago, IL—Chicago-O'Hare Intl, NDB RWY 32L, Amdt. 19
Muscatine, IA—Muscatine Muni, NDB RWY 5, Amdt. 10
Olathe, KS—Johnson County Executive, NDB RWY 17, Amdt. 2
Olathe, KS—Johnson County Executive, NDB-B Amdt. 1
Lebanon, MO—Floyd W. Jones Lebanon, NDB RWY 36, Amdt. 2
Shelby, MT—Shelby, NDB RWY 23, Amdt. 4
Cambridge, NE—Cambridge Muni, NDB RWY 14, Amdt. 1
Cambridge, NE—Cambridge Muni, NDB RWY 32, Amdt. 1
Muskogee, OK—Davis Field, NDB RWY 31, Amdt. 8
Amarillo, TX—Tradewind, NDB-A, Amdt. 12

** * * Effective March 28, 1985*

Birmingham, AL—Birmingham Muni, NDB RWY 23, Amdt. 13
Newport, AR—Newport Municipal, NDB RWY 36, Amdt. 5
Stuttgart, AR—Stuttgart Muni, NDB RWY 18, Amdt. 6
Tifton, GA—Henry Tift Myers, NDB RWY 33, Amdt. 10
Laconia, NH—Laconia Muni, NDB RWY 8, Amdt. 7
Block Island, RI—Block Island State, NDB RWY 10, Orig.
Georgetown, TX,—Georgetown Muni RWY 18, Amdt. 2
Medford, WI—Taylor County, NDB RWY 33, Amdt. 4

** * * Effective March 14, 1985*

Hays, KS—Hays Muni, NDB RWY 34, Amdt. 1
Bar Harbor, ME—Hancock County-Bar Harbor, NDB RWY 22, Amdt. 2

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

* * * *Effective April 11, 1985*

Denver, CO—Stapleton Intl, ILS RWY 35R, Amdt. 6
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 32L, Amdt. 22
Grand Island, NE—Hall County Regional, ILS RWY 35, Amdt. 6
Dallas, TX—Redbird, ILS RWY 31, Amdt. 4

* * * *Effective March 28, 1985*

Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 10
Watertown, NY—Watertown New York Intl, ILS RWY 7, Amdt. 4
Green Bay, WI—Austin Straubel Field, ILS RWY 6R, Amdt. 17

* * * *Effective March 14, 1985*

Bangor, ME—Bangor Intl, ILS RWY 15, Orig.
Bar Harbor, ME—Hancock County-Bar Harbor, ILS RWY 22, Amdt. 1
Wheeling, WV—Wheeling Ohio Co., ILS RWY 3, Amdt. 17

* * * *Effective January 25, 1985*

Huntsville, AL—Huntsville-Madison Co Apt—Carl T Jones Fld, ILS RWY 18R, Amdt. 16
Huntsville, AL—Huntville-Madison Co Apt—Carl T Jones Fld, ILS RWY 36L, Amdt. 3

The FAA published an Amendment in Docket No. 24429, Amdt. No. 1286 to Part 97 of the Federal Aviation Regulations (VOL 50 FR No. 14 Page 2777; dated January 22, 1985) under section 97.29 effective February 14, 1985, which is hereby amended as follows:
Houston, West Houston-Lakeside, MLS STOL RWY 15, Orig., is hereby cancelled.

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

* * * *Effective March 28, 1985*

Rochester, NY—Rochester-Monroe County, RADAR-1, Amdt. 13

* * * *Effective January 25, 1985*

Huntsville, AL—Huntsville-Madison Co Apt—Carl T Jones Fld, RADAR-1, Amdt. 5

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

* * * *Effective April 11, 1985*

Amarillo, TX—Tradewind, RNAV RWY 35, Amdt. 7

* * * *Effective March 28, 1985*

Wetumpka, AL—Wetumpka Muni, RNAV RWY 27, Amdt. 1, Cancelled
Buffalo, NY—Greater Buffalo Intl, RNAV RWY 31, Amdt. 5
Culpeper, VA—Culpeper County T. I. Martin Field, RNAV RWY 22, Orig.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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

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

Issued in Washington, D.C. on February 8, 1985.

John S. Kern,

Acting Director of Flight Operations.

[FR Doc. 85-4269 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 385

[Docket No. 42745; Amdt. No. 1]

Assignment of Certain Aviation Economic Functions; Correction

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

ACTION: Final rule; correction.

SUMMARY: On December 31, 1984, the Department of Transportation reissued in a new form the Civil Aeronautics Board rules dealing with the delegation of numerous discretionary authorities needed to carry out titles IV and X of the Federal Aviation Act of 1958, as amended, and related statutes (49 FR 50984, December 31, 1984). This document corrects minor editorial errors and adds one new subsection to reflect a delegation adopted by the Civil Aeronautics Board on December 21, 1984, but published on January 2, 1985 (50 FR 22), that should have been incorporated into the rules issued by the Department on December 31, 1984.

EFFECTIVE DATE: These corrections will be effective March 13, 1985. Interested persons may avail themselves of the procedures set forth in Subpart C of 14 CFR Part 385 if they desire to petition for review of this action.

FOR FURTHER INFORMATION CONTACT: Warren Dean, Assistant General Counsel for International Law (202) 426-2972, or Vance Fort, Director, Special Programs, Office of the Assistant Secretary for Policy and International Affairs (202) 426-4341, Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. (The latter phone number listed corrects the number originally listed at 49 FR 50984, December 31, 1984.)

SUPPLEMENTARY INFORMATION: The changes listed below correct Part 385, as published at 49 FR 50984, December 31, 1984. The changes fall into several categories. The first involves typographical errors. The second includes changes to reflect the takeover of CAB functions by the Department, and changes to make the document consistent with a definition contained in § 385.1. Finally, two subsections are being deleted since they refer to procedures that no longer exist, another subsection is being added to incorporate a delegation adopted by the Civil Aeronautics Board on December 21, 1984, but published in the **Federal Register** after the Department's publication of the reissued Part 385, and in one instance the term "Reviewing Official" is being replaced with "Secretary" to correct an error.

Concurrently with the reissuance of Part 385, the Department issued an amendment to 49 CFR Part 1 to delegate transferring CAB functions to Secretarial officers within DOT (49 FR 50994, December 31, 1984.) With respect to a delegation contained in 49 CFR 1.56(i)(1), one point deserves clarification. Under § 1.56(i)(1), the Assistant Secretary for Policy and International Affairs is delegated authority, among other things, to determine the economic fitness of carriers under 49 U.S.C. 1389. The limitation on the Assistant Secretary's authority contained in § 1.56(i)(1) only applies to decisions and recommendations under 49 U.S.C. 1389 made by the Director, Office of Essential Air Service. An amendment to clarify this point does not appear to be necessary. However, if confusion results, 49 CFR 1.56(i)(1) may be amended at a later date.

Regulatory Evaluation

This rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979. The rule is not considered to be "major" as defined by E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not cause a major increase in costs or prices for consumers, individual industries, government agencies or regions, and it will not have a significant adverse effect on competition, or any other aspect of the economy. The economic impact is

judged to be so minimal as not to warrant a full regulatory evaluation.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 14 CFR Part 385

Organization and functions (government agencies).

(Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*); Airline Deregulation Act of 1978 (Pub. L. 95-504, October 24, 1978), Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443, October 4, 1984); 49 U.S.C. Subtitle I; and 14 CFR 385.19)

PART 385—[AMENDED]

Corrections

Accordingly, 14 CFR Part 385 (49 FR 50984, December 31, 1984) is corrected as set forth below:

§ 385.3 [Amended]

1. By adding an "s" to the word "determination" in the third sentence of § 385.3.

§ 385.4 [Amended]

2. By replacing the words "Reviewing Official" with the word "Secretary" in the third sentence of § 385.4.

§ 385.13 [Amended]

3. By removing § 385.13(k) and marking it "[Reserved]".

4. By replacing the first word "or" with "on" in the third sentence of § 385.13(m).

§§ 385.13 and 385.19 [Amended]

5. By removing the words "Civil Aeronautics" in the third sentence of § 385.13(m), in the first sentence of § 385.13(v), in the second sentence of § 385.13(qq)(3), and in the first sentence of § 385.19(a)(3).

§ 385.13 [Amended]

6. By replacing the paragraph designation "(x)" with "(ss)" in the first sentence of § 385.13(ss)(3);

§ 385.19 [Amended]

7. By adding a period between the words "involved" and "Such" in § 385.19(a)(2).

8. By removing § 385.19(a)(6);

§ 385.27 [Amended]

9. By adding a new § 385.27(u) which reads as follows:

* * * * *

(u) Grant or deny requests for individual air carrier financial data in accordance with the limitations on the availability of these data contained in paragraph (d) of the reporting instructions for schedule F-1, which are contained in § 298.62 of this chapter.

§ 385.28 [Amended]

10. By replacing the word "Board" with "DOT" in the first sentence of § 385.28(a).

11. By replacing the acronym "CAB" with "DOT" in the first sentence of § 385.28(c).

§ 385.54 [Amended]

12. By replacing the words "motion if two or more Board Members so desire. The Board" with "motion. The Reviewing official" in the first and second sentence of § 385.54(b).

Issued in Washington, D.C. on February 15, 1985.

Jim J. Marquez,

General Counsel, Department of Transportation.

[FR Doc. 85-4310 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 40320-5004]

Limit on Duty-Free Insular Watches in Calendar Year 1985

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This document establishes the quantity of watches and watch movements which may be entered free of duty into the U.S. customs territory during calendar year 1985 from the insular possessions of the United States (the Virgin Islands, Guam, and American Samoa) pursuant to Pub. L. 97-446; and makes other minor amendments.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Creel, (202) 377-1660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 1984 (49 FR 44651) we proposed a 1985 limit of 5,000,000 units, with the respective territorial shares as shown in the following table:

Virgin Islands	3,500,000
Guam	1,000,000
American Samoa	500,000

We also proposed other minor amendments of the regulations.

We invited comments from the public on these proposals. The only commenter, an insular watch producer in the Virgin Islands, informed us that it expected to expand its production in 1985. It reported its understanding that there would be further expansion on the part of other insular watch manufacturers. The comment supports our proposal to increase the territorial share of the Virgin Islands.

This action is taken under authority of Pub. L. 97-446 and in compliance with Executive Order 12291.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands.

PART 303—[AMENDED]

Part 303 of Title 15 of the Code of Federal Regulations is amended as follows:

1. Section 303.3(b) is revised to read:

§ 303.3 Determination of the total annual duty-exemption.

* * * * *

(b) *Standards for Determination.* (1) Notwithstanding paragraph (b)(2) of this section, the limit established for any year may be 7,000,000 units if the limit established for the preceding year was a smaller amount.

(2) Subject to paragraph (c) of this section, the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, or increased, if the resultant total is larger than 7,000,000, by more than 20% of the quantity established for the calendar year immediately preceding.

* * * * *

2. Section 303.4(b)(1) is revised to read:

§ 303.4 Determination of territorial distribution.

* * * * *

(b) *Standards for Determination*—(1) *Limitations.* A territorial share may not be reduced by more than 500,000 units in any calendar year. No territorial share shall be less than 500,000 units.

* * * * *

3. The following new paragraph (e) is added to § 303.14:

§ 303.14 Allocation factors and miscellaneous provisions.

* * * * *

(e) *Territorial shares.* The shares of the total duty exemption are 3,500,000 for the Virgin Islands, 1,000,000 for Guam, and 500,000 for American Samoa.

(Pub. L. 97–446; 96 Stat. 2329 (19 U.S.C. 1202))

Dated: February 14, 1985.

John L. Evans,

Deputy to the Deputy Assistant Secretary for Import Administration.

Richard T. Montoya,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 85–4246 Filed 2–20–85; 8:45 am]

BILLING CODE 3510–DS–M, 4310–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–21756]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority in order to allow the Director of the Division of Market Regulation to review, publish notice of, and where appropriate, approve, proposed self-regulatory organization ("SRO") plans, and plan amendments for the abbreviated reporting of minor infractions (sanctions not exceeding $2,500).

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Pam Konieczka, Esq., Division of Market Regulation, (202) 272–2855.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today announced the amendment, effective upon publication in the **Federal Register**, of its rules under the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.* as amended) governing delegation of authority to the Director of the Division of Market Regulation (17 CFR 200.30–3). The amendment authorizes the Director of the Division of Market Regulation to review, publish notice of, and where appropriate, approve plans and amendments to plans for abbreviated reporting of minor infractions submitted by self-regulatory organizations pursuant to section 19(d)(1), of the Act and Rule 19d–1(c).

Discussion

Rule 19d–1, which was adopted pursuant to Section 19(d)(1) of the Act, requires SROs to report to the Commission notice of final disciplinary actions, and prescribes the content of such notices. Paragraph (c)(2) of Rule 19d–1, however, as adopted effective June 8, 1984 [Securities Exchange Act Release No. 21013 (June 1, 1984); 49 FR 23828 (June 8, 1984)], permits SROs to submit for Commission approval plans and plan amendments specifying uncontested minor rule violations (sanctions not exceeding $2,500) which would either be exempt from Rule 19d–1's current reporting requirements or subject to reduced, periodic reporting to the Commission.

In adopting amendments to Rule 19d–1 the Commission noted that separate detailed reports of uncontested minor rule violations impose administrative burdens on both the SROs and the Commission yet are of limited value for purposes of the Commission's oversight of enforcement and disciplinary activities of SROs. The Commission believes that review and action on plans for the abbreviated reporting of ostensibly administrative, minor operational and reporting violations generally would not raise significant policy issues. Moreover, their review by the Commission would result in additional delays and expenditures of time and resources by the Commission and its staff. Therefore, the Commission believes it appropriate to delegate to the Director of the Division of Market Regulation the authority to review, publish notice of, and where appropriate, approve SRO plans specifying uncontested minor rule violations (sanctions not exceeding $2,500) which would either be exempt from Rule 19d–1's current reporting requirements or subject to abbreviated reporting to the SEC.

The Commission finds that there will be no burden on competition imposed by the amendment not necessary or appropriate in furtherance of the Act. Furthermore, the Commission finds that the foregoing action relates solely to agency management and personnel, and accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to 15 U.S.C. 78d–1, as amended, becomes effective February 21, 1985.

List of Subjects in 17 CFR Part 200

Administrative practice and procedures, Freedom of information, Privacy, Securities.

Text of Amendment

The Securities and Exchange Commission, pursuant to the Act, and particularly sections 2, 19 and 23 thereof (15 U.S.C. 786, 78s and 78w), and the Delegation of Functions Act, 15 U.S.C. 78d–1, hereby adopts an amendment to § 200.30–3(a).

The Commission hereby amends paragraph (a) of § 200.30–3 of Title 17, Chapter II by adding new paragraph (a)(44) to read as follows:

PART 200—ORGANIZATION: CONDUCT AND ETHICS; INFORMATION AND REQUESTS

§ 200.30–3 Delegation of Authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(44) To review, publish notice of, and where appropriate, approve plans, and amendments to plans, submitted by self-regulatory organizations pursuant to Rule 19d–1(c) under the Act [§ 240.19d–1(c)].

By the Commission.

John Wheeler,

Secretary.

February 13, 1985.

[FR Doc. 85–4292 Filed 2–20–85; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3018/R733; FRL–2781–5]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule established tolerances for the combined residues of the insecticide permethrin and its metabolites in or on leafy vegetables (except *Brassica*). The regulation to establish maximum permissible levels for the combined residues or permethrin was requested pursuant to a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on February 21, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of May 23, 1984 (49 FR 21795), which announced that ICI Americas, Inc., Agricultural Chemical Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted pesticide petition 4F3018 to EPA proposing that 40 CFR 180.378 be amended by establishing a tolerance for the combined residues of the insecticide permethrin (3-phenoxyphenyl)methyl(+)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, and its metabolites (+)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethycyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3-PBA) in or on all raw agricultural commodities of the leafy vegetables (except *Brassica*) group at 20 parts per million.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances have been discussed in detail in the **Federal Register** of October 13, 1984 (47 FR 45008), and the same toxicological concerns apply without revision to the newly listed commodities.

Granting these tolerances will increase the theoretical maximum residue contribution from 1.2282 to 1.3529 milligrams per day (mg/day). The percentage of the acceptable daily intake used will increase from 40.94 to 45.10 percent.

The metabolism of permethrin is adequately understood, and an adequate analytical method, gas-liquid chromatography with an electron capture detector, is available for enforcement purposes. No actions are pending against continued registration of permethrin, nor are any other considerations involved in establishing the tolerances.

Since there will be a label restriction of no feeding of crop refuse to livestock and not to graze treated areas, there will be no problem of secondary residues in milk, meat, or meat byproducts from dairy animals or animals being finished for slaughter. As the leafy vegetables (except *Brassica*) group is not a poultry feed item, there will be no problem of secondary residues in eggs or poultry tissues.

Even if the subject crop was to be fed to livestock or poultry, the established meat, milk, poultry, and egg tolerances would be adequate to cover secondary residues resulting from the proposed use.

The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 5, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.378(b) is amended by adding, and alphabetically inserting, the following raw agricultural commodities, to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Leafy vegetables (except *Brassica*)	20.0
* * * * *	

[FR Doc. 85–4231 Filed 2–20–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Cypermethrin

[PP 2F2623/R740; FRL–2781–4]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; extension of tolerance.

SUMMARY: This rule extends tolerances for the residues of the synthetic pyrethroid insecticide cypermethrin in or on certain raw agricultural commodities. This regulation to extend the maximum permissible level for residues of cypermethrin in or on these commodities was requested by ICI Americas, Inc.

EFFECTIVE DATE: Effective on February 21, 1985.

ADDRESS: Written objections, identified by the document control number [PP 2F2623/R740], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal **Register** of February 24, 1982 (47 FR 8087), which announced that ICI Americas, Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted pesticide petition 2F2623 to EPA proposing that 40 CFR Part 180 be

amended by establishing a tolerance for residues of the insecticide cypermethrin [(±)*alpha*-cyano-(3-phenoxyphenyl)methyl(±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane-carboxylate) in or on the raw agricultural commodities cottonseed at 0.5 part per million (ppm); meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and milk at 0.05 ppm.

There were no comments received in response to the notice of filing.

The Agency published in the **Federal Register** of June 15, 1984, a notice announcing its decision to establish a tolerance for residues of cypermethrin on cottonseed; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and milk for a period extending to December 31, 1985, to cover residues existing from the conditional registration of cypermethrin. Based on additional information received in response to the June 15, 1984 notice, the Agency extended the conditional registration of cypermethrin to December 1, 1986 (see 50 FR 1112; January 9, 1985). Therefore, the Agency is extending the tolerances for cypermethrin for the period extending to December 1, 1987, and the tolerance may be made permanent if registration is continued based on information received in 1986.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances, as well as the risks of cypermethrin, are discussed in related documents, published in the **Federal Register** of June 15, 1984 (49 FR 24864) and January 9, 1985 (50 FR 1112).

A full review of the data indicates that although cypermethrin is oncogenic in female mice, the risks would be extremely small from the proposed use of cypermethrin on cotton. The 1-year pro-rated dietary risk, based on the highly conservative assumption that all units of those commodities would bear residues at the proposed tolerance levels, is estimated to be 1.4×10^{-7}. Actual residues in meat and milk are expected to be less than the tolerances of 0.05 ppm.

Based on a 1-year dog feeding study with a no-observed-effect level (NOEL) of 1.0 mg/kg/day[1] for nononcogenic effects and using a safety factor of 100, the acceptable daily intake (ADI) has been calculated to be 0.01 mg/kg/day with a maximum permissible intake (MPI) of 0.6 mg/kg/day for a 60-kg person. The tolerances represent a theoretical maximal residue contribution (TMRC) of 0.0307 mg/kg/day in a 1.5 kg diet and represent 5.12 percent of the MPI.

There are no regulatory actions pending against the registration of cypermethrin. The metabolism of cypermethrin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method using electron capture gas-liquid chromatography is available for enforcement purposes.

Based on the above information, the Agency has determined that extending the tolerances for residues of the pesticide in or on the commodities will protect the public health. Therefore, as set forth below, the tolerances are extended to December 31, 1987, to cover residues existing from this continuing conditional registration of cypermethrin.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice procedure, Agricultural commodities, Pesticides and pests.

Dated: February 7, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

§ 180.414 [Amended]

Therefore, § 180.418 *Cypermethrin; tolerances for residues* is amended by extending the effective date of December 31, 1985, to December 31, 1987.

[FR Doc. 85-4232 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

[1] The Agency used the 1-year dog feeding study NOEL to establish the ADI since the dog was the most sensitive species tested, i.e., gave the lowest NOEL.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C., 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An

opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
San Luis Obispo County (unincorporated areas) FEMA-6633	
Arroyo Grande Creek: 30 feet upstream from center of 22nd Street	*28
Shallow Flooding: Intersection of 22nd Street and Garden Street	#2
Shallow Flooding: 100 feet north from intersection of Willow Street and Southern Pacific Railroad	*28
Carpenter Canyon Creek: 5 feet downstream from center of Private Road, approximately 0.1 mile above confluence with Corbit Canyon Creek	*166
Cayucos Creek: 50 feet upstream from the center of Northbound State Highway 1	*15
Little Cayucos Creek: 50 feet upstream from the center of Ocean Boulevard	*18
Shallow Flooding: At intersection of D Street and Ocean Boulevard	#1
Corbit Canyon Creek: 30 feet downstream from the center of Corbett Canyon Road	*167
Delessigues Creek: 100 feet upstream from center of Thompson Avenue	*345
Los Berros Creek: 20 feet upstream from center of Valley Road	*66
Shallow Flooding: 250 feet north along Valley Road from intersection with State Highway 1	*54
Meadow Creek: 10 feet upstream from the center of Roosevelt Avenue	*10
Morro Creek: 150 feet upstream of Private Road crossing which is approximately 2.4 river miles upstream of the Pacific Ocean	*114
Little Morro Creek: 30 feet upstream from center of Little Morro Creek Road	*124
Nipomo Creek:	
160 feet upstream from center of U.S. Highway 101 northbound	*218
250 feet upstream from center of Tefet Road	*309
Pismo Creek: 100 feet upstream from the center of a Private Road located approximately 800 feet upstream of the Pismo Beach corporate limit	*37
San Luis Obispo Creek: 200 feet upstream from the center of Harford Drive	*11
Santa Rosa Creek: 20 feet upstream from the center of Windsor Boulevard	*18
Santa Rosa Creek Split Flow: 30 feet upstream from the center of Cambria Road	*36
Tefet Road Tributary: 20 feet upstream from the center of Mallaugh Street	*320
Tefet Road Tributary East Fork: At confluence with Tefet Road Tributary	*336
Willow Creek: 50 feet upstream from the center of Hidalgo Avenue	*36
Corbit Canyon Creek: At City of Arroyo Grande corporate limits	*167
Pacific Ocean:	
On C Street, 300 feet southwest of intersection with Ocean Boulevard	*11
Just north of confluence with Hazard Canyon Creek at Montana De Oro State Park	*15
Maps available for inspection at County Engineer's Office, County Government Center, Room 206, San Luis Obispo, California.	
COLORADO	
Hotchkiss (town), Delta County, FEMA-6625	
North Fork, Gunnison River: 40 feet downstream from centerline of State Highway 92	*5,318
Maps available for inspection at Public Works Department, B and Main, Hotchkiss, Colorado.	
Ouray County (unincorporated areas), FEMA-6625	
Uncompahgre River:	
At the center of County Road 24	*6,885
30 feet downstream from the Center of Potter Lane	*7,068
At the confluence of Corbett Creek and the Uncompahgre River	*7,437
1,500 feet west of the intersection of Cutler Creek and U.S. Highway 550	#1
Uncompahgre River West Arm: At the confluence of Park Ditch and the Uncompahgre River West Arm	*7,191
Maps available for inspection at Special Assistant's Office, 541 4th Street, Ouray, Colorado.	
Ouray (city), Ouray County, FEMA-6625	
Uncompahgre River:	
At the confluence of Bridalveil Creek and the Uncompahgre River	*7,629
30 feet upstream from the center of Seventh Avenue	*7,710
50 feet upstream from the center of Oak Street	*7,750
Maps available for inspection at City Hall, 320 6th Avenue, Ouray, Colorado.	
ILLINOIS	
Unincorporated areas of Cumberland County (Docket No. FEMA-6625)	
Embarras River:	
About 1.7 miles downstream of confluence of Muddy Creek	*513
About 3.0 miles upstream of County Route 9	*564
Maps available for inspection at the County Clerk's Office, Cumberland County Courthouse, Toledo, Illinois.	
Unincorporated areas of Grundy County (Docket No. FEMA-6625)	
Illinois River:	
About 0.3 mile downstream of Conrail	*496
At confluence of Kankakee River	*509
Des Plaines River:	
At confluence of Kankakee River	*509
About 0.5 mile upstream of confluence of Kankakee River	*510
Kankakee River:	
Mouth at Illinois River	*509
Just downstream of County Line Road	*510
East Fork, Mazon River:	
About 3,800 feet downstream of Interstate 55	*568
About 3,400 feet upstream of Rice Road	*585
East Fork, Mazon River Tributary:	
Mouth at East Fork Mazon River	*583
About 1,900 feet upstream of mouth	*585
Nettle Creek:	
About 7,000 feet downstream of Conrail	*506
Just downstream of Conrail	*516
East Fork, Nettle creek:	
Just upstream of Interstate 80	*535
About 5,000 feet upstream of Gore Road	*556
East Fork, Nettle Creek Tributary:	
About 5,000 feet downstream of Ashley Road	*522
About 400 feet downstream of U.S. Route 6	*534
Just downstream of Interstate 80	*544
Aux Sable Creek:	
About 2.8 miles downstream of Minooka Road	*535
About 2,000 feet upstream of Interstate 80	*548
Gooseberry Creek:	
Just upstream of Old Mazon Road	*612
Just downstream of Livingston Road	*619
West Fork, Gooseberry Creek:	
About 3,100 feet downstream of Scully Road	*614
About 2,800 feet upstream of Interstate 55	*626
Claypool Ditch:	
Just upstream of Jugtown Road	*541
Just downstream of Broadway Road	*547
Maps available for inspection at the Building, Planning and Zoning Office, Grundy County Courthouse, 111 E. Washington, Morris, Illinois.	
IOWA	
City of Waterloo, Black Hawk County (Docket No. FEMA-6625)	
Cedar River:	
About 1.75 miles downstream of Illinois Central Gulf Railroad	*833
About 2.15 miles upstream of confluence of Stream No. 13	*859
Sink Creek:	
About 950 feet downstream of Shaulis Road	*833
About 2,650 feet upstream of Hammond Avenue	*907
Crossroads Creek:	
Mouth at Cedar River	*840
Just upstream of Chicago, Rock Island and Pacific Railroad	*845
About 120 feet upstream of Hammond Avenue	*882
Blowers Creek:	
Just upstream of closure structure	*828
Just downstream of Illinois Central Gulf Railroad (about 1,500 feet upstream of closure structure)	*832
About 200 feet upstream of Illinois Central Gulf Railroad (about 1,800 feet upstream of closure structure)	*838
About 100 feet downstream of LaFayett Street	*839
Just upstream of LaFayett Street	*844
At confluence of Maywood Branch	*856
Maywood Branch:	
At confluence with Blowers Creek	*856
Just upstream of Newell Street	*886
Blowers Creek (Upstream of Maywood Branch):	
At confluence with Maywood Branch	*856
Just upstream of Newell Street	*860
Virden Creek:	
Just upstream of Culvert Inlet	*855
About 0.97 mile upstream of East Donald Street	*871
Virden Creek Tributary:	
About 1,900 feet downstream of East Airline Highway	*871
About 100 feet upstream of Big Rock Road	*908

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Black Hawk Creek:	
Mouth at Cedar River	*854
About 0.61 mile upstream of West Shaulis Road	*872
Prescotts Creek:	
Mouth at Black Hawk Creek	*866
About 500 feet upstream of Hoff Road	*891
City View Branch:	
Mouth at Blowers Creek	*853
Just downstream of Illinois Central Gulf Railroad	*862
Stream No. 13:	
Just upstream of Wagner Road	*857
About 0.53 mile upstream of Big Rock Road	*875
Stream No. 36:	
Mouth at Stream No. 13	*865
About 0.81 mile upstream of Big Rock Road	*872
Stream No. 37:	
Mouth at Stream No. 13	*867
Just upstream of Burton Avenue	*876
Stream No. 39:	
Mouth at Stream No. 13	*873
Just upstream of Burton Avenue	*879
Dry Run Creek:	
About 1,300 feet downstream of Mitchell Avenue	*868
Just downstream of Bontrager Park outlet structure	*868
Just upstream of Bontrager Park outlet structure	*889
Just downstream of Park Lane	*889
Just upstream of Park Lane	*894
Just downstream of San Marnin Drive	*902
Just upstream of State Highway 412	*907
Just downstream of U.S. Highway 520	*910
Just upstream of U.S. Highway 520	*915
About 350 feet upstream of West Shaulis Road	*941
Cedar River Diversion: Within corporate limits	*859
Shallow Flooding (Overflow from Culvert on Virden Creek downstream of U.S. Highway 63):	
At the intersection of Center Street and Logan Avenue	*851
About 500 feet west of intersection of Utica Street and Lafayette Street	*851
About 400 feet northeast of intersection of Dawson Street and Logan Avenue	*855
Maps available for inspection at the City Hall, 715 Mulberry, Waterloo, Iowa.	
MAINE	
Harpswell, town, Cumberland County (FEMA Docket No. 6633)	
Casco Bay:	
Shoreline of Middle Bay at Jordan Point	*10
Shoreline of Middle Bay on Birch Island at Haward Point	*12
Shoreline of Middle Bay at Wilson Cove	*9
Shoreline of Middle Bay at Whaleboat Island, east side	*18
Western shoreline of Basin Cove	*10
Shoreline of Potts Harbor at Basin Point Road (extended)	*21
Shoreline of Potts Harbor 3,000 feet southwest of Ash Cove Road (extended)	*15
Shoreline of Potts Point	*14
Shoreline of Merriconeag Sound 150 feet south of Bailey Road (extended)	*16
Shoreline of Merriconeag Sound at Stover Point	*12
Shoreline of Merriconeag Sound at Garrison Gut Cove	*10
Shoreline of Merriconeag Sound at Jaquish Gut	*15
Shoreline of Merriconeag Sound at east side of Great Mark Island	*20
Shoreline of Middle Bay at Wilson Cove	*9
Shoreline of Middle Bay on east side of Upper Goose Island	*14
Shoreline of Harpswell Sound at Clark Cove	*12
Shoreline of New Meadows River at Laurel Point	*12
Shoreline of Quahog Bay at Tondreaus Point	*12
Maps available for inspection at the Town Hall, South Harpswell, Maine.	
MASSACHUSETTS	
Dartmouth, town, Bristol County (FEMA Docket No. 6614)	
Buzzards Bay:	
Shoreline at northern corporate limits	*18
Shoreline at Redwood Street (extended)	*20
Shoreline at Rockland Street (extended)	*18
Shoreline of Apponagansett Bay at School Street (extended)	*16
Shoreline of Apponagansett Bay at Highland Avenue (extended)	*13
Approximately 3,700 feet along shoreline south of Hetty Green Street (extended)	*18
Shoreline approximately 1 mile east of Meadow Shore Road (extended)	*32
Shoreline at Ocean Avenue (extended)	*18
Shoreline at Barneys Joy Road (extended)	*18
Shoreline at Horseneck Road (extended)	*18
Maps available for inspection at the Town Office, Dartmouth, Massachusetts.	
Send comments to Honorable Walter Faria, Chairman of the Dartmouth Board of Selectmen, Town Office, Dartmouth, Massachusetts 02748.	
Gloucester, city, Essex County (FEMA Docket No. 6625)	
Miller River:	
Upstream side of Dr. Osman Babson Road	*10
Upstream side of Cherry Street	*16
Approximately 800 feet upstream of Cherry Street	*21
Atlantic Ocean Essex Bay: South shore of Essex Bay	*12
Ipswich Bay:	
Entire shoreline of Wingaersheek Beach	*15
Shoreline at Folly Point	*20
Approximately 300 feet past end of Atlantic Street	#1
Massachusetts Bay: Shoreline at Normans Woe Cove	*30
Gloucester Harbor:	
Shoreline at Western Harbor	*13
Entire shoreline of Inner Harbor	*10
East shore of Gloucester Harbor	*12
Briar Neck: Shoreline at Briar Neck	*25
Maps available for inspection at the City Library, Gloucester, Massachusetts, and the Planning Office, Forbes Building, Gloucester, Massachusetts.	
Marblehead, town, Essex County (FEMA Docket No. 6633)	
Atlantic Ocean:	
Shoreline at Peach's Point	*26
Shoreline of Salem Harbor at Green Street (extended)	*13
Shoreline of Little Harbor at Little Harbor Way	*14
Shoreline of Marblehead Harbor at State Street (extended)	*14
Shoreline of Marblehead Harbor at Nashua Avenue (extended)	*14
Eastern shoreline of Marblehead Neck at Fishing Point Lane (extended)	*25
South shore of Marblehead Neck Causeway, approximately 1,000 feet west of intersection of Ocean Avenue and Harbor Avenue	*17
South shoreline of Marblehead Neck, approximately 300 feet east of east end of causeway	*17
Shore of Massachusetts Bay at Summit Raod (extended)	*25
Shore of Massachusetts Bay at Bartlett Street (extended)	*34
Maps available for inspection at the Office of Douglas Saat, Town Engineer, Abbot Hall, Washington Street, Marblehead, Massachusetts.	
Sandwich, town Barnstable County (FEMA Docket No. 6614)	
Cape Code Bay:	
Shoreline at Sand Castle Drive (extended)	*17
Shoreline at Canal Service Road (extended)	*15
Shoreline at Foster Road (extended)	*15
Shoreline at Bernis Road (extended)	*26
Shoreline at Carlton Drive (extended)	*20
Shoreline at Leonard Road (extended)	*25
Maps available for inspection at the Sandwich Town Library, 142 Main Street, Sandwich, Massachusetts, and the Town Supervisor's Office, Route 130, Sandwich, Massachusetts.	
Swampscott, town, Essex County (FEMA Docket No. 6599)	
Atlantic Ocean:	
Shoreline at Mostyn Street (extended)	*18
Shoreline 1,000 feet southwest of east tip of Littles Point	*28
Shoreline at Blaney Street (extended)	*20
Shoreline at Galloupes Point	*15
Maps available for inspection at the Town Administration Building, Swampscott, Massachusetts.	
Send comments to Honorable Larry Greenbaum, Chairman of the Board of Selectmen for the Town of Swampscott, Town Administration Building, Swampscott, Massachusetts	
Truro, town Barnstable County (FEMA Docket No. 6625)	
Atlantic Ocean:	
Shoreline at Truro-Provincetown corporate limits	*18
Shoreline at Coast Guard Road (extended)	*28
Shoreline approximately 1.5 miles south of Longnook Road (extended)	*14
Cape Cod Bay:	
Shoreline at Truro-Provincetown corporate limits	*15
Shoreline at Great Hollow Road (extended)	*18
Shoreline at Pamet Harbor	*17
Shoreline at Stevens Way (extended)	*20
Shoreline at Rolling Hills Road (extended)	*24
Maps available for inspection at the Selectmen's Office, Truro Town Hall, Truro, Massachusetts.	
MICHIGAN	
Charter Township of Georgetown, Ottawa County (Docket No. FEMA-6599)	
Grand River:	
About 1.6 miles downstream of confluence of Lowing—Comstock Drain	*602
About 1,500 feet upstream county boundary (1,100 feet upstream of confluence of Rush Creek	*605
Rush Creek:	
At mouth	*605
Just downstream of Chessie System	*611
Bliss Drain	
At mouth	*607
About 570 feet downstream of Wisner Street	*623
Just upstream of Wisner Street	*631
About 0.5 mile upstream of Interstate 196	*641
Holzenga Drain:	
At mouth	*605
At Kenowa Lake inlet	*608
Just upstream of Ravenswood Drive	*613
Just downstream of Kenowa Avenue	*616
Watson Drain: Within community	*605
Lowing Comstock Drain:	
At mouth	*603
About 750 feet downstream of 24th Avenue	*616
About 425 feet downstream of 24th Avenue	*622
Just downstream of 28th Avenue	*640
East Branch Lowing Comstock Drain:	
At mouth	*606
Just upstream of Norman Drive	*612
Maps available for inspection at the Office of Township Clerk, Charter Township of Georgetown, 263 Church Street, Jenison, Michigan.	
MISSOURI	
City of Granby, Newton County (Docket No. FEMA-6625)	
Shoal Creek:	
About 1,300 feet downstream of confluence of Culpepper Creek	*1033
About 3,600 feet upstream of Burlington Northern Railroad	*1037
Culpepper Creek:	
At mouth	*1034
Just downstream of County Highway E	*1068
Just upstream of County Highway E	*1074
Maps available for inpsection at the City Hall, Granby, Missouri.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
City of Pleasant Hill, Cass County (Docket No. FEMA-6625)	
Big Creek:	
About 1,400 feet downstream of Missouri Pacific Railroad	*855
Just upstream of Boardman Street	*864
North Overflow Big Creek:	
About 400 feet downstream of State Highway 7	*851
Just downstream of abandoned railroad	*855
Shallow Flooding Area east of Second Street, north of Commercial Street and south of Cedar Street	#2
Maps available for inspection at the City Hall, 203 Paul Street, Pleasant Hill, Missouri.	
NEW YORK	
Delhi, town, Delaware County (FEMA Docket No. 6625)	
West Branch Delaware River:	
Downstream corporate limits	*1,296
Approximately 75' downstream of Platner Brook	*1,314
Approximately 200' downstream of confluence of Peaks Brook	*1,325
At confluence of Little Delaware River	*1,344
At the downstream Village of Delhi corporate limits	*1,349
At the upstream Village of Delhi corporate limits	*1,370
At confluence of Elk Creek	*1,384
At confluence of Kidd Brook	*1,395
At upstream corporate limits	*1,410
Little Delaware River:	
At confluence with West Branch Delaware River	*1,344
Approximately .5 mile upstream of Upper Golf Course footbridge	*1,379
Approximately 620 feet upstream of Thompson Cross Road bridge	*1,398
Maps available for inspection at the Town Clerk's Office, Delhi, New York.	
Delhi, village, Delaware County (FEMA Docket No. 6625)	
West Branch Delaware River:	
Approximately 500' downstream of downstream corporate limits	*1,348
Upstream side of Bridge Street	*1,363
Upstream corporate limits	*1,370
Steel Brook:	
At confluence with West Branch, Delaware River	*1,356
Upstream side of Woolerton Street	*1,412
Upstream of Delhi Reservoir Dam	*1,567
Maps available for inspection at the Village Clerk's Office, Delhi, New York.	
Hurley, town, Ulster County (FEMA Docket No. 6625)	
Esopus Creek:	
Approximately 250 feet downstream of U.S. Route 209	*163
Upstream side of County Route 29A	*167
Upstream corporate limits	*176
Maps available for inspection at the Town Clerk's Office, Hurley, New York.	
Lloyd, town, Ulster County (FEMA Docket No. 6625)	
Hudson River: Entire shoreline within community	*9
Maps available for inspection at the Town Hall, 12 Church Street, Highland, New York.	
West Sparta, town, Livingston County (FEMA Docket No. 6599)	
Canaseraga Creek:	
Downstream corporate limits	*576
Confluence of Patterson Gully	*593
Upstream White Bridge Road	*602
Most upstream corporate limits	*640
Maps available for inspection at the Town Clerk's Office, R.D. 3, Dansville, New York.	
NORTH CAROLINA	
Unincorporated areas of Chowan County (Docket No. FEMA-6625)	
Albemarle Sound: Within community	*7
Chowan River:	
Mouth at Albemarle Sound	*7
Just upstream of Holiday Island	*8
Pembroke Creek: From mouth at Albemarle Sound to just downstream of SR 1208	*8
Maps available for inspection at the Chowan County Courthouse, Edenton, North Carolina.	
Town of Edenton Chowan County (Docket No. FEMA-6625)	
Albemarle Sound/Edenton Bay:	
Along southern shoreline from western extraterritorial limit to about 200 feet southeast of Cameron Drive	*7
Along southern shoreline from about 200 feet southeast of Cameron Drive to mouth of Queen Anne Creek	*8
Pembroke Creek: Within community	*8
Northeast Tributary of Pembroke Creek:	
At extraterritorial limits	*8
About 1.0 mile upstream of extraterritorial limits	*10
Queen Anne Creek:	
From mouth to just downstream of Paxton Lane	*8
Just upstream of Paxton Lane	*8
Just downstream of Southern Railway	*17
Northwest Tributary of Queen Anne Creek:	
At confluence with Queen Anne Creek	*11
Just downstream of Old Hertford Road	*13
Northeast Tributary of Queen Anne Creek: From mouth at Queen Anne Creek to about 2,000 feet upstream of the mouth	*11
Filberts Creek: From mouth at Pembroke Creek to about 260 feet downstream of Virginia Road	*8
Filberts Creek Tributary: From confluence with Filberts Creek to about 250 feet downstream of U.S. Highway 17	*8
Maps available for inspection at the Town Hall, Edenton, North Carolina.	
Town of Hertford, Perquimans County (Docket No. FEMA-6625)	
Perquimans River: Within community	*7
Maps available for inspection at Town Hall, Hertford, North Carolina.	
Unincorporated areas of Perquimans County (Docket No. FEMA-6625)	
Albermarle Sound:	
Along southern shoreline from Stevenson Point to about 3,000 feet west of Reed Point	*5
Along southern shoreline from Harvey Point to just east of SR 1351	*5
Along southern shoreline from just east of SR 1351 to Holiday Lane	*6
Along southern shoreline from Holiday Lane to mouth of Yeopim River	*7
Perquimans River:	
Along southwest shoreline from Harvey Point to about 4,500 feet downstream of Blount Point	*5
Along northeast shoreline from about 3,000 feet west of Reed point to Sueola Beach	*6
Along shoreline from Sueola Beach to White Hat Landing	*6
Along shoreline from White Hat Landing to about 1 mile upstream of confluence of Goodwin Mill Creek	*7
About 0.7 mile upstream of SR 1202	*10
Little River:	
Along shoreline from Stevenson Point to about 3.7 miles upstream of Stevenson Point	*5
Along shoreline from about 3.7 miles upstream of Stevenson Point to just northeast of SR 1332	*6
From just northeast of SR 1332 to about 2.6 miles downstream of U.S. Highway 17	*7
About 1.46 miles upstream of U.S. Highway 17	*10
Maps available for inspection at the Perquimans County Courthouse, Hertford, North Carolina.	
Town of Winfall, Perquimans County (Docket No. FEMA-6625)	
Perquimans River: Within community	*7
Mill Creek: Within community	*7
Maps available for inspection at the Town Hall, Winfall, North Carolina.	
TEXAS	
Corpus Christi, city, Nueces County (FEMA Docket No. 6599)	
Airport Drainage: Just upstream of Joe Mireur Road	*34
Drainage Creek:	
Just downstream of Old Brownsville Road	*29
Approximately 400 feet upstream of Joe Mireur Road	*35
Oso Bay Tributary No. 2: Approximately 600 feet upstream of Rodd Road	*12
Oso Bay Tributary No. 3: Just upstream of Lexington Road	*12
Oso Bay Tributary No. 6:	
Approximately 160 feet above Acushnet Road	*20
Just downstream of U.S. Government Railroad	*24
Oso Creek Tributary No. 10: Just upstream of West Point Road	*32
Oso Creek Tributary No. 14: Just upstream of Texas Mexican Railroad	*46
Navigation Boulevard Drainage Ditch: Approximately 800 feet downstream of Old Brownsville Road	*27
State Highway 44 East Drainage Ditch: Just downstream of Hopkins Road	*40
State Highway 44 West Drainage Ditch: Approximately 1,650 feet downstream of Bronco Road	*44
Nueces River: Approximately 10,000 feet upstream of U.S. Highway 77	*15
Gulf of Mexico:	
Along shoreline at Bob Hall Pier	*11
Along shoreline at Fish Pass	*11
Nueces Bay:	
Nueces River at Missouri Pacific Railroad crossing	*14
At intersection of Nueces Bay Boulevard and West Broadway	*9
Laguna Madre: At intersection of Knicker bocker and Laguna Shores Boulevard	*9
Corpus Christi Bay:	
Along shoreline at seaplane ramps	*13
Along shoreline at seaside memorial cemetery	*14
Redfish Bay: Along shoreline at a point 3,000 feet north of Corpus Christi Channel	*11
Oso Bay: Along east shoreline just west of U.S. Naval Air Station	*14
Maps available for inspection at the City Hall, 302 South Shoreline, Corpus Christi, Texas.	
Lake Jackson, city, Brazoria County (FEMA Docket No. 6614)	
Bastrop Bayou:	
At most downstream corporate limits	*13
At first upstream corporate limits	*14
At second upstream corporate limits	*16
At confluence of Bastrop Bayou East and West Tributaries	*18
Bastrop Bayou West Tributary:	
At confluence with Bastrop Bayou	*18
At upstream corporate limits	*19
Bastrop Bayou East Tributary:	
At confluence with Bastrop Bayou	*18
At upstream corporate limits	*19
Brazos River:	
Approximately 3.4 miles upstream of downstream corporate limits	*13
At confluence of Buffalo Camp Bayou	*18
At upstream corporate limits	*21
Oyster Creek:	
At downstream corporate limits	*15
Upstream side of Willow Drive	*18
Upstream side of That Way	*22
At upstream corporate limits	*24

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps available for inspection at the Lake Jackson City Hall, 25 Oak Drive, Lake Jackson, Texas.	
Portland, city, San Patricio County (Docket No. FEMA-6625)	
Nueces Bay: Approximately 750 feet along Cliff Drive from the intersection of Cliff Drive and Moore Avenue	*14
Corpus Christi Bay: The point approximately 200 feet shoreward from the intersection of Markham Place and Shore Drive	*11
Maps available for inspection at City Hall, 900 Moore Avenue, Portland, Texas 78374.	
Richland Hills, City, Tarrant County (Docket No. FEMA-6625)	
Big Fossil Creek:	
Downstream of State Route 121	*505
Approximately 2,000 feet upstream of downstream corporate limits	*506
Upstream corporate limits	*509
Mackey Creek:	
Upstream of Baker Boulevard	*532
Upstream corporate limits	*534
Stream BF-5:	
Approximately 340 feet upstream of Big Fossil Creek Levee	*501
Upstream of Park Place Drive	*521
Upstream of Baker Boulevard	*541
Upstream of Brooks Avenue	*560
Downstream of Hardisty Street	*581
Stream BF-5A:	
Confluence with Stream BF-5	*508
Upstream of Park Place Drive	*520
Upstream of Baker Boulevard	*541
Stream BF-5B:	
Confluence with Stream BF-5	*501
Upstream of Allena Lane	*505
Downstream of Crites Street	*528
Calloway Branch:	
Downstream corporate limits	*549
Upstream corporate limits	*557
Stream WF-9:	
Downstream corporate limits	*515
Upstream of State Route 121	*527
Downstream of Bridges Avenue	*547
Maps available for inspection at the Richland Hills City Hall, 3200 Diana Drive, Fort Worth, Texas.	
Timbercreek Canyon, village Randall County (Docket No. FEMA-6625)	
Prairie Dog Town Fork of Red River:	
At downstream corporate limits	*3,417
Upstream side of Roberts Drive	*3,423
At upstream corporate limits	*3,427
Maps available for inspection at the Mayor's Office, Route 7, Box 4-5, Amarillo, Texas.	
VERMONT	
Manchester, town, Bennington County (Docket No. FEMA-6625)	
Batten Kill:	
Upstream side of Union Street	*682
Confluence of West Branch Batten Kill	*691
Upstream side of Depot Street	*700
Downstream side of Dufresne Dam	*704
West branch, Batten Kill:	
Confluence with Batten Kill	*691
Upstream side of Depot Street	*698
Downstream side of Dam	*720
Boum Brook:	
Confluence with Batten Kill	*687
Upstream side of Vermont Roadroad	*690
Upstream side of Richville Road	*701
Upstream side of Old Glen Road	*740
Approximately 80 feet upstream of U.S. Route 7	*747
Upstream side of Glen Road	*765
Maps available for inspection at the Office of David Durrell, Loning Administrator, Manchester, Vermont.	
CALIFORNIA	
Redding (city), Shasta County FEMA-6586	
Sacramento River: 50 feet upstream from center of Market Street	*489
Sulphur Creek: Intersection of Creek and Sulphur Creek Road	*522
Olney Creek: 15 feet upstream from center of Sacramento Drive	*458
Tributary to Churn Creek, Churn Creek:	
Intersection of Hartnell Avenue and Lawrence Road	*534
50 feet upstream from center of Hartnell Avenue	*511
Maps are available for inspection at Department of Planning, 760 Park View Avenue, Redding, California.	
FLORIDA	
City of Leesburg, Lake County (Docket No. FEMA-6592)	
Ponding Area, 07-3: Approximately 2,600 feet along Tally Road north of the intersection of Griffin Road and Tally Road, then approximately 50 feet northwest	*75
Ponding Area, 07-5: Approximately 400 feet northeast of State Highway 44A (Griffin Road) and Thomas Avenue intersection	*75
Ponding Area 07-7: Approximately 400 feet southwest of State Highway 44A (Griffin Road) and Thomas Avenue intersection	*75
Dyches Lake: Approximately 600 feet south of State Highway 44 (West Main Street), and State Highway 44A intersection	*80
Ponding Area Q2-1: Approximately 1,500 feet north of State Highway 468 and State Highway 44 (West Main Street) intersection	*78
Ponding Area Q3-2: Approximately 1,000 feet southwest of Dyches Lake	*79
Ponding area Q3-3: Approximately 10 feet southwest of State Highway 468 and State Highway 44 (West Main Street) intersection	*75
Ponding Area Q3-4: Northwest corner of State Highway 44 (West Main Street) and State Highway 44A (Griffin Road) intersection	*79
Ponding Area Q4-6: Approximately 3,500 feet southwest of State Highway 468 and Seaboard Coast Line Railroad intersection	*80
Lake Hollywood: Approximately 2,000 feet northwest of State Highway 468 and Seaboard Coast Line Railroad intersection	*75
Ponding Area K1-1: Approximately 700 feet southeast of State Highway 468 and Seaboard Coast Line Railroad intersection	*73
Ponding Area K1-2: Northwest corner of State Highway 468 and Seaboard Coast Line Railroad intesection	*75
Ponding Area K1-3: Northeast corner of Sumter Street and State Highway 29 (14th Street) intersection	*75
Ponding Area K4-1: Approximately 1,000 feet southeast of State Highway 44 (East Main Street) and State Highway 33 (Dixie Avenue) intersection	*66
Lake Lucerne: About 200 feet east of the intersection of Seminole Avenue and 12th Street	*71
Ponding Area G1-2: Approximately 500 feet northwest of Oak Drive and Gibson Street intersection	*70
Ponding Area G9-2: Approximately 400 feet north of Moss Street and Center Street intersection	*75
Maps are available for inspection at the City Hall, 504 West Orange, Leesburg, Florida.	
GEORGIA	
Unincorporated areas of Glynn County (FEMA-6553)	
Atlantic Ocean:	
At intersection of Oriole Street and Glynn Avenue	*17
At intersection of Kings Way and Demere Road	*15
At intersection of Sea Island Road and Kings Way	*14
At intersection of Sea Island Drive and Augustine Street	*14
Maps are available for inspection at the Office of the Director of the Brunswick-Glynn County Planning Commission, Old City Hall Building, Brunswick, Georgia 31520.	
OHIO	
(C) Whitehall, Franklin County (Docket No. FEMA-6526)	
Big Walnut Creek:	
Just upstream of Main Street	*766
Just downstream of Conrail	*781
Mason Run:	
About 0.25 mile downstream of Main Street	*776
About 0.08 mile upstream of Broad Street	*793
Maps are available for inspection at the Service Director's Office, 360 South Yearling Road, Whitehall, Ohio.	

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

Issued: February 12, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 85–4199 Filed 2–20–85; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 84–089]

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Great Lakes Pilotage Regulations. These amendments increase the basic pilotage rates by four percent in the U.S. Great Lakes pilotage system. These changes are made in order to increase the revenue received by the pilot organizations so that they may meet their operating costs.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke (G–MVP/12), Room

1210, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. (202) 426–2985.

SUPPLEMENTARY INFORMATION: The United States and Canada entered into a Memorandum of Arrangements regarding Great Lakes Pilotage (1977 being the most recent version) which incorporates, among other things, the provisions for the establishment and adjustment of joint or identical pilotage rates. The U.S. Coast Guard and the Canadian Great Lakes Pilotage Authority, Ltd. have agreed to a joint identical four percent rate increase in the international sections of the Great Lakes pilotage system to be implemented prior to the commencement of the 1985 navigation season on the Great Lakes. Under the "foreign affairs" exception of the Administrative Procedures Act (5 U.S.C. 553(a)(1)), a Notice of Proposed Rulemaking is not required. As this rate adjustment involves a foreign affairs function, only a Final Rule will be published setting forth the provisions of the agreed to four percent rate increase in Great Lakes Pilotage Rates.

U.S. pilots are private entrepreneurs, and as such, they must price their services so as to recover the costs of providing that service.

The Coast Guard has completed a review of revenues earned and expenses incurred by the three U.S. Great Lakes pilot organizations and has developed estimated revenue requirements. The sum of all operating costs, including administration, dispatching, pilot boats, pilot travel, pilot training, and target pilot compensation, form the total estimated revenue requirements. The guideline followed in the development of a pilot compensation figure is that the target compensation for U.S. pilots is to be comparable to the earnings of their licensed counterparts on U.S. Great Lakes vessels.

Traffic was also analyzed by reviewing traffic trends of prior years and by obtaining the views of interested persons including the pilots and the users of pilotage services. The number of vessels, their size, and route patterns for 1985 are expected to be similar to those in 1984.

The estimated revenue requirements taken in conjunction with projected traffic produce the basic rates required to enable the U.S. pilotage system to be self-supporting. Our analysis did not show uniform results throughout the system. These factors were considered thoroughly and in our negotiations with Canada we agreed to an identical 4% across the board rate increase in the international sectors of the system.

Evaluation

Although Executive Order 12291 does not apply to this regulation under the foreign affairs exception, the Coast Guard has nevertheless reviewed this regulation and has determined it to be non-major. This regulation is considered to be nonsignificant and, although not required, a regulatory evaluation has been prepared under the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 dtd 5–22–80). The DOT Order requires that each evaluation include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State, and local governments, as well as the anticipated benefits and impacts of the regulations. The estimated cost of this rule is $315,871. This figure is the amount of additional revenue the U.S. pilots should receive under this regulation based on the projected 1985 traffic and is the increased amount that shippers would have to pay for pilotage services on the Great Lakes. The benefit of this rule is the value of avoiding or minimizing costly delays and disruptions in shipping attributable to the failure to retain qualified pilots and to attract new qualified pilots. The overall efficiency and safety of the pilotage system is enhanced by having an appropriate number of pilots available to provide the required services. The regulatory evaluation from which this information is taken has been included in the pubic docket and can be obtained from the Marine Safety Council (G–CMC/21)(CGD 84–089), U.S. Coast Guard, Washington, D.C. 20593.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) requires an initial regulatory flexibility analysis for regulations having a significant economic impact on a substantial number of small entities. The pilotage fees in question account for less than five percent of the total shipping cost and will not have a significant impact on the shipping industry. Pursuant to section 605(b) of the Act, it is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

In the development of this rate adjustment, U.S. and Canadian shipping associations and pilots organizations were consulted.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Merchant Marine Safety, and Lieutenant Commander Ronald C. Zabel, Project Attorney, Office of the Chief Counsel.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Reporting and recordkeeping requirements, Seamen.

PART 401—[AMENDED]

In consideration of the foregoing, Part 401 of Title 46 of the Code of Federal Regulation is amended as follows:

1. The authority citation for Part 401 is revised to read as follows and all other authority citations within this part are removed:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46a.

2. Section 401.405 is revised to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) District 1:

(1) For passage through the District or any part thereof, $9.13 for each statute mile, plus $122 for each lock transited, but with a minimum basic rate of $266 and a maximum basic rate for a through trip of $1,170.

(2) For a movage in any harbor, $401.

(b) District 2:

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $623.

(2) Between points on Lake Erie west of Southeast Shoal, $368.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, $1,085.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $623.

(5) Southeast Shoal to Detroit Pilot Boat, $451.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, $1,257.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $809.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $623.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $368.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, $816.

(11) Detroit Pilot Boat to any point on the St. Clair River, $816.

(12) Detroit Pilot Boat to Port Huron Change Point, $634.

(13) Between points on the St. Clair River, $368.

(14) Port Huron Change Point to any point on the St. Clair River, $451.

(c) District 3:

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1,065.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $893.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $401.

(4) For a movage in any harbor, $401.

3. Section 401.410 is amended by revising paragraphs (a) and (b) to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario, $215.

(2) In Lake Erie, $266.

(3) In Lakes Huron, Michigan and Superior, $215.

Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of $205.

(b) Between Buffalo and any point on the Niagara River below the Black Rock Lock, $523.

* * * * *

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $34 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $532 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under §401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $34 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $532 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $201;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $34 for each hour or part of an hour including the first hour, with a maximum basic rate of $532 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $205 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

Dated: February 14, 1985.

Clyde T. Lusk, Jr.,

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

[FR Doc. 85-4223 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 84-749; FCC 85-50]

Air-Ground Stations in the Public Land Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Frequency 459.675 MHz, previously unassigned, is assigned for use as a signaling frequency in the Public Air-Ground Radiotelephone Service. Use of this frequency in conjunction with its paired frequency, 454.675 MHz, will allow implementation of an automated signaling system for air-ground service.

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Kelly Cameron, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers.

Report and Order (Proceeding Terminated)

In the matter of amendment of Part 22 of the Commission's Rules and Regulations Governing Air-Ground Stations in the Public Land Mobile Service; CC Docket No. 84-749.

Adopted January 30, 1985.

Released February 6, 1985.

By the Commission.

1. By a Notice of Proposed Rulemaking (Notice) in this docket, FCC 84-352, released July 31, 1984, the Commission proposed to assign frequency 459.675 MHz as a signaling channel for radio communications with airborne stations.[1] We found that the proposed assignment would make possible the development and implementation of an automated signaling system for air-ground radiotelephone service. We stated our belief that this would benefit the public by making air-ground service more efficient and less costly. We therefore

[1] The NPRM also denied a petition filed by Denver Telephone Answering Service, Inc., requesting that the currently assigned signaling channel, 454.675 MHz, be made available for shared use.

proposed to amend our rules to provide for the assignment of 459.675 MHz as a signaling channel in the air-ground service. We invited comments on this proposal and specifically requested comments on whether we should take any further action to ensure that the proposed signaling system would be compatible with existing equipment and whether we should specify a signaling format.

2. In response to the Notice, we received comments from six parties.[2] All of the commenters supported the proposed assignment. Four of the commenters addressed our concern that any automated signaling system should be compatible with existing manually-operated equipment. Three of these parties—National Business Aircraft Association, Inc., Rockwell International of Canada, Ltd./Wescom Canada Division and Wulfsberg Electronics, Inc.—have assured us that the proposed automated system is fully compatible with existing equipment. They therefore urge that we not prescribe a signaling format but that we allow the marketplace to determine what format is most appropriate. Wulfsberg also notes that the system it manufactures is the only one currently available. The Operating Telephone Companies (OTC) urge us to propose minimum technical standards which clearly evidence compatibility between automated and manual systems. OTC does not specify, however, what type of standards we should propose.

Discussion

3. We conclude that the proposed assignment would serve the public interest by making air-ground service more efficient and less costly. Accordingly, we are adopting the final rule set out in Appendix B.[3] In light of the comments, we do not believe that further technical standards are necessary. Our concern that the proposed automated signaling system might not be compatible with existing manually-operated equipment appears to have been unfounded. All but one of the commenters opposed the adoption of technical standards. The only commenter urging us to impose technical standards, OTC, has not suggested what these standards should be. Nor has OTC demonstrated convincingly that regulatory action is necessary. Thus, the development of standards would needlessly delay the initiation of automated air-ground service. In addition, as Wulfsberg appears to be the only manufacturer of terminal equipment for the proposed automated system, *de facto* technical standards will be established for later entrants. As we have already noted, Wulfsberg has assured us that its equipment is compatible with existing equipment. In sum, it has not been shown that the public interest requires the imposition of technical standards, particularly when this would delay the initiation of this valuable new service. However, should subsequent developments indicate that the public interest requires that technical standards be adopted, we will, of course, entertain a petition for rulemaking requesting such action.

Regulatory Flexibility Act—Final Analysis

4. The rule assigns an additional frequency to the Public Air-Ground Radiotelephone Service for use as a signaling frequency. The rule is needed to allow the implementation of an automated signaling system. No report or recordkeeping requirements are imposed by the rule.

5. *Issues raised by the public in response to the Initial Analysis.* None.

6. *Alternatives that Would Lessen Impact.* None.

7. Authority for this rulemaking is contained in sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

8. Accordingly, it is ordered, that Part 22 of the Commission's Rules and Regulations is amended as specified in Appendix B, effective immediately upon publication in the **Federal Register**.

9. It is further ordered, that the above-captioned proceeding is hereby terminated.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Aircraft Owners and Pilots Association
Business and Commercial Aviation Magazine
National Business Aircraft Owners Association, Inc.
Operating Telephone Companies
Rockwell International of Canada, Ltd./Wescom Canada Division
Wulfsberg Electronics, Inc.

Appendix B

PART 22—[AMENDED]

47 CFR Part 22 is amended as follows:

1. Section 22.521 is amended by revising paragraph (a)(2) to read as follows:

§ 22.521 Air-ground radiotelephone service.

* * * * *

(a) * * *

(2) Frequencies 454.675 MHz and 459.675 MHz are to be associated with each base/mobile pair listed for use in signaling, including automatic signaling.

* * * * *

[FR Doc. 85-4225 Filed 2-20-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

[Docket No. 41036-4136]

Fisherman's Protective Act Procedures

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

ACTION: Interim rule; extension of comment period.

SUMMARY: NOAA extends the comment period for another fifteen days for the Fisherman's Protective Act interim rule. The interim rule revises administration of the Fisherman's Guaranty Fund under section 7 of the Fisherman's Protective Act of 1967. The comment period for the interim rule ended on February 6, 1985.

EFFECTIVE DATE: Comments will be accepted until March 8, 1985.

ADDRESSES: Send comments to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven St., NW., Page Building 2, Room 309, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper (Program Leader, NMFS), 202-634-4688.

Dated: February 14, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 85-4264 Filed 2-20-85; 8:45 am]

BILLING CODE 3510-22-M

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[2] A list of the commenting parties is attached to this Report and Order as Appendix A.

[3] Several of the commenters observed that our Proposed Rule inadvertently failed to specify that 459.675 MHz is being assigned for use as a signaling channel. We are therefore modifying our Proposed Rule to clarify this point as the commenters have suggested.

Proposed Rules

Federal Register
Vol. 50, No. 35
Thursday, February 21, 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

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 84-094]

Horses From CEM Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the treatment and testing of stallions and mares over 731 days of age for importation into the United States from countries where contagious equine metritis (CEM) exists. The regulations currently require that a salaried veterinary officer of the national government of the country of origin supervise certain treatment and specimen collection for stallions and mares and that the veterinarian sign a certificate indicating such supervision. It is proposed to allow veterinarians authorized by the National Veterinary Services of the country of origin, in addition to salaried veterinarians of the National Veterinary Services of the country of origin, to supervise such treatment and specimen collection. It is further proposed that, if the certificate is signed by a veterinarian authorized by the National Veterinary Services of the country of origin, that the certificate be endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so. This action appears necessary because it has been determined that supervision of the treatment and testing by veterinarians authorized by the National Veterinary Services of the country of origin and subsequent endorsement by a salaried veterinarian of the National Veterinary Services of the country of origin would be adequate to help ensure that such horses are free from CEM without imposing an unwarranted burden on the animal health authority of the country of origin.

DATE: Written comments must be received on or before April 22, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. A.A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases.

Section 92.2(i) of the regulations, among other things, authorizes the importation of certain stallions and mares over 731 days of age into the United States from countries affected with contagious equine metritis (CEM) if specific requirements to prevent their introducing CEM into the United States are met, and if the animals imported are moved into approved States for further inspection, treatment, and testing.

With respect to stallions over 731 days of age imported for permanent entry, the regulations in § 92.2(i)(2)(iv) require, among other things, that certain scrubbing, packing and collection of specimens be conducted in the country of origin under the supervision of a salaried veterinary officer of the national government of the country of origin. The regulations in § 92.2(i)(2)(iv) also require that compliance with these requirements be reflected on the certificate acompanying the stallions and that the certificate be signed by the salaried veterinary officer who supervises the scrubbing, packing and collection of specimens.

With respect to mares over 731 days of age, the regulations in § 92.2(i)(2)(v) require, among other things, that certain surgery, topical treatment, and specimen collection be conducted in the country of origin under the supervision of a salaried veterinary officer of the national government of the country of origin. The regulations in § 92.2(i)(2)(v) also require that compliance with these requirements be reflected on the certificate accompanying the mares and that the certificate be signed by the salaried veterinary officer who supervises the surgery, topical treatment, and specimen collection.

This document proposes to amend the regulations by providing that the supervisory activities for stallions and mares required by § 92.2(i)(2) (iv) and (v) shall be allowed to be conducted either by a salaried veterinarian of the National Veterinary Services of the country of origin or by any veterinarian who is authorized to do so by the National Veterinary Services of the country of origin. Further, it is proposed to provide that the certificate must be signed by the veterinarian conducting the supervisory activities to indicate the supervision. It is further proposed that if the person conducting the supervisory activities is not a salaried veterinarian of the National Veterinary Services of the country of origin, that the certificate must be endorsed by a salaried veterinary officer of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so.

It appears that the supervisory activities could be adequately done by any veterinarian who is authorized by the National Veterinary Services of the country of origin to supervise the activities required by the regulations, in addition to any salaried veterinarian of the National Veterinary Services of the country of origin. In order to ensure that any veterinarian signing the certificate is authorized to do so, it appears necessary to require that the certificate be endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin. It appears that such certification would be adequate to help ensure that such horses are free from CEM without imposing an unwarranted burden on the animal health authority of the country of origin.

It should be noted that the term "salaried veterinary officer of the national government of the country of origin" would be amended by this document to read "salaried veterinarian

of the National Veterinary Services of the country of origin." This amendment is proposed to more clearly identify the category of individuals who may perform the function involved.

It should also be noted with respect to stallions and mares from CEM countries that pursuant to § 92.4 (a)(5) and (a)(8), permits are issued only if the horses are consigned to States which are approved by the Deputy Administrator to receive such horses. The requirements for such approval are set forth in § 92.4. These requirements include, among other things, quarantine, further treatment, and handling provisions. The requirements in § 92.4, in combination with the proposed certification requirements, appear adequate to ensure that horses from CEM countries imported into the United States pursuant to the regulations do not present a risk of introducing CEM into the United States.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that this amendment would not have any significant effect on the number of horses imported into the United States or on the cost of importing these animals.

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

§ 92.2 [Amended]

Accordingly, it is proposed to amend 9 CFR 92.2 as follows:

1. In paragraph (i)(2)(iv) of § 92.2 "signed by a salaried veterinary officer of the national government of the country of origin" would be changed to "either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so,"

2. In paragraph (i)(2)(iv)(A) of § 92.2 "veterinary officer" would be changed to "veterinarian".

3. In paragraph (i)(2)(iv)(B) of § 92.2 "veterinary officer" would be changed to "veterinarian".

4. In paragraph (i)(2)(v)(A)(*2*) of § 92.2 "signed by a salaried veterinary officer of the national government of the country of origin" would be changed to "either signed by a salaried veterinarian of the National Veterinary Services of the country of origin or signed by a veterinarian authorized by the National Veterinary Services of the country of origin and endorsed by a salaried veterinarian of the National Veterinary Services of the country of origin, thereby representing that the veterinarian signing the certificate was authorized to do so,"

5. In paragraph (i)(2)(v)(A)(*2*)(*i*) of § 92.2 "the salaried veterinary officer of the national government of the country of origin" would be changed to "the veterinarian signing the certificate".

Authority: Sec. 203, 60 Stat. 1087, as amended; secs. 6, 7, 8, 10, 26 Stat. 416, 417, as amended; sec. 2, 32 Stat. 792, as amended; sec. 306, 46 Stat. 689, as amended; secs. 2, 3, 4, 5, 11, 76 Stat. 129, 130, 132; sec. 1, 84 Stat. 202; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 14th day of February 1985.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–4280 Filed 2–20–85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 112

[Docket No. 84–090]

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would update and clarify the regulations governing labeling of products involving subsidiaries, distributors, and permittees by removing certain restrictions and revising current language regarding the label requirements. The proposed revision would also amend the label requirements for products imported for research and evaluation. The purpose of the proposed amendments is to remove undue restrictions and to simplify the labeling procedures for products to be evaluated in small scale laboratory studies.

DATE: Comments must be received on or before April 22, 1985.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Buildings, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David F. Long, Chief Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 834, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8674.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This proposed rule contains no new or amended recordkeeping, reporting or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The proposed rule would not have significant effect on the economy and would not result in a major increase in

costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action would not result in an adverse economic impact on a substantial number of small entities. Small entities are defined as independently owned firms not dominant in the field of veterinary biologics manufacturing.

Background

The regulations in 9 CFR 112.4(a) governing labeling of products prepared by subsidiaries operating in licensed establishments contain language which limits such subsidiaries to "domestic subsidiaries." Such limits are unduly restrictive. Therefore, the word "domestic" would be deleted.

Sometimes licensees established marketing units which are known as divisions. The only reference to label provisions for divisions is contained in the definition in 9 CFR 101.2(z). No reference is made to divisions in 9 CFR 112.4 which deals with requirements for labels. A new § 112.4(b) is proposed to provide for labeling requirements which prescribe the placement of the division name in relationship to the name, address, and license number of the licensee. Accordingly, to maintain continuity current § 112.4 (b) and (c) are proposed to be redesignated as (c) and (d).

The regulations in 90 CFR 102.4(b)(3) and 112.1(a) specify that labeling must not be false or misleading in any particular. The Department reviews and approve each label used on licensed biological products to ensure that it complies with the Act and the regulations. When the regulations in 9 CFR 112.4 (b) and (c) were adopted, restrictions on the method of placement of permittee and distributor names and addresses were intended to avoid false and misleading information regarding the identity of the manfacturer. Section 112.4(b) of the regulations restricts label reference to the distributor to name and address only. Also, permittees are allowed to be referred to by name, address, and permit number only [9 CFR 112.4(c)]. Administration and enforcement of these provisions has become increasingly difficult because of the desire of some producers and distributors to use trade names, special package designs, and logos on their product packaging. While some of these label designs and logos could create a false and misleading impression as to the actual producer, others may not do so. Therefore, this proposed revision of 9 CFR 112.4 would accommodate acceptable producer-distributor/permittee arrangements and would prohibit only those labels containing information, trade names, designs, or logos which are determined by the Department's reviewers to be false and misleading or which otherwise do not comply with the Act and the regulations. In order to ensure that manufacturers are clearly identified, this revision would codify the practice of including the words "manufactured by," "product by," or an equivalent term placed in connection with the name, address, and license number on distributor labels. The same words would be used in connection with the name and address of the manufacturers of products imported for sale and distribution by the permittee under the provisions of 9 CFR 104.5.

Title 9, CFR 112.9(a) requires that the statement "Notice! For Experimental Use Only-Not For Sale!" appear on labels for all products imported for research and evaluation under the provisions of 9 CFR 104.4. This requirement is considered to be unnecessary in the case of products imported in small quantities for evaluation by the permittee and for samples of previously exported products returned to licensed establishments for testing under the provisions of 9 CFR 104.4(d). However, the warning is very important on labels of products to be shipped for evaluation in laboratory or field trails as provided in 9 CFR 103.3. Therefore, this proposed amendment would only retain the present 9 CFR 112.9(a) labeling statement, "Notice! For Experimental Use Only—Not For Sale!" in the case of imported products which would be distributed for evaluated under the provisions of 9 CFR 103.3.

Title 9 CFR 112.9(a) also requires a dosage table for each product imported for research and evaluation. This requirement is considered to be unnecessary because numerous products, such as diagnostics, are not administered to animals and, therefore, have no recommended dose. The requirement that full instructions be provided with all products would ensure proper dosage information, where appropriate. Therefore, reference to the dosage table is proposed to be deleted.

List of Subjects in 9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and Containers, Transportation.

PART 112—PACKAGING AND LABELING

Section 112.4 would be revised to read:

112.4 Subsidiaries, division, distributors, and permittees.

Labels used by subsidiaries, divisions, distributors, and permittees shall comply with requirements for review, approval, and filing of labels used for licensed biological products distributed and sold by licensees and as provided in this section.

(a) *Subsidiaries.* Labels to be used on a licensed biological product prepared by a subsidiary operating in a licensed establishment shall be submitted in accordance with § 112.5. Only labels approved for use on such product shall be used by the subsidiary.

(b) *Divisions.* Labels to be used on a licensed biological product prepared in a licensed establishment for distribution by a division or marketing unit of the licensee shall be submitted in accordance with § 112.5. The name, address, and license number of the licensee shall be prominently placed on such labels. The relationship of the division or marketing unit to the licensee shall appear prominently on the label by use of the term "division of" or equivalent.

(c) *Distributors.* The name and address of the distributor or any statement, design, or device shall not be placed on the labels or containers of a licensed biological product in a manner which could be false or misleading or which could indicate that the distributor is the manufacturer of such product or operating under the license number shown on the label. The manufacturer shall be identified by name, address, and license number with the term "manufactured by," "produced by," or an equivalent term prominently placed in connection therewith. The name and address of the distributor may be placed on labels or containers if the term "distributor," or "distributed by," or an equivalent term is prominently placed in connection therewith.

(d) *Permittees.* The name and address of the permittee and any statement, design, or device shall not be placed on the labels or containers of a biological product imported for sale and distribution in accordance with § 104.5 in a manner which could be false or misleading or which could falsely

indicate that the permittee is the manufacturer of such product. The manufacturer shall be identified by name and address with the term "manufactured by," "produced by," or an equivalent term prominently placed in connection therewith. Reference to the permittee shall be made by name, address, and permit number with the term "imported by," "produced for," or an equivalent term prominently placed in connection therewith.

Section 112.9 would be revised to read:

§ 112.9 Biological products imported for research and evaluation.

A biological product imported for research and evaluation under a permit issued in accordance with § 104.4, with the exception of products imported under § 104.4(d), shall be labeled as provided in this section.

(a) The labels shall identify the product and the name and address of the manufacturer and shall provide instructions for proper use of the product, including all warnings and cautions needed by the permittee to safely use the product.

(b) Labels on each product to be further distributed in accordance with § 103.3 shall bear the statement "Notice! For Experimental Use Only—Not for Sale!"

(c) The labeling shall contain any other information deemed necessary by the Deputy Administrator and specified on the permit. (37 Stat. 832–833 (21 U.S.C. 151–158))

Done at Washington, D.C., this 15th day of February, 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–4208 Filed 2–20–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations to provide for the release of notice of charges issued by it in administrative enforcement proceedings, as well as final orders resulting from such proceedings.

DATE: Comments must be received by March 25, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. Comments may be hand delivered to and reviewed at Room 6108 between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Walter P. Doyle, Counsel, Legal Division, (202–389–4151), Room 4023G, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Pursuant to a policy statement proposed for comment published in the notices section of this issue FDIC would initiate a policy of publishing the names of all parties to final orders resulting from administrative enforcement actions brought by it and making copies of such orders available to the public. FDIC also proposes, in its discretion, to make available to the public the notices of charges initiating such actions. This proposed rulemaking would make a necessary conforming amendment to Part 309 of FDIC regulations to reflect the substantive policy changes contained in the proposed policy statement as it relates to publishing notices of charges. Final orders are already covered by § 309.4(b)(1).

The FDIC is limiting the comment period on this proposed rulemaking to 30 (rather than the usual 60) days in order to coincide the comment period hereunder with that provided for in the proposed statement of policy related hereto.

In accordance with the Regulatory Flexibility Act, the Board of Directors certifies that the rule would not have a significant economic impact on a substantial number of small entities. The amendment to Part 309 relates to the public disclosure of information by the FDIC.

There are no paperwork requirements in this rule, and, consequently, the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 12 CFR Part 309

Authority delgations, Disclosure requirements, Freedom of information, Privacy.

PART 309—DISCLOSURE OF INFORMATION

For the reasons set forth above, the FDIC hereby proposes to amend Part 309 of Title 12 of the *Code of Federal Regulations* as follows:

1. **Authority:** Sec. 2[9 "Seventh" and "Tenth"], Pub. L. No. 797, 64 Stat. 881 as amended by title III, sec. 309, Pub. L. No. 95–630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth"); 5 U.S.C. 552.

2. It is proposed that the following new paragraph (c)(4) be added to § 309.4:

§ 309.4 Publicly available information:

* * * * *

(c) * * *

(4) At the FDIC's discretion, copies of notices of charges or assessments or similar notices initiating proceedings within the scope of § 308.03.

By Order of the Board of Directors this 11th day of February 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–3908 Filed 2–20–85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–2]

Proposed Alteration of VOR Federal Airway V–460; San Diego, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Federal Airway V–460 by extending it from Mission Bay, CA, to Julian, CA. This action would reduce air traffic controller workload by eliminating the need for radar vectoring of traffic circumnavigating the Naval Air Station (NAS) Miramar traffic flows.

DATES: Comments must be received on or before March 27, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWP–2, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWP-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V-460 by extending it from Mission Bay, CA, to Julian, CA. This action would eliminate unnecessary vectoring of traffic to avoid the NAS Miramar traffic flows. Additionally, east and northeast departures from the San Diego area would utilize this routing and avoid the NAS Miramar arrivals. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

VOR Federal airways, aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V-460 [Amended]

By removing the words "From Poggi, CA, via Julian, CA;" and substituting the words "From Mission Bay, CA; INT Mission Bay 091°T(076°M) and Julian, CA, 185°T(170°M) radials; Julian;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65))

Issued in Washington, D.C., on February 12, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-4268 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ANM-30]

Proposed Alteration of VOR Federal Airway V-142 and Establishment of Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend VOR Federal Airway V-142 by extending it from Malad City, ID, to Twin Falls, ID, and designate additional controlled airspace between Burley, ID, and Ogden, UT. This will allow more flexibility by providing more direct routing and better utilization of radar capabilities and available navigable airspace.

DATES: Comments must be received on or before March 27, 1985.

ADDRESSES: Send comments to the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-30, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in

triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 and § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V-142 by extending it from Malad City, ID, to Twin Falls, ID, and designate additional controlled airspace between Burley, ID, and Ogden, UT. This will allow more flexibility by providing more direct routing and better utilization of radar capabilities and available navigable airspace. Sections 71.123 and 71.163 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, additional control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 and § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.123

V-142 [Amended]

By removing the words "From Malad City, ID," and substituting the words "From Twin Falls, ID, via INT Twin Falls 115°T(097°M) and Malad City, ID, 242°T(225°M) radials; Malad City;"

§ 71.163

Burley, ID [New]

That airspace extending upward from 1,200 feet above the surface bounded on the northeast by V-101; southeast by V-465; on the southwest by V-484; on the northwest by a line 14 miles southeast of and parallel to the Burley, ID, VORTAC (lat. 42°34'49" N., long. 113°51'54" W.) 223°T(206°M) radial extending from the northeast edge of V-484 to the southwest edge of V-101; and excluding the airspace of V-142.

Ogden, UT [New]

That airspace extending upward from 8,500 feet MSL above the surface bounded on the northeast by V-101 and the Ogden, UT, 1,200 foot transition area; on the south by V-288; on the southwest by V-484; on the northwest by V-465.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on February 12, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-4267 Filed 2-20-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. 33-6566; File No. S7-38-84]

Request for Comments; Providing Safe Harbor for Certain Types of Annuity Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission today announced that it has extended from February 15 until April 15, 1985, the date by which comments on Securities Act Release No. 33-6558 (November 21, 1984) regarding certain types of annuity contracts [49 FR 46750, November 28, 1984] must be submitted. The Commission has received a request that the comment period be extended and believes that an extension of time until April 15, 1985, will be beneficial since it will result in the receipt of additional useful comments.

DATE: Comments must be received on or before April 15, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 (Reference to File No. S7-38-84). All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Karen L. Skidmore, Attorney (202) 272-3017, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 33-6558, the Commission requested written comments on proposed rule 151, which would provide a safe harbor under section 3(a)(8) of the Act for certain types of annuity contracts. The American Council of Life Insurance ("ACLI"), an insurance industry representative, has requested that the comment period on the proposed rule be extended. In view of this request and in order to receive the benefit of comments from the greatest number of interested persons, the Commission has extended the comment period for Securities Act Release No. 33-6558 from February 15, until April 15, 1985.

By the Commission.
John Wheeler,
Secretary.
February 15, 1985.
[FR Doc. 85-4293 Filed 2-20-85; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 146

[Docket No. 84N-0404]

Concentrated Blackcurrent Juice; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 85-1888 beginning on page 3535 in the issue of Friday, January 25, 1985, make the following corrections:

1. The docket number in the heading was incorrect. It should read as set forth above.

2. On page 3538, in the first column, the ninth line should read "oils/kg."

BILLING CODE 1505-01-M

21 CFR Part 146

[Docket No. 84N-0403]

Nectars of Certain Citrus Fruits; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 85-1884 beginning on page 3538 in the issue of Friday, January 25, 1985, make the following correction on page 3541:

In the first column, in paragraph "19", in the last line, "mg/kg" should read "mg iron/kg".

BILLING CODE 1505-01-M

21 CFR Part 146

[Docket No. 84N-0406]

Non-Pulpy Blackcurrant Nectar; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 85-1889 beginning on page 3541 in the issue of Friday, January 25, 1985, make the following corrections:

1. On page 3543, in the middle column, in paragraph "1.", "IJU" should read "IFJU" in both cases.

2. On page 3544, in the first column, footnote 4 to paragraph "24." was omitted. The footnote reads:

[4] Temporarily endorsed pending consideration by the IFJU Working Group of AAS method (AOAC, 1975, 25.143-25.147) for general use in fruit juices.

BILLING CODE 1505-01-M

21 CFR Part 146

[Docket No. 84N-0405]

Blackcurrant Juice; Advance Notice of Proposed Rulemaking on the Possible Establishment of a Standard

Correction

In FR Doc. 85-1883 beginning on page 3533 in the issue of Friday, January 25, 1985, make the following corrections:

1. On page 3534, in the first column, in "2.2", *"Sugar."* should read *"Sugars."*

2. On the same page, in the third column, in "7.8", in the sixth line, "or" should read "of".

BILLING CODE 1505-01-M

21 CFR Part 606

[Docket No. 85N-0070]

Agency Collection of Information Under Review by the Office of Management and Budget (OMB)

AGENCY: Food and Drug Administration.
ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to issue notices of proposed rulemaking for changes in the collection of information requirements contained in the agency's current good manufacturing practices for blood and blood components regulations at 21 CFR Part 606. This notice is required by 5 CFR 1320.14(f).

FOR FURTHER INFORMATION CONTACT: Steve Falter, Center for Drugs and Biologics (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: On August 28, 1984, FDA submitted to the Office of Management and Budget (OMB) for clearance the existing recordkeeping and reporting requirements contained in the agency's current good manufacturing practices for blood and blood components regulations found in 21 CFR Part 606.

On November 26, 1984, OMB notified FDA through the Department of Health and Human Services of its decision to request the agency to initiate proposals for change in the collection of this information. OMB has extended its approval for this collection of information under OMB control number 0910-0116 through December 1985. FDA is developing notices of proposed rulemaking that would reduce or eliminate unnecessary burdens in these regulations. Publication of this notice is required by OMB regulations, 5 CFR 1320.14(f).

List of Subjects in 21 CFR Part 606

Blood, Reporting and recordkeeping requirements.

Dated: February 14, 1985.
Mervin H. Shumate,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 85-4192 Filed 2-15-85; 3:47 pm]
BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2780-6]

Approval and Promulgation Florida; Lead Implementation Plan

AGENCY: Environmental Protection Agency.
ACTION: Proposed rule.

SUMMARY: Pursuant to Section 110 of the Clean Air Act and the National Ambient Air Quality Standard (NAAQS) for lead, the State of Florida, submitted to EPA a State Implementation Plan (SIP) for lead. On November 30, 1983.(48 FR 56406), EPA proposed to approve the plan subject to the correction of several deficiencies. Florida submitted a revised plan on September 17, 1984. EPA today proposes to disapprove the regulatory portion of the revised plan, approve all other portions of the State's submittal, and to promulgate Federal source-specific emission limitations for the lead stationary sources in Florida identified as having a potential to violate the lead NAAQS. Prior to final promulgation, EPA will hold a public hearing in Tampa, Florida, to obtain comments on its proposed action. The hearing is scheduled for Thursday, March 28, 1985, at 10 a.m. at the Hillsborough County Office, 190 Ninth Avenue, Tampa, Florida.

DATE: To be considered, comments must reach us on or before April 22, 1985.

ADDRESSES: Written comments should be addressed to Ms. Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below).

Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NW., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301

EPA Central Docket Section, West Tower Lobby, Gallery I, A–130, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Ms. Kelly S. McCarty, EPA Region IV, Air Management Branch, at the above listed address and phone 404/881–3286, or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On October 5, 1978 (43 FR 46246), EPA promulgated the NAAQS for airborne lead. Under the provisions of section 110(a)(1) of the Clean Air Act, each state is required to submit a SIP which provides for implementation, maintenance, and enforcement of the primary and secondary NAAQS's within the state. The primary and secondary standard for lead is 1.5 $\mu g/m^3$, averaged over a calendar quarter.

Today's action is in response to a court-ordered schedule resulting from a Settlement Agreement reached on July 26, 1983, betweeen EPA and the Natural Resources Defense Council, Inc. (NRDC) in litigation concerning the completion of lead SIPs for a number of states, (*NRDC* v. *Ruckelshaus*, (D.D.C.) No. 82–2137). The schedule called for certain states, including Florida, to submit SIPs for lead to EPA by August 1, 1984, or in time for EPA to propose action on the submittal by January 1, 1985.

On October 31, 1983, the Florida Department of Environmental Regulation (EDER) submitted a lead SIP to EPA for parallel processing. EPA proposed to approve the SIP on December 21, 1983 (48 FR 56406), with the understanding that FDER would corrrect several deficiencies. Comments were submitted to EPA on its proposal, as well as to the State on its proposal. All of these comments were addressed by the FDER, and the lead SIP was revised. These changes included revision of the emissions inventory and control strategy. FDER submitted the revised lead SIP to EPA on September 17, 1984. The State of Florida's submission all the necessary supporting material consistent with the requirements of 40 CFR Part 51, including an appropriate emissions inventory, modeling analysis, and demonstration of attainment; however, it does not include enforceable laws or regulations to implement the specific measures necessary to assure attainment and maintenace of the lead NAAQS around certain stationary sources of lead. Such enforceable measures are required by section 110(a)(2)(B) of the Act, and EPA's regulations governing the preparation, adoption and submission of implementation plans. (*See* 40 CFR 51.22 and 51.87 (1984)). Therefore, EPA is disapproving the regulatory portion of the State's submittal, approving all other aspects of the FDER submittal, and proposing federal source-specific emission limitations based upon the supporting material submitted by the State of Florida. Following is a discussion of the supporting material submitted by Florida that is the basis for the source-specific emission limitations being proposed today by EPA pursuant to section 110(c) of the Clean Air Act.

Analyses were performed for areas which are not in the vicinity of lead point sources but have exceeded the standard since 1974, as shown by monitoring. Automobiles are the major contributors to lead emissions in these areas. Federal regulations that limit the lead content of gasoline have resulted, and will continue to result, in a gradual decrease in lead emissions. Depending on the lead air concentration in the base (historic) year, it is possible for such areas to attain the lead standard solely due to these Federal regulations. Based on this, and information about past and projected gasoline usages, and assuming that lead concentrations decrease proportionally with automotive lead emissions, EPA has calculated critical lead concentrations for several base and attainment years. These were published in a July, 1983, draft report entitled *Updated Information on Approval and Promulgation of Lead Implementation Plans*. If the highest lead concentration for a given base year/attainment year combination is less than the critical value for that combination, EPA assumes that the standard will be attained by that attainment year. In each of the areas analyzed, the quarterly lead concentrations were below EPA's critical values and should be well below the standard by 1985. All of the data showed attainment of the standard in 1982, except one site in Duval County. Measured air quality data submitted with the plan (1974 to present) showed a violation in 1982 in Duval County caused by automobile emissions. This site showed attainment by 1983 using the modified rollback technique described in Appendix F of the above report, and information from 1982 and 1983 refinery lead usage reports submitted to EPA (as described in the Technical Support Document).

The submittal also contains a control strategy that depends on source-specific emission limits, and the Federal lead in gasoline phase-down program, to attain and maintain the NAAQS. The plan proposes to apply source-specific regulations to three battery manufacturing plants and three secondary lead smelters. Sources in these categories have to be specifically addressed in the SIP if actual emissions exceed five tons per year. The emission inventories contained in the proposed plan show that all but one of these sources had actual emissions in the 1982 base year of less than the significance level of five tons a year, but were formally permitted at levels that modeling showed could cause exeedances of the lead standard.

EPA's review of the modeling submitted by the State in their original submittal of October 31, 1983, revealed certain discrepancies (see the proposal of December 21, 1983, 48 FR 56406); these have been corrected in the submittal of September 17, 1984. To correct the plan, the State used the appropriate meteorological data and changed the emission inventory to distinguish process and fugitive emission points, also, a new modeling analysis was performed and the control strategy was adjusted on the basis of that analysis. Further details pertaining to these corrections and other technical aspects of this plan are contained in the Technical Support Document available for public inspection at EPA's Regional Office in Atlanta, Georgia, and at EPA Headquarters in Washington, D.C.

The currect attainment demonstration shows that the revised source-specific regulations will result in the attainment and maintenence of the lead standard in the areas that the sources impact. Stationary sources were modeled at their allowed emission limits using the Industrial Source Complex (ISC) air quality model in its long term mode (ISCLT).

In addition, the State has committed to operating a lead monitoring network in accordance with 40 CFR Part 58. The public may inspect the description of the monitoring network for lead at the FDER address listed above.

Although FDER has the ultimate responsibility and authority for the lead SIP, certain activities have been delegated to local air pollution control agencies. All these local agencies are responsible for monitoring and some are also responsible for permitting and enforcement.

The revised SIP, as discussed earlier, contains one significant deficiency. It does not include legally enforceable measure establishing specific emission limitations on certain sources of lead in Florida. The State has indicated that they want to promulgate source-specific regulations, but that this approach will take them a considerable amount of time. In the meantime the State does not want to sumit individual State operating permits for the six affected sources as part of the lead SIP. Under the court-ordered schedule in the NRDC litigation concerning completion of the various lead imlementation plans, EPA was supposed to take final action on the Florida lead SIP by August 1, 1984. If EPA's final action was to disapprove the SIP, it was supposed to propose a Federal implementation plan (FIP) for the State by October 1, 1984. Since the State of Florida was making a number of revisions to its original SIP submittal, EPA deferred action on its original proposal. In light of the various changes to the SIP submittal, EPA subsequently concluded that it would be necessary to repropose action on this plan. EPA and NRDC have been discussing an extension of time for completion of action on Florida's implementation plan (as well as for several other states). Once EPA and NRDC have concluded their discussions, the United States District Court for the District of Columbia will need to independently consider the appropriateness of any extension for completion of this implementation plan. In order to proceed as quickly as possible, however, EPA is proposing action to disapprove the regulatory portion of the Florida submittal, approve the rest of the plan, and simultaneously propose Federal regulations that would establish federally enforceable source-specific emission limitations on the six lead sources in Florida. The State submitted recommended emission limits to the EPA on November 19, 1984. The emission limitations proposed today are based on these limits and the control strategy attainment demonstration modeling submitted by Florida. In addition, EPA consulted with the local air pollution control agencies, the State, and the affected sources.

Action

EPA today proposes to disapprove the regulatory portion of the Florida implementation plan for lead, approve the rest of the plan, and to propose promulgation of Federal source-specific emission limitations for six stationary sources which have the potential to violate the NAAQS for airborne lead. The public is invited to submit written comments on the proposal.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted to the address listed in the front of this notice. Submittal of the comments at, or before, the hearing is preferable, even though ERA is allowing 30 days following the hearing for comments.

Pursuant to section 307(d)(1)(B) of the Clean Air Act, EPA has established a docket (No. FIP–IV–A–6501) which is available for public inspection and copying at EPA's Docket Office listed above, between 8:00 A.M. and 4:00 P.M., Monday through Friday. A reasonable fee may be charged for coyping. An identical docket has also been established at EPA's Region IV Office, listed above.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities, because the requirements are already in place at the State level in the form of operationg permits and will be submitted in the near future as State regulations. In addition, all affected sources are already meeting these requirements.

Under Executive Order 12291, today's action is not "Majory". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspecton at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

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

(Secs. 110 and 301 of the Clean Act Act (42 U.S.C. 7410 and 7601)).

Dated: November 30, 1984.

Charles R. Jeter,

Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40, Code of Federal Regulations, as follows:

Subpart K—Florida

Section 52.535 is added as follows:

§ 52.535 Rules and regulations.

(a) The regulatory portion of the lead implementation plan submitted on September 17, 1984, is disapproved because the laws or regulations needed to implement specific measures necessary to assure attainment and maintenance of the NAAQS for lead were not included.

(b) The following requirements shall apply to all the facilities listed in paragraph (c) of this section:

(1) The facilities listed in paragraph (c) of this section shall conduct an initial test on all sources of lead emissions specified for each facility within 120 days of promulgation of this regulation. Such test shall demonstrate compliance with the specified emission limit for each source. Source test methods and analytical procedures used shall be in accordance with provisions of Part 60, Appendix A, Method 12. For source testing, a plan shall be submitted to the Region IV Administrator of EPA and the Florida Department of Environmental Regulation (FDER) at least sixty (60) days prior to the initial test, to allow review and approval of the plan. This plan should include, at a minimum, a description of the test equipment and procedures to be used and the sampling locations, with appropriate dimensions, showing upsteam and downstream gas flow disturbances. Notice must be given to the Region IV Administrator and the FDER Bureau Chief, at least thirty (30) days prior to conducting the initial test, to afford them the opportunity to have observers present. Results of all source testing and compliance determinations shall be submitted the Region IV Administrator and the FDER Bureau Chief within thirty (30) days after completion of the test. After completion of the initial performance test required above, the facilities shall conduct annual stack tests for all sources with a specified emission limit.

(2) Compliance with emission limits for non-process fugitive emissions, i.e., road dust, stock piles, plant grounds, etc., shall be determined by site inspections and review of records and logs of fugitive dust suppression activity, which may include chemical stabilization, water spraying with appropriate runoff collection, resurfacing, sweeping, revegetation, etc.

(3) Upon submittal and approval by EPA, the Agency will accept an alternative method to demonstrate compliance with the specified emission limit. A submittal for an alternative compliance method must provide an exclusive means (i.e., mathematical relationship with established parameter(s)) to determine compliance with the applicable emission limit. Until an alternative compliance method request is approved by EPA, the initial and annual emission test requirements will remain in effect.

(4) The owner(s) or operator(s) shall maintain continuous records of plant process and emission control operations as necessary to determine continuous compliance. Such records shall include reports of all process operations and control equipment operating parameters. Such records shall also include reports of all types of process upsets and emission control equipment malfunction, detailing the nature and duration of the upset or malfunction, the expected effects on emissions, and the corrective actions taken or planned to avoid recurrences. Such records shall be available at the plant site for inspections by the Region IV Administrator of EPA and the Bureau Chief of the FDER for a period of at least two (2) years.

(c) The following requirements are promulgated as applicable to the indicated stationary sources of lead:

(1) Gulf Coast Lead, 1901 North 66th Street, Tampa, FL.

Secondary Lead Smelter Operation.

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rate (pound per hour)
Blast and slag furnaces	1.810
Blast and slag furnaces, slag and product tapping	0.060
Blast furnace charging	0.220
50-ton melt kettles (3 total)	0.400
20-ton keel cast kettle	0.080
Total	2.570

(ii) Visible emissions from the closed charge doors on the blast furnace and the refining kettle shall not exceed 5 percent opacity during furnace operation.

(iii) Visible emissions from the charge doors on the blast furnace shall not exceed 10 percent opacity during charging operations.

(iv) Visible emissions from all other sources shall not exceed 5 percent opacity.

(v) Source tests shall be performed in accordance with EPA Reference Methods 1 through 5, and 9 (40 CFR Part 60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(vi) No more than one blast furnace shall operate at a time.

(vii) No more than two 50-ton melt kettles shall be operated at a time.

(viii) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(2) Johnson Controls, Globe Battery Division, 10215 North 30th Street, Tampa, FL.

Lead—Acid Battery Manufacturing Plant.

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rates (pound per hour)
OSI Drying Oven—A	0.008
OSI Drying Oven—B	0.008
Hofman VAC System	0.030
Remelt Rotoclone	0.020
Paste Mixing Rotoclone	0.008
Wirtz Caster #1	0.015
Wirtz Caster #2	0.015
Wirtz Caster #3	0.015
Wirtz Caster #4	0.015
Wirtz Caster #5	0.006
Mark V Cast on Strapline	0.118
Cast on Strapline 1 & 2	0.100
Cast on Strapline #3	0.050
Paste Mixing—dry	0.040
Mill Bearing	0.006
PbO Storage	0.010
Total	0.464

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(iii) Source tests shall be performed in accordance with EPA Reference Methods 1 through 5, 9 (40 CFR Part 60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(iv) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(3) Chloride Metals, US. 41/Raleigh Street, Tampa, FL Secondary Lead Smelter Operation

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rates (pound per hour)
Blast Furnace #1	0.600
Slag & Product Tapping-Furnace #1	0.100
Blast Furnace #2	0.080
Slag & Product Tapping-Furnace #2	0.050
Remelt Kettles (4 total)	0.200
PbO Plant	0.220
PbO Transfer	0.220
Total	1.470

(ii) Visible emissions from the closed charge doors on Furnaces No. 1 and 2 shall not exceed 5 percent opacity during furnace operation.

(iii) Visible emissions from the charge doors on Furnaces No. 1 and shall not exceed 10 percent opacity during charging operations.

(iv) Visible emissions from the lead oxide plant shall not exceed 5 percent opacity.

(v) Visible emissions from all other sources shall not exceed 5 percent opacity.

(vi) Source tests shall be performed in accordance with EPA Reference Methods 1 through 5, and 9 (40 CFR Part 60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(vii) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(4) Chloride Battery, US. 41/Raleigh Street, Tampa, FL. Lead-Acid Battery Manufacturing Plant

(i) All emission plants shall be limited to the following levels:

Source name	Lead emission rates (pound per hour)
Ventialtion System	0.300
PbO Silo	0.070
Pb Casting and Pasting	0.350
Total	0.720

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(iii) The PbO silo shall be limited to operating 16 hours per week.

(iv) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(v) Source tests shall be performed in accordance with EPA Reference Methods 1 through 5, and 9 (40 CFR Part 60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(5) Gould Battery (GNB), 11331 Satellite Boulevard, Orlando, FL. Lead-Acid Battery Manufacturing Plant.

(i) All emission points shall be limited to the following levels:

Source name	GNB ID No.	Lead emission rates (pound per hour)
Pasting/Parting	B1	0.1950
Assembly	B2	0.2188
Casting, QC Mixing	B3	0.1808
Assembly	B4	0.2998
Assembly	B5	0.4902
Bulk Oxide	B6	0.0142
Central Vacuum	B7	0.0096
Pot Hood	E1	0.1190
Pot Hood	E2	0.0096
Pot Hood	E3	0.0096
Tray Exhaust	E4	0.1238
Paste Oven POS	E5	0.0048
Paste Oven NEG	E6	0.0048
Total		1.6800

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(iii) Source tests shall be performed in accordance with EPA Reference Methods 1 through 5, and 9 (40 CFR Part

60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(iv) The following sources shall be limited to operating 4000 hours per year:

Pasting/Parting, GNB ID #B1; Assembly, GNB ID #B2; Assembly, GNB ID #B3; Assembly, GNB ID #B4; Central Vacuum, GNB ID #B7; Tray Exhaust, GNB ID #E4; Paste Oven POS, GNB ID #E5; Paste Oven NEG, GNB ID #E6.

(v) The following sources shall be limited to operating 5000 hours per year:

Casting, QC Mixing, GNB ID #B3; Pot Hood, GNB ID #E1; Pot Hood, GNB ID #E2; Pot Hood, GNB ID #E3.

(vi) The Bulk Oxide point source, GNB ID #B6, shall be limited to operating 1000 hours per year.

(vii) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(6) Refined Metals, 2640 Capitola Street Jacksonville, FL. Secondary Lead Smelter Operation.

(i) This source is currently shut down, with no plans to reopen. However, should the owners decide to reopen the plant, they must reapply for a permit as if they were a new source, and they will be subject to new source review, as if they had not operated previously. This is to be effective immediately, even though their current permit does not expire until December 31, 1984. This is pursuant to Florida Administrative Code 17-2.530, Source Reclassifications, and 17-4.09, Renewals.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, and 489

Medicare and Medicaid Programs; Intermediate Sanction of Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These regulations would implement section 916 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) authorizing the Secretary and State Medicaid agencies to impose an alternative to terminating long-term care facilities found to be out of compliance with the Medicare conditions of participation or the Medicaid conditions of participation or standards. Under the proposal, in facilities where deficiencies did not pose immediate jeopardy to the health and safety of their patients, the Secretary of HHS and State Medicaid agencies could exercise discretion to invoke termination or to deny reimbursement for new Medicare and Medicaid admissions to these facilities for a period up to 11 months after a specified date. However, the Secretary and the State Medicaid agencies retain the authority to terminate a facility at any time, including the period of the alternative sanction, if they determine that such action is warranted under current regulations at 42 CFR Part 489, Subpart E and 42 CFR Part 442, Subpart B. If a facility's deficiencies were found to pose immediate jeopardy to its patients, the proposed regulations would require the denial of payments for new admissions and the termination from participation in the programs.

DATES: To assure consideration, comments should be received by April 22, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services; Attention: HSQ-096-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C., 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Matthew Brown, (301) 594-7617.

SUPPLEMENTARY INFORMATION:

I. Background

Providers of health care services participate in the Medicare and Medicaid programs under provider agreements with HCFA (for Medicare), and with State Medicaid agencies (for Medicaid). In order to enter into a provider agreement, a skilled nursing facility (SNF) or an intermediate care facility (ICF) must first be certified by a State survey agency as complying with certain minimum health and safety requirements. These requirements, also referred to as conditions of participation (for SNF's) or standards (for ICFs and ICFs/MR), are set forth for SNFs and ICFs at sections 1861(j) and 1905 (c) and (d) of the Social Security Act and in implementing regulations (42 CFR Part 405, Subpart K, and Part 442). Facilities are surveyed periodically by State survey agencies to determined their continued compliance with these requirements.

Before the enactment of section 916 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), if a State survey agency made a determination that a facility no longer substantially met the conditions of participation or standards under Medicare or Medicaid, the only Federal sanction, directly derived from the Social Security Act (Act), available to the Secretary or Medicaid agency was to terminate the facility's provider agreement under the authority of section 1866(b)(2)(B) of the Act for Medicare or sections 1902(a)(28) and 1905 (c) and (d) of the Act for Medicaid. Termination of a facility's provider agreement, in effect, terminates a facility's participation in the Medicare and Medicaid programs. In addition to the Federal sanction of termination, some States have provided a full range of intermediate sanctions under State law including suspension of payment, bans on admissions, and other various fines and penalties. In cases where States choose to impose sanctions, there is no requirement that States obtain HCFA consent.

Current Medicare regulations provide for a 15-day notice prior to the effective date of termination, and for appeal of the termination of a SNF's provider agreement (42 CFR 489.53 (b) and (c)). Appeal procedures include a full evidentiary hearing available to the provider after the effective date of the termination of a provider agreement require (as specified at 42 CFR Part 431, Subpart D) a full evidentiary hearing either before or within 120 days after the termination becomes effective. Those facilities participating in both programs are entitled to the effective date and appeals procedures under Medicare and the Medicare decision is binding under both programs.

II. Changes in the Statute

Section 916 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499, enacted on December 5, 1980) added sections 1866(f) and 1902(i) to the Act. These sections provide for an intermediate sanction for long-term care facilities. These sanctions are considered important tools to promote correction of deficiencies rather than to simply exclude facilities from the program. The sanction is a denial of payment for up to 11 months to a noncomplying facility for new admissions to the facility after a specified date.

The Ways and Means Committee Report on the Omnibus Reconciliation Act of 1980 (HR 7652, dated July 2, 1980, pages 63–64) states the problem Congress addressed and its expectation for the new sanction as follows:

> At present, the only sanction available in many jurisdictions to penalize a skilled nursing facility which is out of compliance with the conditions of participation in the medicare and medicaid programs is to terminate that facility's participation in the program. Frequently, this sanction involves an overriding hardship to program beneficiaries which makes its use undesirable, if not impossible.

Further on page 65, the Report states:

> The Committee believes that the application of this sanction, in lieu of immediate decertification of a facility where life and safety are not threatened, will serve to protect beneficiaries both by giving the skilled nursing facility an incentive to correct deficiencies in a timely manner and by forestalling the need for traumatic transfers of a large number of patients during the time needed (as) improvements are being made in the facility.

The intermediate sanction would not become a substitute for terminating a facility's provider agreement. The authority to impose the denial of payments for new admissions as an intermediate sanction is in addition to the Secretary's existing authority under section 1866(b)(2)(B) of the Act to terminate a noncomplying facility and to the States' authority to terminate or impose any other sanctions under State law. State and Federal termination authorities, remain in effect regardless of these alternative sanctions. Therefore, termination can occur at any time, including during the period of the alternative sanction, if the Secretary or State Medicaid agency determines that such action is necessary under current regulations. The provisions of the statute relating to facility provider agreements and the Medicare and Medicaid programs follow.

Medicare

The Secretary must terminate a facility's provider agreement if he or she determines that (1) the facility no longer meets one or more of the conditions of participation necessary to qualify as a provider, and (2) the facility's deficiencies pose immediate jeopardy to patients' health and safety. In addition to terminating a facility's provider agreement, the Secretary will deny Medicare payments to a facility with respect to new admissions to the facility after a date specified by the Secretary.

In situations where a facility's deficiencies do not pose immediate jeopardy to patient's health and safety, the Secretary continues to have the discretion to terminate for reasons of health and safety or for reasons related to provider failures as specified in 42 CFR Part 489, Subpart E. In these and other situations, however, the Secretary may now deny Medicare payments to a facility, in lieu of termination, with respect to new admissions to the facility after a date specified by the Secretary, *if the Secretary determines* that (1) the facility no longer meets one or more of the conditions of participation or standards necessary to qualify as a provider, and (2) the facility's deficiencies pose no immediate jeopardy to patients' health and safety. In cases where the Secretary makes these two determinations, payments for patients admitted to the facility prior to the imposition of the sanction would not be affected. The statute does not permit denial of payments for patients admitted to a facility prior to the imposition of a sanction. (Patients who become eligible for Medicare while in the facility are not considered new admissions.)

Medicaid

A Medicaid agency must terminate a facility's provider agreement if it determines that (1) the facility no longer meets one or more of the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) necessary to qualify as a provider, and (2) the facility's deficiencies pose immediate jeopardy to patients' health and safety. In addition to terminating a facility's provider agreement, the Medicaid agency may deny Medicaid payments to a facility with respect to new admissions to the facility after a date specified by the agency.

In situations where a facility's deficiencies do not pose immediate jeopardy to patient's health and safety, the Medicaid agency continues to have the discretion to terminate for reasons of health and safety or for reasons of provider failures as provided in 42 CFR 449.53. The Medicaid agency may deny Medicaid payments to a facility, in lieu of termination, with respect to new admissions to the facility after a date specified by the agency *if the agency finds* that (1) the facility no longer meets the appropriate conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR) necessary to qualify as a provider, and (2) the facility's deficiencies pose no immediate jeopardy to patients' health and safety. In cases where the Medicaid agency makes these two determinations, payments for patients admitted to the facility prior to the imposition of the sanction would not be affected. The statute does not permit denial of payments for patients admitted to a facility prior to the imposition of a sanction. (Patients who become eligible for Medicaid while in the facility are not considered new admissions.)

Medicare and Medicaid

If a facility participates in both Medicare and Medicaid and if the Secretary denies Medicare payments for new admissions, the Medicaid agency must deny Medicaid payments for new admissions, effective for the same time period as the period for Medicare denial of payments.

Procedures

The statute requires that before denying payments for new admissions, the facility must be given a notice of the deficiencies and an opportunity to correct them. If the deficiencies are not corrected, the statute provides that the facility be given a notice and an opportunity for a hearing prior to denial of payments. After a decision to deny payments, following the opportunity for a hearing, the statute requires that the facility and public must be notified before the effective date of the denial.

Sections 1866(f)(3) and 1902(i)(3) further provide that the denial of payments for new admissions must remain in effect for 11 months after the month it was made effective or until the facility corrects the deficiencies or the Secretary or Medicaid agency determines that the facility has made a good faith effort to achieve substantial compliance, whichever occurs first. We believe that the statute also provides sufficient discretion to allow the Secretary or the State agency to deny payments for new admissions for periods of less than 11 months. We propose, therefore, to make provision for the denial of payments for the length of time set by the Secretary or State agency, but not for a period exceeding 11 months. If the denial of payments has been in effect for the time set or 11 months past the month in which it was made effective, the statute requires the facility's provider agreement be terminated effective the first day of the month following the last month for which payment had been denied. However, the Secretary and State Medicaid agency retain the authority to invoke termination at any time, including the effective period of the denial of payments, if warranted, under the existing termination authorities at 42 CFR Parts 489 and 442.

We believe that the statutory amendments made by section 916 should promote compliance with the conditions of participation or standards

by facilities with non-life-threatening deficiencies. By preventing new admissions, but permitting continued particpation, there is a positive incentive to make corrections as well as a penalty for failed compliance. As explained in the Report of the House Committee on the Budget that accompanied Pub. L. 96-499 (H.R. Rep. No. 96-1167, 96th Cong., 2d Sess. 57, 410, (1980)), the use of the denial of payment as an alternative to terminating a facility's provider agreement would serve to protect patients by providing facilities with no-life-threatening deficiences an incentive to correct their deficiences in a timely manner thereby avoiding the adverse effect to patients caused by their transfer to another facility while the deficiences are being corrected. Thus, the statute would penalize the facility with deficiencies rather the patients already in those facilities.

In addition to the intermediate sanction, section 916 also amended section 1902(a)(33)(B) and added section 1910(c) of the Act to give the secretary "look behind" authority. This authority would allow the Secretary to validate State determinations as to whether a facility is meeting the conditions for participation (for SNFs) or standards (for ICFs and ICFs/MR) when the Secretary has cause to question the determinations. Where the Secretary makes a determination that a facility does not meet the conditions of participation or standards, the statute authorizes the Secretary to cancel approval or terminate the participation of any SNF or ICF from the Medicaid program. We believe that the "look behind" provision contained in sections 1902(a)(33)(B) and 1910(c) of the Act is self implementing and requires no further regulations.

III. Provisions of the Regulations

In order to implement the intermediate sanction, we must amend both Medicare and Medicaid regulations. With respect to Medicare regulations, we propose to add at 42 CFR Part 489, Provider Agreements Under Medicare, a new Subpart F, Denial of Payment to SNFs for New Admissions; Withholding of Payment. A section concerning withholding of payment for failure to make timely utilization review, implementing section 1866(d) of the Act, is currently located in 42 CFR Part 489, Subpart E (§ 489.50). We propose to move it to the new Subpart F in order to keep similar topics together (in this case, issues regarding payments). The section on withholding would be redesignated as § 489.66.

In addition, we propose to make technical revisions to 42 CFR 405.1501 and 405.1502 to update references to regulation citations regarding provider agreements under Medicare.

Under Medicaid regulations, we propose to add to 42 CFR Part 442, Subpart C, which addresses the certification of SNEs and ICFs, three new sections (§§ 442.117, 442.118, and 442.119) to implement the intermediate sanction.

Further discussion of the provisions of the regulations in provided below:

A. Alternative to Terminating a Facility's Provider Agreement and When It Would Be Applied

1. *Regulation Changes.* Under Medicare regulations, we propose to establish a new § 489.60 under the new Subpart F of 42 CFR Part 489. This new section would provide that HCFA (acting of behalf of the Secretary) may, as an alternative to terminating an SNF's provider agreement under Medicare because of noncompliance with one or more conditions of participation or standards, impose a denial of payments for new admissions to the facility. This sanction may be imposed along only when HCFA determines that the deficiences causing the facility's noncompliance pose no immediate jeopardy to its patients. If the facility's noncompliance posed immediate jeopardy to its patients. If the facility's noncompliance posed immediate jeopardy to its patients, HCFA would apply the denial of payments for new admissions and terminate the facility's provider agreement. Finally, the new § 489.60 would provide that if, based on the conditions already discussed, HCFA dicides to deny payments to an SNF that participates in both the Medicare and Medicaid programs, HCFA will require the Medicaid agency to deny payments for new admissions as well.

Under Medicaid regulations, we would add a new § 442.118, to provide that the State agency also may, as an alternative to terminating a provider agreement for an SNF or ICF under Medicaid because of noncompliance, impose a denial of payments for new admissions to the facility. This new section also will specify that the sanction may be imposed only when the State agency determines that the deficiencies causing the facility's noncompliance pose no immediate jeopardy to its patients. If the facility's noncompliance poses immediate jeopardy to its patients, the State agency may apply the denial of payments for new admissions in addition to the required termination of the facility's provider agreement.

In cases of immediate jeopardy, when a decision is made to both terminate a facility's provider agreement and to deny payments for new admissions, the implementation of the denial of payments depends upon the outcome of the termination proceedings. The two sanctions can be initiated simultaneously but will not necessarily be effective simultaneously. If the hearing decision on the issue of termination is that a facility does not meet all the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR), but the violations pose no immediate jeopardy, proceedings would continue for denial of payment for new admissions. However, if the hearing decision on the issue of termination is that a facility is in full compliance with the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR), there would be no grounds for continuing procedures to deny payments for new admissions.

We foresee that in many cases the imposition of the intermediate sanction will become moot when it is applied in addition to termination. Termination procedures can be imposed sooner than the intermediate sanction since the intermediate sanction requires a prior hearing. Once termination of the provider agreement is effective, the facility will no longer receive payments for any beneficiary in the facility whether previously admitted or a new admission. We propose that since both the intermediate sanction and termination require prior notice, one notice stating the intent to invoke both sanctions will suffice. If termination is effective before the intermediate sanction, then no further pursuit of the intermediate sanction is needed.

2. *Applicability Under Medicaid.* In addition to regular certification rules applicable to all Medicaid certified facilities, HCFA issued a series of special rules for ICFs/MR with certain deficiencies requiring longer than 12 months to correct. On June 3, 1977, we published a final rule (42 FR 28700) that prescribed State procedures for certifying intermediate care facilities for the mentally retarded (ICFs-MR) to participate in State Medicaid programs (42 CFR 442.113 and 442.115). Specifically, the final rule stated that all facilities certified on or after July 18, 1977 would be subject to certain conditions concerning certification with deficiencies. Those conditions were:

- Any facility certified on or after July 18, 1977 with deficiencies in Federal requirements for staffing may be given a

period not to exceed July 18, 1978 for correction of the deficiency.

- A facility certified on or after July 18, 1977 with deficiencies in the Life Safety Code and/or certain physical enviornmental standards may be given a period not to exceed July 18, 1980 for the correction of the deficiencies.
- Under certain conditions the Secretary may grant the State authority to approve a plan of correction beyond July 18, 1980 but not to exceed July 18, 1982.

B. Immediate Jeopardy

Because the proposed regulations refer to situations that pose immediate jeopardy to a facility's patients, we propose to add a definition of "immediate jeopardy" to Medicare regulations at 42 CFR 489.3 and to Medicaid regulations at 42 CFR 442.2. The definition for Medicare certified SNFs would specify that immediate jeopardy is any situation in which a facility's noncompliance with one or more conditions of participation poses a serious threat to patients' health and safety such that immediate corrective action is necessary. The definition of "immediate jeopardy" for Medicaid SNF, ICF or ICF/MR would specify that immediate jeopardy is any situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or with standards (for ICFs and ICFs/MR) poses a serious threat to patients' health and safety such that immediate corrective action is necessary. For example, an "immediate jeopardy" situation would occur where a facility experiences an unexpected potentially hazardous situation (i.e., severe roof damage, a breakout of a contagious disease, etc.) which if not immediately corrected could pose a threat to patients' health and safety. Although we believe that this definition is reasonable in its parameters, we specifically request comments on this particular definition.

In situations where noncompliance with applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses immediate jeopardy to a facility's patients, the statute requires the termination of a facility's provider agreement. We, therefore, would amend Medicare regulations at 42 CFR 489.53 and Medicaid regulations at 42 CFR 442.117 to include this provision. We wish to clarify again that when a facility's provider agreement is terminated, no Federal funds are available to the facility. We believe that most cases of noncompliance will not involve immediate jeopardy, and therefore, HCFA and the Medicaid agency will have the option to impose either a termination of the facility's provider agreement or the intermediate sanction of the denial of payments for new admissions. We believe that the enactment of the intermediate sanction adds an important and effective tool to the Secretary's enforcement effort. States may also impose any other sanctions that are available to them under State law.

C. Hearings and Other Procedures

Section 916 did not alter any existing appeals procedures for termination of a facility's provider agreement. This reflects Congressional intent, as the Conference Report that accompanied Pub. L. 96-499 specified that the provisions of section 916 would not alter procedures available under current law (H.R. Rep. No. 96-1479, 96th Cong., 2d Sess. 141 (1980)). However, we are requesting comments on whether to shorten the notice of the effective date of termination from 15 days to 2 days. This date would apply *only* to facilities shown to be placing patients in "immediate jeopardy". Terminations under Medicare would continue to be effective 15 days after the notice, as specified in 42 CFR part 489. Terminations under Medicaid would continue to be effective at time intervals specified in 42 CFR Subparts D and E.

Regarding the hearing to be provided prior to the denial of payments for new admissions, we believe that since the imposition of a denial of payments as compared with terminations is a lesser and temporary sanction, as hearing less than a full evidentiary hearing would satisfy all due process requirements.

As required by the statute, the proposed regulations would specify that prior to effectuating a denial of payment for new admissions, HCFA or the State Medicaid agency would provide a facility the opportunity to correct its deficiencies through an approved plan of correction. If the deficiencies remain after the time period specified in the plan of correction, the regulations would provide a notice and opportunity for an informal hearing.

The informal hearing offered by HCFA for facilities under Medicare, or by the Medicaid agency for facilities providing services only under Medicaid, would give the facility an opportunity to present, in person or in writing, evidence and documentation to show that it is not out of compliance with the cited deficiencies. The facility would be given a written decision by HCFA or the Medicaid agency setting forth the reasons for the final decision. Consistent with section 1866(f)(1) of the Act, where dually certified facilities have payments for new admissions denied by HCFA under Medicare, the facility, if it chooses to appeal, must follow HCFA's appeal procedures, rather than the State's, since HCFA's determination is final for both programs.

If the final decision is to deny payments for new admissions, the proposed regulations would require that the facility and the public be notified prior to the effective date of the denial of payments. We propose that the notice will state the effective date, and the reasons for and duration of the denial of payments for new admissions for the facility. Notice to the public could be a notice published in a newspaper serving the locale of the facility.

Proposed regulations implementing these provisions would be located for Medicare under § 498. 62 and for Medicaid under the new § 442.118.

D. Duration of Denial of Payments and Subsequent Termination

The statute specifies that the imposition of the denial of payments for new admissions be in effect for 11 months after the month it was imposed. We also believe that the statute provides sufficient discretion to allow for imposition of the denial of payments for new admissions for the time set by the Secretary or State agency, but not to exceed 11 months. The statute further requires the Secretary or Medicaid agency to terminate the facility's provider agreement if after the period of denial of payments, the facility has neither corrected deficiencies nor made a good faith effort to achieve substantial compliance. We also believe tha the statute provides discretion to allow for imposition of the denial of payments for new admissions for the time set by the Secretary of State agency, but not to exceed 11 months. We propose to include these provisions in Medicare regulations at § 489.64 and in Medicaid regulations at § 442.119.

In accordance with the statute, the regulations would make the termination effective on the first day following the last date of denial of payments. The proposed regulations also would specify that appeal of the termination is available under the usual procedures for appeal of a termination. In Medicare regulations, these procedures are located at 42 CFR Part 405, Subpart O and in Medicaid regulations, the procedures are located at 42 CFR Part 431, Subpart D.

IV. Impact Analysis

A. Executive Order 12291

We have determined that these proposed regulations would not likely result in an annual economic effect of $100 million or meet other threshold criteria of section 1(b) of the Order.

These provisions would provide an alternative to terminating a facility's provider agreement that may be imposed on noncomplying long-term care facilities. We intend that these proposed regulations would provide an incentive for these facilities to comply with the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) rather than be denied reimbursement for new admissions or face termination.

Lack of data regarding the number of potentially affected facilities, and the extent of their deficiencies, limits our ability to estimate with precision the impact of these provisions. However, based on our past experience with facility terminations, we can make several assumptions concerning the effects of this proposed rule.

- Although we intend to use the new authority in an appropriate manner, we estimate infrequent imposition of the proposed intermediate sanction authority. We anticipate facility compliance with pertinent conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) in a majority of cases, before the full effect of the intermediate sanction is realized and payments for new admissions are actually denied.
- We estimate the effect of implementing an intermediate sanction to be slightly less than the costs, related to termination activity to the State and Federal government and the facility.
- Facilities facing the threat of a sanction, would realize some costs in complying with the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) (i.e., building rehabilitation, increase in staff, etc.). As we cannot determine the extent of compliance problems, we cannot estimate the cost associated with resolving these problems. However, any costs borne by these facilities would be outweighed by the improved health and safety conditions realized by the facilities' patients. Therefore, we believe that these costs are reasonable given the resulting benefits.

In summary, available information does not indicate that the annual effect of this proposed rule would exceed $100 million or any of the other threshold criteria.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed rule will not result in a significant impact on a substantial number of small entities.

We estimate that about 13,000 SNFs, ICFs and ICFs/MR participate in the Medicare and Medicaid programs. As noted in the Executive Order discussion, an absence of program data precludes exact estimates of the significance of the impact or the number of affected small entities. However, the assumptions noted above lead us to conclude that a substantial number of SNFs, ICFs and ICFs/MR would not be significantly impacted by these proposed provisions. The realively few SNFs, ICFs or ICFs/MR that would be affected by these provisions, could minimize the economic impact resulting from the sanction activity through immediate compliance with the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR).

Further, we believe that this proposed rule is more advantageous to facilities and to beneficiaries than the present approach, because patients could remain in the facilities while under an intermediate sanction.

The present termination-only approach results in a facility losing all of its reimbursement of Medicare and Medicaid patients, which would ultimately impact on facilities and patients alike.

As the impact of the proposed rule would not exceed the threshold criteria of the Act, a regulatory flexibility analysis is not required.

C. Discussion

As noted in the above analyses, available data does not indicate that the threshold criteria for the Order and for the Act would be exceeded. Thus, we are not required to conduct either of the two analyses to estimate the potential impact on providers and individuals. However, this proposed rule should benefit patients currently situated in long-term care facilities.

We intend that this rule would result in facility compliance with our conditions of participation and standards. By gaining compliance, patients would not have to be transferred but could remain while the facility makes the appropriate correction(s). Completion of this work would then improve the health and safety standards of that facility. Thus, we believe these proposed regulations would penalized the facility with deficiencies and not the patients within them.

V. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (agreements), End-stage renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Recordkeeping and reporting requirements, Rural areas, X-rays.

42 CFR Part 442

Certification of intermediate care facilities (ICFs), Certification of skilled nursing facilities (SNFs), Contracts (agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider agreements, Rural health clinics, Termination procedures.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

The authority citation for Part 405, Subpart O, reads as follows:

Authority: Secs. 1102, 1866, 1869, 1871, 1872, 49 Stat. 647, as amended; 79 Stat. 327; 79 Stat. 330-332; 42 U.S.C. 1302, 1395 et seq., unless otherwise noted.

1. Section 405.1501 is amended by revising the citations in paragraphs (a)(3) and (d) to read as follows:

§ 405.1501 Providers of services, emergency service hospitals, independent laboratories, suppliers of portable X-ray services, end-stage renal disease treatment facilities and persons; determinations and appeals procedures.

(a) * * *

(3) The termination of the Secretary's agreement with a provider of services

for cause of this part and §§ 489.15, 489.16, and 489.53 of this chapter (see § 405.1905);

* * * * *

(d) To be a participating provider of services, eligible for payments, a provider must be in compliance with title VI of the Civil Rights Act of 1964 and must enter into an agreement with the Secretary under section 1866 of the Social Security Act (see part 489 of this chapter). The provisions of this Subpart O do not govern in any respect the adjudication of issues related to the compliance of an institution or agency with title VI of the Civil Rights Act of 1964, or the implementing regulation (45 CFR Part 80) issued by the Secretary of Health and Human Services.

* * * * *

In § 405.1502 the introductory paragraph is reprinted for the convenience of the reader and the section is amended by revising the citation in paragraph (c) to read as follows:

§ 405.1502 Initial determinations.

The Secretary will make findings, setting forth the pertinent facts and conclusions, and an initial determination with respect to:

* * * * *

(c) The termination by the Secretary of an agreement with a provider of services, because the provider no longer meets the appropriate conditions of participation necessary to qualify as a provider, or for any other cause for termination by the Secretary described in the provisions of § 489.53 of this chapter.

* * * * *

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

The authority citation for Part 442 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. The table of contents for Part 442 is amended by adding under Subpart C §§ 442.117, 442.118 and 442.119 to read as follows:

* * * * *

Subpart C—Certification of SNF's and ICF's

* * * * *

Sec.

442.117 Termination of certification for facilities whose deficiencies pose immediate jeopardy.

442.118 Denial of payments for new admissions.

442.119 Duration of denial of payments and subsequent termination.

* * * * *

2. In § 442.1(a) the numerical designations are removed, and a new citation for section 1902(i) is added. As revised paragraph (a) reads as follows:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements, facility certification, and facility standards relating to the provision of skilled nursing facility and intermediate care facility services to Medicaid recipients. The requirements apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;

Section 1902(a)(27), provider agreements;

Section 1902(a)(28), skilled nursing facility standards;

Section 1902(a)(33)(B), State survey agency functions;

Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements;

Section 1905 (c) and (d), definition of intermediate care facility services;

Section 1905 (f) and (i), definition of skilled nursing facility services;

Section 1910, participation of Medicare-certified skilled nursing facilities in Medicaid; and

Section 1913, hospital providers of skilled nursing and intermediate care services.

* * * * *

3. Section 442.2 is amended by reprinting the introductory phrase and by adding in alphabetical order the definition of "immediate jeopardy".

§ 442.2 Terms.

In this part—

* * * * *

"Immediate jeopardy" for Medicaid certified SNFs, ICFs and ICFs/MR means a situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses a serious threat to patients' health and safety such that immediate corrective action is necessary.

4. New §§ 442.117, 442.118 and 442.119 are added to read as follows:

§ 442.117 Termination of certification for facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) specified under Subparts D, E, F, or G of this part; and

(2) The facility's deficiencies pose immediate jeopardy to patients' health and safety.

(b) Subsequent to the termination of a facility's provider agreement, the Medicaid agency must follow the termination procedures and appeals process specified in Part 431, Subpart D of this chapter.

§ 442.118 Denial of payments for new admissions.

(a) *Cause for denial of payments.* (1) Effective December 5, 1980, instead of terminating a facility's provider agreement, the Medicaid agency may deny Medicaid payments to a SNF, ICF or ICF/MR with respect to new admissions to the facility after a date specified by the agency if the agency finds that—

(i) The facility no longer meets the applicable conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR) specified under Subpart D, E, F, or G of this part; and

(ii) The facility's deficiencies pose no immediate jeopardy to patients' health and safety.

(2) In addition to terminating a facility's provider agreement, the Medicaid agency may deny Medicaid payments to a SNF, ICF or ICF/MR with respect to new admissions to the facility after a date specified by the agency if the agency finds that—

(i) The facility no longer meets the applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) specified under Subpart D, E, F or G of this part; and

(ii) The facility's deficiencies pose an immediate jeopardy to patients' health and safety.

(3) If a facility participates in both Medicare and Medicaid and if Medicare payments are denied for new admissions (Subpart F of Part 489 of this chapter), the Medicaid agency must deny Medicaid payments for new admissions, effective for the same time period as the period for Medicare denial of payments. A dually participating facility, if it chooses to appeal, must follow the procedures offered by HCFA as specified in § 489.62 of this chapter

instead of the agency procedures specified in paragraph (c) of this section.

(b) *Agency procedures.* Before denying payments for new admissions, the Medicaid agency must—

(1) Ensure that the facility has a reasonable opportunity, following the initial determination that it no longer meets the applicable conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR), to correct its deficiencies through an approved plan of correction;

(2) Provided the facility, if it remains deficient after the expiration of the time periods specified in the approved plan of correction, with notice of the proposed denial of payments including notice of the opportunity for an informal hearing;

(3) Provide the facility, if it requests a hearing in response to the notice provided under paragraph (c)(2) of this section, with an informal hearing that includes—

(i) The opportunity for the facility to present before a State Medicaid official, who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the applicable conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR) for participation; and

(ii) A written decision setting forth the factual and legal bases pertinent to a resolution of the dispute; and

(4) In the event of an adverse informal hearing decision to the facility, provide the facility and the public, at least 15 days before the effective date of the denial of payments, with a notice that will include the effective date, duration and reasons for the denial of payments.

§ 442.119 Duration of denial of payments and subsequent termination.

(a) Except as provided under § 442.118(a), the Medicaid agency may deny payments for new admissions for up to 11 months after the month the denial of payments was imposed. The Medicaid agency may terminate the sanction if during this period the agency finds that the facility—

(1) Has corrected the deficiencies; or

(2) Is making a good faith effort to achieve substantial compliance with the conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR) for participation.

(b) The Medicaid agency must terminate a facility's provider agreement—

(1) Upon the agency's finding that the facility has been unable to achieve compliance with the conditions of participation or standards (for SNFs) or standards (for ICFs and ICFs/MR) during the period that payments for new admissions have been denied;

(2) Effective the first day of the first month following the last date that the denial of payments has been in effect; and

(3) In accordance with the procedures for appeal of terminations set forth in Subpart D of Part 431 of this chapter.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

The authority citation for Part 489 reads as follows:

Authority: Secs. 1102, 1861, 1884, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302 1395x, 1395aa, 1395cc, and 1395hh).

1. The table of contents for Part 489 is amended by revising the title of § 489.3 under Subpart A, by revising the title of Subpart E, by removing § 489.50 from Subpart E and adding a new table of contents for Subpart F to read as follows:

Subpart A—General Provisions

* * * * *

Sec.
489.3 Definitions.

* * * * *

Subpart E—Termination of Agreement and Reinstatement after Termination

* * * * *

Subpart F—Denial of Payments to SNFs for New Admissions; Withholding of Payment

Sec.
489.60 Cause for denial of payments.
489.62 Procedures for denial of payments.
489.64 Duration of denial of payments and subsequent termination.
489.66 Withholding of payment for failure to make timely utilization review.

2. Section 489.1 is amended by revising the introductory paragraph as follows:

§ 489.1 Statutory basis.

This part implements section 1866 of the Social Security Act. Section 1866 specifies the terms of provider agreements, the grounds for terminating a provider agreement, the circumstances under which payment for new admissions may be denied, and the circumstances under which payment may be withheld for failure to make timely utilization review. The following other sections of that Act are also pertinent:

* * * * *

3. Section 489.2 is amended by revising paragraph (a) to read as follows:

§ 489.2 Scope of part.

(a) Subpart A of this part sets forth the basic requirements for submittal and acceptance of a provider agreement under Medicare. Subpart B of this part specifies the basic commitments and limitations that the provider must agree to as part of an agreement to provide services. Subpart C specifies the limitations on allowable charges to beneficiaries for deductibles, coinsurance, copayments, blood, and services that must be part of the provider agreement. Subpart D of this part specifies how incorrect collections are to be handled. Subpart E sets forth the procedures for termination of an agreement and conditions for reinstatement after termination. Subpart F sets forth the circumstances and procedures for denial of payments for new admissions instead of termination and for withholding of payment instead of termination.

* * * * *

4. Section 489.3 is amended by revising the title, adding an introductory paragraph and adding in alphabetical order the definition of "immediate jeopardy" as follows:

§ 489.3 Definitions.

For purposes of this part—

"Immediate jeopardy" for Medicare SNFs means a situation in which a facility's noncompliance with one or more conditions of participation poses a serious threat to patients' health and safety such that immediate corrective action is necessary.

* * * * *

5. The title of Subpart E is revised to read as follows:

Subpart E—Termination of Agreement and Reinstatement After Termination

§ 489.50 [Redesignated as § 489.66]

6. Section 489.50 is redesignated as § 489.66.

7. Section 489.53 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, reprinting paragraphs (c) and (d) for the convenience of the reader; and by adding a new paragraph (b) to read as follows:

§ 489.53 Termination by HCFA.

* * * * *

(b) *Additional provision applicable to the termination of SNFs.* HCFA will terminate a SNF's provider agreement if HCFA determines that—

(1) The SNF no longer meets a condition of participation specified in Subpart K of Part 405 of this chapter; and

(2) The SNF's deficiencies pose immediate jeopardy to a patient's health and safety.

(c) *Notice of termination.* (1) HCFA will give the provider notice of termination at least 15 days before the effective date of termination of the agreement.

(2) HCFA will concurrently give notice of termination to the public.

(3) The notice will state the reasons for, and the effective date of, the termination, and explain to what extent services may continue after that date, in accordance with the exceptions set forth in § 489.55.

(d) *Appeal by the provider.* A provider may appeal a termination of its agreement by HCFA, in accordance with Subpart O of Part 405 of this chapter. The termination of a provider agreement on grounds specified in paragraph (a)(6), (a)(7), or (a)(8) of this section is subject to the additional procedures specified in § 420.102 of this chapter.

8. A new Subpart F is added to read as follows:

Subpart F—Denial of Payments to SNFs for New Admissions; Withholding of Payment

Sec.

Supart F—Denial of Payments to SNFs for New Admissions; Withholding of Payment

§ 489.60 Cause for denial of payments.

(a) Instead of terminating a SNF's provider agreement, HCFA may deny Medicare payments to a SNF with respect to new admissions to the facility after a date specified by HCFA, if HCFA determines that—

(1) The SNF no longer meets a condition of participation or standard specified in Subpart K of Part 405 of this chapter; and

(2) The SNF's deficiencies pose no immediate jeopardy to patients' health and safety.

(b) In addition to terminating a SNF's provider agreement, HCFA will deny Medicare payments to a SNF with respect to new admissions to the facility after a date specified by HFCA, if HCFA determines that—

(1) The SNF no longer meets a condition of participation or standard specified in Subpart K of Part 405 of this chapter; and

(2) The SNF's deficiencies pose an immediate jeopardy to patient's health and safety.

(c) Whenever HCFA denies payment to a facility for new admissions, and the facility also participates in the Medicaid program, HCFA will require the Medicaid agency to deny payments for new admissions to the facility under the Medicaid program for the same time period as a the period for Medicare denial of payments.

§ 489.62 Procedures for denial of payments.

Before denying payments for new admissions, HCFA will—

(a) Ensure that the facility has a reasonable opportunity, following the initial determination that it no longer meets the applicable conditions of participation or standards, to correct its deficiencies through an approved plan of correction;

(b) Provide the facility, if it remains deficient after the expiration of the time periods specified in the approved plan of correction, with notice of the proposed denial of payments including notice of the opportunity for an informal hearing;

(c) Provide the facility, if it requests a hearing in response to the notice provided under paragraph (a)(2) of this section, with an informal hearing that includes—

(1) The opportunity for the facility to present before a HCFA official who was not involved in making the initial determination, evidence and documentation, in writing or in person, to refute the decision that the facility is out of compliance with the conditions of participation or standards; and

(2) A written decision setting forth the factual and legal bases pertinent to a resolution of the dispute; and

(d) In the event of a decision following and informal hearing that is adverse to the facility, provide the facility and the public at least 15 days before the effective date of the denial of payments, with a notice that will include the effective date, duration and the reasons for the denial of payments.

§ 489.64 Duration of denial of payments and subsequent termination.

(a) The denial of payments for new admissions may continue for up to 11 months after the month it was imposed or until HCFA finds that the facility—

(1) Corrected the deficiencies; or

(2) Is making a good faith effort to achieve substantial compliance with the conditions of participation or standards.

(b) HCFA will terminate a SNF's provider agreement—

(1) Upon HCFA's finding that the facility has been unable to achieve compliance with the conditions of participation during the period that payments for new admissions have been denied;

(2) Effective the first day of the first month following the last day of the period that the denial of payments has been in efect; and

(3) In accordance with the procedures for terminations and reinstatements set forth at §§ 489.53 through 489.57.

§ 489.66 Withholding of payment for failure to make timely utilization review.

(a) If HCFA finds that there is a substantial failure to make timely utilization review of long-stay cases in a hospital or skilled nursing facility, HCFA may determine that no payment shall be made for inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or for posthospital extended care services furnished an individual after the 20th day of a continuing period of such services.

(b) Before making a determination to withhold payment, HCFA will notify the provider of its intention and will afford the institution or agency an opportunity for a hearing.

(c) The withholding of payment will become effective as of the date specified in the determination and be applicable to services furnished to individuals admitted after that date.

(d) The withholding will continue in effect until HCFA finds that:

(1) The reason for the withholding has been removed; and

(2) There is reasonable assurance that it will nor recur.

(Catalog of Federal Domestic Assistance Program No. 13.773, Health Insurance for the Aged—Hospital Insurance; No. 13.774, Health Insurance for the Aged—Supplementary Medical Insurance; No. 13.714, Medical Assistance Program)

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: October 23, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-4214 Filed 2-20-85; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Public Relations Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for comment on proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering (a) a change to FAR 31.109 and (b) revising FAR 31.205-1 to add coverage on public relations costs to the existing coverage on advertising. At the present time, there is no explicit coverage on public relations in the contract cost principles. Because of the broad and diverse range of activities encompassed by the term public relations, the proposed coverage defines certain specific public relations activities whose costs are allowable, and certain others whose costs are unallowable.

DATE: Comments on the proposed revisions should be submitted in writing to the FAR Secretariat at the address shown below on or before [April 22, 1985 to be considered in the formulation of the final rule. Please cite FAR Case No. 84-54 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th and F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, (202) 523-4755.

SUPPLEMENTARY INFORMATION: It is proposed that FAR 31.109 be amended by adding paragraph (h)(16) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(16) Costs of public relations and advertising.

2. Additionally, it is proposed that section 31.205-1 be revised to read as follows:

31.205-1 Public relations and advertising costs.

(a) "Public relations" means all functions and activities dedicated to—

(1) Enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, civic and community relations, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) below, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) above.

(d) The only advertising costs that are allowable are those that arise from requirements of Government contracts and that are exclusively for—

(1) Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34);

(2) Acquiring scarce items for contract performance; or

(3) Disposing of scrap or surplus materials acquired for contract performance.

Costs of this nature, if incurred for more than one Government contract or both Government work and other work of the contractor, are allowable to the extent that the principles in 31.201-3, 31.201-4, and 31.203 are observed.

(e) Allowable public relations costs include the following:

(1) Costs of—

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers.

However, allowable communication and liaison costs are limited to the costs of those "activities" necessary to keep the public and the financial community informed of the financial condition of the company, such as notice of contract awards, plant closings or openings, employee layoffs or rehires, sales and profit changes, etc.

(2) Costs of memberships in civic and community organizations (but see 31.205-8).

(3) Costs of participation in community service activities.

(4) Costs of plant tours and open houses (but see paragraph (f)(6) below).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All advertising costs other than those specified in paragraph (d) above.

(2) All public relations costs, other than those specified in paragraph (e) above, whose primary purpose is to promote the sale of products or services, either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(3) Costs of air shows and other special events, such as conventions and trade shows including—

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(4) Costs of sponsoring meetings, symposia, seminars, and other special events when the principal purpose of the event is the enhancement of the image of a contractor or its products.

(5) Costs of ceremonies such as corporate celebrations and new product announcements.

(6) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities. However, if such media are used primarily for training and orientation of new and existing employees, then the costs are allowable under 31.205-44.

(7) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(g) Costs made specifically unallowable under this subsection

31.205–1 are not made allowable under subsections of Subpart 31.2, such as 31.205–13 (Employee morale, health, welfare, food service, and dormitory costs and credits), 31.205–22 (Lobbying costs), 31.205–34 (Recruitment costs), 31.205–38 (Selling costs), or 31.205–43 (Trade, business, technical, and professional activity costs). Conversely, costs that are specifically unallowable under these and other subsections of Subpart 31.2 are not made allowable under this subsection.

List of Subjects in 48 CFR Part 31

Government procurement.

(40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; 42 U.S.C. 2453(c))

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–4188 Filed 2–20–85; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Parts 32 and 52

Federal Acquisition Regulation (FAR); Withholding of Funds From Construction Contract Progress Payments

AGENCY: Department of Defense (DoD), General Service Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for comment on proposed rule.

SUMMARY: The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a revision of the FAR to (a) add FAR 32.103, Progress payments under construction contracts, and (b) a revision of the contract clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, to express the policy set forth in OFPP Policy Letter 83–1.

DATE: Comments on the proposed revisions should be submitted in writing to the FAR Secretariat at the address shown below on or before April 22, 1985, to be considered in the formulation of the final rule. Please cite FAR Case No. 84–26 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Attn: FAR Secretariat (VR), 18th and F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, (202) 523–4755.

SUPPLEMENTARY INFORMATION: 1. It is proposed that FAR 32.103 be added to read as follows:

32.103 Progress payments under construction contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained until completion of all contract requirements. Retainage should not be used as a substitute for good contract management, and contracting officers should not withhold funds without cause. Determinations regarding the use of retainage and the specific levels to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The level of retainage withheld shall not exceed 10 percent of the amount billed by the contractor in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better-than-expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

2. Additionally it is proposed that paragraph c) of the contract clause at FAR 52.232–5, Payments Under Fixed Price Construction Contracts, be revised to read as follows:

52.232–5 Payments Under Fixed-Price Construction Contracts.

* * * * *

(c) In making these progress payments, the Contracting Officer may retain a maximum of 10 percent of the estimated amount until final completion and acceptance of the work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, the Contracting Officer shall retain an amount that the Contracting Officer considers adequate protection of the Government and may release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.

* * * * *

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

(40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; 42 U.S.C. 2453(c))

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–4189 Filed 2–20–85; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274; Sub-13]

Rail Abandonments; Use of Rights-of-Way as Trails

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Public Law 98–11, enacted March 28, 1983, amends section 8 of the National Trails System Act to provide that rights-of-way of abandoned rail lines may be used for trails if the prospective user agrees to and is able to comply with certain financial requirements. Since the amendment has an impact on the processing of abandonment proceedings, we propose to amend 49 CFR Part 1152 to provide for early notice to interested persons of the possibility of making a trails use request, and to allow interested persons to request use of rail rights-of-way as trails as long as they provide information concerning their willingness and ability to comply with certain financial requirements.

DATES: Comments are due on March 25, 1985.

ADDRESSES: An original and 10 copies of comments referring to Ex Parte No. 274 (Sub-No. 13) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245

or

Wayne A. Michel, (202) 275–7657.

SUPPLEMENTARY INFORMATION: The text of the proposed rules follows as an appendix to this notice.

Additional information is contained in the Committee's full decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation.

This rule will not have a significant economic impact on a substantial number of small entities because the general purpose of the rule is to implement a statutory provision allowing persons to use rail property for trails after it has been authorized for abandonment.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedures, Railroads, and Environment.

This rulemaking notice is issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321, 10903, 10904, and 10906.

Decided: February 11, 1985.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix—Proposed Additions to 49 CFR Part 1152

PART 1152—[AMENDED]

1. The notice form in § 1152.21 is proposed to be amended by removing the word "and" in item (iv), changing the period to a semicolon at the end of item (v), and adding the word "and" to follow the semicolon, and by adding a new item (vi) at the end of this list of terms headed by the language, "In addition, a commenting party or protestants may provide a statement of position and a summary of evidence regarding:" to read as follows:

§ 1152.21 Form of notice.

* * * * *

(vi) Prospective use of right-of-way for trail purposes.

* * * * *

2. Section 1152.25 is proposed to be amended by redesignating the text of present paragraphs (c)–(e) as (d)–(f), by amending paragraph (a)(2)(iv) by removing the "and", by amending paragraph (a)(2)(v) by changing the period to a semicolon and adding the word "and" to follow the semicolon, and adding new paragraphs (a)(2) (vi) and (c).

§ 1152.25 Participation in abandonment or discontinuance proceedings.

(a) * * *

(2) * * *

(vi) prospective use of right-of-way for trail purposes.

* * * * *

(c) *Prospective use of right of way for trail purposes.* If any State, political subdivision, or any qualified private organization is interested in acquiring or using the right-of-way of the rail line to be abandoned, pursuant to 16 U.S.C. 1247(d), it must file a comment indicating that it would like to do so. The comment must include an accurate description of the right-of-way (including mileposts), or portion thereof, that will be used and also must include a map designating the right-of-way involved. The comment also shall include: (1) An affidavit that the user will assume full responsibility for management of such right of way including the duty to maintain the right of way and for any legal liability arising out of such transfer or use, such as ensuring that the railroad and other owners of property adjacent to the right of way will be free from any liability in connection with the right of way, and (2) proof that the user has the financial ability to meet these obligations.

* * * * *

[FR Doc. 85–4257 Filed 2–20–85; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Parts 1207 and 1249

[Docket No. 38904]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to eliminate the uniform system of accounts (49 CFR Part 1207) and revise the periodic reporting requirements (49 CFR Part 1249) for Class I and Class II common and contract motor carriers of property. The Commission believes these provisions are no longer necessary for Commission oversight of the ratemaking process. The Commission is proposing a new condensed report, applicable only to Class I common motor carriers, to replace the current comprehensive annual and quarterly report forms. These changes should significantly reduce carriers' accounting and reporting costs and burden.

DATES: Written responses should be filed on or before April 8, 1985. The proposed revisions would be effective 30 days after they are approved.

ADDRESSES: An original and 15 copies of comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, 202–275–7448.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's Notice of Proposed Rulemaking (NPR). To purchase a copy of the full NPR, write to T.S. InforSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. While we are proposing a significant reduction in the reporting burden for motor carriers of property, the cost savings will not be material in relation to total operating expenses, and only Class I and II carriers will be affected. We request your comments on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1207

Motor carriers, Uniform system of accounts.

49 CFR Part 1249

Motor carriers, Reporting and recordkeeping requirements.

These rules are proposed under the authority of 49 U.S.C 11142 and 11145 and 5 U.S.C. 553.

Decided: February 7, 1985.

By the Commission, Chariman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley concurred.

James H. Bayne,

Secretary.

APPENDIX A

PART 1207—[REMOVED]

Part 1249 of Title 49 of the Code of Federal Regulations would be amended by removing Part 1207 and by revising Part 1249 to read as follows:

PART 1249—REPORTS OF MOTOR CARRIERS

Sec.

Authority: 49 U.S.C. 11142 and 11145 and 5 U.S.C. 553.

§ 1249.1 Annual and quarterly reports of Class I motor carriers of property.

(a) All Class I motor carriers of property shall complete and file Motor Carrier Quarterly and Annual Report Form M. This shall apply to Class I common motor carriers of property, including household goods and dual authority carriers.

(b) Motor Carrier Quarterly and Annual Report Form M shall be used to file both quarterly and annual selected motor carrier data. The quarterly report shall be filed within 30 days after the end of the reporting quarter. The annual report shall be filed on or before March 31 of the year following the year to which it relates. The quarterly and annual report shall be filed in duplicate in the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423.

§ 1249.2 Annual reports of Class I carriers of passengers.

Commencing with reports for the accounting year of 1974, as described in Part 1206 instruction 3 of this chapter, and thereafter, until further order, all Class I motor carriers of passengers are required to file annual reports in accordance with Motor Carrier Annual Report Form MP-1 (passenger). Such annual report shall be filed in duplicate in the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, on or before March 31 of the year following the year to which it relates.

§ 1249.3 Quarterly reports of passenger revenues, expenses, and statistics.

Commencing with reports for the quarter ended March 31, 1968, and for subsequent quarters thereafter, until further order, all Class I common and contract motor carriers of passengers subject to Part II of the Interstate Commerce Act, shall compile and file quarterly reports in accordance with motor carrier Quarterly Report of Revenues, Expenses, and Statistics (Class I carriers of passengers), form QPA. Such quarterly reports shall be filed in duplicate in the Office of the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, within 30 days after the close of the period to which it relates.

[FR Doc. 85-4256 Filed 2-20-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 35
Thursday, February 21, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commercial/Industrial Activities Review; Schedule

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of review schedule.

SUMMARY: This notice sets forth the schedule of studies which are to be made of commercial/industrial activities by Agricultural Stabilization and Conservation Service (ASCS). These studies are to be in accordance with Office of Management and Budget (OMB) Circular No. A–76.

FOR FURTHER INFORMATION CONTACT: J. Horace Hampton, Information Resources Management Division, P.O. Box 2415, Washington, D.C. 20013, (202) 447–7302.

SUPPLEMENTARY INFORMATION: In accordance with OMB Circular No. A–76, the following scheduled studies are to be made of ASCS commercial/industrial activities: ASCS Agency Mailroom, Washington, D.C., 10 full-time equivalent employees, study to begin April, 1985 and be completed August, 1985; High Speed Digital Facsimile Network (FAX), Washington, D.C., 3.5 full-time equivalent employees, study to begin January, 1987 and be completed August, 1987; Aerial Photography Rectification and Reproduction, Salt Lake City, UT., 58 full-time equivalent employees, study to begin April, 1985 and be completed September, 1986; Warehousing/Laboring, Kansas City, MO., 8 full-time equivalent employees, study to begin April, 1985 and be completed September, 1985; Warehousing/Laboring, Washington, D.C., 5 full-time equivalent employees, study to begin January, 1986 and be completed September, 1986; Health Unit, Kansas City, MO., 2 full-time equivalent employees, study to begin April, 1985 and be completed September, 1985; Mail and File Operations, Kansas City, MO., 16 full-time equivalent employees, study to begin April, 1985 and be completed August, 1985.

Signed at Washington, D.C. on February 8, 1985.

Everett Rank,

Administrator.

[FR Doc. 85–4271 Filed 2–20–85; 8:45 am]

BILLING CODE 3410–05–M

Food and Nutrition Service

Level of Donated-Food Assistance or Cash in Lieu Thereof for Nutrition Programs for the Elderly Fiscal Year 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or cash in lieu thereof which is authorized to be provided by the Secretary during the period October 1, 1984 through September 30, 1985, for nutrition services under the Older Americans Act of 1965, as amended. The level of assistance in Fiscal Year 1985 will be 56.76 cents per meal, an increase from the Fiscal Year 1984 level of 56.50 cents per meal.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements a mandatory provision of section 311 of the Older Americans Act of 1965, has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified as "nonmajor" because it does not meet any of three criteria in the definition of "major rule" in the Executive Order. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete. The action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service, has determined that it will not have a significant economic impact on a substantial number of small entitles. The purpose of this action is to notify States of the level of donated-food assistance to be provided for nutrition services under the Older Americans Act during Fiscal Year 1985.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review.

Notice is hereby given that pursuant to section 311 (a)(4) and (c)(2) of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), the level of assistance in commodities or, where applicable, cash in lieu thereof, to be provided by the Secretary of Agriculture to recipients of grants or contracts for the operation of nutrition services under Titles III and VI of the Act for the period October 1, 1984 through September 30, 1985 will be 56.76 cents per meal. This rate would increase the level of assistance from the Fiscal Year 1984 rate to 56.50 cents per meal.

Section 311(a)(4) of the Act requires the Secretary, in donating foods or providing cash in lieu thereof to nutrition programs for the elderly funded under the Act, to maintain a minimum level of assistance during each fiscal year after Fiscal Year 1978 of not less than 30 cents per meal. That amount is to be adjusted on an annual basis for each fiscal year to reflect changes in the series for food away from home of the Consumer Price Index (CPI) for all Urban Consumers published by the Bureau of Labor Statistics (BLS) of the Department of Labor. Notwithstanding this provision for adjustment, section 311(c)(2) of the Act requires the Secretary to reduce the level of assistance per meal in any fiscal year in which compliance with section 311(a)(4) costs more than the amount authorized to be appropriated for that year.

Section 310 of Pub. L. 98–459, signed into law on October 9, 1984, amended section 311(a)(1) of the Act to authorize appropriations of $120,800,000 for Fiscal Year 1985 to carry out the provisions of section 311(a)(4).

In accordance with the provision for annual adjustment based on changes in the CPI series as provided for in section 311(a)(4) of the Act, the level of assistance for Fiscal Year 1985 would be 58.75 cents per meal; that amount reflects a 4.0 percent increase in the CPI series as reported by BLS for the period August 1983 to August 1984. However, based on an estimated 212,800,000 meals to be served during Fiscal Year 1985, providing assistance a 58.75 cents per meal would cost $125,020,000. To avoid exceeding the $120,800,000 authorization limit, the Secretary must, in accordance with section 311(c)(2) of the Act, set the level of assistance at 56.76 cents per meal. Should the actual Fiscal Year 1985 meal level vary from this estimate, the Secretary may need to adjust further the level of assistance for all meals served during Fiscal Year 1985. If another revision is necessary, the level of assistance will be adjusted uniformly for each meal served. Notice of any further adjustment in the level of assistance will be given in the **Federal Register** as soon as the Department determines such action is necessary.

In accordance with section 311(c)(1)(B) of the Act, no State may receive cash-in-lieu-of-commodities payments unless the State submits its final reimbursement claims for meals within 90 days after the last day of the Federal fiscal quarter for which payment is claimed.

(42 U.S.C. 3030a)

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: February 15, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-4272 Filed 2-20-85; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Rio Grande Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policy and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact with respect to a project proposed by Rio Grande Electric Cooperative, Inc. (Rio Grande). The project consists of the construction of a 138 kV transmission line in Brewster County, Texas.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact (FONSI) and Environmental Assessment (EA) and Rio Grande's Borrower's Environmental Report (BER) may be reviewed at or obtained from the office of the Chief, Distribution and Transmission Engineering Branch, Southwest Area-Electric, Room 0009, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382-1915, or at the office of Rio Grande Electric Cooperative, Inc. (R.D. Gwartney, Manager), P.O. Box 125, Brackettsville, Texas 78832, telephone (512) 563-2444, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for financing assistance from Rio Grande, has reviewed the BER submitted by Rio Grande and has determined that it represents an accurate assessment of the environmental impact of the proposed project. Rio Grande's project consists of rebuilding the existing 87.2 km (54.2 mi.) 69 kV transmission line from the Alpine Substation located east of Alpine, Texas, to the Persimmon Gap Substation which is located near the north entrance of Big Bend National Park. The new line would be upgraded to 138 kV and would follow the existing route within the existing right-of-way. Equipment to upgrade both existing substations would be installed within the fenced areas; no additional acreage would be required.

REA determined that the proposed project will have no effect on cultural resources, important farmland, floodplains, wetlands and threatened and endangered species.

Alternatives examined for the proposed line rebuild and upgrade included no action and alternative routes in Brewster County. REA determines that the proposed project is an acceptable alternative to provide Rio Grande's needs.

Based upon BER and support documents, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

In accordance with REA Environmental Policies and Procedures, 7 CFR Part 1794, which was published in the **Federal Register** on March 13, 1984 (49 FR 9544-9558), Rio Grande advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This progam is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: February 15, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-4279 Filed 2-20-85; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identifed in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than March 13, 1985, to: Office of Export Trading Company

Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–00004."

Applicant: Trust International Services Company, Inc., 1250 4th Street SW., Suite 505, P.O. Box 28004, Washington, D.C. 20005, Telephone: 202/488–4827

Application No. 85–00004

Dated Received: February 8, 1985

Date Deemed Submitted: February 11, 1985.

Summary of the Application

A. Export Trade

Products. All engines and turbines, farm and garden machinery, construction and related machinery, metalworking machinery, special industry machinery, general industry machinery, electric distributing equipment, electrical industrial apparatus, household appliances, electric lighting and wiring equipment, radio and television receiving equipment, communication equipment, electronic components and accessories, miscellaneous electrical equipment and supplies, building construction, special trade construction contracting, transportation equipment, transportation services, durable and nondurable wholesale goods.

Services. All trade facilitating services including matching buyer with seller, furnishing short, medium and long-term financing, placement of marine, casualty and war risk insurance, coordinating the shipment of products, processing documentation, establishing repayment mechanisms, providing ancillary procurement services, market analysis and research, countertrade services and consulting.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Trust International seeks certification to:

1. Enter into any number of nonexclusive agreements with individual buyers in the Export Markets or with individual suppliers to act as a Sales Representative or Broker.

2. Enter into agreements with individual Suppliers wherein:

a. Trust agrees to serve as the exclusive Sales Representative and in addition, may agree not to represent any competitors of such Supplier unless authorized by the Supplier; or

b. The Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Trust exclusively represents the Supplier; or

c. Both a and b above.

3. Enter into exclusive agreements with persons in the Export Markets (including distributors and sales or marketing agents), wherein Trust agrees to pay competitive commissions or other compensation, and wherein (a) Trust agrees to deal in Products in the Export Markets only through that person, or (b) that person agrees not to represent Trust's competitors in the Export Markets or not to buy from Trust's competitors, or (c) both (a) and (b).

4. Establish prices and quantities of Products to be sold in the Export Markets for Trust's own account or on behalf of an individual Supplier.

5. Enter into exclusive or nonexclusive agreements with an individual buyer in the Export Markets to act as a Purchasing Agent with respect to a particular transaction.

6. Upon receiving a request from a buyer in the Export Markets for the price of a particular Product, Trust may ask one or more U.S. suppliers individually to supply a price quotation to Trust for that Product, add its own markup to the U.S. Supplier's price, and transmit a price quotation to the buyer. Upon placement of an order by a buyer, Trust may purchase Products and ship to the buyer.

7. As Trust becomes aware of invitations to bid or other sales opportunities in the Export Markets, Trust may contact individual U.S. Suppliers of the various or similar Products specified in the invitation to bid or purchase specifications, invite the Suppliers to supply independent quotations to Trust for the Products, and enter into independent, individual agreements with Suppliers whereby Trust will submit a response to the bid invitation or request for quotation.

Dated: February 15, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85–4247 Filed 2–20–85; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application for Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than March 13, 1985 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to "Export Trade Certificate of Review, Application 85–00003."

Summary of Application

Applicant: Marine Midland Trade, Inc., 140 Broadway, New York, NY 10015, Telephone: 212/306–4403.

Application No.: 85–00003.

Date Deemed Submitted: February 5, 1985.

Members in Addition to Applicant: Marine Midland Banks, Inc., Buffalo,

NY; and Marine Midland Bank, N.A., New York, NY.

Export Trade and Export Markets

Marine Midland Trade, Inc. (MMT), a New York corporation, intends to provide export marketing services for U.S. suppliers of goods and services. The products that the applicant intends to export or represent for export will be all-inclusive and limited only by the laws of the United States. MMT's proposed export activities will be conducted on a worldwide basis, with a primary emphasis on certain Asian markets, particularly Hong Kong, Republic of Korea, Singapore, Taiwan, and Malaysia.

MMT is a wholly-owned subsidiary of Marine Midland Banks, Inc., a bank holding company named herein as a member. In its conduct as an export intermediary, the applicant, in concert with its parent and its affiliate Marine Midland Bank, N.A., may provide or offer the following export trade services: Communication and processing of foreign orders to and for exporters and foreign purchasers, financing, marketing, consulting, international market research, advertising, product research and design, legal assistance, foreign exchange transactions, insurance, transportation and packaging of goods, trade documentation, freight forwarding, and warehousing. In certain instances, MMT may take title to goods, acting as an export distributor for its own account.

Export Trade Activities and Methods of Operation

The Applicant desires certification to:

1. Enter into exclusive agreements with individual U.S. manufacturers and suppliers of products, wherein:

(i) MMT agrees not to represent any competitors of such supplier unless authorized by the supplier; and/or

(ii) The supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which MMT represents the supplier and, if such sales do occur, to pay a commission to MMT.

2. Enter into nonexclusive agreements with U.S. suppliers, wherein MMT may appoint distributors or sales agents for the Export Markets.

3. Enter into agreements with individual export intermediaries (including buyers, distributors and sales agents), wherein:

(i) MMT agrees to deal in particular products in particular export markets only through that intermediary, and/or

(ii) That intermediary agrees not to deal in particular products in particular export markets with anyone except MMT.

4. Establish prices in the Export Markets based upon its determination of market costs, overhead and profits.

Dated: February 14, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-3851 Filed 2-20-85; 8:45 am]

BILLING CODE 3510-DR-M

[A-122-403]

Egg Filler Flats From Canada—Postponement of Final Antidumping Determination

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 a respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and, that we have determined to postpone our final determination as to whether sales of egg filler flats from Canada have occurred at less than fair value until not later than May 31, 1985.

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Aceto, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3534.

SUPPLEMENTARY INFORMATION: On August 23, 1984, the Department of Commerce initiated, 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 egg filler flats from Canada were being, or were likely to be, sold at less than fair value. On January 16, 1985, the Department published an affirmative preliminary determination in the **Federal Register** (50 FR 2320). The notice stated that if this investigation proceeded normally we would make a final determination by March 26, 1985.

On February 5, 1985, counsel for respondent Fripp Fibre Forms, Ltd. (Fripp) requested that we extend the period for the final determination until May 31, 1985, 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination.

Fripp is qualified to make such a request since it accounts for over 50 percent of the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is 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 31, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: February 14, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-4263 Filed 2-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron From Brazil; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on pig iron from Brazil. The review covers the period January 1, 1982, through December 31, 1982.

As a result of the review, the Department has preliminarily determined the aggregate net subsidy for the period to be 17.83 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 21, 1985.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Richard Henderson, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 9923) the final results of its last administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045, April 4, 1980) and announced its intent to conduct the next review. As required by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that review.

Scope of the Review

Imports covered by the review are shipments of Brazilian pig iron of basic, foundry, malleable, and low phosphorous grades. Such merchandise is currently classifiable under item 606.1300 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1982, through December 31, 1982, and thirteen programs: (1) Preferential financing for exports through CACEX; (2) an income tax exemption for export earnings; (3) the export credit premium for the Industrial Products Tax ("IPI"); (4) preferential financing under CIC-CREGE 14–11; (5) incentives for trading companies (Resolution 643); (6) partially-indexed long-term loans; (7) fiscal benefits for special export programs ("BEFIEX"); (8) tax reductions on equipment used in export production ("CIEX"); (9) accelerated depreciation for Brazilian-made capital goods; (10) preferential financing for the storage of merchandise destined for export (Resolution 330);l (11) preferential export financing under Resolution 68 ("FINEX"); (12) remission on export of indirect taxes other than IPI; and (13) special tax credits to firms located in Brazil's less developed regions.

Analysis of Programs

(1) Preferential Financing for Exports

Under this program, the Department of Foreign Commerce of the Banco do Brasil ("CACEX") declares companies eligible to receive working capital loans at preferential rates. These loans have a duration of up to one year. During the period of review, each firm producing pig iron could obtain preferential financing for up to 20 percent of the value of its previous year's exports.

During 1982, the companies reviewed had loans outstanding under Resolution 674 (effective January 22, 1981) of the Banco Central do Brasil. Resolution 674 had a maximum interest rate of 40 percent and required two interest payments, one 180 days after the loan was granted and one when the principal was repaid.

In past reviews, we calculated the benefit from a loan by prorating the loan amount over the portion of the review period during which the loan was outstanding irrespective of the timing of interest payments. We now believe that the benefit occurs when the case flow effect occurs. For loans under Resolution 674, that effect occurred when the borrower made the preferential interest payments.

Although we have changed our methodology, in this review we continued to straddle those loans that we had straddled in the last review. For new loans, not included in the last review, we calculated the benefit based on the date of payment. For each new loan with interest payments during 1982, we divided the number of days of each portion of the loan (the date of the drawdown to the date of the initial interest payment and the date of the initial interest payment to the date of the final interest payment) by 365 days. We applied the resulting ratio to the interest differential (the difference between the annual commercial benchmark and the Resolution 674 interest rate at the time of drawdown) and multiplied the result by the affected loan principal.

To find the interest differential for our calculations, we compared two effective rates. For our benchmark, we took the national average effective rate for thirty-day discounts of accounts receivable as found in Analise/Business Trends. We then compounded this rate to find the annual commercial benchmark. The effective preferential rates on the straddled loans varied between 40.42 and 44 percent. The commercial benchmark for these loans was 92.23 percent. Therefore, the interest differential for the straddled loans ranged from 48.23 to 51.81 percent. The new loans also had effective preferential rates varying between 40.42 and 44 percent. However, the commercial benchmark at the time the borrowers contracted for these loans, here the time of drawdown, was 127.93 percent. Thus, the interest differential for the new loans ranged from 83.93 to 87.51 percent. We preliminarily determine the total net subsidy from this program to be 3.17 percent *ad valorem*.

On January 2, 1984, the Banco Central do Brasil issued Resolution 882 to succeed Resolution 674. Resolution 882 required only one interest payment, when the principal was repaid. It also set the maximum interest to be charged as the rate for "full monetary correction" (as calculated by the change in readjustable treasury bonds, "ORTN") plus 3 percent per annum.

In September 1984, the Banco Central do Brasil issued Resolution 950 superseding Resolution 882 and changing the program substantially. Resolution 950 applies retroactively back to January 1984. We do not have sufficient information to analyze the effect of these changes, and therefore, we have not considered these program-wide changes in establishing the cash deposit of estimated countervailing duties.

(2) Income Tax Exemption for Export Earnings

Exporters of pig iron are eligible under this program for an exemption from income tax of the percentage of profit attributable to export revenue. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. The benefit equals the product of the amount of tax-exempt profit times the prevailing 35 percent corporate income tax rate. We preliminarily determine the benefit from this program to be 1.22 percent *ad valorem*.

(3) IPI Export Credit Premium

Exports of pig iron are eligible for the maximum IPI export credit premium. The Brazilian government reimburses in cash a percentage of the f.o.b. invoice price of the exported merchandise to exporters through the bank involved in the export transaction.

The Brazilian government eliminated the IPI export credit premium on December 7, 1979, but reinstated it on April 1, 1981. On June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the premium on exports to the U.S. However, we found that no firms paid this tax before December 1982, at which time they paid it without any monetary correction, interest, or penalties.

We consider the lag in collection to be a benefit to the exporters equal to an interest free loan in the amount of the tax owed, rolled over monthly, until they actually paid the tax. Under current practice, exporters are to pay the offset tax 45 days after the end of the month in which the shipment earning the premium occurred. To calculate the benefit, we considered the interest free loan to begin on the date the tax was due (*i.e.*, 45 days after the end of the month of shipment).

As a commercial benchmark, we used the monthly discount rate (described for the Resolution 674 program), compounding for the number of months the hypothetical loan was outstanding in 1982. Using this, we preliminarily determine the *ad valorem* benefit to be

13.01 percent. For the cash deposit of estimated countervailing duties, we believe the Brazilian government now collects this tax at the appropriate time and the potential benefit under this program therefore is zero.

(4) Preferential Export Financing Under CIC–CREGE 14–11

CIC–CREGE 14–11 is a program operated by the Banco do Brasil that provides preferential financing to exporters, who are then required to maintain a minimum fixed level of foreign exchange with the Banco do Brasil. Exporters of pig iron participated in the program in 1982.

We calculated the benefit in a manner similar to that used for Resolution 674 financing. There is no maximum interest rate for this program, and interest payments are normally made quarterly with the full principal repaid at the end of the loan term. All loans outstanding in 1982 had an interest rate of 55 percent. To calculate the benefit, we continued to straddle those loans that we had straddled in the last review. There was only one additional loan that had an interest payment during the period of review. We calculated the benefit from that loan based on the interest payment date as we did for new loans under Resolution 674. We preliminarily determine the benefit conferred by this program to be 0.19 percent *ad valorem*.

(5) Incentives for Trading Companies (Resolution 643)

Under this program, CACEX declares trading companies eligible to receive loans at preferential rates. Eligible firms have access to a line of credit which can be drawn down to purchase goods for export. The trading companies use the loan principal as advance payment for the goods purchased. These loans are subject to the same interest constraints as Resolution 674 loans. Normally, the term of the loan is not to exceed 180 days but the actual length varies, running from the date of receipt of the loan to the date of shipment of the goods. The interest is paid in full at the end of the loan term.

During verification, we found that one firm received a loan under this program for the purchase of pig iron for export. We did not receive the full information we requested on this loan, and we therefore used the best information available, found in the accounts of the firm that sold the pig iron to the trading company.

We took the annual preferential interest rate (37 percent) and the same annual benchmark as for Resolution 674 and found an interest differential of 90.93 percent. Using the same calculation method as for new Resolution 674 loans, we preliminarily determine the *ad valorem* benefit under this program to be 0.24 percent.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of pig iron did not use them during 1892.

A. Partially-indexed long-term loans;

B. Fiscal benefits for special export programs ("BEFIEX");

C. Tax reductions on equipment used in export production ("CIEX");

D. Accelerated depreciation for Brazilian-made capital goods;

E. Preferential financing for the storage of merchandise destined for export (Resolution 330);

F. Preferential export financing under Resolution 68 ("FINEX");

G. Remissions on export of indirect taxes other than IPI; and

H. Special tax credits to firms located in Brazil's less developed regions.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the aggregate net subsidy to be 17.83 percent *ad valorem* for the period of review. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 17.83 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1982, and on or before December 31, 1982.

Because of the changes in these programs described above, we preliminarily determine the potential subsidy, for purposes of the cash deposit of estimated countervailing duties, to be 4.82 percent. The Department intents to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 4.82 percent of the entered value on all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 13, 1985.

Alan F. Holmer,

Deputy Assistant Secretary Import Administration.

[FR Doc. 85–4261 Filed 2–20–85; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces review of a request for a short supply determination under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to hollow seamless tubular products, of circular cross section, which require further advancement by heat treating or similar processes for use as oil well tubing and oil well casing. The tubular products range in diameter from 2⅜-inches to 9⅝-inches and in wall thickness from 0.190-inch to 0.545-inch.

EFFECTIVE DATE: Comments must be submitted no later than March 11, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377–4038.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where

a shortage of supply is identified, i.e., where the U.S. industry is unable to meet damand in the United States for particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for short supply for the following products: Hollow seamless tubular products, of circular cross section, which require further advancement by heat treating or similar processes, for use as oil well tubing and oil well casing. The tubular products range in diameter from 2⅜-inches to 9⅝-inches and in wall thickness from 0.190-inch to 0.545-inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 11, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: February 15, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-4260 Filed 2-20-85; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification No. 3 to Permit No. 370; Alaska Department of Fish and Game

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 370 issued to the Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, Alaska 99802, on March 2, 1982 (47 FR 10071), as modified on June 17, 1982 (47 FR 27400), and June 3, 1983 (48 FR 27121), is further modified to extend the period of authorized taking for three years.

Accordingly, Section B-6 is deleted and replaced by: "6. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective January 1, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 13, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-4221 Filed 2-20-85 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Privacy Act of 1974; Amendment of System Notices and New Routine Use Statement

AGENCY: Department of Energy.

ACTION: Final notice; establishment of new routine use for two systems of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974, to publish a notice in the **Federal Register** of a change to an existing routine use of a system of records. The Department of Energy (DOE) published in the **Federal Register** on November 2, 1984, at 49 FR 44125 a proposal to change a routine use of DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records" to permit the disclosure of records maintained in these systems to the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, for health and safety studies of workers at any DOE facility. This final notice permits the disclosure to NIOSH of records maintained in these systems for the purpose of conducting a health hazard evaluation of workers at DOE's Feed Materials Production Center located at Fernald, Ohio and DOE's Portsmouth Gaseous Diffusion Plant at Piketown, Ohio.

FOR FURTHER INFORMATION CONTACT:

David E. Patterson, PE-24, Office of Operational Safety, U.S. Department of Energy, Germantown Facility, Washington, DC 20545, (301) 353-3157

Abel Lopez, GC-41, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-8618

Carole J. Gorry, MA-232.1, Acting Chief, FOI and Privacy Acts Activities Branch, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-5955.

EFFECTIVE DATE: March 25, 1985.

SUPPLEMENTARY INFORMATION: The DOE published a notice in the **Federal Register** on November 2, 1984, at 49 FR 44125 to amend a routine use of DOE-33 "Personnel Medical Records" and DOE-35 "Personnel Radiation Exposure Records" to permit the disclosure of records maintained in these systems to NIOSH for the purpose of conducting a health hazard evaluation of workers at any DOE facility. Under the routine uses currently established for DOE-33 and DOE-35, NIOSH may obtain access to these records for the purpose of conducting an epidemiological study of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. The comments received from DOE facilities indicate that, at this time, NIOSH will be conducting a health hazard evaluation of workers at the DOE Feed Materials Production Center at Fernald, Ohio. The purpose of the study is to determine whether there are health effects from occupational exposure to chemical, radiation and physical hazards at Fernald facility. The DOE, therefore, is amending the current routine use to permit NIOSH to obtain access to records maintained in DOE-33 and DOE-35 for the purpose of conducting health hazard evaluations of workers at DOE's Feed Materials Production Center at Fernald, Ohio and the Portsmouth Gaseous Diffusion Plant at Piketown, Ohio.

The Privacy Act provides that, with respect to disclosure of a record, a routine use is a use which is compatible with the purpose for which the record was collected. It has been determined that the proposed routine use is compatible because the records are maintained for purposes of assessing workers' health and safety and conducting a health and mortality study, and NIOSH would be permitted to examine these records for the limited purpose of conducting a health hazard evaluation which would be used to assess the health and safety of workers at this facility.

Issued in Washington, DC this 14th day of February 1985.

William S. Heffelfinger,

Director of Administration.

SYSTEM NAME:

Personnel Medical Record.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Bendix Corporation, P.O. Box 1159, Kansas City, MO 64141.

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, Pittsburgh, PA 15122.

U.S. Department of Energy, Carbondale Mining Research Center, P.O. Box 2587, Carbondale, IL 62901.

U.S. Department of Energy, Dayton Area Office, Mound Laboratory, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Kansas City Area Office, 2006 East Bannister, Box 202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Petroleum Reserve, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83411.

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE employees and DOE contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, Washington, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examinations and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patient records and emergency room out-patient records for private patients at Kadlec Hospital. Results of monitoring individuals for exposure to chemical agents (not covered in DOE–35) and physical stress and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act: 5 U.S.C. 7901; Executive Order 12009; OMB Cirular A–72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physicians, U.S. Department of Labor, various State departments of labor and industries, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses in the performance of regular diagnostic and treatment services to patients.

A record from this system of records may be disclosed to officials of the National Institute for Occupational Safety and Health (NIOSH), for the purpose of conducting a health hazard evaluation of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio, and DOE's Feed Materials Production Center at Fernald, Ohio.

Additional routine uses listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are rendered illegible and destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Environment, Safety, and Health, PE–20, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations identified as items 2 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts Activities Branch, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name of requester, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, pay and leave records, and Office of Personnel Management retirement life insurance and health benefits records system and personnel management records system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1, 3, 4, 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, and the following additional locations:

U.S. Department of Energy, Amarillo Area Office, Panex Plant, P.O. Box 1086, Amarillo, TX 79105.

U.S. Department of Energy, Brookhaven Area Office, Upton, NY 11973.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014.

U.S. Department of Energy, Idaho Health Services Laboratory, CF–690, INEL and Computer Science Center, Idaho Falls, ID 83401.

U.S. Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Reactors Representative Office, Building 195, Charleston Naval Shipyard, Charleston, SC 29408.

U.S. Department of Energy, Naval Reactors Representatives Office, P.O. Box 21, Groton, CT 06340.

U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Mare Island, CA 94592.

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding and Dry Dock Company, P.O. Box 973, Newport News, VA 23607.

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705.

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 1687, Pascagoula, MS 39567.

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Habor, Naval Shipyard, P.O. Box 128, FPO San Francisco, CA 96610.

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Building 178, P.O. Box 2008, Portsmouth, NH 03801.

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard, P.O. Box 1A, Bremerton, WA 98314.

U.S. Department of Energy, New Brunswick Laboratory, D–350, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Pinellas Area Office, P.O. Box 11500, St. Petersburg, FL 33733.

U.S. Department of Energy, Puerto Rico Office, P.O. Box BB, San Juan, PR 00935.

U.S. Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, CO 80401.

U.S. Department of Energy, Sandia Area Office, P.O. Box 5800, Albuquerque, NM 87115.

U.S. Department of Energy, Shippingport Branch Office, P.O. Box 11, Shippingport, PA 15077.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE personnel, contractor personnel, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

DOE and contractor personnel and other individuals' radiation exposure records and other records in connection with registeries of uranium, transuranics, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act and Executive Order 12009.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Department of Navy uses these records to monitor radiation exposure of Naval and other personnel at Navy activities.

Nuclear Regulatory Commission uses these records to monitor radiation exposure of contractor personnel. DOE and its contractors and consultants, other contractors, and organizations, including various states' departments of labor and industry groups, use these records to monitor radiation exposure of personnel.

U.S. Department of Defense uses these records for the limited purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing; and for conducting epidemiological studies of radiation effects on individuals so identified.

National Academy of Sciences and Center for Disease Control (and appropriate management personnel of the U.S. Department of Health and Human Services) use these records for conducting epidemiological studies of the effects of radiation on individuals exposed to ionizing radiation.

A record from this system of records may be disclosed to officials of the National Institute for Occupational Safety and Health (NIOSH), for the purpose of conducting a health hazard evaluation of workers at DOE's Portsmouth Gaseous Diffusion Plant at Piketon, Ohio and DOE's Feed Materials Production Center at Fernald, Ohio.

Additional routine uses 1, 2, 4, 7, 8, 9, and 10 listed in Appendix B of 47 FR 14284, dated April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tape, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings, with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are rendered illegible destroyed by shredding, maceration, or burning, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Deputy Assistant Secretary for Environment, Safety and Health, PE–20, 1000 Independence Avenue SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, and the additional locations listed above under System Location are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts Activities Branch, U.S. Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1, 3, 4, and 6 through 18 in Appendix A of 47 FR 14284, dated April 2, 1982, in accordance with DOE's Privacy Act regulations (10 CFR Part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, geographic location(s) and organization(s) where requester believes such records may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, domsimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-4212 Filed 2-20-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-831, to Interatom GmbH, Bensberg, the Federal Republic of Germany, one fission product source, containing approximately 3.5 grams of uranium, enriched to 93% in U_{235} for use in calibration in the Kalkar power reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: February 15, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-4297 Filed 2-20-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Civilian Radioactive Waste Management

Nuclear Waste Policy Act of 1982; Public Hearings on the Draft Environmental Assessments for Proposed Site Nominations

AGENCY: Department of Energy (DOE).

ACTION: Additional public hearings.

SUMMARY: On January 23, 1985, 50 FR 3304, an announcement was made concerning the public hearings to be held on the Draft Environmental Assessments prepared for the nine potentially acceptable sites for the location of a high-level nuclear waste repository. That notice set forth how to request an opportunity to speak at a hearing and the procedures to be used in conducting the hearings.

Two additional public hearings have been scheduled on the Hanford (Washington) Draft Environmental Assessment. They are: BPA Auditorium, 1002 Northeast Holladay, Portland, Oregon (covers Portland/Vancouver, Washington area), March 11, 1985, 2:00-5:00 pm and 7:00-10:00 p.m.; and City Council Chambers, West 808 Spokane Falls Blvd., Spokane, Washington, March 13, 1985, 2:00-5:00 p.m. and 7:00-10:00 p.m. For information on these two hearings, contact Lee Olson, Project Manager, Basalt Waste Isolation Project, Richland Operations Office, U.S. Dept of Energy, P.O. Box 550, Richland, Washington 99352. Phone (509) 376-7334.

Issued in Washington, D.C., February 15, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management

[FR Doc. 85-4210 Filed 2-20-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EC85-10-000, et al.]

Electric Rate and Corporate Regulation Filings; Gulf States Utilities Co.

February 14, 1985.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. EC85-10-000]

Take notice that on February 4, 1985, Gulf States Utilities Company (Gulf States) filed an Application seeking an order pursuant to section 203 of the Federal Power Act authorizing the sale of certain transmission facilities by Gulf States to Jasper-Newton Electric Cooperative, Inc., (Jasper-Newton). Jasper-Newton is a member cooperative of the Sam Rayburn Dam Electric Cooperative, Inc., (SRDE). Gulf States and SRDE are parties to an interconnection agreement presently on file with the Commission.

Comment date: February 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Tucson Electric Power Company

[Docket No. ER85-285-000]

Take notice that on February 4, 1985, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 45 between Tucson and the Los Angeles Department of Water and Power.

Tucson requests an effective date of April 30, 1984.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. ER85-286-000]

Take notice that on February 4, 1985, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 42 between Tucson and the United States of America, Department of Energy, Western Power Administration.

Tucson requests an effective date of March 31, 1982.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of Indiana, Inc.

[Docket No. ER85-287-000]

Take notice that on February 7, 1985, Public Service Company of Indiana, Inc. (PSCI) tendered for filing pursuant to the Interconnection Agreement between PSCI and Central Illinois Public Service Company (CI) a Tenth Supplemental Agreement to become effective April 6, 1985.

PSCI states that this Tenth Supplemental Agreement modifies the Agreement as follows:

1. Amends Article 5, billing and payment, by deleting Article 5.03 and inserting a new Article 5.03.

2. Amends Service Schedule C—Interchange Power, Service Schedule D—Short Term Power and Service Schedule E—Coordination of Scheduled Maintenance of Generating Facilities to incorporate the parties' Order 84 language.

3. Inserts a new Service Schedule A—Emergency Service which provides for a minimum charge for such service and

incorporates the parties' Order 84 language.

Copies of the filing were served upon Central Illinois Public Service Company, the Illinois Commerce Commission and the Public Service Commission of Indiana.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER85-289-000]

Take notice that on February 7, 1985, Public Service Company of New Mexico (PNM) tendered for filing as an initial rate schedule an Economy Energy Agreement (Agreement) between PNM and Arkansas River Power Authority (ARPA), a political subdivision of the State of Colorado.

The service to be provided under the Agreement is interruptible economy energy and is identical to that provided under PNM Rate Schedule FERC No. 49. Rates for the service are based on either (1) split savings, (2) 115% return of energy, or (3) 115% of seller's cost.

PNM requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon ARPA and the New Mexico Public Service Commission.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER85-288-000]

Take notice that on February 7, 1985, Florida Power Corporation (Florida Power) tendered for filing a Letter of Commitment dated January 18, 1985 providing for 5 MW of firm interchange service between Florida Power and the City of St. Cloud, Florida. Florida Power states that the Letter of Commitment is executed pursuant to Service Schedule D of the Contract for Interchange Service dated December 1, 1981 between Florida Power and the City of St. Cloud, which contract is designated as Florida Power's Rate Schedule FERC No. 95. The Letter of Commitment is submitted for inclusion as a supplemental to Service Schedule D.

Florida Power requests that the Letter of Commitment be permitted to become effective February 1, 1985, and therefore requests waiver of the sixty day notice requirement.

Copies of this filing have been served upon the City of St. Cloud and the Florida Public Service Commission.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER85-284-000]

Take notice that on February 6, 1985, Pacific Gas and Electic Company (PGandE) tendered for filing revisions to Appendix A of the Interconnection Agreement between PGandE and Northern California Power Agency ("the NCPA Agreement") and to Appendix A of the Interconnection Agreement between Pacific Gas and Electric Company and the City of Santa Clara ("the Santa Clara Agreement"). This filing supersedes Exhibit A-2 of both Agreements.

The Parties have developed new transmission loss factors to be applied for billing and scheduling purposes. These new revised factors are intended to replace the factors originally filed under Exhibit A-2 of each Agreement. These revisions will not change the level of any rates under these Agreements. These revisions also will not significantly affect the revenue collected from NCPA and Santa Clara.

PGandE states that since these customers are required by Contract to begin real-time scheduling on or before March 1, 1985, PGandE must request a waiver of the commission's usual notice requirements. Therefore, PGandE respectfully requests an effective date of February 1, 1985. No customers under any other rate schedules will be affected if such waiver is granted.

Comment date: February 28, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER85-274-000]

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on February 4, 1985, tendered for filing an amendment to its unit contract for the sale of power from its Pilgrim Unit 1 to Montaup Electric Company ("Montaup").

The amendment extends the term of the contract and clarifies the calculation of capacity charges under the contract.

Copies of the filing have been served upon Montaup and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: February 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Interstat Power Company

[Docket No. ER85-279-000]

Take notice that Interstate Power Company (Company) tendered for filing on February 4, 1985, a change in delivery points pursuant to the provison of the Interconnection Agreeement between Interstate Power Company and Dairyland Power Coop dated August 17, 1966 (FERC No. 80).

The Company filed contract supplements dated November 17, 1980, January 21, 1982, December 6, 1982, January 11, 1984 and January 7, 1985, between Interstate Power Company and Western Area Power Administration (FERC Rate Schedule Nos. 14 and 113). The supplements extend the terms of the contracts from 1981 through 1985 or until a replacement contract is executed, whichever event occurs first.

Notices of termination for FERC Rate Schedule Nos. 111, 112, 117, 118 and 119 were also filed.

Comment date: February 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER85-276-000]

Take notice that on February 4, 1985, Pacific Power & Light Company (Pacific), an assued business name of PacifiCorp, tendered for filing Fifth Revised Sheet Nos. 5A and 5B (Index of Purchasers) of Pacific's FERC Electic Tariff, Original Volume No. 3 (Tariff), and Service Agreements between Pacific and Seattle City Light, El Paso Electric Company, , City of Burbank, City of Tacoma, Pacific Gas and Electric Company, Nevada Power Conpany and Black Hills Power and Light Company.

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in service Schedule PPL-3 under Pacific's Tariff.

Comment date: February 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Power & Light Company

[Docket No. ER85-277-000]

Take notice that Puget Sound Power & Light Company ("Puget") on February 4, 1985 tendered or filing, as an initial rate schedule, the contract dated on September 28, 1,984, for upgrading the electric transmission facilities and service between Puget Sound Power & Light Company ("Puget") and the United States of America ("Navy").

The contract provides for rebuilding certain transmission facilites that interconnect the Navy and Puget and for upgraded transmission services as an exchange in kind between the Navy and Puget. The Navy has agreed to pay Puget

a onetime connection charge for the upgrading of certin transmission facilities. Service under this contract will commence after the completion of the transmission facilities upgrade on or before April 1, 1985.

Comment date: February 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Company

[Docket No. ER 85-283-000]

Take notice that on February 6, 1985, Oklahoma Gas and Electric Company (OG&E) tendered for filing a new Agreeement intended to supersede OG&E's Rate Schedule FERC No. 119. This Agreement is the contract between OG&E and the Southwestern Power Administration (SWPA). The new rate is identical to the old rate, and provides for the sale of Replacement Energy and Emergency Service by OG&E to SWPA.

OG&E requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: February 27, 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 intevene or protest with the Federal Energy Regulation 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 295.214). 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4203 Filed 2-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE84-11-002]

Appalachian Power Co.; Application for Exemption

February 15, 1985.

Take notice that Appalachian Power Company (APC) filed an application on November 19, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, information on the cost of providing electric service as specified in Subparts B, C, D, and E of Part 290. The delay in publishing this Notice Of Application For Exemption in the **Federal Register** is due to an administrative oversight.

In its application for exemption APC states, in part, that it should not be required to file the specified data for the following reason:

The gathering of the information is not likely to carry out the purposes of section 133 of the Public Utility Regulatory Policies Act.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person must also serve a copy of such comments on:

Kevin F. Duffy, Esq., American Electric Power Service Corp., 1 Riverside Plaza, Columbus, Ohio 43215

and

Mr. Barry L. Thomas, Appalachian Power Company, 40 Franklin Road, SW., Roanoke, Virginia 24009

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4252 Filed 2-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7077-001, et al.]

Applications for Abandonment of Service

February 15, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 4, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
G-7077/001, D, Feb. 7, 1985	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102.	Consolidated Gas Supply Corporation, George S. Bland Lease, New Milton District of Doddridge County, West Virginia.	(1)	
G-7083-001, D, Feb. 5, 1985	do	Equitable Gas Company, Sharp-McMillen Lease, Grant and Jefferson Districts of Nicholas County, West Virginia.	(1)	
CI64-883-001, D, Feb. 1, 1985	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252	Natural Gas Pipeline Company of America, Ann-Mag Field, Brooks County, Texas.	(2)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
C85-228-000 (CI63-35), B, Feb. 7, 1985.	Sun Exploration and Production Co. P.O. Box 2880, Dallas, Texas 75221-2880	El Paso Natural Gas Company, Brown Bassett Field, Crockett County, Texas.	(*)	
C85-229-000, B, Feb. 7, 1985	TEC Corporation, P.O. Box 3331, Evansville, Indiana 47706.	Texas Gas Transmission Corporation, Hanson South Gas Field, Hopkins County, Kentucky.	(*)	
C85-230-000, B, Feb. 7, 1985	Joseph H. Hager, d.b.a. Seneca-Upshur Petroleum, Inc.	Consolidated Gas Transmission Corporation, Warren Field, Upshur County, West Virginia.	(*)	
C85-231-000 (CI69-999), B, Feb. 7, 1985.	Phillips Oil Company (Succ. to Aminoil, Inc.), 336 Home Savings & Loan Bldg., Bartlesville, Okla. 74004.	Transwestern Pipeline Company, Bell Lake Field, Lea County, New Mexico.	(†)	
C85-232-000 (CI78-632), B, Feb. 7, 1985.	do	El Paso Natural Gas Company, Willow Lake (Morrow Formation), Eddy County, New Mexico.	(†)	
C85-236-000 (CI75-243), B, Feb. 7, 1985.	MAPCO Oil & Gas Company (Formerly: MAPCO Production Company), 1800 S. Baltimore, Tulsa, Oklahoma 74119.	Florida Gas Transmission Company, North Montegut Field, Terrebonne Parish, Louisiana.	(*)	
C85-237-000 (CI76-577), B, Feb. 7, 1985.	do	Florida Gas Transmission Company, North Montegut Field, Terrebonne Parish, Louisiana.	(*)	
C85-238-000 (CI77-748), B, Feb. 7, 1985.	do	Florida Gas Transmission Company, Chalkley Field, Cameron Parish, Louisiana.	(*)	

¹ Last deliveries of gas purchased by Cities Service from Hugh Spencer and resold to Consolidated Gas Supply Corporation occurred during August, 1984 and the purchase agreement between Cities Service and Hugh Spencer dated 12-31-59 was terminated effective 1-4-85 due to the volume of gas produced and sold under the agreement having reached the economic limit, thus making the sale unprofitable for both parties.

² Deliveries of gas purchased by Cities Service from Peake Operating Company and resold to Equitable Gas Company under the subject contract will cease on 2-1-85. The purchase agreement between Cities Service and Peake dated 5-4-55 expired 5-4-60; however, deliveries of gas have continued until Applicant was advised by Peake that the contract would be terminated 2-1-85.

³ Certain leases have expired or have been terminated or surrendered.

⁴ Assignment and Bill of Sale executed on 11-28-84 effective 12-1-84, wherein Sun Exploration and Production Company assigned its interest in Property No. 629080 Myrtle Mitchell Unit and no longer has leaseholdings and retains no interests under Rate Schedule No. 151.

⁵ Field depleted.

⁶ Expenses exceed income.

⁷ Aminoil, Inc., which was merged into Phillips Oil Company effective 1-4-85 and assigned to Kaiser-Francis Oil Company, effective 2-1-84, its interest in the properties.

⁸ Depletion of Reserves and Plugged and Abandoned.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-4253 Filed 2-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-26-002]

Natural Gas Pipeline Co. of America; Change in Rates

February 14, 1985.

Take notice that on February 13, 1985, Natural Gas Pipeline Company of America (Natural) submitted for filing, to be part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), to be effective March 1, 1985:

Substitute Fifty-seventh Revised Sheet No. 5

Substitute Twenty-fourth Revised Sheet No. 5A

The purpose of this filing is to amend Natural's PGA filing in Docket No. TA85-1-26-000 and TA85-1-26-001 filed on January 18, 1985. This filing reduces the 10.76¢ proposed commodity rate increase contained in the January 18, 1985, filing to 4.71¢. This 6.05¢ decrease reflects the elimination of the 5.72¢ annual surcharge adjustment designed to recover $58.4 million of Order 94 production related cost payments made by Natural in parital satisfaction of its retroactive contractual obligations. Natural had indicated in the January 18, 1985, filing that in the event the Commission approved Natural's request for a one-time lump sum billing to its customers to recover Order 94 payments made to producters, Natural would refile to eliminate that portion of the surcharge adjustment. The Commission approved the one-time billing procedure in an order dated January 29, 1985, in Docket No. RP85-18-000.

Also included is a .33¢ surcharge reduction to reflect the effect of the Stipulation and Consent Agreement in Docket No. IN82-2 issued February 1, 1985, which, among other things, required Natural to credit its deferred account by $1.5 million and to include such adjustment in the computation of its surcharge adjustment as of March 1, 1985.

Natural requests waiver of the Commission's Regulations to the extent required to make the proposed tariff sheets effective on March 1, 1985.

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 §§ 385.214 and 385.211. All such petitions or protests must be filed on or before February 21, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4254 Filed 2-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-99-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 14, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 14, 1985 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

Substitute Second Revised Sheet No. 122

The above tariff sheet is being filed in substitution of its counterpart which was filed on December 17, 1984 pursuant to Commission order issued November 21, 1984 in Docket No. RP84-99-001, which ordered Texas Eastern's revised tariff sheets filed in Docket No. RP84-99-000 be withdrawn. The tariff sheets that were withdrawn reflected a new Rate Schedule AIC (Additional Incentive Charge), related Form of Service Agreement and conforming changes to the General Terms and Conditions. It has come to our attention that a reference to Rate Schedule AIC was inadvertently left in Second Revised Sheet No. 122 and we are therefore, filing Substitute Second Revised Sheet No. 122 to correct the error.

The proposed effective date of the above tariff sheet is November 21, 1984.

Copies of the filing were served on Texas Eastern'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, 825

North Capitol Street, NE., Washington, DC 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 21, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4255 Filed 2-20-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-6-FRL-2779-8]

Parts I and III of the Final NPDES Permits for Petroleum Storage and Transfer Facilities in the States of Arkansas, Louisiana, Oklahoma, and Texas; Issuance

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: This notice corrects the title appearing in the July 12, 1984 of the **Federal Register** on page 28446. The corrections encompass typographical errors or minor changes and clarifications which do not involve any substantive or policy issues. Because these corrections do not involve any substantive or policy issues, the Agency finds that notice and public comment are not required and that good cause has been shown for these corrections to become effective upon publication.

In FR Vol. 49, 135 appearing on pages 28446 through 28453 in the issue of July 12, 1984, make the following changes:

1. In Part I, page 28449, Part I is deleted and placed immediately above A. Effluent Limitations and Monitoring requirements on page 28448.

2. In Part I.D.5. a(1)(ii), page 28450, 150 persons is changed to 250 persons.

3. In Part III.B.4., pages 28452, the definition of "quarter" is changed to read as follows: "Quarter means a calendar quarter (i.e. January through March, April through June etc.)

4. In Part III.B.5., page 28453, the words "petroleum and" is inserted after the word receptacles in the first sentence.

5. In Part III.B.5, page 28453, the words "Petroleum" and "Petroleum products" is changed to include crude oil. Crude oil was included in the definition in the proposed permit published September 13, 1983 (48 FR 41084) but a typographic omission occurred in the final issued permit.

Effective date: February 21, 1985

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 85-3991 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

[A-6-FRL-278-6]

Region 6; Extension of the Expiration Date of a PSD Permit; Kirby Forest Industries, Inc.

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permit:

1. PSD-TX-471—Kirby Forest Industries, Inc. This permit was issued on June 24, 1983, for the construction of a pulp and paper mill to be located approximately 1.5 miles west of Bon Wier, Newton County, Texas. Construction has not commenced due to unfavorable economic conditions. The permit was extended for one year to a new expiration date of December 24, 1985.

A notice of EPA's proposed action to extent the PSD permit was published in a newspaper in the affected area of the facility. No comments were received regarding the proposed extension. Documents relevant to the extension request are available for public inspection during normal business hours at the Air and Waste Management Division, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, and in the offices of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

This extension is a final action reviewable under section 307(b)(1) of the Clean Air Act only in the Fifth Circuit Court of Appeals. Any petition for review must be filed on or before April 22, 1985.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: February 11, 1985.

Frances E. Phillips,

Acting Regional Administrator, Region 6.

[FR Doc. 85-4229 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30248; FRL-2781-3]

Certain Companies; Applications To Register Pesticide Products; Zoecon Corp., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register certain pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comments by March 25, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30248] and the file number to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, Attn: PM 21, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM 21, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not

imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File Symbol:* 11273–LU. Applicant: Zoecon Corporation, A Sandoz Co., 975 California Ave., Palo Alto, CA 94304. Product name: Sandofan® 31F Fungicide. Fungicide. Active ingredient: 2-Methoxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2'6'-xylidide 31%. Proposed classification/Use: General. For control of seed rot and damping off diseases of certain crops.

2. *File Symbol:* 11273–LE. Applicant: Zoecon Corporation. Product name: Oxadixyl Technical Fungicide. Fungicide. Active ingredient: 2-Methoxy-*N*-(2-oxo-1,3-oxazolidin-3-yl)-acet-2'6'-xylidide 96%. Proposed classification/Use: General. For manufacturing use only.

II. Product Involving a Changed Use Pattern

File Symbol: 43813–T. Applicant: Janssen Pharmaceutica, PO Box 344, Bear Tavern Road, Washington Crossing, NJ 08560. Product name: Fungazil 20EC. Fungicide. Active ingredient: Imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)1*H* imidazole 20%. Proposed classification/Use: General. To include in its presently registered use new, use for disease control in greenhouse. Type registration: Conditional.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: February 11, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–4233 Filed 2–20–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–40009C; PH–FRL 2775–7]

Department of the Interior Federal Agency Plan; Approval of Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: EPA issued a Notice of Intent to Approve the amended Department of the Interior (DOI) Federal Agency Plan for the certification of its employees to apply restricted use pesticides in the performance of their duties, as published in the **Federal Register** of October 12, 1983 (48 FR 46427). The previously approved certification plan covered only the Bureau of Land Management (BLM). The amended plan covers not only the BLM, but also the Bureau of Indian Affairs (BIA) and the National Park Service. This notice announces approval by EPA of the amended plan.

EFFECTIVE DATE: February 21, 1985.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the locations where the plan is available for inspection.

FOR FURTHER INFORMATION CONTACT: John MacDonald, Compliance Monitoring Staff (EN–342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. M–2510, 401 M Street SW., Washington, D.C. 20460 (202–382–7846).

SUPPLEMENTARY INFORMATION: The only comment received in response to the Notice of Intent was from the Natural Resources Department of the Three Affiliated Tribes, Fort Berthold Reservation, Mandan, Hidatsa, and Arikara Tribes. EPA regulations require specific coordination between Federal agencies with approved certification plans and States. The Three Affliated Tribes described the unique relationship between the BIA and the Indian tribes. Further, the Three Affiliated Tribes pointed out that several tribes were developing tribal certification plans for EPA approval. Because of this situation, the Three Affiliated Tribes requested that the DOI Certification Plan require the same coordination with Indian tribes as was required with States. The DOI Certification Plan has been revised to accommodate this request. Changed pages have been submitted. The Three Affiliated Tribes have reviewed these changes and sent a letter to EPA withdrawing their objections to the approval of the DOI certification plan.

Copies of the DOI Certification Plan are available for inspection at the following locations:

U.S. Department of the Interior, Bureau of Land Management (230), 1725 I Street NW., Washington, D.C. 20240;

Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202;

Environmental Protection Agency, Region, I, John F. Kennedy Building, Boston, MA 02203;

Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278;

Environmental Protection Agency, Region III, Curtis Buiding, Sixth and Walnut Streets, Philadelphia, PA 19106;

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365;

Environmental Protection Agency, Region V, Pesticides Branch, 230 South Dearborn Street, Chicago, IL 60604;

Environmental Protection Agency, Region VI, 1201 Elm Street, First International Building, Dallas, TX 75270;

Environmental Protection Agency, Region VII, 324 11th Street, Kansas, City, MO 64108;

Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Suite 900, Denver, CO 80295;

Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105;

Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 98101.

The Department of the Interior's amended plan for the certification of its employees to apply restricted use pesticides in the performance of their duties is approved.

Dated: February 18, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–4236 Filed 2–20–85; 8:45 am]

BILLING CODE 6560–50–M

[Opp-30250; FRL-2781-1]

E.I. du Pont de Nemours and Co.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered pesticide product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by March 25, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30250] and the file number (352-UGI) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM#2, Attn: PM 21, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM 21 (703-557-1900).

SUPPLEMENTARY INFORMATION: E.I. du Pont de Nemours and Co., Wilmington, DE 19898, has submitted an application to EPA to register the pesticide product Du Pont® Carbendazim Technical, EPA File Symbol 352-UGI, containing the active ingredient (methyl 2-benzimidazolecarbamate) at 98 percent, pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use for manufacture of fungicides only. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended).

Dated: February 11, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-4235 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30222C; FRL-2781-2]

Elanco Products Co.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Elanco Products Co. to register the pesticide product Rubigan® 50W containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M Street, SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 229, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, pubished in the **Federal Register** of January 12, 1983 (48 FR 1349), which announced that Elanco Products Co., 740 S. Alabama St., Indianapolis, IN 46285, had submitted an application to register the pesticide product Rubigan® 50W containing the active ingredient fenarimol [alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol] at 50 percent; an active ingredient not included in any previously registered product.

The application was approved on November 13, 1983 as Rubigan® 50W for general use on turfgrasses to control dollar spot, large brown patch, fusarium blight, stripe suit, and pink or gray snow mold. The product was assigned EPA Registration No. 1471-134.

The Agency has considered all required data on the risks associated with the proposed use of fenarimol and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fenarimol, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on fenarimol.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA, 22202 (703-557-3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M

Street, SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(4)(5) FIFRA, as amended)

Dated: February 11, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-4234 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-300093; PH-FRL 2782-8]

Compound 1080; Availability and Request for Comments on Data in Support of Application for Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the Agency has received data, labeling, and other information necessary to make a final decision on the registration of Sodium Monofluoroacetate (Compound 1080) Livestock Collar, EPA File Symbol 6704-IL. This notice also announces that these data are available for public inspection and solicits public comments on these data and this application. The Agency will consider these comments, in addition to comments from its own staff and the Office of Endangered Species, in reaching a final decision on the adequacy of the data and the final terms and conditions of the registration, if any is granted at this time.

DATE: Written comments, in triplicate, must be received on or before March 25, 1985. The Agency will not consider requests to extend the comment period.

ADDRESS: By mail, address written comments identified by the document control number [OPP-30093] to:

Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person: bring comments to: Rm 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter.

All written comments, and a copy of the data submitted to support the registration of the 1080 Toxic Collar, will be available for public inspection in Rm 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Agency recommends that persons wishing to review data or comments contact Ms. Frances Mann (703-557-3262), in advance, to schedule a time to view these documents.

FOR FURTHER INFORMATION CONTACT:

By mail: William H. Miller, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: RM. 211, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: On September 22, 1981, the Agency received an application (EPA File Symbol 6704-IL) from the U.S. Department of the Interior (USDI), Washington, D.C., to register Compound 1080 (Sodium Flouoroacetate) in the 1080 Toxic Collar for use on sheep or goats to control coyotes that depredate livestock. On January 12, 1982, the Agency received an application (EPA File Symbol 35978-U) from the Wyoming Department of Agriculture, Cheyenne, Wyoming, and an application (EPA File Symbol 46779-R) from Rancher's Supply, Inc., Alpine, Texas, for a similar use. The applicants proposed restricting the use of the 1080 Toxic Collar only to certified applicators and individuals under their direct supervision. During this period the Agency also received other applications to register Compound 1080 in Single Lethal Dose (SLD) baits.

As a result of the 1080 applications for registration, the Agency held extensive public hearings, followed by an "Initial Decision" by Administrative Law Judge Spencer Nissen on October 22, 1982, and a "Final Decision" by Assistant Administrator Lee M. Thomas on October 31, 1983. These decisions authorized the Agency to consider applications for registration of the 1080 Toxic Collar, with certain use restrictions, in its normal registration process. The Agency has now received all the data, labeling, and other information upon which to make a final decision on the registration of the 1080 Toxic Collar and on the terms and conditions of such a registration, if granted at this time. This Notice is being published in accordance with FIFRA Section 3(c)(4) and 40 CFR 162.6(b)(6).

The Agency is currently reviewing this information. Upon completion of our review, we will request a biological opinion, under section 7 of the Endangered Species Act, from USDI's Office of Endangered Species. Their biological opinion will evaluate the impacts of this proposed use on endangered species. By way of this Notice, the Agency wishes to provide the public with the opportunity to comment on (1) the adequacy of the individual studies, themselves, and (2) the adequacy of the studies to support registration of the 1080 Toxic Collar.

Titles of the data and other information available for inspection include the following:

1. Secondary Hazard of the 1080 Toxic Collar: Toxicity of Poisoned Coyotes to Skunks and Magpies. Pen Studies June-July 1984.
2. Toxicity of 1080-Treated Diets to Magpies, Skunks and Golden Eagles. Laboratory and Pen Studies September-October 1984.
3. Acute Dermal Toxicity Study.
4. Primary Dermal Irritation Study.
5. Primary Eye Irritation Study.
6. Efficacy and Hazards of Compound 1080 in Toxic Collars. Laboratory and Pen Studies April 1980-July 1984.
7. Modified Gas-Liquid Chromatographic Method for Determination of Compound 1080 (Sodium Fluoroacetate).
8. Gas Chromatographic Analysis of Coyote and Magpie Tissues for Residues of Compound 1080 (Sodium Fluoroacetate.)
9. Sodium Fluoroacetate (Compound 1080) Contamination on the necks of Coyote-killed Angora Goats with Punctured Toxic Collars.
10. Estimated Doses of Sodium Fluoroacetate (Compound 1080) Delivered to Coyotes by Toxic Collars.
11. A Report on Field and Laboratory Research November 1978-March 1980.
12. The Toxic Collar for Selective Removal of Coyotes that Attack Sheep.
13. Predacidal Uses of 1080: Technical Review Document.
14. Initial Decision. FIFRA Docket No. 502. Notice of Hearing on the Applications to Use Sodium Fluoroacetate (Compound 1080) to Control Predators.
15. Final Decision. FIFRA Docket No. 502. Notice of Hearing on the Applications to Use Sodium Fluoroacetate (Compound 1080) to Control Predators.
16. Application Documents and Labeling Information.

Along with comments from its own staff and those from the Office of Endangered Species, the Agency will take into consideration these public comments in its decision-making process. At a later date, the Agency will publish a summary of these comments in the **Federal Register** and explain how it considered them in making its decision. See information under "ADDRESS" above for making arrangements for viewing the data to support registration.

Dated: February 12, 1985.

Susan H. Sherman,

Director, Office of Pesticide Programs.

[FR Doc. 85-4357 Filed 2-20-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Disclosure by the FDIC of Statutory Enforcement Actions; Policy Statement

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Issuance of Statement of Policy.

SUMMARY: The FDIC is proposing to adopt a statement of policy which provides for the FDIC to publish and make available to the public the names of all banks and persons participating in their affairs to whom the FDIC has issued notices and final orders in conjunction with statutory enforcement actions initiated on or after the date this proposed statement of policy is issued for comment. This policy would apply to notices of intention to terminate insured status and insurance termination orders, notices of charges and cease-and-desist orders, notices of intention to remove and removal orders, notices of suspension or prohibition from further participation and suspension orders, notices of assessment of civil penalty and civil money penalty orders, and notices of intent to issue a directive and directives. Notices would be included in this publication when issued and final orders would be listed on or about their effective dates. When applicable, the publication would also include previously disclosed final orders that had been terminated by the FDIC.

In order to preserve public confidence in the banking system in an increasingly deregulated and competitive environment, the FDIC believes that greater reliance on market discipline is preferable to the introduction of an excessive and extensive system of regulatory controls over the activities of banks. In order to achieve such discipline, the banking public needs information concerning the banks with which it conducts or may conduct its business in order to properly evaluate the level of risk that will be encountered in dealing with specific banks. Thus, the FDIC is soliciting comments on the merits of whether public disclosure of notices issued by and final enforcement actions taken by the FDIC would facilitate the development of effective market discipline, thereby encouraging funds flows to the vast majority of banks that are prudently operated rather than to the marginal banks that tend to pay the highest rates.

DATE: Comments on the proposal must be received by March 25, 1985.

ADDRESS: Comments regarding the proposed statement of policy should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments may also be inspected in Room 6108 between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4761.

SUPPLEMENTARY INFORMATION: The proposed policy statement which has been summarized above is intended to furnish the FDIC with an additional tool for increasing market discipline by subjecting banks and their managements to greater public scrutiny. Adoption of the proposal would therefore aid the FDIC in assuring that banks have the caliber of management necessary for their safe and sound operation in an increasingly deregulated environment. To date, administrative actions taken by the FDIC, whether of an informal nature such as memorandums of understanding or of a formal nature such as the statutory enforcement actions covered by the policy statement, have been reasonably successful in correcting violations of laws and regulations and weaknesses related to bank capital, asset quality, earnings, and liquidity. However, these informal and formal actions have frequently been less effective in helping to remedy management problems. The specific objectives and narrow confines of an administrative action may restrict a bank's management temporarily, but, where poor management is the real root of a bank's other problems, similar problems may resurface after an outstanding action has been terminated.

At present, banks that are subject to final orders resulting from statutory enforcement actions are required by FDIC regulations or policies to disclose this fact only in certain specific circumstances. Banks with securities registered with the FDIC in accordance with the Securities Exchange Act of 1934 are required to inform investors of the issuance of a cease-and-desist order in documents such as annual reports, quarterly reports, current reports, and proxy statements. Banks seeking to publicly raise capital (debt or equity), whether or not their securities are registered, are expected to disclose the existence of statutory enforcement actions in offering circulars prepared for distribution to potential purchasers of their securities. Beginning in late 1984, all insurance termination orders and cease-and-desist orders have contained a provision requiring the bank to provide a description of the final order to its shareholders in conjunction with the bank's next shareholder communication and with its notice or proxy statement preceding the next shareholders' meeting.

Other than in the circumstances described above, information concerning a statutory enforcement action against a particular bank has generally not been made available directly to the bank's depositors, its other customers and creditors, and the public at large by either the bank or the FDIC. The FDIC has since 1976 published summaries of its statutory enforcement actions, but these summaries do not name the banks or individuals subject to such final orders. It may be possible in some cases for a person with considerable knowledge of a particular bank to determine from a summary that the bank is subject to a final order. Moreover, the FDIC will release a copy of the actual order issued against a specific bank or individual when such a document is requested under the Freedom of Information Act (FOIA). (Notices, however, are not released.) Under present FDIC policies, when a person requests a copy of a final order imposed on a single named bank, the banks' name is not deleted from the document that is furnished to this person. If the request covers more than one institution, however, the FDIC currently excises the bank's names and other identifying data from the copies of the orders released to the individual submitting the FOIA request.

Reasons for Changing Present Disclosure Practices for Enforcement Actions

The existing disclosure procedure is not an efficient method for ensuring that market participants are equally aware of any notices or final orders issued against a bank. Moreover, the FDIC believes that the nature and content of a notice or final order is relevant to customer decisions regarding their relationships with a bank. The effect of this proposed policy statement would be to subject banks against which statutory enforcement actions are initiated to potentially greater public scrutiny. Institutions whose problems have resulted from poor management will be less able to hide that fact. Persons evaluating the financial condition of banks will be better able to determine the caliber of their managements if the specific institutions against which notices or final orders have been issued are known to the public. Uninsured depositors and other creditors will be able to assess their potential risk.

The vast majority of banks supervised by the FDIC are sound, well managed institutions. The FDIC relies on reason and persuasion as its primary corrective tools when weaknesses are detected in these banks. In certain banks which are regarded as having sufficient overall strength and financial capacity to make failure only a remote possibility, the FDIC may identify weaknesses that, if not properly addressed and corrected, could worsen into a more severe situation. The policy of the FDIC's Division of Bank Supervision provides that matters in need of corrective action in such institutions should be addressed in a memorandum of understanding. (The proposed policy statement does *not* provide for the publication of the names of banks that have entered into memorandums of understanding with the FDIC and the FDIC does not consider memorandums of understanding available to the public under the FOIA.) A smaller number of banks are found to have problems or violations of sufficiently greater severity that the Division of Bank Supervision recommends to the FDIC Board of Directors that formal action be taken against these institutions pursuant to sections 8 or 18(j)(3) of the Federal Deposit Insurance Act ("FDI Act") or section 908(b) of the International Lending Supervision Act of 1983 ("ILSA"). In addition, the FDIC may institute a formal action under these sections of the FDI Act against any director, officer, employee, agent, or other person participating in the conduct of the affairs of a bank. Through these enforcement actions, the FDIC acts to correct improper banking practices, increase bank capital, or suspend or remove individuals from further participation in a bank's activities.

The FDIC has been granted authority to issue a final cease-and-desist order by section 8(b) of the FDI Act (and a temporary cease-and-desist order by section 8(c)) if a nonmember bank is engaging in an unsafe or unsound practice or is violating a law, rule, or regulation or any written agreement entered into with the FDIC. If the bank or any individual does not comply with such an order, the FDIC may impose a civil money penalty in accordance with section 8(i)(2) of the FDI Act. The FDIC is authorized by section 8(a) of the FDI Act to initiate termination-of-insurance proceedings against any insured bank in an unsafe or unsound condition. Under sections 8(e) and 8(g) of the FDI Act, the FDIC may suspend or remove directors, officers, or other persons participating in the management of a nonmember bank if the person has violated a law, regulation, or final cease-and-desist order, has engaged in unsafe or unsound banking practices, has breached his or her fiduciary duty, or has been indicted for a felony involving dishonesty or breach of trust. Section 18(j)(3) of the FDI Act provides for the FDIC to levy a civil money penalty against any nonmember bank or person participating in the conduct of its affairs for violations of laws or regulations relating to loans and other dealings between banks and their affiliates or to loans and extensions of credit by a bank to its executive officers and principal shareholders.

The administrative procedures applicable to these formal actions afford the bank or person participating in its affairs an opportunity for a hearing before an administrative law judge. Unless this right to a hearing is waived, the FDIC must serve the appropriate parties with a notice that contains a statement of facts relating to the practices or violations which warrant the enforcement action and fix a time and place for a hearing. A notice of charges is issued in conjunction with cease-and-desist proceedings while a notice of intention to terminate insured status, a notice of intention to suspend or remove, a notice of assessment of civil penalty, and a notice of intent to issue a directive apply to proceedings of the types indicated within their names.

In addition, section 8(c) of the FDI Act empowers the FDIC to issue a temporary cease-and-desist order whenever it is determined that violations or threatened violations of law by or unsafe or unsound practices of a bank or a person participating in its affairs are likely to cause insolvency or substantial dissipation of its assets or earnings, seriously weaken its condition, or otherwise seriously prejudice the interests of its depositors. A temporary order, accompanied by a notice of charges, becomes effective upon service. However, the party subject to such an order may seek injunctive relief to set it aside, limit it, or suspend it.

Finally, section 908(b) of ILSA authorizes the FDIC to issue a directive to a nonmember bank that fails to maintain the minimum capital requirement prescribed for it under the FDIC's capital maintenance regulations (12 CFR 325) which implement section 908(a) of ILSA. A directive is a final order mandating that a bank restore its capital to the required minimum level within a specified time period.

The FDIC relies on its authority to institute the types of formal enforcement actions described above when circumstances warrant in order to properly discharge its supervisory responsibilities. Nonetheless, adoption of the proposed policy statement should directly affect only a relatively small number of banks. In 1984, the FDIC initiated 226 enforcement actions and issued 125 final cease-and-desist orders, 13 removal orders, and 13 civil money penalty orders affecting 62 individuals. The number of insured state nonmember banks at year-end 1984 totalled approximately 8,850. Hence the FDIC believes that sound, well managed institutions should view the publication of the names of banks and other parties subject to notices and final orders as an appropriate supervisory response in a deregulated banking environment. This disclosure will provide the market with an indication of the institutions that the FDIC has found to be operating in a less than acceptable manner or with more than normal risk. Public notice of such situations should aid market participants in their evaluation of the condition of the institutions with which they wish to maintain or initiate banking relationships. Should a customer be averse to the risk of a continuing relationship with a bank against which a statutory enforcement action has been undertaken, the selection of a new bank or banks with which to conduct business should inure to the benefit of well managed competing institutions. Thus, adoption of this policy statement should have the long range effect of strengthening the industry.

Other Considerations

The proposed disclosure of notices of charges and similar notices as well as final orders is intended to reduce any incentive that a bank or a person participating in its affairs might have to attempt to delay or avoid disclosure of an enforcement action by not consenting to the entry of a final order. When a bank or other person does not consent to the issuance of an order, the FDIC has the burden of proving the allegations set out in its notice during the ensuing hearing process, lengthening the amount of time before an order, if any, can be entered. The FDIC initiates a formal administrative action against a bank or person only when each charge can be properly supported by evidence and all charges, taken as a whole, are sufficiently critical to warrant such serious enforcement action. The impetus for such action is the FDIC's desire for a bank to undertake the corrective actions needed to restore it to a safe and sound condition and to bring it into compliance with applicable laws and regulations. The policy statement as proposed should not interfere with the FDIC's ability to achieve this supervisory objective since the disclosure consequences of the policy would not depend on whether a bank or other party decided to consent to an order.

Since a bank is expected to serve the convenience and needs of its community, the impact of an enforcement action affects both depositors and borrowers. All bank customers have an interest in preserving the bank's presence in the community. Shareholders have their investment to protect. The soundness of the bank is the key to the continuity of its existence. Therefore, these various groups should be justifiably concerned over banking practices and violations, within the control of management that have been deemed so serious as to warrant the issuance of a notice or order. In particular, a bank's shareholders elect its board of directors and a primary duty of the board is to appoint officers who are qualified to manage the bank's daily activities. While current FDIC policy requires a bank to inform its shareholders about insurance termination orders and cease-and-desist orders not later than the next shareholders' meeting, under the proposed disclosure policy this group would be assured of receiving prompt notification of notices as well as final orders.

While most enforcement actions relate to safety and soundness matters, the FDIC also issues final orders for the purpose of correcting violations of consumer protection and civil rights laws and regulations and for the purpose of correcting unsatisfactory operations in bank trust departments. The proposed policy statement makes no distinction among the various aspects of a bank's operations which may fall within the scope of the FDIC's formal actions. Since an objective of the proposal is to provide bank customers with information they may find useful in their evaluation of the quality of an institution's management, the FDIC feels it would be inappropriate to exclude notices and orders dealing with certain subjects from disclosure. Regardless of their content, notices and final orders are in most cases indicative of deficiencies in the manner in which bank directors and officers have discharged their responsibilities. Disclosure of notices and final orders will therefore permit bank customers to assess management performance.

As it has been proposed, the disclosure policy would apply to all statutory enforcement actions initiated on or after the date this proposed statement is issued for public comment. If an when the policy statement is approved by the FDIC Board of Directors, the names of banks and persons participating in their affairs to whom notices and final orders have been issued would be published on or about their issue dates and effective dates, respectively. Those notices and orders associated with actions initiated after the date of this proposal that the FDIC issues between that date and the date the proposed policy becomes effective, if adopted, would be included in the first disclosure to be issued following the policy's effective date. The FDIC is presently considering the use of a weekly press release as the method for disclosing its statutroy enforcement actions should the proposed policy statement become effective.

Since adoption of the policy statement would represent a change in the FDIC's disclosure practices with respect to enforcement actions, the disclosure policy as proposed would apply only to those enforcement actions initiated on or after the date of its issuance for public comment. Enforcement actions that are already in process as of the date of this proposal that subsequently result in the issuance of notices and final orders would not be subject to this disclosure policy. While banks and other persons involved in such actions are normally informed that final orders specifically identifying their names may be released in response to a request under the FOIA, these parties would likely have been advised on the limited amount of routine disclosure applicable to enforcement actions under current FDIC policy. The FDIC is therefore interested in receiving public comment on whether and to what extent the proposed disclosure policy should apply to enforcement actions that are under way as of the date of this proposal.

An additional result of the proposed statement of policy, if it were to be adopted, would be that the text of final orders that had been listed in the FDIC's publication could be released to the public under the FOIC with only limited deletions. Moreover, the FDIC would begin to make available to the public notices of charges and similar notices if the policy statement and a proposed amendment to section 309.4 of its regulations (12 CFR Part 309), published eleswhere in this issue, are adopted. For banks and individuals identified in a press release there would no reason to excise names and certain other identifying information from the text of final orders requested under FOIA as is current FDIC practice (unless a FOIA request covers only a single named bank) or from the test of notices. However, this would create a system in which notices and final orders resulting from enforcement actions that predate the proposed disclosure policy would continue to have names and identifying data deleted before a copy of the text is released. Since the FDIC believes that market discipline is enhanced when relevant information, including information on notices and final orders, is available to a bank's depositors and its other customers and creditors, a disclosure system that differentiates between enforcement actions solely on the basis of the date they were initiated does not promote an informed banking public. Thus, the FDIC also solicits comment on whether the text of notices and final orders resulting from formal actions instituted prior to the date this proposed policy is issued for comment should be released to the public upon request without deletions of names and certain other identifying information.

Related Issues for Which Comments Are Solicited

The proposed policy statement provides for publication of enforcement actions by the FDIC since, as described above, state nonmember banks themselves are not generally required to make extensive disclosure of such actions. Nonetheless, an alternative approach to achieving timely public awareness of notices and final orders issued by the FDIC would be for the FDIC to adopt a policy that places the responsibility for disclosure of statutory

enforcement actions on the banks involved. The FDIC would therefore like to receive comments on whether banks that are subject to enforcement actions (or whose directors, officers, employees, or agents are subject to such actions) should be required to publicly disclose this fact, either in place of the FDIC's publication of these actions or in addition to it.

Informal enforcement actions taken against banks by the FDIC, typically in the form of memorandums of understanding, have not been included within the scope of the proposed disclosure policy statement. They are, however, an important means by which the FDIC seeks to ensure that bank managements recognize the problems within their institutions and take appropriate corrective action to eliminate these weaknesses. Since informal actions are directed toward banks of supervisory concern whose overall strength and financial capacity makes the possibility of failure remote whereas statutory enforcement actions are initiated against banks with problems of greater severity, memorandums of understanding are not intended to be a substitute for formal actions such as cease-and-desist orders. Nevertheless, because the proposed policy statement does not provide for the FDIC to divulge the names of banks that have entered into memorandums of understanding, banks with severe weaknesses that would normally be the subjects of formal enforcement actions by the FDIC may strive to negotiate their way into informal memorandums of understanding to avoid disclosure if the policy statement were to be adopted. Comments are therefore sought on the questions of whether the adoption of the proposal would likely lead to an increased use of memorandums of understanding in preference to formal enforcement actions and, should this occur, what the effects, either beneficial or detrimental, of such a shift might be. Consequently, the final issue on which the FDIC wishes to solicit comment is whether the proposed disclosure policy statement should be extended to informal enforcement actions such as memorandums of understanding.

The text of the proposed statement of policy follows:

Disclosure by the FDIC of Statutory Enforcement Actions; Policy Statement

In order for the FDIC to carry out its responsibility to promote a safe and sound banking system that enjoys public confidence, the Board of Directors has been given broad enforcement powers under section 8 of the Federal Deposit Insurance Act ("FDI Act"). The Board has the power to terminate insurance (section 8(a)) and to order banks to cease and desist from engaging in unsafe or unsound practices or violations of law or regulations (sections 8(b) and 8(c)). The Board has also been given the power to suspend or remove a bank officer or director or prohibit participation by others in bank affairs (sections 8 (e) and (g)). In addition, sections 8(i)(2) and 18(j)(3) of the FDI Act give the FDIC authority to assess civil money penalties against banks and individuals for violations of certain statutes. Finally, section 908(b) of the International Lending Supervision Act of 1983 ("ILSA") authorizes the FDIC to issue a directive to a bank that fails to maintain its required minimum capital.

The administrative proceedings associated with these various enforcement actions provide the bank or the person participating in its affairs with an opportunity to either consent to the entry of a final order or to contest the action in a hearing presided over by an administrative law judge. When an action is contested, the FDIC must issue a notice to the bank or the other persons subject to the action describing the practices or violations for which corrective action is sought and setting a time and place for a hearing during which the FDIC must prove the charges it has made. A notice of charges is issued in conjunction with cease-and-desist proceedings and also accompanies temporary cease-and-desist orders while notices of intention to terminate insured status, a notice of intention to suspend or remove, a notice of assessment of civil penalty, and a notice of intent to issue a directive apply to proceedings of the types indicated within their names.

Except for banks whose securities are registered with the FDIC in accordance with the Securities Exchange Act of 1934 and banks using offering circulars in connection with the public issuance of their own securities, banks have not generally been required to disclose the existence of notices issued by or final enforcement actions imposed by the FDIC. Recently, however, the FDIC began to include a provision in all of its insurance termination and cease-and-desist orders requiring timely disclosure of such orders to bank shareholders. Moreover, in response to requests under the Freedom of Information Act (FOIA) inquiring about the existence of any final orders against a single named bank (but not against more than one named bank), the FDIC releases copies of final orders under sections 8 and 18(j)(3) of the FDI Act and section 908(b) of ILSA, provided certain information (but not the name of the bank) has been deleted from the documents pursuant to the provisions of the Freedom of Information Act.

The FOIA permits federal agencies in their discretion to withhold certain types of sensitive information from routine public disclosure. The generally confidential treatment heretofore accorded banks and bank directors, officers, employees, and agents involved in statutory enforcement actions emanates from FDIC policy. In the current environment of deregulation of the banking industry, the Board of Directors has reassessed the value of retaining this disclosure policy for notices and final agency orders issued in conjunction with the FDIC's statutory enforcement actions.

Deregulation is intended to decrease the Government's involvement in the banking business both with respect to the industry as a whole and individual institutions. Nevertheless, widespread trust in the banking system must be maintained. As the regulatory restrictions which had previously constrained bank actions are removed, the market takes on greater importance as a mechanism for promoting sound bank management and reducing the potential for inappropriate or abusive behavior by encouraging funds flows to the vast majority of banks that are prudently operated. Thus, the availability of relevant information is essential to an evaluation of bank condition and the effectiveness of the resulting market discipline.

The market's judgment of bank performance incorporates an assessment of the ability and willingness of an institution's management to operate its bank in a safe and sound manner and in conformity with applicable laws, rules, and regulations. One may conclude from the FDIC's initiation of an enforcement action that bank has exhibited a serious weakening in the quality of its assets or other unsound conditions that warrant prompt corrective action by its management, its shareholders, or others. Thus, the marketplace's perception of management's ability, or lack thereof, to effect the remedial measures prescribed in a final order (or to take the necessary steps to eliminate the deficiencies outlined in a notice prior to the entry of a final order) and to restore the bank to a safe and sound condition should help to provide an element of discipline over the institution.

Therefore, the Board of Directors has determined that the names of all banks and persons participating in their affairs to whom the FDIC has issued notices

and final orders in conjunction with statutory enforcement actions should be published and made available to the public. The publication would also include previously disclosed final orders that had been terminated by the FDIC. This policy will apply to all enforcement actions initiated on or after the date this statement of policy was issued for public comment. The publication should also indicate that any person desiring copies of the notices or orders listed therein may obtain them from the FDIC upon written request by naming the banks or individuals of interest. Limited deletions of examination data may be made to such copies to the extent deemed appropriate by the Director of the Division of Bank Supervision.

Adoption of this policy will not only promote market discipline, but will also enhance the FDIC's supervisory efforts. Facing the specter of disclosure, bank managments may be less likely to engage in activities which are unsafe or unsound. Moreover, those banks that have entered into memorandums of understanding, an informal administrative action used by the FDIC as a means of effecting corrective action in banks considered to be of supervisory concern, but which have not deteriorated to the point where they warrant formal statutory enforcement action, may tend to become more highly motivated than at present to implement the recommended corrective measures. In those cases where the initiation of statutory enforcement action becomes necessary, awareness of notices and final orders should provide the market, in concert with the FDIC, with the opportunity to exert pressure on banks to eliminate the unsafe and unsound practices and conditions within their control and to attract and retain competent personnel to properly manage bank affairs.

By order of the Board of Directors this 11th day of February, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-4299 Filed 2-2-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-118]

Bright Banc Savings Association, Dallas, TX (Successor to Texas Federal Savings and Loan Association, Dallas, TX); Application To Withdraw Securities From Listing and Registration

Dated: February 15, 1985.

Bright Banc Savings Association, Dallas, Texas (the "Association"), has filed, on February 4, 1985, pursuant to Securities Exchange Act ("Exchange Act") section 12(d) and Exchange Act Rule 12d2-2(d), an application with the Federal Home Loan Bank Board ("Board") to withdraw from listing and registration on the American Stock Exchange (the "Exchange") Certificates of Deposit Maturing July 22, 1988 and March 21, 1994 (the "1988 and 1994 Certificates"), originally issued by Texas Federal Savings and Loan Association, Dallas, Texas ("Texas Federal"), which has been consolidated into the Association. The reasons given by the Association for delisting and deregistration are as follows:

(1) The application states that on January 4, 1985, Texas Federal was merged with and into Trinity Banc Savings Association, whose name was changed to Bright Banc Savings Association, on January 17, 1985.

(2) The Association has no common stock registered under the Exchange Act. Accordingly, the only reporting obligation for the Association relates to the Certificates.

(3) The Association's application states that during calendar year 1983 and during the first six months of 1984, only $397,000 and $104,000 principal amount, respectively, of the 1988 Certificates were traded on the Exchange, and that only $188,000 and $25,000 principal amount respectively, of the 1994 Certificates were traded on the Exchange. A total of $55,000,000 in principal amount of the 1988 Certificates were issued and a total of $20,000,000 in principal amount of the 1994 Certificates were issued. The Certificates were issued in bearer form only.

(4) In view of the limited trading of the Certificates, the Association believes that the expense of the preparation and filing of Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K under the Act, is disproportionate to any benefit to the holders of the Certificates.

(5) Deposits in the Association, including the Certificates, are insured by the Federal Savings and Loan Insurance Corporation up to $100,000 for each depositor.

(6) The application states that The Exchange has agreed not to interpose any objections to the filing of this application.

(7) The Association's application states that the Association agrees to furnish to holders of Certificates, upon written request, the most recent monthly and quarterly regulatory reports filed by the Association with the Board. For copies of such reports, Certificate holders should contact Mr. Ronald D. Murff, Bright Banc Savings Association, 14311 Welch Road, Dallas, Texas 75234. Payment of the Certificates in excess of the amounts insured by the Federal Savings and Loan Corporation has not been guaranteed. The Prospectus for the offering of Certificates expressly stated that application would be made to list the Certificates on the Exchange, but no assurance was given that an active trading market would develop. The Association made no representations regarding the continued listing of the Certificates on the Exchange.

Any interested person may, on or before March 15, 1985, submit by letter to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., 20552, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Board for the protection of investors. The Board, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Board determines to order a hearing on the matter.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-4227 Filed 2-20-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-055.

Title: Atlantic and Gulf/West Coast of South America Conference.

Parties:

Compania Chilena De Navigacion

Interoceania, S.A.
Compania Peruana De Vapores
Compania Sud Americana De Vapores, S.A.
Lineas Navieras Bolivianas, S.A.M.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would modify the Agreement No. 202–007890 (West Coast of South America Northbound Conference) into Agreement No. 202–002744–055, adding intermodal authority northbound to the scope of Agreement No. 202–002744–055. The parties advise that they intend to cancel Agreement No. 202–007890 upon the effectiveness of Agreement No. 202–002744–055. It would also substitute permanent provisions for previously submitted interim mandatory provisions and would restate the agreement in accordance with the Commission's format, organization and content requirements.

By Order of the Federal Maritime Commission.

Dated: February 15, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85–4281 Filed 2–20–85; 8:45 am]

BILLING CODE 6730–01–M

Petition for an Amended Statement of Policy Concerning the Status of Shippers' Associations; Order Denying Petition

The American Institute for Shippers' Associations, Inc. (AISA) has filed a "Petition for an Amended Statement of Policy Concerning Status of Shippers' Associations Under the Shipping Act of 1984," (Petition) [1] requesting an amendment to the Commission's May 23, 1984 Notice (May Notice) addressing the status of shippers' associations under the Shipping Act of 1984 (1984 Act or Act) (46 U.S.C. app. 1701 *et seq.*).[2] It requests a determination from the Commission that membership and participation in such associations is limited to the "owners or beneficial owners" of the goods shipped through the association.

Notice of filing of the Petition was published in the **Federal Register** and interested persons were invited to submit their views. Comments in support of the Petition were submitted by: (1) Wine and Spirits Shippers' Association, Inc.; (2) Chemical Manufactures Association (CMA); (3) Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic & Gulf Freight Conference; Trans Pacific Freight Conference (Hong Kong); New York Freight Bureau; and Philippines North America Conference (Trans-Pacific Conferences); (4) Council of European & Japanese National Shipowners' Associations (CENSA); (5) Far East Conference; Pacific/Indonesian Conference; Pacific-Straits Conference; and Pacific Westbound Conference (Far East Conferences); (6) Phillips Petroleum Company; (7) U.S. Atlantic & Gulf/Australia-New Zealand Conference; The "8900" Lines; Marseilles/North Atlantic U.S.A. Freight Conference; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference; Mediterranean-North Pacific Coast Freight Conference; Greece/U.S. Atlantic Rate Agreement; The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference; and United States Atlantic Ports/Italy, France and Spain Freight Conference (North Atlantic Conferences); and (8) North Atlantic United Kingdom Freight Conference; North Atlantic French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental-U.S. Gulf Freight Association; Gulf-United Kingdom Conference; Gulf-European Freight Association; North Europe-U.S. South Atlantic Rate Agreement; and U.S. South Atlantic-Europe Rate Agreement (North European Conferences).[3]

Comments in opposition to the Petition were submitted by: (1) Transportation Brokers Conference of America, Inc. (TBCA) Shippers' Association (TBCA/SA); (2) Tobacco Association of the United States; (3) VEXTRAC (Virginia Export Trading Company) Ltd.; (4) International Association of NVOCCs (IANVOCC); (5) National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA); and (6) Greene Companies International, Inc. (Greene).

Positions of the Parties [4]

A. In Support

AISA argues that those entities entitled to participate in shippers' associations under the 1984 Act should be identical to those permitted to participate in domestic shippers' associations under the Interstate Commerce Act (ICA), thereby precluding from membership anyone but the owner or beneficial owner of the goods shipped. AISA believes Congress intended such a result since it used substantially the same definition in section 3(24) of the Act as it used in the freight forwarder provisions of the ICA, which also contain a reference to shippers' associations.[5] AISA finds additional support for its view of Congress' intent from the Conference Report which accompanied the Shipping Act of 1984. There, Congress stated that the new definition of shippers' association:

> . . . Was included for the sole purpose of identifying this shippers' group. A shippers' association would continue to be subject to laws other than the Shipping Act of 1984.

H.R. Rep. No. 600, 98th Cong., 2d Sess. 27–28 (1984). AISA argues that the other laws referred to by Congress are the domestic surface transportation laws. AISA then alleges that case law interpreting the shippers' association provision in the ICA indicates that middlemen such as non-vessel-operating common carriers (NVOs), freight forwarders, and brokers, are not entitled to form or participate in shippers' associations. AISA further contends that application of this Interstate Commerce Commission (ICC) precedent would not conflict with the language or intent of the 1984 Act.

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[1] Shortly before close of business on the day prior to the Commission's consideration of the Petition, AISA filed a Motion to Supplement the Petition. Because of the untimely nature of the request and because no other parties had an opportunity to respond to the Motion, the Motion is denied.

[2] The May Notice, published in the **Federal Register** at 49 FR 21799, advised that shippers' associations were not subject to direct, ongoing affirmative regulation by the Commission and that, accordingly, the Commission did not intend to issue any rules governing the formation or operation of such associations at that time. The May Notice further indicated that the legal issues which may arise from the formation of shippers' associations are matters generally falling within the jurisdiction of other federal agencies. The Commission concluded, nonetheless, that, to the extent such association become involved in activities which may be subject to the Shipping Act of 1984, the Commission would address those issues on an *ad hoc* basis.

[3] Although supporting AISA's basic position, the North Atlantic Conferences and the North European Conferences would have the Commission institute a rulemaking proceeding in this matter.

[4] Comments which are repetitive or cumulative have not been identified and discussed for each commenting party.

[5] 49 U.S.C. 10562 reads in pertinent part:

> The Interstate Commerce Commission does not have jurisdiction under this subchapter [freight forwarder service] over—
>
> * * * * *
>
> (3) The service of a shipper or a group of shippers in consolidating or distributing freight on a nonprofit basis, for the shipper or members of the group to secure carload, truckload, or other volume rates.
>
> * * * * *

AISA also contends that the ICC prohibition on middleman participation in shippers' associations is supported by the express statutory distinctions in the 1984 Act between shippers' associations and other middleman organizations and that predecessor bills to the 1984 Act clarify Congress' intent to exclude non-beneficial owners from shippers' associations. Lastly, AISA claims that a Federal Maritime Commission (FMC) position similar to that of the ICC is necessary to ensure uniformity of regulation; otherwise, FMC shippers' associations comprised of non-beneficial owners would be limited to negotiating only with ocean common carriers and accepting whatever inland intermodal arrangements they have negotiated.

The Wine and Spirits Shippers' Association notes that ocean freight forwarders receive compensation on ocean freight and therefore argues that their participation in shippers' associations could raise questions of illegal rebating. It also points out that NVOs presently enjoy benefits similar to those accorded shippers' associations in relationship to vessel operators and that they thus have no need to function within a shippers' association. Allowing them to do so, the Association contends, would add an additional intermediary between the vessel owner and the beneficial owner of the cargo, with a concomitant cost increase to the general public.

CMA argues that NVOs, brokers and freight forwarders cannot form shipper's associations because they hold themselves out to the public to arrange transportation for the beneficial owners of cargo for a profit; but the definition of shipper's association requires consolidation or distribution of freight on a nonprofit basis. CMA also contends that permitting intermediaries to join shippers associations would dilute the ability of shippers to band together and negotiate rates.

The Trans-Pacific Conferences argue that because NVOs are "carriers" in relation to the underlying shippers, allowing them to join shippers' associations would be antithetical to the Act. These conferences also contend that inclusion of NVOs in a shipper's association could effectively incorporate an entire trade in the association, something which would be contrary to the concept of a definitive group of shippers organized for the purpose of entering into negotiations with carriers. Finally, it is argued that the inclusion of NVOs in shippers' associations could place carriers in violation of the Act unless any contracts between NVO comprised shippers' associations and carriers are filed and become effective under the Act.

The North Atlantic Conferences take the position that participation by NVOs and other intermediaries in shipper's associations could present serious regulatory problems. They note section 10(b)(13)'s requirement that common carriers must negotiate with shippers' associations (46 U.S.C. app. 1709(b)(13)) and are concerned that NVOs operating outside a shipper's association might be forced to negotiate with competing NVOs who have joined an association. These conferences also suggest that by managing or participating in a shippers' association, NVOs could avoid tariff filing requirements, prohibiting against offering service contracts, rebating provisions, and other prohibited acts. Underlying shippers allegedly would be given no notice of the nature of the responsibilities of an NVO and a shippers' association to each other.

Finally, The North Atlantic Conferences assert that while the statutory definition of shippers' association refers to the consolidation or distribution of freight "for the members of the association," an association's consolidation of cargo brought to it by an NVO or other middleman would not be the consolidation of a member's cargo, but rather the consolidation of the cargo of a non-member, *i.e.*, the underlying shipper.

B. In Opposition

TBCA/SA argues that the definition of "shipper" [6] contained in the 1984 Act is clear and that no interpretation or clarification of the term is necessary. It concludes that, if a broker is a "person for whose account the ocean transportation of cargo is provided," it is a shipper and perforce can form or join a shippers' association. In this regard, TBCA/SA questions whether the Commission has the power to adopt the language proposed by AISA, since in doing so it would be, in essence, rewritting the statutory definition of "shipper," something which is solely the prerogative of Congress.

TBCA/SA points out that the legislative history and language of the Act are devoid of any connection between FMC and ICC Shippers' associations. It contends that the reference in the Conference Report to a shippers' association continuing to be subject to laws other than the Shipping Act of 1984 refers to the antitrust laws and not the domestic transportation laws. It further advises, that, under ICC law, brokers can qualify as shippers under certain circumstances.

TBCA/SA also claims that most shipper groups which were formed in the past were organized around geographical locations or particular industries, but that the formation of maritime shippers' associations along similar lines will be more difficult. These perceived difficulties will be allegedly lessened by permitting brokers to form shippers' associations which will permit smaller shippers to benefit from the savings inherent in volume rates. This allegedly could further increase the volume of United States Exports.

TBCA/SA rebuts the contention that, if brokers are permitted to form shippers' associations, the benefits will flow only to the brokers and not to their underlying shippers. It argues that if brokers do not share the benefits, shippers will not choose to use them and the marketplace will thus regulate the situation.

VEXTRAC argues that the interpretation advocated by AISA is contrary to one of the major purposes of the Act—to allow the public to benefit from the evolution and development of the maritime transportation industry. It contends that grant of the Petition would hinder innovative arrangements among shippers and the various organizations which can assist them. If further argues that shippers' associations organized by middlemen will flourish only if they meet shippers' needs.

IANVOCC points out that even though the term "shipper" was not defined under the 1916 Act, it was interpreted to mean the owner of the goods or the person for whose account the carriage of goods is undertaken. It also refers to precedent stating that carriers may not discriminate between shippers on the basis that one is and the other is not the real or beneficial owner of the cargo. It also notes that section 3(17) of the 1984 Act clearly provides that an NVO is a shipper *vis a vis* a vessel operating common carrier.[7]

IANVOCC believes that ocean common carriers are using the instant Petition as a vehicle to eliminate or curtail NVO competition for less-than-containerload (LCL) freight. It contends, however, that many shippers are too

[6] Section 3(23) states:

"shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

[7] Section 3(17) states: "non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

small to consolidate a significant amount of cargo, so that they can negotiate meaningfully with carriers, but that 3 or 4 NVOs may be able to, all to the utlimate benefit of the LCL shipper.

Greene notes that the Interstate Commerce Act and Shipping Act references to shipper's associations occur in different contexts and that the ICA reference occurs as an exemption from its freight forwarder regulation. Greene claims that the ICC restricted this shippers' association exemption to only the beneficial owners of cargo because otherwise it might have been used by forwarders to avoid freight forwarder regulation. It contends that, on the other hand, shippers' associations are recognized in the 1984 Act to allow their members to take advantage of volume rates and service contracts and to impose the requirement that carriers negotiate meaningfully with them.

Greene points out that both Senate bill predecessors to the 1984 Act explicitly debarred NVOs and freight forwarders from memberhsip in shippers' councils, but that the "shippers' association" provision ultimately adopted is not similarly restricted. It contends that the deletion of the restriction aganist NVOs and freight forwarders clearly indicates that Congress did not intend that such limitations be imposed.

Greene also advises that NVOs and other consolidators have been operating in the U.S. foreign trades for the past 20 years and that they have extensive experience in intermodal movements to offer to the shipping public. It therefore believes that a basic objective of the 1984 Act—the fostering of competition in the shipping industry—would be enhanced by permitting NVOs and others to join shippers' associations.

Discussion

The AISA petition requests the Commission to interpret the word "shipper" for purposes of the term "shippers' association" to mean only the owner or beneficial owner of the goods shipped. For the reasons stated below, the Commission is denying the Petition.

First and foremost, the applicable statutory provisions do not permit the interpretation urged by AISA. Section 3(24) defines "shippers' association" as "a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts." Section 3(23) defines "shipper" as not only the "owner" of cago but also the "person for whose account the ocean transportation of cargo is provided or the person to whom delivery is made." The statute clearly recognizes, therefore, that someone other than the owner of the cargo can be considered a shipper for purposes of the 1984 Act. To the extent, therefore, that there are entities which are not beneficial owners of cargo but instead are "persons for whose account the ocean transportation of cargo is provided", they qualify as "shippers" under the Act.[8] And as shippers, they would further qualify as participants in shippers' associations unless some restriction appeared elsewhere in the Act. None does;[9] so that as a straighforward exercise in statutory interpretation, Petitioner's request is not supported.[10]

Under the circumstances, there would appear to be no reason to resort to the legislative history of the Act to seek further clarification. However, even if one were to consult that history, it lends no support to AISA's restrictive interpretation of the word "shipper".[11] Indeed, the limited legislative history on shipper's associations appears to indicate the contrary. The concept of some sort of shippers' group acting as a countervailing balance to the power of conferences was an early part of various bills introduced to reform the Shipping Act, 1916 (46 U.S.C. app. 801, *et seq.*). However, the use of the term "shippers' association" was a late development which only occurred as the result of meetings between the House and Senate conferees on S. 47. In discussing this provision, the Conference Report states that:

> . . . The conferees agree to the addition of a new definition (24), "shippers' association" . . . . The definition was included for the sole purpose of identifying this shippers' group. A shippers' association would continue to be subject to laws other than the Shipping Act of 1984. *If a group meets the definition, it can negotiate rates on behalf of its members.* Section 10(b)(13) prohibits any common carrier from refusing to negotiate with such an association.

H.R. Rep. No. 660, 98th Cong., 2d Sess. 27–28, (184) (emphasis supplied). This discussion clearly indicates, therefore, that so long as a shippers' group meets the statutory definition, it can operate as a shippers' association. The Conference Report suggests no other restrictions on membership.

This conclusion is further supported by other aspects of the relevant legislative history. The Senate version of the Shipping Act which went to conference contained an entity called a "shippers' council." It was defined as "an association of shippers of their agents, *other than ocean freight forwarders and non-vessel-operating common carriers*" (S. 47, section 3(25)) (emphasis supplied). The Senate bill also recognized joint ventures of small shippers, which were specifically limited to shippers who ship no more than 35, 40 foot containers a month (S. 47, section 8(a)(9)(B)). The final compromise, which resulted in the addition of "shippers' associations" in lieu of "shippers' councils" and "shipper joint ventures," omitted these earlier restrictions. The failure to expressly restrict in any way the membership in shippers' associations (other than in the definition), where it had done so with predecessor shipper organizations, further suggests that Congress had no intention of limiting membership in such associations beyond the requirements set forth in its definition.

Although Congress used a definition of shippers' association which is similar to the description of shipper groups which are exempt from ICC freight forwarder regulation, there is nothing in the statute or its legislative history which indicates that Congress in any way intended that the ICC's treatment of domestic shipper groups pursuant to this provision should be controlling on the FMC's treatment of shippers' associations in international ocean transportation. In this regard, we agree with TBCA/SA that the language in the Conference Report concerning shippers' associations being subject to laws other than the 1984 Act (H.R. Rep. No. 600, *supra* at 27–28) is a reference to the

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[8] In addition, section 3(17) states that an NVO is "a shipper in its relationship with an ocean common carrier."

[9] The fact that some entities which otherwise meet the definition of "shipper" may realize some financial benefit in the course of their operations would not appear to disqualify them from membership in shippers' associations. The nonprofit aspect of the shippers' association definition applies to the association itself. It does not by its terms extend to the individual members of the association. Indeed, if it did, all shippers would effectively be precluded from participating in such an association.

[10] It is an established principle of statutory contruction that "the starting point for interpreting a statute is the language of the statute itself." *Consmer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). *See also, Blum v. Stenson*, —— and U.S. ——, 79 L. Ed. 2d 891, 900 (1984), where the Court noted "[w]here . . . resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear."

[11] If Congress intended to limit the membership of shippers' associations along the lines suggested by AISA, there is no such indication in any of the legislative history referred to by the parties or otherwise reviewed by the Commission. In matters of statutory interpretations, we can only be guided by the statute and the expressions of Congressional intent, as reflected in the committee reports, floor statements, etc., made during the legislative process leading to the passage of the statute. Post-passage remarks of those involved in the legislative process can be given little or no weight. *Bread Political Action Committee v. Federal Election Commission*, 455 U.S. 577, 582 n. 3 (1982).

antitrust laws and not the domestic surface transportation laws. The language in question appears to have been intended to distinguish the conferee's treatment of shippers' associations from the Senate-passed bill which had permitted joint ventures of small shippers and had accorded them an exemption from the antitrust laws [S. 47, section 8(a)(9)]. (*See* H.R. Rep. No. 600, *supra* at 38).

Moreover, the 1984 Act and ICA uses of the term "shippers' association" occur in different contexts and are clearly intended to serve different purposes. The FMC shippers' association provision identifies those groups of shippers which can enter into service contracts on behalf of their members, and with which common carriers must negotiate. The ICC shippers' association provision appears as an exemption to its freight forwarder regulation, so that what might otherwise appear to function in the same manner as an ICC freight forwarder would not be subject to the same regulatory requirements.[12]

Finally, limiting the definition of "shipper" in the manner suggested by AISA does not appear consistent with the overall objectives of the shippers' association provisions in the 1984 Act. These provisions were intended to allow small shippers to take better advantage of the 1984 Act by permitting them to aggregate their cargoes to obtain volume rates and service contracts. It should not matter whether small shippers are able to gain these advantages by individually consolidation their cargoes or by using others who aggregate cargoes of other shippers. The expansion of membership in shippers' associations to other than the owners of cargoes should enable small shippers to compete more effectively. This may in fact be the only option available to many of them.

The Commission recognizes that administrative agencies have a certain amount of discretion in interpreting the statutes under which they operate. In fact, section 17(a) of the Act gives the Commission the express authority to "prescribe rules and regulations as necessary to carry out this Act." [46 U.S.C. app. 1716(a)]. Here, however, the interpretation which AISA would have the Commission adopt is neither supported by the language of the statute nor its legislative history. AISA is therefore asking the Commission to redefine the term "shipper", at least as it applies to shippers' associations. The Commission cannot grant this relief, and, as a result, the Commission is denying AISA's Petition.

Therefore, it is ordered, that the "Petition for an Amended Statement of Policy Concerning the Status of Shippers' Associations Under the Shipping Act of 1984" submitted by the American Institute for Shippres' Associations, Inc. is denied; and

It is further ordered, that the "Motion of the American Institute for Shippers' Associations, Inc., to Supplement its Petition" is also denied.

By the Commission.

Bruce A Dombrowski,

Assistant Secretary.

[FR Doc. 85-4245 Filed 2-20-85; 8:45 am]

BILLING CODE 6730-01-M

[12] In any event, ICC case law dealing with domestic shippers' associations does not appear to be that on point for international shippers' associations. The principal case cited by Petitioner, *Sunshine State Shippers & Receivers Association*, 350 I.C.C. 391 (1975), does not address that same issue raised here. While the ICC did note there that associations of shippers have "no direct beneficial interest in the property they handle for their members" and for that reason are incapable of qualifying for membership in a shippers' association, *Sunshine supra*, 350 I.C.C. at 404, that determination was based on statutory language which does not contain as expansive a definition of "shipper" as does the 1984 Act.

There appears to be no overriding need for harmony between FMC and ICC treatment of shippers' associations, for they are not necessarily in conflict. To the extent a domestic shippers' association is composed of other than the owner or beneficial owner of cargo, it would be subject to ICC freight forwarder regulation if it attempted to secure volume rates from ICC regulated carriers. On the other hand, if persons other than owners or beneficial owners qualified as members of international shippers' associations under the 1984 Act, they could negotiate volume rates or service contracts with common carriers in international commerce and would not have to deal directly with ICC regulated carriers. Only to the extent they did, would they also be subject to ICC regulation and have to comply therewith. This is not an unusual situation. There are often instances where carriers or other persons may be subject to FMC jurisdiction for one purpose but subject to ICC jurisdiction for another.

Agreement(s) Filed

Correction

In FR Doc. 85-4057 beginning on page 7000 in the issue of Tuesday, February 19, 1985, make the following corrections:

1. On page 7001, in the first column, immediately following the "Synopsis" of "Agreement No.: 202-007890-021", add the following Agreement:

Agreement No.: 202-007890-022.

Title: West Coast of South America Northbound Conference.

Parties:

Lykes Bros. Steamship Co., Inc.
CCNI (Compania Chilena De Navigacion Interoceania)
Chilean Line (Compania Sud Americana De Vapores, S.A.)
Linabol (Lineas Navieras Bolivianas S.A.)
Peruvian State Line (Compania Peruana De Vapores)

Synopsis: The proposed amendment would delete Delta Steamship Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

2. On the same page, in the same column, "Agreement No.: 212-01086-004" should read "Agreement No.: 212-010286-004."

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

GHW Associates, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 12, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *GHW Associates*, Hackensack, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of First Inter-County Bank of New York, New York, New York.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *City Bancorp, Inc.*, Murphysboro, Illinois; to merge with Gorham Bancorp.

Inc., Murphysboro, Illinois, thereby indirectly acquiring The City Bank of Carbondale, Carbondale, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lowry Facilities, Inc.*, Clinton, Oklahoma; to acquire 1.0 percent of the voting shares of Oklahoma Bancorporation, Inc., Clinton, Oklahoma, thereby increasing its proportionate voting control over company to 32.8 percent. Oklahoma Bancorporation, Inc. is the parent of Oklahoma Bank and Trust Company, Clinton, Oklahoma.

Board of Governors of the Federal Reserve System, February 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4190 Filed 2-20-85; 8:45 am]

BILLING CODE 6210-01-M

NS&T Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 12, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NS&T Bankshares, Incorporated*, Washington, D.C.; to acquire Franklin Mortgate Corporation, Fairfax, Virginia, thereby engaging in making, acquiring, and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by a mortgage company.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to and thereby to expand the scope of the activities of Comerica—Midwest National Association, Toledo, Ohio, to offer the full range of non-commercial loan services as defined in § 225.25(b)(1).

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Phillips Insurance Agency, Inc.*, Newport, Minnesota; to retain general insurance agency assets previously acquired from Ronald P. Raleigh Insuance Agency, Tripoli, Wisconsin under § 225.25(b)(8)(ii) of Regulation Y. These activities would be conducted in the Prentice, Wisconsin trade area.

Board of Governors of the Federal Reserve System, February 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4191 Filed 2-20-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

January 25, 1985.

GSA Regional Bulletin FPMR 3-E-147, Supply and Procurement

To: Heads of Federal agencies located in GSA Region 3 (Maryland, Delaware, Virginia, West Virginia, and Pennsylvania)

Subject: Conversion of the GSA Region 3 Self-Service Stores into a Customer Supply Center in Lima, Pennsylvania

1. *Purpose.* This bulletin announces the conversion of the GSA Region 3 Self-Service Stores into a Customer Supply Center in Lima, Pennsylvania.

2. *Expiration date.* This bulletin expires on April 30, 1985.

3. *Background.*

a. The General Services Administration is committed to providing effective and economical supply support to government agencies. To provide this kind of support under the current budgetary limitations, it is essential that GSA make sure that the maximum benefit is obtained from every dollar spent for supply support. Accordingly, supply support functions that are cost effective should be continued or expanded, as appropriate, and those that are not cost effective should be discontinued. An assessment of supply support functions indicates that the GSA Self-Service Stores in Region 3 are not cost effective and should be converted into a Customer Supply Center. The stores are planned for conversion during the early part of calendar year 1985.

b. All customers located in Virginia and West Virginia will be served by the Customer Supply Center in Norfolk, Virginia. To make arrangements to use the Norfolk Customer Supply Center, all FTS 827-6000 or (804) 441-6000.

c. All customers located in Maryland, Delaware and Pennsylvania will be served by the Customer Supply Center in Lima, Pennsylvania. To make arrangements to use the Lima Customer Supply Center, call FTS 596-6000 or (215) 596-6000.

d. Other sources of supply include requisitioning through the GSA stock programs, obtaining items through the GSA stock program, obtaining items through Federal Supply Schedules, or using the next closest Customer Supply Center. The regulations on priorities for use of supply services are contained in FPMR 101-26.107.

4. *Locations of the GSA Self-Service Stores being converted into a Customer Supply Center in Lima, Pennsylvania.* The locations of the GSA Self-Service Stores being converted in Region 3 are as follows:

Self-Service Store #17, 31 Hopkins Plaza, B-03, Baltimore, Maryland 21201

Self-Service Store #28, 600 Arch Street, B-128, Philadelphia, Pennsylvania 19106

Self-Service Store #29, 1000 Liberty Avenue, Basement, Pittsburgh, Pennsylvania 15222.

Federal agencies in the Pittsburgh area were notified of the conversion process at the Federal Executive Board meeting held on September 28, 1984.

5. *Conversion dates.* The dates by which the conversion will take effect for the locations identified in paragraph 4 above are as follows:

Baltimore Self-Service Store—April 30, 1985.
Philadelphia Self-Service Store—March 31, 1985.
Pittsburgh Self-Service Store—January 31, 1985.

6. *Agency Comments.* Comments concerning the effect or impact of the conversion of the Self-Service Stores identified in paragraph 4 may be submitted to the Assistant Regional Administrator, Federal Supply and Services (3F), General Services Administration, 9th and Market Streets, Philadelphia, Pennsylvania 19107, by March 30, 1985.

George P. Cordes

Regional Administrator.

[FR Doc. 85-4201 Filed 2-20-85; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meeting; Correction

This notice is to correct a document that was published in **"Federal Register"** Volume #50, Issue 21, Page 4597, Document Number 85-2450 on January 31, 1985 as follows: The Basic Psychopharmacology Subcommittee of the Neurosciences Research Review Committee will hold its meeting at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland, instead of the Ramada Inn.

Dated: February 14, 1985.

Estelle O. Brown,

Committee Management Assistant, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-4196 Filed 2-20-85; 8:45 am]

BILLING CODE 4160-20-M

March, Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of March 1985.

Board of Scientific Counselors, NIDA
March 4-6; 9:30 a.m.
Francis Scott Key Medical Center
Building C, 4940 Eastern Avenue
Baltimore, Maryland 21224
Open—March 4; 9:30-10:00 a.m.
Closed—Otherwise
Contact Francis C. Johnson, Addiction Research Center, P.O. Box 5180, Baltimore, Maryland 21244, (301) 955-7506.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIDA, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:30-10:00 a.m., March 4, the meeting will be open for administrative announcements and program developments. Otherwise, the Board will be performing a review of the intramural research projects of the Addiction Research Center, including an evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c), and section 10(d) of Pub. L. 92-463 (5. U.S.C. Appendix I).

Epidemiologic Research Subcommittee of the Epidemiologic and Services Research Review Committee
March 4-6; 9:00 a.m.
Loews Summit Hotel
East 51st Street at Lexington Avenue
New York, New York 10022
Open—March 4: 9:00-10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson, Parklawn Building, Room 9C18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., March 4, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee
March 4-8; 9:00 a.m.
Holiday Inn Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—March 4; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Irma Fisher, Parklawn Building, Room 9C24, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., March 4, the meeting will be open for discussion of adminstrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee
March 7-8; 9:00 a.m.
Bethesda Marriott
5151 Pooks Hill Road
Bethesda, Maryland 20814
Open—March 7; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Pamela Mitchell, Parklawn Building, Room 9C18, 5600 Fishers Lane, Rockville, Maryland 20857, (301), 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National

Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., March 7, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIAAA
March 25–26; 9:00 a.m.
National Institutes of Health
Building 31, Conference Room 2
9000 Rockville Pike
Bethesda, Maryland 20205

Open—March 25; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Dr. Boris Tabakoff, National Institutes of Health, Building 10, Room 3C103, Bethesda, Maryland 20205, (301) 496–8996

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIAAA, on the alcohol intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:00–9:30 a.m., March 25, the Board will meet in Building 31, Conference Room 2, for approximately 30 minutes, for a report on recent administrative developments. The remainder of the session will be devoted to a review and evaluation of intramural projects and individual staff scientists in the Division of Intramural Research, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of section 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee
March 27–30; 1:30 p.m.
The Georgetown Hotel
2121 P Street, NW.
Washington, D.C. 20037

Open—March 28; 1:30–2:30 p.m.
Closed—Otherwise
Contact: Virginia Harter, Parklawn Building, Room 9–95, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: From 1:30–2:30 p.m., March 28, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: February 14, 1985.

Estelle O. Brown,

Committee Management Assistant, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–4226 Filed 2–20–85; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Cooperative Agreements; Preventive Health Services-Tuberculosis Control, Availability of Funds for Fiscal Year 1985

Correction

In FR Doc. 85–2046 beginning on page 3840 in the issue of Monday, January 28, 1985, make the following correction on page 3841:

In the first column, in the fourteenth line from the bottom, "CDS" should read "CDC".

BILLING CODE 1505–01–M

Food and Drug Administration

[Docket No. 85M–0038]

Medical Lasers, Inc.; Premarket Approval of Meditic Model OPL–3 ND:YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Medical Lasers, Inc., Chevy Chase, MD, for premarket approval, under the Medical Device Amendments of 1976, of the Meditec Model OPL–3 Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the applicant that FDA approved the application because the applicant had shown the device to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for adminstrative review by March 25, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7320.

SUPPLEMENTARY INFORMATION: On December 12, 1983, Medical Lasers, Inc., Chevy Chase, MD 20815, submitted to FDA an application for premarket approval of the Meditec model OPL–3 Nd:YAG Ophthalmic Laser. The device is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy). On January 30, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 14, 1985, FDA approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be

identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspectioin at the Center for Devices and Radiological Health—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and the FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and palce where the review will occur, and other details.

Petitioners may, at any time on or before March 25, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 13, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–4194 Filed 2–20–85; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Application Announcement and Proposed Funding Preferences for Special Initiative Grants for Area Health Eduction Center Programs

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Special Initiative Grants for Area Health Eduction Center Programs are being accepted under the authority of section 781(a)(2) of the Public Health Service Act, as amended by Pub. L. 98–619. Comments are also invited on the proposed funding preferences set forth below. This is the second Special Initiative cycle under section 781(a)(2) for Fiscal Year 1985.

Section 781(a)(2) authorizes Federal assistance to medical and osteopathic schools which have previously received Federal financial assistance for the area health education centers (AHEC) program under either section 802 of Pub. Law 94–484 in Fiscal Year 1979 or under section 781. Section 781(a)(2) applications will be to improve the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps scholarship program to provide effective health services in health manpower shortage areas.

To be eligible to receive support for a special initiative area health education center program grant, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the reqüirements of final regulations at 42 CFR Part 57, Subpart MM.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone (301) 443–6857

Questions regarding programmatic information should be directed to:

Chief, Area Health Education Center Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone (301) 443–6950

Approximately $1.8 million is available for awards in Fiscal Year 1985. Authorization for the current fiscal year is provided by the Department of Labor, Health and Human Services and Education and Related Agencies Appropriation Act, Pub. L. 98–619, enacted on November 8, 1984.

The application deadline date is April 12, 1985. Applications shall be considered as meeting the deadline if they are either (1) *received* on or before the deadline date, or (2) *postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Proposed Funding Preferences

In keeping with Federal initiatives to expand and develop improved health services for the elderly and underserved minorities, the Bureau of Health Professions is proposing two funding preferences for approved Fiscal Year 1985 applications received as a result of this announcement. These funding preferences do not apply to an earlier **Federal Register** announcement of August 22, 1984, (49 FR 33344) for another Fiscal Year 1985 competitive cycle for this grant program.

1. Projects which will place increased emphasis on advancing the clinical education of health professions students and/or health professionals in the care of the elderly.

2. Projects which include the recruitment and training (including appropriate clinical experiences) of underrepresented minorities in the health professions.

Interested persons are invited to submit written comments regarding these funding preferences to Director, Division of Medicine, Bureau of Health Professions at the address given below.

All comments received not later than March 25, 1985, will be considered before final funding preferences for Fiscal Year 1985 are established.

Normally, the comment period would be 60 days. However, due to the need to implement any changes in the funding preference for the Fiscal Year 1985 award cycle, this comment period has been reduced to 30 days. After the close of the comment period, the final funding preferences will be published as a notice in the Federal Register.

Written comments should be addressed to:

Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6190.

All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated February 13, 1985.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 85-4195 Filed 2-20-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U-42900]

Proposed Continuation of Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy proposes that two Executive Orders which created Naval Oil Shale Reserve No. 2 continue for an additional 20 years. The lands would remain closed to surface entry, mining and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM Utah State Office, 324 South State Street #301, Salt Lake City, Utah 84111-2303, (801) 524-3074.

The Department of Energy proposes that the existing land withdrawals made by Executive Orders of December 6, 1916, and November 17, 1924, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 45 miles northeast of Green River and aggregate 88,050.52 acres in Uintah and Carbon Counties.

The purpose of the withdrawals is to set aside oil shale lands for the exclusive use or benefit of the United States Navy. The withdrawals segregate the lands from the operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose or the segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: February 13, 1985.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-4209 Filed 2-20-85; 8:45 am]

BILLING CODE 4310-DQ-M

Resource Management Planning; Lower Gila North Planning Area; Phoenix District, A2

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to file category I amendment to Lower Gila North Planning Document, Lower Gila Resource Area, Phoenix District Arizona.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c) and 1610.3-1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7).

(1) Description of the proposed planning action: The proposed action is to amend the Lower Gila North Management Framework Plan (MFP) completed in December 1982. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The MFP Amendment and accompanying Environmental Assessment (EA) will provide the basis for changing the MFP Land Tenure Adjustment Section (L-4) to include public lands in the planning unit not previously listed to be considered for disposal for (1) State selections and State exchanges, (2) mineral estate exchanges, and (3) special legislation. The Amendment and EA are scheduled for completion by February 22, 1985.

(2) Identification of the geographic area involved: The planning area involved is located in the north half of the Lower Gila Resource Area in southwestern Arizona. General boundaries are immediately west of Phoenix, north of Interstate 10, extending west to the Plomosa, Buckskin, and Rawhide Mountains, south of Alamo Lake, and southwest of Prescott from Skull Valley south. The area covers portions of Maricopa, Yuma, La Paz and Yavapai Counties. The majority of BLM administered lands in the planning unit are directly west and northwest of Phoenix.

(3) General types of issues anticipated: The proposed Amendment addresses the changes to the Land Tenure Adjustment Section only.

(4) Disciplines to be represented and used to prepare the amendment: Lands, wildlife, botany, archaeology, geology, economics, and range.

(5) The kind and extent of public participation opportunities to be provided: Public participation will be carried out through participation in several comment periods to be announced in the Federal Register, local newspapers, and BLM news releases. There is a specific comment period for the governor to inform and seek comment from State and local agencies.

(6) Times, dates, and locations scheduled or anticipated for any public meetings, hearings, conferences or gatherings, as known at this time: At this time, no scheduling for any public meetings has been planned. All public input will be handled through written comments.

(7) The name, title, address and telephone number of the Bureau of Land Managment official who may be contacted for further information: William T. Childress, Area Manager, 2015 W. Deer Valley Rd., Phoenix, Arizona 85027, Phone: (602) 863-4464.

(8) The location and availability of documents relevant to the planning process: Documents will be available for public review at the Phoenix District Office, 2015 W. Deer Valley Rd., Phoenix, Arizona.

Dated: February 13, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-4243 Filed 2-20-85; 8:45 am]

BILLING CODE 4310-32-M

[Serial No. I-7322]

Idaho; Proposed Withdrawal and Public Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 12,400 acres of public land and the reserved mineral interests in 4,400 acres of private land along a 53-mile segment of the Lower Salmon River near Grangeville, Idaho. The withdrawal would close the lands to surface entry and mining. The land would remain open to mineral leasing.

DATE: Comments should be received by May 22, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrance, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597.

On September 23, 1973, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following-described lands, including all reserved mineral interests in private lands, from location and entry under the mining laws and from settlement, sale, location, and entry under the general public land laws, subject to valid existing rights:

Those lands within approximately ¼ mile of either bank of the Lower Salmon River, from the mouth of Hammer Creek downstream to the confluence of the Snake River.

The area described involves a 53-mile segment of lands adjoining the Lower Salmon River and contains approximately 12,400 acres of public land and 4,400 acres of reserved mineral interests in private lands in Idaho, Nez Perce and Lewis counties.

The purpose of the withdrawal is to protect the scenic, recreational and cultural values of the lands. The lands are and have been segregated from provisions of the Wild & Scenic Rivers Act (Pub. L. 90-542) and subsequently upon notation of the land office records of the withdrawal application filing (I-7322) on October 1, 1973, under the regulations then in effect (43 CFR 2351.3(a)). Under the provisions of section 204(g) of the Federal Land Policy and Management Act of October 21, 1976, the segregative effect of the application filing will terminate on October 21, 1991, unless the lands are withdrawn or the application is otherwise terminated before that date. The uses which have been and will continue to be allowed during the segregative period are all discretionary authorizations which conform with the current land use and management plans, including recreational uses. It is proposed that the lands be withdrawn for a period of 20 years, the maximum allowed by statute. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments, suggestions or objections to the withdrawal proposal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that two public meetings will be held in connection with the proposed withdrawal. The first will be held in the Forest Service smokejumpers loft at the Grangeville, Idaho airport at 7:30 p.m. on March 26, 1985. A second will be held at the Community Center, 1424 Main Street, Lewiston, Idaho at 7:30 p.m. on March 27, 1985. The meetings will be open to attendance of opponents to the withdrawal who may state their views and to proponents of the withdrawal who may explain its purpose, intent and extent and to all interested persons who desire to be heard on the subject. Those who desire to be heard in person at the hearing should file notice thereof not later than March 20, 1985, with the Idaho State Director, Bureau of Land Management.

Dated: February 13, 1985.

Louis B. Bellesi,

Deputy State Director for Operations.

[FR Doc. 85-4327 Filed 2-20-85; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Availability Draft Land Protection Plan; Hot Spring National Park, Garland County, AR

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, and the final interpretive rule from Preparation of Land Protection Plans printed in the **Federal Register** on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Hot Springs National Park, Garland County, Arkansas.

The Draft Land Protection Plan addresses the protection of 1,046.76 acres within the authorized boundary that are not Federally owned. It considers alternate means of protection, provides for public use and safety and identifies what land or interest in land need to be in Federal ownership in order to achieve management purposes consistent with the intent of Congress in authorizing the park.

Copies of the Draft Land Protection Plan are available from Hot Spring National Park, Post Office Box 1860, Hot Springs, Arkansas 71902; and the Southwest Regional Office, National Park Service, Post Office Box 728, Sante Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Hot Springs National Park, Post Office Box 1860, Hot Springs, Arkansas 71902, within 30 days from the publication date of this notice.

Dated: February 5, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-4184 Filed 2-20-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA- 225 through 234, 731-TA- 213 through 217, 731-TA-219, 731-TA- 221 through 226, and 731-TA- 228 through 234 (Preliminary)]

Certain Carbon Steel Products From Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela

Determinations

On the basis of the record [1] developed in its countervailing duty investigations involving certain carbon steel products from Austria, Sweden, and Venezuela, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

[1] The record is defined in §207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Carbon steel plates, whether or not in coils, provided for in item 607.66 of the Tariff Schedules of the United States (TSUS), from—

Sweden [investigation No. 701–TA–225 (Preliminary)] [2] and

Venezuela [investigation No. 701–TA–226 (Preliminary)].[2]

Hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, from—

Austria [investigation No. 701–TA–227 (Preliminary)],[3]

Sweden [investigation No. 701–TA–228 (Preliminary)],[3] and

Venezuela [investigation No. 701–TA–229 (Preliminary)];[3] and

Cold-rolled carbon steel plates and sheets, provided for in TSUS item 607.83, from—

Austria [investigation No. 701–TA–230 (Preliminary)],[4]

Sweden [investigation No. 701–TA–231 (Preliminary)],[4] and

Venezuela [investigation No. 701–TA–232 (Preliminary)].[4]

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be subsidized by the Governments of the cited countries:

Galvanized carbon steel sheets, provided for in TSUS items 608.07 and 608.13, from—

Austria [investigation No. 701–A–233 (Preliminary)] and

Venezuela [investigation No. 701–TA–234 (Preliminary)].

On the basis of the record developed in its antidumping investigations involving certain carbon steel products from Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, and Venezuela, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following products which are alleged to be sold in the United States at less than fair value (LTFV):

Carbon steel plates, whether or not in coils, provided for in TSUS item 607.66, from—

Czechoslovakia [investigation No. 731–TA–213 (Preliminary)],[5]

East Germany [investigation No. 731–TA–214 (Preliminary)],[5]

Hungary [investigation No. 731–TA–215 (Preliminary)],[5]

Poland [investigation No. 731–TA–216 (Preliminary)],[5] and

Venezuela [investigation No. 731–TA–217 (Preliminary)];[5]

Hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, from—

Austria [investigation No. 731–TA–219 (Preliminary)],[6]

Hungary [investigation No. 731–TA–221 (Preliminary)],[6]

Romania [investigation No. 731–TA–222 (Preliminary)],[6] and

Venezuela [investigation No. 731–TA–223 (Preliminary)];[6]

Cold-rolled carbon steel plates and sheets, provided for in TSUS item 607.83, from—

Austria [investigation No. 731–TA–224 (Preliminary)],[7]

Czechoslovakia [investigation No. 731–TA–225 (Preliminary)],[7]

East Germany [investigation No. 731–TA–226 (Preliminary)],[7]

Romania [investigation No. 731–TA–228 (Preliminary)],[7] and

Venezuela [investigation No. 731–TA–229 (Preliminary)];[7] and

Carbon steel angles, shapes, and sections having a maximum cross-sectional dimension of 3 inches or more, provided for in TSUS item 609.80, from—

Norway [investigation No. 731–TA–234 (Preliminary)] [8] and

Poland [investigation No. 731–TA–235 (Preliminary)].[8]

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the following products which are alleged to be sold in the United States at less than fair value:

Galvanized carbon steel sheets, provided for in TSUS item 608.07 and 608.13, from—

Austria [investigation No. 731–TA–230 (Preliminary)],

East Germany [investigation No. 731–TA–231 (Preliminary)],

Romania [investigation No. 731–TA–232 (Preliminary)], and

Venezuela [investigation No. 731–TA–233 (Preliminary)].

Background

These investigations were instituted in response to petitions filed with the Commission and the Department of Commerce by the United States Steel Corp., Pittsburgh, PA, and Chaparral Steel Co., Midlothian, TX, on December 19, 1984, and by Bethlehem Steel Corp., Bethlehem, PA, on December 20, 1984. The petitions allege that imports of certain carbon steel products from Austria, Czechoslovakia, East Germany, Finland, Hungary, Norway, Poland, Romania, Sweden, and Venezuela are being subsidized by the respective foreign Governments (countervailing duty petitions) and/or sold in the United States at less than fair value (antidumpting petitions) and that industries in the United States are materially injured or threatened with material injury by reason of such imports.

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 2, 1985 (50 FR 186). The conference was held in Washington, DC, on January 9, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On January 18, 1985, Bethlehem Steel Corp., the petitioner in all of the

[2] Chairwoman Stern and Commissioner Rohr determine that there is a reasonable indication that the domestic industry is materially injured. Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Vice Chairman Liebeler made a negative determination.

[3] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[4] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[5] Chairwoman Stern and Commissioner Rohr determine that there is a reasonable indication that the domestic industry is materially injured. Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Vice Chairman Liebeler made a negative determination.

[6] Commissioners Eckes and Lodwick determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern determines that there is a reasonable indication that the domestic industry is materially injured. Commissioner Rohr determines that there is a reasonable indication that the domestic industry is materially injured or threatened with material injury. Vice Chairman Liebeler made a negative determination.

[7] Commissioners Eckes, Lodwick, and Rohr determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern and Vice Chairman Liebeler made negative determinations.

[8] Commissioners Eckes, Lodwick, and Rohr determine that there is a reasonable indication that the domestic industry is threatened with material injury. Chairwoman Stern and Vice Chairman Liebeler made negative determinations.

Commission's antidumping investigations concerning imports of certain carbon steel products from Finland, withdrew its petitions. On January 25, 1985, the Commission was notified by the Department of Commerce that, based on the withdrawal of the petitions, it was terminating its investigations concerning imports of such merchandise from Finland. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the following investigations were terminated:

Carbon steel plates in coils from Finland (investigation No. 731-TA-218 (Preliminary));
Hot-rolled carbon steel sheets from Finland (investigation No. 731-TA-220 (Preliminary)); and
Cold-rolled carbon steel plates and sheets from Finland (investigation No. 731-TA-227 (Preliminary)).

The Commission transmitted its report on these investigations to the Secretary of Commerce on February 4, 1985. A public version of the Commission's report, Certain Carbon Steel Products from Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela (investigations Nos. 701-TA-225-235 (Preliminary) and 731-TA-213-217, 219, 221-226, and 228-235 (Preliminary), USITC Publication 1642, February 1985) contains the views of the Commission and information developed during the investigations.

By order of the Commission.

Issued: February 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4286 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-221 (Final)]

Certain Cast-Iron Pipe Fittings From Brazil

AGENCY: United States International Trade Commission.

ACTION: The Commission hereby revises the date of its public hearing in connection with the subject countervailing duty investigation to March 18, 1985.

EFFECTIVE DATE: February 12, 1985.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202-523-6620), Office of Investigations, U.S. International Trade Commission, Washington, DC 20436.

SUPPLEMENTARY INFORMATION: The Commission instituted this final countervailing duty investigation effective December 19, 1984, and scheduled a hearing to be held in connection therewith for March 14, 1985 (50 FR 2350, January 16, 1985). However, in response to a request from counsel for the petitioner in the subject investigation, the Commission is revising its schedule as described below.

The Commission's hearing, which was to have been held on March 14, 1985, has been rescheduled to begin at 10 a.m. on March 18, 1985, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. The deadline for filing posthearing briefs is revised to March 25, 1985.

By order of the Commission.

Issued: February 15, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4289 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA- 236 and 237 (Preliminary)]

Certain Castor Oil Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of hydrogenated castor oil classified under item 178.20 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold in the United States at less than fair value (LTFV).[2] The Commission further determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of 12-hydroxystearic acid, classified under item 490.26 of the TSUS and which are alleged to be sold in the United States at LTFV.[2]

Background

On December 27, 1984, petitions were filed with the Commission and the Department of Commerce by counsel for the American Manufacturers of Castor Oil Products (AMCOP), Wayne, New Jersey,[3] alleging that the industries in the United States are materially injured or threatened with material injury by reason of imports of hydrogenated castor oil and 12-hydroxstearic acid from Brazil which are alleged to be sold in the United States at LTFV. Accordingly, effective December 27, 1984, the Commission instituted preliminary antidumping duty investigation Nos. 731-TA- 236 and 237 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 9, 1985 (50 FR 1135). The conference was held in Washington, DC, on January 17, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 11, 1985. The views of the Commission are contained in USITC Publication 1646 (February 1985, entitled "Certain Castor Oil Products from Brazil: Determinations of the Commission in Investigations Nos. 731-TA- 236 and 237 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: February 11, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4284 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-199 (Final)]

Certain Dried Salted Codfish From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-199 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairwoman Stern determines that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports.

[3] On January 24, 1985, Counsel for AMCOP amended the petitions to substitute Union Camp Corp. as the petitioner.

United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of cod, which has been dried and salted, whether or not whole, but not otherwise prepared or preserved, and not in airtight containers, provided for in item 111.22 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). The Commission will, make its final injury determination no later than 45 days after Commerce's final LTFV determination (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subpart A and C (19 CFR Part 207), and Part 201, Subpart A through E (19 CFR Part 201).

EFFECTIVE DATE: January 29, 1985.

FOR FURTHER INFORMATION CONTACT: David Coombs (202–523–1376, Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain dried salted codfish from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on July 19, 1984, by Codfish Corporation, Ponce, Puerto Rico. In response to this petition the Commission conducted a preliminary antidumping investigation, and, on the basis of information developing during the course of that investigation, determined that there was a reasonable indication that the establishment of an industry in the United States was materially retarded by reason of imports of the subject merchandise (49 FR 35870, August 8, 1984).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file entry.

Service List

Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 3, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. 20, 1985, at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 3, 1985. All persons desiring to appear at the hearing and make oral presentation should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on May 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs in May 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written material submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)).

Written Submission

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 27, 1985. In addition, any person has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 27, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must by submitted separately. The envelope and all pages of such submissions must be clearly labled "Confidential Business Information." Confidential submission and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 14, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–4287 Filed 2–20–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–181]

Certain Meat Deboning Machines; Rescheduling of Hearing Date

The Commission hearing in the above-captioned investigation previously scheduled for February 22, 1985, has been rescheduled to February 28, 1985, beginning at 10:00 a.m.

By order of the Commission.

Issued: February 15, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4290 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[332-201]

Conditions of Competition Affecting the U.S. Gulf and South Atlantic Shrimp Industry; Hearing

AGENCY: United States International Trade Commission.

ACTION: Time and place of public hearing.

SUMMARY: Notice is hereby given that the public hearing in this matter will be held beginning on Thursday, March 21, 1985, in New Orleans, Louisiana, in the Queen Ann room of the Monte Leone Hotel, 214 Royal Street, at 10:00 a.m. Notice of the investigation and hearing was published in the **Federal Register** of November 21, 1984 (49 FR 45936).

By order of the Commission.

Issued: February 15, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4282 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-201 (Final)]

Egg Filler Flats From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-201 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of egg filler flats, provided for in item 256.70 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before March 26, 1985, and the Commission will make its final injury determination by May 15, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 16, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of egg filler flats from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on August 3, 1985, by Keyes Fiber Co., Stamford, CT, and the Packaging Corporation of America, Evanston, IL. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 37857, September 26, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on April 5, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 19, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 3, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m on April 10, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569 August 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 26, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information

pertinent to the subject of the investigation on or before April 26, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4283 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-191, 192, 194, and 195 (Final)]

Oil Country Tubular Goods From Argentina, Brazil, Mexico, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-191, 192, 194, and 195 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Brazil, Mexico, and Spain, of oil country tubular goods,[1] provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before March 25, 1985, and the Commission will make its final determinations by May 13, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: January 16, 1985.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of oil country tubular goods from Argentina, Brazil, Mexico, and Spain are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on June 13, 1984, by Lone Star Steel Company and CF & I Steel Corporation. In response to those petitions the Commission conducted preliminary antidumping investigations, and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 31782, August 8, 1984).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on March 22, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on April 4, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 22, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 27, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 1, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the

[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

hearing [§ 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, August 15, 1984)].

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 11, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 11, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 15, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4288 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-236 (Preliminary) and 731-TA-242 (Preliminary)]

Tapered Tubular Steel Transmission Structures From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-236 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and preliminary antidumping investigation No. 731-TA-242 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of tapered tubular steel structures or structual units used to support overhead electrical transmission and distribution lines, or for mounting substation equipment, provided for in items 652.94, 652.96, or 653.00 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of the Republic of Korea and sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by March 28, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-523-1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 11, 1985, by:

The Tapered Tubular Steel Structures Section of the National Electrical Manufacturers Association, Washington, DC;
C.E. American Pole Structures, Houston, TX;
ITT Meyer Industries, Red Wing, MN;
Power Enterprises, New Orleans, LA; and
Valmont Industries, Inc., Valley, NE.

Participation in the investigations

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, August 15, 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 6, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Vera Libeau (202-523-0368) or Bonnie Noreen (202-523-1369) not later than March 4, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before March 8, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, August 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules [19 CFR 201.6, as amended by 49 FR 32569, August 15, 1984.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules [19 CFR 207.12].

By order of the Commission.

Issued: February 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4285 Filed 2-20-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30612]

Peter J. Brix—Control, Knappton Corp., Yutana Barge Lines, Inc., and Black Navigation Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed acquisition of control of water carriers under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Brix Corporation, a non-carrier, seeks approval of its control of Yutana Barge Lines, Inc., and Black Navigation Company, Inc., two water common carriers operating under Certificate Nos. W-1131 and W-1132, respectively. Applicant contends that Yutana and Black operate as a single system over Alaskan waterways under the doctrine of *Louisville J.B. & R. Co. Merger*, 295 I.C.C. 11 (1955), and that, with respect to them, the transaction should be considered as the acquisition by a non-carrier of a single integrated carrier system. Peter J. Brix is President and Director, and a 75-percent owner of Brix Corporation. Peter J. Brix is also Chairman of the Board and a 15.2 percent owner of Twin City Barge Inc., a non-carrier holding company controlling Knappton Corporation, a water carrier operating over waterways in Oregon and Washington under Certificates in No. W-420.

DATE: Comments are due April 8, 1985.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioners' representative: Donald Macleay, 1625 Eye Street NW., Washington, D.C. 20006.

Comments should refer to Finance Docket No. 30612.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

James H. Bayne,

Secretary.

[FR Doc. 85-4258 Filed 2-20-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

February 15, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available);

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

Existing Collection in Use Without an OMB Control Number

(1) Larry E. Miesse, 202/633-4312.

(2) Office of Attorney Personnel Management, Office of the Deputy Attorney General, Department of Justice.

(3) APPLICATION BOOKLETS: ATTORNEY GENERAL'S HONOR PROGRAM; SUMMER LAW INTERN PROGRAM; LAW STUDENT PROGRAM (DAG).

(4) None.

(5) Annually.

(6) Individuals or households. These application forms are used in connection with three special hiring programs for attorneys, law students and judicial law clerks. The application packets describe program criteria and solicits detailed information so as to facilitate decisions as to interviewing and selection.

(7) 3,700 respondents.

(8) 3,700 burden hours.

(9) Not applicable under 3504(h).

(10) Robert Veeder—395-4814.

New Collection

(1) Larry E. Miesse, 202/633-4312.

(2) Office of Justice Programs, Department of Justice.

(3) CRIME VICTIM COMPENSATIONS GRANT GUIDELINES (OJP).

(4) None.

(5) Annually.

(6) State and local governments. Information requested is necessary to submit a statutorily-required report to the Congress on the effectiveness of the Victims of Crime Act, efficiently manage the victims program, and assure grantees' compliance with statutory criteria. The affected public consists of the 40 state crime victim compensation programs.

(7) 40 respondents.

(8) 320 burden hours.

(9) Not applicable under 3504(h).

(10) Robert Veeder—395-4814.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312.

(2) Immigration and Naturalization Service, Department of Justice.

(3) NONIMMIGRANT CHECKOUT LETTER.
(4) INS G–146.
(5) On Occasion.
(6) Individuals or households. Used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens wanted by the INS when initial investigation to locate has been unsuccessful.
(7) 20,000 respondents.
(8) 3,300 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—202/395–4814.
(1) Larry E. Miesse, 202/633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) APPLICATION FOR PERMISSION TO REAPPLY FOR ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR REMOVAL.
(4) INS I–212.
(5) On occasion.
(6) Individuals or households. Form provided for use by certain prospective immigrants and nonimmigrants to obtain permission to reapply for admission into the United States after deportation or removal.
(7) 4,300 respondents.
(8) 1,333 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—395–4814.
(1) Larry E. Miesse, 202/633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) INS FREEDOM OF INFORMATION/PRIVACY ACT REQUEST FORM.
(4) INS G–639.
(5) On occasion.
(6) Individuals or households. Used by persons requesting a search of immigration and/or naturalization records under the Freedom of Information and/or Privacy Acts.
(7) 38,500 respondents.
(8) 9,625 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—395–4814.
(1) Larry E. Miesse, 202/633–4312.
(2) Immigration and Naturalization Service, Department of Justice.
(3) APPLICATION FOR VERIFICATION FROM INS RECORDS.
(4) INS G–641.
(5) On occasion.
(6) Individuals or households. Form is provided for use by persons desiring verification from INS records of age, date of birth, naturalization/citizenship or genealogical data. Data used by INS to identify record and to release data requested.
(7) 70,000 respondents.
(8) 17,500 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—395–4814.
(1) Larry E. Miesse, 202/633–4312.
(2) Antitrust Division, Department of Justice.
(3) DEPARTMENT OF JUSTICE FEDERAL COAL LEASE REVIEW INFORMATION (ATR).
(4) ATR–139, ATR–140.
(5) On occasion.
(6) Businesses or other for-profit. The information collected from prospective federal coal lessees will be used in the Department's review of the competitive effects of federal coal lease issuances, transfers, and exchanges.
(7) 25 respondents.
(8) 50 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—395–4814.
(1) Larry E. Miesse, 202/633–4312.
(2) Antitrust Division, Department of Justice.
(3) OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA. (43 CFR PART 3130). (ATR).
(4) None.
(5) On occasion.
(6) Businesses or other for-profit. Data used by the Attorney General in making an antitrust review in this program area.
(7) 70 respondents.
(8) 40 burden hours.
(9) Not applicable under 3504(h).
(10) Robert Veeder—395–4814.

Larry E. Miesse,
Departmental Clearance Officer.

[FR Doc. 85–4240 Filed 2–20–85; 8:45 am]
BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION

Presidential Search Committee; Request for Applications

SUMMARY: This notice sets forth the qualifications and deadline for individuals to submit applications for President of the Legal Services Corporation to the Presidential Search Committee.

DATE: Applications must be submitted by March 15, 1985.

ADDRESS: Legal Services Corporation, 733–15th Street NW., Washington, D.C. 20005. Attn.: Timothy Baker.

FOR FURTHER INFORMATION CONTACT: Timothy Baker, Special Counsel, Legal Services Corporation, 733–15th Street NW., Washington, D.C. 20005 (202/272–4010).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation was created by the Legal Services Corporations Act of 1974, Pub. L. 93–355, 88 Stat. 378, amended Pub. L. 95–222, 91 Stat. 1619 (1977). The Legal Services Corporation is a private, non-profit corporation established by Congress in 1974 to provide financial support for legal assistance to the poor in civil matters. With a current annual appropriation of $305 million, the Corporation funds over 320 programs that deliver legal services directly to clients and furnishes through its staff, as well as by grants and contracts, a wide variety of support services.

The President has responsibility for directing all aspects of the operations of the Legal Services Corporation. Among the President's specific duties are the responsibility for Corporation activities in connection with the Corporation staff, the Corporation's Board of Directors, the Congress, Federal agencies, the private bar, local legal services programs, and other organized groups interested in legal services.

The applicant must possess a law degree and have been licensed to practice for a minimum of five years. Membership in the bar of the highest court of a state and demonstrated ability in management and administration is required. Experience with Congress, federal agencies or other grant making agencies, and familiarity with the provision or delivery of legal services is desirable.

The maximum salary is set by statute at Executive Level V (currently $68,700). Free dental insurance is provided and health and life insurance are available.

Dated: February 15, 1985.

Dennis Daugherty,
Acting Secretary.

[FR Doc. 85–4300 Filed 2–20–85; 8:45 am]
BILLING CODE 6820–35–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; 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 Media Arts Advisory Panel (Programming in the Arts Section) to the National Council on the Arts will be held on March 12–13, 1985, from 9:00 a.m.–5:30 p.m. in room 716 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 Foundations 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.

February 13, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-4202 Filed 2-20-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-1113]

Amendment of Special Nuclear Material License No. SNM-1097, General Electric Co., Nuclear Fuel Manufacturing Department Wilmington, NC; Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment of Special Nuclear Material License No. SNM-1097 to permit operation of the Uranium Process Management Project. This project involves the addition of an onsite uranium scrap recovery process and advanced chemical treatment of liquid waste streams.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-1097. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingy, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C 20555

Dated at Silver Spring, Maryland this 13th day of February, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-4277 Filed 2-20-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289 OLA (Steam Generator Repair)]

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of February 14, 1985, oral argument on the appeal of intervenor Three Mile Island Alert from the Licensing Board's October 31, 1984 initial decision and the intervenor's December 10, 1984 motion to reopen the record will be held at *10:00 a.m. on Wednesday, March 27, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: February 14, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-4273 Filed 2-20-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-454]

Commonwealth Edison Co. Byron Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-37 to Commonwealth Edison Company (the licensee) which authorizes operation of the Byron Station, Unit No. 1 (the facility), at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. The issuance of this license was approved by the Nuclear Regulatory Commission at a meeting on February 12, 1985, and it supersedes the License for Fuel loading and Low Power Testing, License No. NPF-23, issued on October 31, 1984.

Byron Station, Unit No. 1 is a pressurized water reactor located in north central Illinois, 2½ miles east of the Rock River, 3 miles south-southwest of the town of Byron, and 17 miles southwest of Rockford, Illinois. The station is within Rockvale Township, Ogle County, Illinois. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Byron Station, Units 1 and 2 (dated April 1982) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-37, with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982; (3) the Commission's Safety Evaluation Report, dated February 1982 (NUREG-0876), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) and the Final Environmental Statement, dated April 1982.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C. 20555 and at the Rockford Public Library, Rockford, Illinois. A copy of Facility Operating License NPF-37 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 6 (NUREG-0876) and the Final Environmental Statement (NUREG-0848) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555.

GPO deposit account holders may call 301–492–9530.

Dated at Bethesda, Maryland this 14th day of February 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85–4275 Filed 2–20–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order pursuant to 10 CFR 50.55(b) to extend to construction completion permit date to Illinois Power Company on behalf of itself, and as agent for Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc. (the Permittees), for Clinton Power Station, located in DeWitt County, approximately six miles east of the city of Clinton, Illinois.

Description of Proposed Action

By letter of August 22, 1984, the permittees filed a request with the Nuclear Regulatory Commission to extend the completion date specified in Construction Permit No. CPPR–137 for the Clinton Power Station Unit 1. The action proposed is the issuance of an order providing for the extension of the latest date for completion of construction of Unit 1 from October 1, 1984 to October 1, 1986.

Need for the Proposed Action

In the above referenced letter the following factors were given as the bases for requesting an extension of the construction permit date.

1. A series of stop work orders and recovery programs were initiated by Illinois Power in 1982 to implement corrective action and improve construction programs for several areas of construction.

2. An Overinspection Program and Record Verification Program were initiated by Illinois Power in 1982 to verify the quality of construction of large portions of CPS.

Furthermore, the time required to lift the stop work orders and complete the recovery programs, Overinspection Program, and the Record Verification Program was not accounted for in the previous request for an extension of the construction permit for Clinton Power Station.

Environmental Impact of the Proposed Action

The FES–CP for Clinton Power Station Units 1 and 2 published in October 1974 and the FES–OL for Clinton Power Station Unit 1 published in May 1982 include an assessment of potential evironmental, economic and community impacts due to site preparation and plant construction, in addition to assessments associated with station operation. In addition, the (1) staff's review of the inspection reports prepared by the Office of Inspection and Enforcement as a result of periodic inspection visits to the Clinton 1 site, (2) staff's discussions with individuals and local and state officials held at the time of operating license review of the station, and (3) comments received by the NRC on the Draft Environmental Statement for Clinton 1, operating license stage, did not identify adverse impacts on the environment or the surrounding community which were not anticipated and adequately discussed in the NRC impact statements or which were significantly greater than those discussed in the NRC impact statements.

The only effects possibly resulting from the requested extension would be those due to transposing the impacts in time or extending the total time the local community is subjected to temporary construction impacts. This, in the staff's view, will not result in any significant additional impact. Use of site lands and waters will not be altered by the proposed extension of the construction completion date [Lake Clinton reached normal pool elevation on May 17, 1978 (FES–OL Section 4.3.1.1) and the Illinois Department of Conservation officially declared the lake open for public use on August 22, 1979].

Therefore, the Commission concludes that environmental impacts associated with construction of the station as described in the FES–CP and the FES–OL and the Environmental Impact Appraisal supporting the extension of Construction Permit No. CPPR–137, Clinton Power Station Unit No. 1 dated June 7, 1982 are not affected by the proposed extension. Thus, no significant change in impact is expected to result from the extension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Clinton Power Station.

Agencies and Persons Consulted: The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for extension dated August 22, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Warner Vespasian Library, Clinton, Illinois.

Dated at Bethesda, Maryland, this 13th day of February 1985.

For the Nuclear Regulatory Commission.

Frank Miraglia,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–4276 Filed 2–20–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No 50–410]

Niagara Mohawk Power Corp.; Availability of Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of Nine Mile Point Nuclear Station Unit 2, located on the southeast shore of Lake Ontario in Scriba, Oswego County, New York. Notice of receipt of the application of Niagara Mohawk Power Corporation to operate Nine Mile Point Nuclear Station Unit 2 was published in the **Federal Register** on May 13, 1983 (48 FR 21680–21681).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Pennfield Library, State University College, Oswego, New York 13126 for inspection and copying. The report (NUREG–1047) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit holders can call (301) 492–9530.

Dated at Bethesda, Maryland, this 15 day of February 1985.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-4274 Filed 2-20-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21757; Filed No. 4-260]

Filing of Proposed Plan by the American Stock Exchange, Inc.

February 13, 1985.

The American Stock Exchange, Inc., ("Amex") submitted on September 11, 1984, copies of a proposed plan pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder.[1] The proposed plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person. In accordance with paragraph (c)(2) of Rule 19d-1, Amex proposes to designate as minor rule violations certain specified rule violations under Amex's two automatic fine systems, and requests that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. According to the Amex, the quarterly notice for each violation would list the name of the member or member organization, the nature and date of the violation, the sanction imposed, and the date of disposition.

Amex's minor rule infraction fine system and its reporting violation fee system are the two systems of fines encompassed by the proposed plan. Under the minor rule infraction fine system, the uncontested minor rule violations included in the proposed plan are as follows:[2]

(1) Floor decorum violations;[3]

(2) The following on floor/off floor operational violations:[4]

(a) A specialist's failure to be properly represented at the trading post at scheduled times to answer inquiries regarding the status of orders and resolve equity DK notices [5];

(b) A specialist's failure to respond to inquiries regarding unreported PER/AMOS automated order routing market orders [6];

(c) Failure to submit option trade comparison data to the Exchange by specified deadlines;

(d) Failure to be represented at the Exchange's options reconciliation room at scheduled times to resolve rejected options trades; and

(e) Failure to provide the required options audit trail information on trade comparison input.

Floor governors and exchange officials are authorized under the minor rule infraction fine system to charge members and member organizations with floor decorum and operational violations and to assess fines ranging from $50 for a first offense to $500 for a sixth offense.

Official under Amex's reporting violation fee system [7] can impose a fee of $50 per day for the late filing of reports periodically specified by the Exchange. According to Amex, currently twelve reports,[8] primarily in the financial and market surveillance areas, are subject to the system. Under both the reporting violation fee system and the minor rule infraction fine system, members or member organizations may plead guilty and pay the fine or contest the charge and request a hearing before the Exchange's Disciplinary Committee.[9]

Publication of the submission is to expected to be made in the **Federal Register** during the week of February 18, 1985. In order to assist the Commission in determining whether to approve the proposed plan or institute proceedings to determine whether the proposed plan should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange

[1] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter.

[2] *See* Securities Exchange Act Release No. 17071 (August 18, 1980), 45 FR 56218 (August 22, 1980) (SR-Amex-80-22), in which the Commission approved Amex's proposed rule change to revise its procedures for the disposition of minor rule violations and to include non-compliance with off-floor operational matters as a minor rule violation.

[3] Amex defines floor decorum violations as any act or omission which tends to disrupt the orderly conduct of business on its trading floor or which causes serious interference with the personal comfort or safety of other persons on the floor. Examples of floor decorum violations include running on the trading floor, smoking in unauthorized areas, and the throwing of objects and obstructions on the floor. The floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from reporting under Rule 19d-1(c)(1) *See* Securities Exchange Act Release No. 17085 (August 22, 1980), 45 FR 57707 (August 29, 1980).

[4] On September 1, 1982, the SEC granted an Amex request that it be permitted to file quarterly reports with respect to its minor operational and reporting violations. *See* letter from Michael J. Kulczak, Branch Chief, Division of Market Regulation, to J. Bruce Ferguson, Assistant Vice President, Amex, dated September 1, 1982. *See also* letter from Richard O. Scribner, Executive Vice President, Amex, to Michael A. Cline, Branch Chief, Division of Market Regulation, dated August 7, 1981, in which Amex requested that an exemption from the notice provision of Rule 19d-1 be granted for uncontested minor rule violations covered by its existing minor disciplinary infraction fine system and its fee system for certain reporting violations. By including this arrangement in this minor rule violation plan filed under Rule 19d-1, Amex formalizes the existing agreement with the Commission.

[5] When comparison information is received on certain transactions and the recipient has no knowledge of the transaction the comparison is stamped "Don't Know", ["DK"], dated and initialed, and the comparison form so stamped is returned immediately to the seller. The Amex has facilities, and its rules specify procedures, for the resolution of such uncompared trades as promptly as possible.

[6] The Post Execution Reporting System ("PER") automatically routes market orders and reports and day market and limited price odd lot orders and reports between member firm offices and trading posts. The Amex Options Switch System ["AMOS"] automatically routes limited price option day orders and reports between member firm offices and trading posts on the Amex floor. Both systems are designed to improve order flow and execution reporting, and to reduce operating costs of subscribing member organizations.

[7] The Amex fee system for certain reporting violations under Amex Rule 30 was approved by the Commission in Securities Exchange Act Release No. 18827 (June 21, 1982), 47 FR 18190 (June 29, 1982) (SR-Amex-81-15).

[8] The following 12 reports are subject to the reporting violation fee system: (1) Exam 12 (Report of financial condition); (2) Equity Computation; (3) Net Capital Computation; (4) X-17A-5, Part II (FOCUS Report); (5) X-17A-5, Part I (FOCUS Report); (6) X-17A-5, Part IIA (FOCUS Report); (7) X-17A-5, Part IIA (Short form FOCUS Report); (8) MO 14 and MO 15 (Specialist financial reports); (9) Form 958-C (Registered Options Trader and Specialist Report of orders entered in underlying securities related to Amex options); (10) Form 50 (Short Position); (11) 1-RA (Exchange transactions initiated from off-floor); and (12) 1-S (Round lot short sales transactions).

[9] As noted above, only uncontested violations would be eligible for abbreviated periodic reporting under Amex's proposed plan.

Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. 4–260

Copies of the submission, all subsequent amendments, all written statements with respect to the plan which are filed with the Commission, and all written communications relating to the plan between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any suabsequent amendments also will be available at the principal office of the Amex.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–4217 Filed 2–20–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23602; 70–6877]

Central and South West Corp. and CSW Energy, Inc.; Request of Non Utility Subsidiary to Expand Additional Dollars

February 14, 1985.

Central and South West Corporation ("CSW"), 2500 San Jacinto Tower, Dallas, Texas, 75222, a registered holding company, and its wholly-owned subsidiary, CSW Energy, Inc. ("Energy"), have filed with this Commission a post-effective amendment to its application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50 (a)(3), 86, 87, 90 and 91 promulgated thereunder.

In an order dated August 4, 1983 (HCAR No. 23021), the Commission authorized CSW and Energy, *inter alia*, to conduct preliminary studies, investigations and research of energy-related business and investment opportunities. These activities were intended to focus on such areas as steam production, waste disposal, communication or load management or the development of synthetic fuels and solar energy. Energy's budget in this regard was limited to $1,000,000 without further Commission authorization.

Energy is currently approaching the $1,000,000 expenditure limitation and, as a result, CSW and Energy are requesting that they be authorized to spend an additional $2,000,000 for further studies, investigations and research along the same general parameters previously authorized. The $49,000,000 previously authorized for cogeneration projects would not be affected.

This post-effective amendment and any additional 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 11, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve copies on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request.

Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, this post-effective amendment, as it may be amended may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–4215 Filed 2–20–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14373; File No. 812–5975

Application and Opportunity for Hearing; the Commonwealth Group, Inc.

February 13, 1985.

Notice is hereby given that the Commonwealth Group, Inc. ("CGI"), 106 North Adams Street, Rockville, MD 20850, and its investment adviser, Commonwealth Capital Management, Inc. ("CCM") (collectively, "Applicants"), filed an application on November 8, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

CGI, a Maryland corporation, is an open-end, management investment company registered under the Act. CGI presently consists of the Bowser Growth Fund Series, a no-load series, and two new series, the Nicholson Growth Fund Series and Newport Far East Fund Series. The Nicholson Growth Fund Series and Newport Far East Fund Series and any additional CGI series for which CGI deems it appropriate will not operate as no-load series (collectively, the "Series"). In such instances, CGI proposes to assess a contingent deferred sales charge on certain redemptions of its shares and waive the contingent deferred sales charge with respect to certain types of redemptions.

Applicants propose to assist in financing the distinction of shares in each Series pursuant to a plan for such Series adopted by the Series under Rule 12b–1 under the Act (the "Plan"). Applicants assert that each Plan was approved by CGI's Board of Directors, including a majority of the directors who are not interested persons of CGI as defined in the Act. Each Plan may be different from and will operate independently of any Plan adopted by any other Series of CGI. Applicants state that the Plan provides that the Series may incur certain costs which may not exceed a maximum amount equal to 0.3125% of the Series' average daily net assets for any quarter elapsed after inception of the Plan. Amounts paid under the Plan may be paid by the Series's principal underwriters as commissions to dealers for the sale of Series shares under the Plan. Applicants represent that it is expected by the Series that the amount paid by a Series under a Series' Plan will compensate its underwriter or distributor for the payments, other costs and reasonable profits for its distribution efforts over a period of years. In order to reimburse the principal underwriter of a series for certain expenses relating to the sale of its shares when such shares are redeemed prior to bearing a fair share of the Series' distribution costs, Applicants propose that a contingent deferred sales charge be imposed at the time of redemption of certain shares within four calendar years after their purchase.

Applicants represent that the contingent deferred sales charge is a declining percentage of the lesser of the net asset value of the shares redeemed or the total cost of such shares. No contingent deferred sales charge would be imposed when the investor redeems amounts derived from (1) increases in the value of his account above the total cost of such shares due to increases in the net value per share, (2) shares with respect to which no commission was paid upon issuance, including shares acquired through reinvestment of dividend income and capital gains distributions, or (3) shares held in all or

part of more than four consecutive calendar years.

When a contingent deferred sales charge is imposed, Applicants state that the amount of the charge is: 4% of amounts redeemed during the calendar year of purchase; 3% of amounts redeemed during the calendar year after the year of purchase; 2% of amounts redeemed during the second calendar year after the year of purchase; and 1% of amounts redeemed during the third calendar year after the year of purchase, and that no contingent deferred sales charge is imposed on amounts redeemed thereafter.

In determining whether a contingent deferred sales charge is payable and, if so, the percentage charge applicable, Applicants will assume that shares held the longest are the first to be redeemed. No contingent deferred sales charge will be imposed on exchanges of the shares between funds or series which have adopted similar Plans and for which a series' underwriter also serves as underwriter. Moreover, when such an exchange is made, the calendar year of the purchase of the original series shares shall be applied to determine any future contingent deferred sales charge.

Applicants note that a Series may sell its shares to certain employee benefit plans ("Eligible Benefit Plans") at net asset value without the imposition of a contingent deferred sales charge. A shareholder also may receive a credit of a contingent deferred sales charge previously deducted through the reinvestment privilege offered by CGI and shares of a series may also be sold without imposition of a contingent deferred charge to certain directors, officers and employees of CGI, its investment manager or investment counsel, its underwriter or distributor and certain of their affiliates.

Applicants state that an Eligible Benefit Plan is an arrangement available to employees of an employer (or two or more affiliated employers) having not less than 1,000 employees at its inception, or an employer who provides for purchases through periodic payroll deductions or otherwise. There must be at least 100 initial participants with accounts investing or invested in shares of the Series or, any other Series or fund for which the Series' principal underwriter or distributor acts as such under a similar arrangement. The initial purchase by the Eligible Benefit Plan and prior purchase by or for the benefit of the initial participants must aggregate not less than $25,000. Subsequent purchase must be at least $10 per account and must aggregate at least $250.

Applicants state that a shareholder may elect to reinvest any part of the proceeds of a redemption of shares of a series receiving a credit for any contingent deferred sales charge previously deducted if such an election is made within 30 days of the redemption of such shares. The calendar year of the purchase of such shares acquired by reinvestment, for purposes of any future contingent deferred sales charge, is assumed to be the year such shares were originally purchased. The number of shares credited upon reinvesting the proceeds will be based on the net asset value of Series shares next computed following receipt of the proceeds and request for reinvestment. This reinvestment privilege may be utilized only once with respect to any shareholder.

Applicants believe the imposition of the proposed contingent deferred sales charge is fair and is in the best interest of the shareholders, and the proposed charge would be advantageous to shareholders because it would allow shareholders to have greater investment dollars working at the time of purchase.

Notice is futher given that any interested person wishing to request a hearing on the application may, not later than March 8, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4216 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21755; File No. SR-DTC-85-1]

Filing and Immediate Effectiveness of a Proposed Rule Change of the Depository Trust Co.

February 13, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 4, 1985, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

The proposed rule change establishes additional fees for accepting deposits and maintaining long positions in certain municipal bearer securities. In particular, the proposed rule change establishes, a surchare of $1.05 to participants maintaining long positions in bearer book bonds. The proposed rule change also establishes a $0.50 surcharge for long positions in bearer issues which have paying agents outside New York City. These fees are in addition to existing per issue charges. Finally, the proposed rule change establishes a $0.65 surcharge per deposit for bearer issues that have been assigned CUSIP numbers but which have certificates without CUSIP numbers. This fee also is in addition to current deposit fees.

DTC states in its filing that the proposed rule change is consistent with the Act in general and with section 17A(b) (3) in particular. Specifically, DTC maintains that the proposed rule change will equitably allocate fees among DTC's participants and will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

DTC states in its filing that its participants and industry groups have expressed interest in increasing the types of municipal bearer securities that are depository eligible. In response to this interest, DTC has made additional bearer municipal securities depository eligible and is proposing these fees, which have been in effect since January 1, 1985, to cover the cost of processing these new issues.

DTC requested comment on its proposed rule change from participants in August 1984. Those comments generally supported making these additional municipal issues depository eligible, but questioned whether the proposed fees were too high. Based on these comments, DTC once again analyzed its costs and assumptions and adopted lower fees, which are set out above.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the Federal Register. That notice is expected to be published during the week of February 11, 1985. Please refer to File No. SR-DTC-85-1, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20509. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal offices of the Depository Trust Company.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4220 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21761; 5R-PSE-85-3]

Pacific Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

February 14, 1985.

The Pacific Stock Exchange, Inc. ("PSE") 618 South Spring Street, Los Angeles, CA, 90014, submitted on February 1, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to permit the Exchange to delist options series that have no open interest. The purpose of the proposal is to give the Exchange the flexibility to delist those option series that become inactive after the price of the underlying security moves substantially away from the strike price, thus reducing the exchange's operational burdens and eliminating the need for market makers to update quotes for series that do not trade. The statutory basis for the proposed rule change is section 6(b)(5) of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-85-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the PSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change is identical to an American Stock Exchange, Inc. rule change the Commission recently approved.[1]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4218 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21760; SR-PHLX-84-13]

Philadelphia Stock Exchange, Inc.; Filing of Amendments No. 2 and No. 3 to Proposed Rule Change and Order Granting Accelerated Approval of Amended Proposed Rule Change

Feburary 14, 1985.

On July 11, 1984, the Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA, 19103, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder [2] that would establish a series of Option Floor Procedure Advices ("Advices") that are intended to clarify, interpret and consolidate the various options trading rules and operational floor procedures applicable to specialists, registered options traders and floor brokers. The rule proposal also establishes a pre-set fine schedule for violations of the Advices, although Phlx has reserved the right to impose higher fines and other sanctions if the facts surrounding the violation would warrant such action.[3] Phlx submitted Amendments No. 2 and No. 3, to the proposed rule change on November 8, and December 31, 1984, respectively. The Commission is publishing notice of Amendments No. 2 and No. 3 in this release.

The most recent amendments to the proposed Advices are generally technical in nature. Among other things, the amendments reference, where applicable, the Phlx rule(s) from which the Advices are derived.

Amendment No. 2 also proposes certain changes to Phlx rules in order to conform them to the proposed Advices. The majority of these proposed rule changes are non-substantive and simply clarify the rules so they are consistent with the Advices. The proposed changes also eliminate certain commentary to the Phlx rules that are currently contained in other sections of the rules.

Amendment No. 2 also proposes to amend Commentary .01 to Rule 1065 which prohibits a Floor Broker from executing discretionary orders. The proposed change expands the commentary so that it specifically states that a Floor Broker cannot leg a combination order for a Registered Options Trader ("ROT") or accept opening or discretionary orders for a ROT who is associated with the same member organization as such Floor Broker. These changes are currently reflected in the Advices originally filed with the Commission.

In addition, Amendment No. 2 proposes a rule change that would conform Phlx Rule 1037 to a proposed Advice pertaining to a specialist's liability for missed orders on the book. Under the proposal, a specialist shall be

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[1] File No. SR-Amex-84-28, Securities Exchange Act Release No. 24425, October 24, 1984, 49 FR 43522.

[1] 15 U.S.C. 78s(b)(1)(1984).

[2] 17 CFR 240.19b-4 (1984).

[3] The proposed rule change and Amendment No. 1 were noticed in Securities Exchange Act Release No. 21226, August 9, 1984; 49 FR 32823, August 16, 1984. Amendment No. 1, submitted on July 24, 1984, amended the text of the proposed fine schedule so that it specifically set forth Phlx's right to impose higher fines and other sanctions where such action is warranted.

held liable for any loss sustained for orders entrusted to him which should have been executed when he is made aware of the error by 12:00 noon on the business day following the submission of the order. Under existing rules, a specialist is only held liable for unexecuted orders if a written requests is made by the member organization by 9:00 a.m. on the business day following the day the order was submitted to the specialist.

Finally, among other, things, Amendment No. 3 proposes amendments to the Advices so that they reference the applicable Phlx rules. The Commission is publishing this notice to solicit comment on the amended proposed rule change. Persons interested in commenting on the amended proposed rule change should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register.** Comments should be sent to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the amended proposed rule change and all documents relating to the amended proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Room. Copies of the amended filing also are available at the Phlx.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving Phlx's proposed rule change prior to the thirtieth day after the date of publication of notice of filing of Amendments No. 2 and 3 to the proposal in that the original proposed rule change was published for comment for over thirty days, no comments were received in response to that publication and Amendments No. 2 and 3 propose technical changes to the Advices and conform existing Phlx rules to the published Advices. In light of these facts, and to avoid the potential for confusion, accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation Pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4219 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7769]

Clabir Corp., 15⅞% Subordinated Debentures Due December 1, 1997; Application To Withdraw From Listing and Registration

February 14, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities and Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the New York Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) Clabir Corporation ("Company") has been advised by representatives of the Exchange that there has been only one trade on the Exchange involving the 15⅞% Subordinated Debentures, due December 1, 1997 ("Debentures") since the original listing of the Debentures in December 1982. The limited trading in the Debentures that has occurred has been effected in transactions off the Exchange; and Drexel Burnham Lambert Incorporated, which has been the sole market maker with respect to the Debentures, has advised Clabir that it will continue to make a market in the Debentures after the delisting. Thus, Clabir believes that the delisting will not result in any loss of liquidity to the Debentureholders, and that, therefore, the continued listing of the Debentures on the Exchange would not benefit the Debentureholders.

(2) As of January 29, 1985, there were only nine holders of record of the Debentures and only $9,569,000 principal amount of the Debentures remaining outstanding. (Clabir originally issued $20,000,000 principal amount of the Debentures.) Clabir subsequently acquired an additional $3,083,000 principal amount of the Debentures.

(3) The Exchange will not pose an objection to the delisting of these Debentures and that, in light of the small amount of the Debentures outstanding, the limited number of Debentureholders and the absence of trading in the Debentures, the Exchange would not require approval of the security holders with respect to the withdrawal from listing.

Any interested person may, on or before March 8, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4294 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-4344]

Sunair Electronics, Inc., Common Stock, $.10 Par Value; Application To Withdraw From Listing and Registration

February 14, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d 2-2(d) promulgated thereunder, to withdraw the specified security from listing and registation on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) Sunair Electronics, Inc. ("Company") has determined and/or concluded that the listing of its shares on the National Association of Securities Dealers Automated Quotations National Market ("NASDAQ/NMS") would be of greater benefit to its shareholders than its present listing with the Amex.

(2) The issue of withdrawing the listing of the Company's shares from the Amex was submitted to its shareholders by proxy statement mailed on or about December 7, 1984. A total of 3,307,155 shares, representing 83% of the issued and outstanding shares, were voted in favor of delisting the shares with the Amex; 110,048 shares were voted against delisting.

Any interested person may, on or before March 8, 1985, submit by letter to Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rule of the Amex and what terms, it any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4296 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21759; File Nos. SR-NYSE-84-3 and SR-NYSE-84-10]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes

February 14, 1985.

I. Introduction

On January 17, and March 19, 1984, the New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, N.Y. 10006, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, submitted proposed rule changes which, if approved by the Commission, would authorize the NYSE to: (1) Establish an options trading program for standardized options on individual listed stock ("NYSE entry proposal");[1] and (2) adopt an expanded version of the allocation plan which provides procedures for the selection and replacement of stocks underlying individual equity options for the existing equity options exchanges, *i.e.*, the Chicago Board Options Exchange, Incorporated ("CBOE"), and the American ("Amex"), Pacific ("PSE"), and Philadelphia ("Phlx") stock Exchanges ("NYSE Allocation Plan proposal")[2]

The NYSE entry proposal has been amended three times: Amendment No. 1 supplements the Burden on Competition Section of the initial filing;[3] Amendment No. 2 indicates that the Board of Directors of the NYSE approved the proposed rule change on February 2, 1984;[4] and Amendment No. 3 prohibits persons jointly registered as stock traders and as competitive options traders from personally effecting transactions in an individual stock option for one hour after leaving the equity floor.[5]

In light of the issues involved in both proposed rule changes, the Commission published a release ("May Release") soliciting additional comments on the NYSE proposal.[6] While the May Release requested comments generally on the NYSE proposal, it focused on three principal areas: (1) The market information and manipulation concerns arising from the NYSE's status as the primary market for all NYSE listed stocks; (2) the future of the Allocation Plan, including the competitive concerns associated with the multiple trading of individual options; and (3) the NYSE's predominance in the equities market.

In response to the May Release, the Commission received letters of comment from the four equity options exchanges, the Securities Industry Association ("SIA"), the U.S. Department of Justice ("DOJ"), and the NYSE.[7] Comments also were received on procedural aspects of Commission consideration of the NYSE proposals.[8]

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[1] *See* File No. SR-NYSE-84-3, noticed in Securities Exchange Act Release No. 20613 (January 31, 1984), 49 FR 4581 (February 7, 1984).

[2] *See* File No. SR-NYSE-84-10, noticed in Securities Exchange Act Release No. 20821 (April 4, 1984), 49 FR 14616 (April 12, 1984).

[3] Specifically, Amendment No. 1 indicates the NYSE's belief that its entry into options trading would advance the legislative mandate embodied in the Securities Act Amendments of 1975 ("1975 Amendments"), Pub. L. 94-29, 89 Stat. 97 (1975), for maximum competition among order, among market centers and among market makers. Notice of Amendment No. 1 was published in Securities Exchange Act Release No 20613, *supra* note 1.

[4] Amendment No. 2 was discussed in Securities Exchange Act Release No. 20921 (May 2, 1984), 49 FR 19590 (May 8, 1984). Because this amendment was technical in nature, it was not published separately for comment.

[5] Notice of Amendment No. 3 was published in Securities Exchange Act Release No. 21119 (July 6, 1984), 49 FR 28799 (July 16, 1984).

[6] Securities Exchange Act Release No. 20921, *supra* note 4. In this Release, the Commission also extended the comment period on the proposals until June 15, 1984. Subsequently, the Commission further extended this period until July 16, 1984. Securities Exchange Act Release No. 21089 (June 22, 1984), 49 FR 26668 (June 28, 1984).

[7] Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated August 1, 1984 ("Amex letter"); letter from Walter E. Auch, Chairman and Chief Executive Officer, CBOE, to George A. Fitzsimmons, dated July 27, 1984 ("CBOE July 27 letter"), letter from Nicholas A. Giordano, President, Phlx, to George A. Fitzsimmons, dated July 27, 1984 ("Phlx July 27 letter"); letter from Nicholas A. Giordano, President, Phlx, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 29, 1984 ("Phlx October 29 letter"); letter from Jim Gallagher, President, PSE, to George A. Fitzsimmons, dated September 7, 1984 ("PSE letter"); letter from Howard Brenner, Chairman, Options and Derivative Products Committee, SIA, to George A. Fitzsimmons, dated September 18, 1984 ("SIA letter"); letter from Douglas H. Ginsburg, Deputy Assistant Attorney General, DOJ, to George A. Fitzsimmons, dated June 15, 1984 ("DOJ letter"); and letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, dated June 15, 1984 ("NYSE June 15 letter").

In addition, in connection with its proposal to become a participant in the Allocation Plan, the NYSE submitted a comment letter discussing the background and merits of the proposal. Letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated March 13, 1984 ("NYSE March 13 letter").

In evaluating the NYSE proposals, the Commission also considered a Phlx comment letter submitted with respect to File No. SR-NYSE-82-20, a CBOE letter submitted with respect to SR-NYSE-84-26, and two letters attached to the CBOE comment letter on the NYSE entry proposal. *See*, respectively, letter from Nicholas A. Giordano, President, Phlx, to George A. Fitzsimmons, dated October 14, 1983 ("Phlx October 14 letter"); letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to Shirley E. Hollis, Acting Secretary, SEC, dated September 18, 1984 ("CBOE September 18 letter"); letter from Samuel A. Alward, Executive Vice President, NYSE, and Carl L. Bolton, Chairman, Consolidated Quotation Operating Committee, to Joseph O. Duhamel, Executive Vice President, CBOE, dated March 15, 1984; and letter from Joseph W. Sullivan, President, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated September 22, 1978. In addition, the Commission also considered a previous comment letter from the Amex on the NYSE's 1977 proposal to commence options trading, because the Amex letter requested the Commission to incorporate that letter by reference. Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated September 28, 1978. A summary of the comments received, prepared by the Commission's staff, has been placed in File No. SR-NYSE-84-3.

[8] The Commission received seven letters from Congressmen recommending public hearings on the NYSE entry proposal. These letters were signed by a total of 56 Congressmen. Among other things, these letters comment on perceived procedural deficiencies of the NYSE submission under section 19(b) of the Act, as well as certain substantive issues related to NYSE entry into the stock options market. Letters from John D. Dingell, *et al.*, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to John S.R. Shad, Chairman, SEC, dated August 9, and September 20, 1984; letter, from Senator John Heinz, *et al.*, Committee on Banking, Housing and Urban Affairs, U.S. Senate, to Chairman John S.R. Shad, dated August 9, 1984; letters from Senator Specter, Appropriations Committee, U.S. Senate, to Chairman Shad, dated August 9, and October 18, 1984; letter from Dan Rostenkowski, Chairman, Committee on Ways and Means, U.S. House of Representatives, to Chairman Shad, dated August 16, 1984; and letter from Congressman Thomas M. Foglietta, Armed Services Committee, U.S. House of Representatives, to Chairman Shad, dated August 17, 1984.

The Commission also received and considered correspondence between the NYSE, Phlx and Congressman John D. Dingell, concerning these issues. Letter from Ivers W. Riley, Executive Vice President, NYSE, to Congressman Dingell, dated August 30, 1984 ("NYSE August 30 letter"), and letter from Nicholas A. Giordano, President, Phlx, to Congressman Dingell, dated October 2, 1984 ("Phlx October 2 letter").

II. Background

The NYSE first proposed to trade options on individual listed stocks in 1977.[9] Shortly after its proposal was submitted, however, the Commission declared a moratorium on consideration of expanisonary options rule proposals ("Moratorium")[10] and the NYSE proposal, together with other expansionary options proposals, was withdrawn. The NYSE's 1977 proposal differed in many respects from the instant NYSE entry proposal. The 1977 filing contemplated side-by-side trading (the trading of individual options and the underlying stocks at the same post), integrated market making (the trading of options and their underlying stocks by the same specialist), and multiple trading (the trading by the NYSE of options already traded on one or more other exchanges).

During the Moratorium, the Commission staff conducted a study of the options market ("Options Study").[11] The Options Study examined a number of options market structure matters, including questions associated with NYSE entry into the stock options market, as raised in the 1977 NYSE proposal. The Options Study provided a discussion of the effects of NYSE entry in the context of that 1977 NYSE proposal, but did not make any recommendations regarding specific Commission action on that proposal. Nevertheless, in the Options Study, the Commission staff suggested that should the Commission wish "to minimize competitive advantages that the NYSE may enjoy as a result of its predominant position in the securities markets generally and in underlying securities particularly," NYSE entry into the individual listed—stock option market might be conditioned, as follows:

1. NYSE stock and options trading floors would be distinct and completely separated by physical barriers;

2. NYSE stock specialists and registered stock market makers would not be permitted to trade options on their specialty stocks or stocks in which they hold a position except perhaps for the purpose of hedging their stock positions in accordance with a definition of hedging that the Commission has approved;[12]

3. NYSE stock specialists and registered stock market makers would not have access to the options trading floor, and NYSE options market makers would not have access to the NYSE stock trading floor under any circumstances. NYSE stock specialists and registered market makers who enter option orders and option market makers who enter stock orders would be required to enter such orders in the same manner as other market participants who did not have direct access to the NYSE floor;

4. Quotation and transaction information concerning stock and options trading activity would be transmitted between the NYSE stock and options floor only in the same manner that it is currently disseminated between the NYSE and the options exchanges; and

5. The NYSE options program would be maintained as a separate cost center such that stock revenues and income could not be utilized to subsidize options operations.[13]

In December 1978, the Commission issued the Options Study, without either explicit or implicit endorsement of these suggestions regarding NYSE entry. Approximately one year later, the Commission terminated the Moratorium.[14] It was not until January 1984, however, that the NYSE submitted another proposal to trade options on individual listed stocks.

III. Description

A. The NYSE Entry Proposal

The NYSE has proposed to amend a number of NYSE rules to accommodate the trading of options on individual listed stocks. Transactions on the NYSE in stock options would be governed by the NYSE's 700 series rules, the portion of the NYSE's rules that applies to broad-based and narrow-based stock index options.[15] The proposal contemplates NYSE participation in the Allocation Plan.[16] In addition, the NYSE proposes contract terms identical to the specifications for individual listed stock options trading on other options exchanges.[17] The NYSE also intends to apply the same standards established by the options exchanges for the selection of underlying stocks.

The NYSE proposes to use the same market structure for its individual stock options program that it currently uses for its index options program; that is, it proposes to have a specialist for each options contract and to permit the registration of one or more competitive options traders ("COTs") for each contract.[18] As indicated above, unlike its 1977 proposal, the current NYSE entry proposal contemplates that stock and options trading would take place on different trading floors, and thus it would prohibit side-by-side trading and integrated market making. The proposal also would preclude a stock specialist from acting as either a specialist or a COT in individual options on his specialty stocks.[19] In addition, the NYSE

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[9] File No. SR-NYSE-77-17, noticed in Securities Exchange Act Release No. 13674 (June 24, 1977), 42 FR 33829 (July 1, 1977).

[10] Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035 (July 26, 1977).

[11] Report of the Special Study of the Options Markets to the Securities and Exchange Commission, H.R. Rep. No. IFC3, 96th Cong., 1st Sess. (Comm. Print 1978).

[12] In this regard, it should be noted that on February 4, 1985, the Commission approved a proposed rule change by the NYSE to allow for such hedging. Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708 (February 11, 1985).

[13] Options Study, *supra* note 11, at 1022–23 (footnotes omitted).

[14] *See* Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426 (April 1, 1980) ("Moratorium Termination Release").

[15] *See* File No. SR–NYSE–83–23, Securities Exchange Act Release No. 19462 (January 28, 1983), 48 FR 5640 (February 7, 1983) and File No. SR–NYSE–83–52, Securities Exchange Act Release No. 20663 (February 17, 1984), 49 FR 7171 (February 27, 1984).

[16] As noted above, the NYSE's proposal to participate in the options exchanges' allocation process was codified in File No. SR–NYSE–84–10. *See* note 2, *supra*. The proposal contemplated, at least initially, individual stock option trading on those of the seven regional holding companies ("RHCs") divested by American Telephone and Telegraph Company as might be allocated to the NYSE as a participant in the Allocation Plan. Accordingly, on January 9, 1984, the NYSE sent letters to each of the four options exchanges requesting inclusion in the lottery for options on the RHC stocks. *See, e.g.*, letter from John J. Phelan, Jr., President, NYSE, to Robert Birnbaum, President, Amex, dated January 9, 1984. Thereafter, the Commission staff requested that the exchanges participating in the Allocation Plan either refrain from conducting any further options allocation proceedings or make provision for the NYSE to participate conditionally in those proceedings. *See, e.g.*, letter from Douglas Scarff, Director, Division of Market Regulation, SEC, to Robert Birnbaum, President, Amex, dated March 9, 1984. The options exchanges responded by indicating a willingness not to call any further allocation proceedings while the NYSE proposal remains under consideration by the Commission. *See, e.g.*, letter from Nicholas A. Giordano, President, Phlx, to Douglas Scarff, Director, Division of Market Regulation, SEC, dated March 30, 1984.

Approval of the original Allocation Plan, jointly submitted by Amex, CBOE, Phlx and PSE, was published in Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928 (June 5, 1980). In 1981, the Allocation Plan was amended to provide for the replacement of involuntarily delisted options. In 1982, the Plan was amended further to designate the Options Clearing Corporation as an impartial arbitrator to administer certain aspects of the Plan and to enable each options exchange to select 10 additional underlying securities. Finally, in 1984, the Plan was amended to establish a random order of allocation. *See* Securities Exhcnage Act Release Nos. 17757 (April 27, 1981), 17833 (June 1, 1981), 18484 (February 2, 1982), 18493 (February 17, 1982), and 20739 (March 8, 1984); 46 FR 24352 (April 30, 1981); 46 FR 30450 (June 8, 1981), 47 FR 7901 (February 23, 1981), 47 FR 19500 (May 5, 1982), and 49 FR 9666 (March 14, 1984), respectively.

[17] The NYSE indicates that it generally has modeled its rules covering the trading of individual listed-stock options after the rules of the Amex applicable to such options. *See* File No. SR-NYSE-84-3, Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change, section 3[a][ii] at 7.

[18] The Amex and Phlx options markets are similarly organized.

[19] Proposed NYSE Rule 750[f][.80] states, in pertinent part: "No equity specialist . . . may register as a specialist in: [a] A class of stock options on a stock in which he is registered in the primary market therefore. . . ." *See* NYSE Rule 758(a)(vi).

would prohibit individuals jointly registered as stock traders and COTs from personally effecting transactions in an individual stock option for one hour after leaving the equity floor.[20] Furthermore, the NYSE would prohibit electronic communications between options market professionals and the NYSE equity floor, other than those permitted between the other options exchanges' floor professionals and the NYSE equity floor.[21]

The NYSE further proposes to prohibit specialists from "popularizing" either their specialty options or the underlying stocks, orally or in writing.[22] Finally, the NYSE would require members to furnish books, records and other information about their individual stock options transactions to ensure that the NYSE has access to books and records of members and member organizations reflecting their activity in individual listed-stock options as well as underlying stocks.[23]

B. The NYSE Allocation Plan Proposal

The NYSE has proposed to adopt an expanded version of the current format of the Allocation Plan followed by the Amex, CBOE, PSE and Phlx. The NYSE proposal incorporates all of the procedures in the Allocation Plan into the NYSE's rules. The NYSE Allocation Plan Proposal, however, would not include the current selection algorithm.[24] To accommodate the NYSE as a fifth participant in the Allocation Plan, the NYSE proposes to substitute a five-by-five matrix similar to the four-by-four matrix used by the four existing stock options exchanges under the current Allocation Plan.

[20] *See* Amendment No. 3 to File No. SR-NYSE-84-3; and Securities Exchange Act Release No. 21119, note 5, *supra*.

[21] The NYSE has a similar rule in place in connection with the trading of stock index options. NYSE Rule 750.

[22] As defined by the NYSE, the term "popularizing" means the issuance of advertisements, market letters, sales literature, research reports, buy or sell recommendations or any other communication with the public, oral or written, by the specialists or a person associated with the specialist, and in solicitation of customers' orders with respect to any option in which the specialist is registered. NYSE Rule 750(g)(.30), as amended. Currently, this rule permits popularizing by NYSE options specialists with respect to broad-based index options but not with respect to industry index options.

[23] NYSE Rule 793, which currently requries members to furnish books, records and other information about their securities transactions, would be amended to include individual stock options.

[24] The selection algorithm is the formula establishing the order in which each participating exchange is permitted to select new underlying securities for options trading.

IV. Discussion

A. Applicable Legal Standards

Under section 19(b) of the Act, the Commission must approve a proposed rule change filed by an exchange if it finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to the exchange. If the Commission is unable to make this finding, it must institute proceedings to determine whether to disapprove the proposed rule change.[25]

The NYSE stated that both of the proposed rule changes are consistent with section 6(b)(5) of the Act and that, in addition, the NYSE entry proposal is consistent with section 6(b)(1) of the Act.[26] In particular, the NYSE indicated that the NYSE Allocation Plan proposal would "promote just and equitable principles of trade," in furtherance of section 6(c)(5) of the Act.[27] Finally, the NYSE stated that the NYSE entry proposal "relates to section 6(b)(1) of [the Act] in that it will provide a regulatory framework for a market on the floor in individual listed stock options,"[28] and that "this proposed rule change will give the [NYSE] the capacity to carry out the purpose of [the Act] the rules and regulations thereunder and the rules of the [NYSE], and to enforce compliance therewith by members, Options Trading Right ("OTR") holders, and persons associated with members and OTR holders."[29]

In addition, section 6(b)(8) of the Act is relevant to consideration of both proposed rule changes. This subsection provides that the national securities exchanges "may no impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." In its filings, the NYSE indicated that both proposed rule changes would not impose a burden on competition. Indeed, with respect to the NYSE entry proposal, the NYSE "believes that its entry into options trading advances the legislative mandate embodied in the 1975 Amendments for maximum competition among orders, among market centers, and among market makers."[30]

In contrast, the existing options exchanges contend that the NYSE proposals are inconsistent with the Act. For example, Amex argued that the NYSE proposal was inconsistent with section 6(b)(5) because "the proposal will enable NYSE floor professionals to gain an unfair trading advantage over public investors as a result of their preferential access to non-public market information, and it will substantially increase the potential for manipulative abuses."[31] Amex also stated that the NYSE proposal is inconsistent with section 6(b)(8) of the Act, in that "it will tend to undermine or destroy competition in the area of options trading and further increase the domination of the NYSE over the securities markets generally."[32] The conflicting views of the NYSE and the existing options exchanges are discussed below in connection with the specific arguments raised by the commentators.

B. Market Information and Manipulation Concerns

In the May Release, the Commission stated that, "as a primary market for its listed stocks, the NYSE attracts far more orders and has far more volume in these stocks than other exchanges trading these stocks."[33] The Commission

[25] *See* section 19(b)(2)(B) of the Act.

[26] Section 6(b) of the Act provides, in pertinent part, that an "exchange [must be] so organized and [have] the capacity to be able to carry out the purposes of [the Act] and to comply, and . . . to enforce compliance by its members and persons associated with its members, with the provisions of [the Act], the rules and regulations thereunder, and the rules of the exchange . . .," and that "[t]he rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest." *See* sections 6(b)(1) and 6(b)(5), respectively.

[27] *See* File No. SR-NYSE-84-3, Statement of the Purpose, and Statutory Basis for, the Proposed Rule Change, section 3(b) at 8.

[28] *Id.* at 9.

[29] *Id.*

[30] *See* Amendment No. 1, at 2. The NYSE also stated that, "[t]his proposed rule change will further competition by permitting the Exchange to establish a positive, constructive, competitive presence in the individual listed stock options market," and that "the Exchange's establishment of a strong, responsive individual listed stock options market will significantly enhance the efficiency, effectiveness, and regulation of individual listed stock options trading—and overall options market quality—in accordance with the legislative goals and objectives identified by Congress and with the practical concerns of the Commission." *Id.*

[31] *See* Amex letter, Attachment A, at 2.

[32] *Id.* at 3. As discussed more fully below, Amex and Phlx also argue that NYSE entry into the standardized options markets potentially may violate the federal antitrust laws. *See* note 87, *infra*.

[33] *See* May Release, *supra* note 4, 49 FR at 19502. The NYSE's status as the primary market for its listed stocks, and the implications of NYSE primary market status vis-a-vis NYSE entry into the market for standardized options, has been discussed on several prior occasions. This issue was first discussed in 1977 and 1978, in connection with the NYSE's original proposal to trade listed stock options and the Options Study. *See* Securities Exchange Act Release Nos. 13325 (March 3, 1977); 13674 (June 24, 1977); and 14854 (June 15, 1978); 42 FR 13099 (March 8, 1977), *supra* note 9, and 43 FR 26660 (June 21, 1978), respectively. *See* Options Study, *supra* note 11, at 983–1028. On two subsequent occasions, the Commission again

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further noted that, "as a result, NYSE floor participants are likely to possess more material market information about these stocks than traders on the other exchanges."[34] Except for the NYSE, the commentators uniformly agreed that, because the NYSE is the primary market for its listed stocks, NYSE floor professionals have "time and place" advantages; that is, they are likely to possess at various times more market information at an earlier time than other market participants.[35] The four existing stock options exchanges further contended that the informational disparity between NYSE floor professionals and their floor professionals translates into a competitive advantage for NYSE participants.[36]

As a result of the time and place advantages possessed by NYSE floor professionals, several commentators suggested that limitations be placed on communications between the stock and options floors. Commentators also suggested that, as a general matter, certain trading restrictions may be necessary to prevent those floor professionals with knowledge of such information from using it unfairly.

The comments focused on the extent to which the NYSE stock and options floors should be physically separated, so as to prevent market makers from moving freely between the two floors;[37] the ability of NYSE members to develop and implement private electronic communications systems in an effort to circumvent NYSE rules prohibiting NYSE member access to any non-public, material equity market information;[38] and the ability of NYSE members to use non-public material equity market information, such as through the affiliation of equity and options specialist units and the establishment of reciprocal arrangements between various specialist units (*e.g.*, whereby the specialists in different stocks would become the specialists in the overlying options on each other's stocks).[39]

In response to the NYSE's 1977 proposal, the existing options exchanges and the Commission's staff in the Options Study raised questions about the need for safeguards to protect against unauthorized access to the non-public market information concentrated on the NYSE equity floor, and the potential for manipulation involving access to the NYSE equity floor and the use of such information. Indeed, the Options Study discussed whether precautionary measures might be appropriate that would be "designed to minimize competitive advantages that NYSE may enjoy as a result of its predominant position in the securities markets generally and in underlying securities particularly."[40]

The NYSE does not dispute that its stock floor professionals may have access to market information that is unavailable to other market participants, or only is available on a delayed basis.[41] Instead, the NYSE's current proposal attempts to address many of the concerns raised in the past with respect to NYSE entry in the options market. In particular, the NYSE proposal provides for (1) physically separate stock and options trading floors (*i.e.*, no side-by-side trading); (2) no integrated market making; (3) no electronic communications between NYSE options and equity floor professionals, other than those which are permitted between the other options exchanges' floor professionals and the NYSE equity floor; and (4) no proprietary trading in an individual option on an NYSE listed stock by jointly registered specialists for one hour after the specialist leaves the equity floor ("same hour activity"). In addition, since 1977, the NYSE has developed a five phase operational plan for enhancing electronic intra-market and inter-market surveillance systems, which plan has focused primarily on enhancing automated audit trail capabilities. Four of the five phases of the Plan have been implemented.[42]

In its comment letter on the NYSE proposals, the NYSE described its current and anticipated systems for automated surveillance of its options market, as well as the market for the underlying equity securities. Newly implemented procedures include the ability to undertake surveillance for mini-manipulation, pegging and capping, marking the close, front-running and related activities. The NYSE represents that the procedures it plans to implement in this area are substantially equivalent to those currently employed by the existing stock options exchanges. The NYSE also states that it has fully implemented its options audit trail, which will identify the last sale price of the underlying stock prior to any stock options trade, the exact time of the options transaction,[43] and the broker or trader and the clearing member participants in the options transaction. The NYSE's options audit trail is being incorporated into the Intermarket Surveillance Information System ("ISIS") data base, which provides NYSE surveillance personnel with electronic access to the Intermarket Surveillance Group's ("ISG") data files.[44]

The Commission believes that the NYSE's establishment of an options trading floor in a separate physical location from the equity trading floor should preclude unfair access by NYSE options traders to information generated on the NYSE equity floor. We also believe the NYSE generally has devised restrictions that, when combined with its present surveillance capabilities, should be sufficient to frustrate any manipulative schemes based on the potential to discern material, non-public equity market information and to effect

addressed this and related market structure issues, *see* Securities Exchange Act Release No. 16701 (March 26, 1980), *supra* note 14; and the May Release, *supra* note 4.

[34] *Id. See* Options Study, *supra* note 11, at 904.

[35] In the May Release, the Commission noted the Options Study's explanation of how certain advantages may inure to market professionals on the primary exchange: "the presence of these professionals on an exchange floor frequently permits them to react virtually instantaneously to the market information that they obtain and to enter, and perhaps execute, their orders before others can receive and act upon information that may be publicly disseminated." May Release, *supra* note 4, 49 FR at 19592, *citing* Options Study, *supra* note 11, at 881–82.

[36] *See, e.g.*, Amex letter, *supra* note 7, at 6; and Phlx July 27 letter, *supra* note 7, at 49.

[37] *See* Amex letter, *supra* note 7, at 10; and CBOE July 27 letter, *supra* note 7, at 29.

[38] *See* CBOE July 27 letter *supra* note 7, at 14; Amex letter, *supra* note 7, at 7–8; Phlx July 27 letter, *supra* note 7, at 49; Phlx October 29 letter, *supra* note 7, at 3; and PSE letter, *supra* note 7, at 3.

[39] *See* Amex letter, *supra* note 7, at 10; Phlx July 27 letter, *supra* note 7, at 49; and PSE letter, *supra* note 7, at 3.

[40] *See* Options Study, *supra* note 11, at 1021.

[41] NYSE June 15 letter, *supra* note 7, at 12–15.

[42] *See* text accompanying notes 45–50, *infra*. On December 27, 1984, the NYSE sent the Commission a letter indicating that the NYSE experienced certain delays and difficulties in implementing the final stages of its equity audit trail implementation plans, with the result being that additional efforts are needed to increase the utility of the audit trail for market reconstruction and other surveillance purposes. *See* letter from David Marcus, Senior Vice President, NYSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 27, 1984. The Commission expects that substantial progress would be made by the NYSE in developing a complete and operational equity audit trail before the start-up of trading in listed stock options. As with the commencement of other new options programs, this Order makes the actual start-up of the NYSE's listed stock options program contingent on completion of an adequate surveillance program. *See* note 113, *infra*.

[43] *See* June 15 NYSE letter, *supra* note 7, at 6. Currently, the NYSE's options audit trail captures the index values with respect to NYSE traded index options. *Id.* at 8.

[44] The NYSE developed ISIS and began using ISG data files in 1983. *Id.* at 6. The NYSE has participated actively with the existing options exchanges and other securities markets in ISG to develop and implement inter-exchange automated surveillance capabilities. The NYSE states that its new systems would enable surveillance of related stock and options trading activity by combining information from its stock and options audit trails. NYSE June 15 letter, *supra* note 7, at 8.

a transaction in the derivative market prior to public dissemination of the equity market information.

Although internal access between the NYSE stock and options floors is possible, the Commission believes that the floors are sufficiently separate that there should not be meaningful time and place advantages derived from the physical proximity of the two trading floors.[45] Indeed, the Commission believes that physical access between the two floors generally should be no faster, and in fact could be much slower, than utilizing the electronic communications links currently in place between the communications links currently in place between the NYSE stock floor and the floors of the existing options exchanges.[46] Moreover, the NYSE's proposed prohibition of electronic communications between NYSE options floor professionals and the NYSE equity market, other than those permitted between the other options exchange floors and the NYSE equity market, should ensure that NYSE options participants do not enjoy any unique informational advantages. In specific instances in which material stock market information becomes available to options exchange floor traders (or others) before its general dissemination, the various securities markets, including the NYSE, already have frontrunning and related proscriptions in place designed to deal with those situations.[47]

In addition to restricting the use of various means of communication between the NYSE stock and options floors, as well as the use of material, non-public market information by certain NYSE members, the NYSE proposes to reduce further the opportunity for manipulation and market information abuse by restricting the trading activity of NYSE members who may trade as principal on the stock floor. In particular, the NYSE would preclude a stock specialist from acting as either a specialist or a COT in individual options on his specialty stocks.[48] In addition, the NYSE would restrict the trading activities of jointly registered stock traders and COTs by prohibiting these members from personally effecting proprietary transactions in options on an individual stock listed on the exchange, for one hour after leaving the equity floor.[49] As a related matter, current NYSE rules prohibit stock specialists from trading options on their specialty stocks, except for hedging purposes.[50]

Some commentators considered these trading restrictions insufficient to guard against abuse. For example, although the amex conceded that the restrictions imposed by the NYSE "will help to reduce possible abuses," it noted that "these restrictions will not assure that market information gleaned from the equities markets is not used to gain trading advantages in the options markets nor do they sufficiently reduce the potential for manipulative activity to such a degree as to justify approval of this proposal."[51] In addition, certain commentators contended that the NYSE's proposed prohibitions may be readily circumvented. For example, in their commenter letters, PSE and Amex noted, respectively, that "there would be nothing to prevent stock specialists from adjacent specialist units on the NYSE floor from becoming specialists in the options of each others' stocks," or to prevent a member from "relaying the information [obtained on one floor] to his associates on the other floor."[52]

Furthermore, apparently because of similar concerns, Phlx suggested that the NYSE also should prohibit "any affiliation between options specialist units and equity specialist units."[53] Finally, Phlx recommended that NYSE apply the prohibition against same hour activity in reverse, so that "a member also [would] not be permitted to trade any stock on the NYSE equity floor if the member had been on the NYSE options floor within the previous hour."[54]

The Commission believes that the NYSE's proposed rule precluding a stock specialist from making a market in the overlying individual stock option should minimize the specialist's opportunities to manipulate the market in the option. By further imposing restrictions on the ability of jointly registered stock traders and COTs or registered competitive market-makers to effect transactions in the options market, for one hour after leaving the equity floor, the Commission believes the proposal adequately limits the ability of those members to use unfairly any material, non-public market information they might possess.[55] The concerns that adjacent NYSE specialists might become specialists in options on each others' stocks in order to conspire to exchange non-public market information, or that equity floor traders might relay information to associates on the options floor are not unique to the NYSE proposal. Similar arrangements could be attempted or devised now involving persons on the NYSE equity floor and the floors of the existing stock options exchanges. As noted above, the Commission finds that permissible communications between the NYSE stock and options floors will not differ materially from those currently permissible between the NYSE stock floor and the existing options exchanges. To the extent such collaborative schemes were attempted under the NYSE's proposal, the Exchange has proposed the same general kinds of surveillance procedures to detect such activity as the other options exchanges currently have in place.

Furthermore, the Commission does not agree with Phlx that the NYSE should impose upon its members a prohibition equivalent to the reverse of Amendment No. 3. While the use of

[45] In this regard, the NYSE describes the location of its stock options floor in its statement of the purpose and basis of the proposed rule change, but not specifically in the text of the proposal. Because the separation of its stock and options floors is a critical element in the NYSE proposal, any decision by the NYSE to change the location of the options trading floor relative to the stock trading floor, or to modify the means of access between them, would require submission of a proposed rule change under section 19(b) of the Act.

[46] Similarly, DOJ concluded that, although an NYSE member may, on occasion, be able to obtain information on the stock trading floor, and then walk to the options floor to act on that information, this situation is virtually the same—in terms of time and place advantages—as if the NYSE member called a colleague on the CBOE floor to execute a trade. DOJ letter, *supra* note 7, at 15.

[47] *See, e.g.*, NYSE Rule 435. As a separate matter, the CBOE also expressed concern that "there are a variety of ways in which communication systems could . . . circumvent limitations of the type currently in effect on the options exchanges . . . ." CBOE July 27 letter, *supra* note 7, at 28–29. The Commission does not doubt that there exist technologies that would permit contact between the NYSE stock and options floors in a manner not presently permitted between the NYSE stock floor and the existing stock options exchange floors. The Commission, however, does not view circumvention of NYSE's communication restrictions as a potentially significant problem, or, for that matter, one that is necessarily unique to the NYSE proposal. Moreover, none of the commentators have suggested that these rules are not capable of being enforced by the NYSE. Accordingly, the Commission believes that it is most appropriate to rely on the NYSE's surveillance capabilities to monitor its market for instances of such abuse, and, if necessary, to address any rule violations with appropriate enforcement and disciplinary measures.

[48] *See* proposed NYSE Rule 750(f)(.80) and NYSE Rule 785(a)(vi).

[49] *See* Amendment No. 3 to the proposed rule change, and proposed NYSE Rule 758(b)(iii).

[50] *See* Securities Exchange Act Release No. 21710, *supra* note 12.

[51] Amex letter, *supra* note 7, at 11–12.

[52] PSE letter, *supra* note 7, at 3; and Amex letter, *supra* note 7, at 10.

[53] Phlx July 27 letter, *supra* note 7, at 49.

[54] *Id.*

[55] The NYSE has not, however, indicated how it will specifically monitor compliance with this requirement. Accordingly, as noted below, the Commission has conditioned commencement of trading on the submission of an adequate surveillance program to enforce compliance with this prohibition.

material non-public options market information would violate NYSE rules in certain circumstances, it is questionable whether a one-hour restriction on options trader access to the equity floor is a necessary prophylactic to prevent abuse. Historically, the options surveillance programs of the self-regulatory organizations ("SRO's") and the Commission have been geared toward detecting individuals with material, non-public information about a stock seeking to use that information to profit on a leveraged basis by trading options, not the reverse. The possibility cannot be dismissed that transactions in the options market could materially influence the price of the underlying stock and therefore that knowledge of such transactions before public dissemination could be exploited. At the same time, experience over the last decade of options trading does not suggest that such opportunities are so frequent or so significant that reliance on a prophylactic measure, as opposed to ongoing surveillance efforts, is needed to address this concern.

C. NYSE Participation in the Stock Allocation Plan

The NYSE proposes that, upon its entry into the individual stock options market, it will participate in the Stock Allocation Plan. [56] Nevertheless, in the May Release, the Commission, as part of its ongoing efforts to monitor the operation and effect of the Allocation Plan, solicited comment on two alternative types of market structure: Multiple trading and the exclusive trading of stock options contracts by each exchange pursuant to an allocation scheme. [57] Most of the commentators addressed both trading environments, and many of these comentators urged that, if the NYSE is permitted to trade stock options at all, it should be through NYSE participation in a stock allocation plan.

The Amex, CBOE, Phlx and the SIA opposed NYSE entry in a multiple trading environment. [58] As a general matter, these commentators suggested that multiple trading based on the existing trading facilities for options on individual stocks is likely to create market fragmentation and unfair competition. Regarding NYSE entry, the commentators were specifically concerned about: (1) The informational disparities and manipulative potential associated with the NYSE's primary market status for all of its listed stocks; and, (2) the predominace of the NYSE in the equity markets, as reflected by the NYSE's superior resources, including equity market assets, revenues, trading volume, sophisticated internal communications and order routing facilities, and control of key industry facilities. [59] The PSE did not specifically address the issue of NYSE entry in a multiple trading environment because of its view that, procedurally, the issue was not before the Commission at this time. [60] The NYSE also has made clear, in correspondence with the Commission and the Congress, that it is not seeking to multiply trade individual stock options but rather to participate in the existing Allocation Plan. [61]

The commentators asserted that, should the Commission approve the NYSE entry proposal, the NYSE should participate in an allocation plan. The comments varied, however, as to the most appropriate method of allocation. Three commentators expressly recommended that the current pro-rate scheme for allocation be maintained. [62] One commentator suggested that the Commission should consider weighting the allocation scheme to favor new entrants. [63] Two comentators suggested that consideration should be given to an allocation scheme which is weighted in favor of the smaller options exchanges. [64] Finally, in the May Release, the Commission sought comment on a third alternative designed to take into account the relative market shares of the options exchanges. [65]

Because of the limited nature of the NYSE proposal, the Commission does not address today the issues associated with multiple trading of options on individual listed stocks. The Commission however, will continue to monitor the existing Allocation Plan with respect to options on listed stocks with a view toward whether the current pro rata allocation scheme should be modified.

In this regard, an evaluation of the alternative arrangements for allocating underlying listed stocks among the participating options exchanges must consider the current standardized options market structure and the competitive consequences of the various alternatives for both existing and new entrant options exchanges. The Commission notes that there appear to be only a small number of attractive stocks meeting existing options exchange eligibility criteria which have not been selected as the subject of overlying options contracts. As a result, new options exchanges may confront difficulty in acquiring and/or maintaining the same degree of success as the existing exchanges have in the past, at least with respect to new individual listed stock options.

In the Moratorium Termination Release, in which the Commission first requested the options exchanges to develop a fair and orderly method for allocating equity securities for individual stock options trading, the Commission stated:

> In view of the continuing restriction on multiple trading expansion and in view of the limited number of attractive new stocks which the Commission understands meet the current options listing standards, a fair method of allocating additional . . . options among the existing options exchanges must be formulated. [66]

At the time of the Moratorium, standardized options contracts were traded on approximately 230 equity securities. Upon lifting the Moratorium, the Commission recognized that there were only a limited number of attractive new stocks which met the options listing standards. [67] Under these circumstances,

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[56] *See* Securities Exchange Act Release No. 20613, *supra* note 1; and Securities Exchange Act Release No. 20821, *supra* note 2.

[57] *See* May Release, *supra* note 4.

[58] *See, e.g.*, Amex letter, *supra* note 7, at 21–22.

[59] *See Text accompanying notes 82–83, infra.*

[60] *See* PSE letter, *supra* note 7, at 1.

[61] Letter from John L. McConnell, Senior Vice President, NYSE, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated August 30, 1984, attaching letter from Jonn J. Phelan, Jr., Chairman, NYSE, to the Honorable John D. Dingell, Chairman, House Energy and Commerce Committee, U.S. House of Representatives, dated August 30, 1984.

[62] The SIA, Amex and NYSE suggested this format. Essentially, this would be a continuation of the current pro-rata method of allocation. *See* SIA letter, *supra* note 7, at 3; Amex letter, *supra* note 7, at 30; and NYSE June 15 letter, *supra* note 7, at 20.

[63] The DOJ suggested this alternative. DOJ letter, *supra* note 7, at 9.

[64] The DOJ and Phlx discussed this alternative. *Id.* at 9; and Phlx July 27 letter, *supra* note 7, at 49–50.

[65] This suggestion originally was made by CBOE in connection with Amex's proposal to trade narrow-based stock index options. May Release, *supra* note 4, 49 FR at 19593 n. 34, *citing*, letter from Walter E. Auch, Chairman, CBOE, to John S.R. Shad, Chairman, SEC, dated August 10, 1984. None of the Commentators, however, including the CBOE, addressed this alternative in the instant proceeding.

[66] Moratorium Termination Release, *supra* note 14, 45 FR at 21428.

[67] As indicated, between the inception of standardized options trading in 1973 and the voluntary Moratorium, approximately 230 stocks were selected by the participating exchanges for individual options trading. Only 150 stocks were selected from that time until the present. The Commission noted that "the approximately 150 new stock options intorduced since the Moratorium's termination have not been among the most active options." May Release, *supra* note 4, 49 FR at 19593.

the Commission concluded that the exchanges' determination to allocate underlying securities for new options trading on a pro-rata basis provided an equitable method for allocating eligible underlying securities.

The Commission believes that, until it addresses the issues associated with multiple trading, this continues to be an appropriate method for allocating new options contracts. The situation today is substantially similar to that of 1980. For example, there continue to be a limited number of attractive new stocks. Thus, the equal allocation of additional options on listed stocks "should assure fair and equitable treatment for all the options exchanges."[68] The Commission questions whether it can accomplish this goal by skewing the allocation system to favor the smaller options exchanges or new entrants. To do so would effectively penalize the exchanges with relatively larger market shares for their success in achieving that position.[69]

The Commission believes, therefore, that, under the circumstances, continuation of the pro-rata scheme of allocation is most appropriate. Accordingly, the Commission has determined to approve the NYSE Allocation Plan proposal, and therefore requests the other options exchanges to submit proposals to amend their Allocation Plan rules to accommodate NYSE entry.

D. NYSE Predominance

1. *Comments.* The May Release requested comment on whether NYSE predominance in the listed stock market is likely to be transferred to an NYSE options program. Some commentators did argue that the NYSE's predominance would give rise to serious competitive consequence if it were allowed to enter the options market, at least in a multiple trading environment. For example, Amex stated:

> The NYSE has a virtual monopoly on the trading of options eligible stocks and has the ability to utilize the trading advantages derived from that monopolistic position, combined with its vast resources, to gain competitive advantages over the other exchanges in the options markets. Moreover, there is every reason to believe that it will fully exploit these advantages if given the opportunity to multiply trade options.[70]

Similarly, CBOE stated that, "[i]f multiple trading were ever permitted, and the NYSE could participate, NYSE's historic and present monopoly position in the trading of its listed stocks could create competitive burdens and abuses which are unnecessary and inappropriate . . . "[71] because the NYSE dominates stock trading as measured by trading volume, market share, assets, revenue flow, profits, pre-tax income, and market making capital.[72]

Moreover, commentators suggested that the NYSE may not only be able, but willing, to use its resources in an anticompetitive manner. Among other things, commentators cited the following NYSE activities: [73] (1) Engaging in "massive advertising and marketing programs" in connection with implementation of NYSE's futures and options markets; (2) hiring additional personnel from the existing options exchanges (*i.e.*, trading and marketing talent); (3) offering free memberships and low (or no) cost executions and services for existing options products; [74] (4) using the sophisticated electronic communications systems developed in connection with the stock markets for options transactions; [75] and (5) controlling key industry services such as the Consolidated Tape Association, Consolidated Quotation System, and the Options Price Reporting Authority.[76] In view of these concerns, among others, these commentators argued that the NYSE should be required to operate its options program as a separate cost center,[77] as recommended by the Options Study.[78]

In addition, commentators expressed concern that, as a result of the NYSE's predominance in the stock market, the Exchange, or specialist firms on the NYSE, could establish, either explicitly or implicitly, tying arrangements whereby member firms would be compelled to send options orders to the NYSE.[79] For example, these commentators were concerned that member firms may perceive that there are operational and/or pricing efficiencies to be gained by sending their options and equity orders (especially combination orders) involving the same underlying stock to a single exchange.[80] Indeed, it was claimed that even the perception that there are such efficiencies may enable the NYSE to attract options order flow away from the existing options exchanges.[81]

2. *Discussion.* While the Commission recognizes the NYSE's substantial resources and central position in the listed stock market, the Commission believes the concerns over predatory practices and unfair competitive advantages as a result of such NYSE predominance have little relevance in

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[68] Moratorium Termination Release, *supra* note 14, 45 FR at 21428.

[69] At the same time, the Commission does not believe it is appropriate to weight the allocation scheme in favor of the larger exchanges. This would preserve the market share of the largest options exchanges, a result achieved in part because they were the first exchanges to trade options and thus were able to select the most attractive underlying securities. Such a scheme also would preclude the entry of new participants (*i.e.*, organizations with zero market share). *See* DOJ letter, *supra* note 7, at 9.

[70] *See* Amex letter, *supra* note 7, at 21–22.

[71] CBOE July 27 letter, *supra* note 7, at 3.

[72] *Id.* at 4–5. *See also*, CBOE July 27 letter, *supra* note 7, at 11; Phlx July 27 letter, *supra* note 7, at 30–31; and Amex letter, *supra* note 7, at 4.

[73] *See, e.g.*, Phlx July 27 letter, *supra* note 7, at 33–36; Amex letter, *supra* note 7, at 5; and CBOE July 27 letter, *supra* note 7, at 10–14.

[74] Two commentators—Phlx and CBOE—also addressed this issue in response to a proposed rule change by the NYSE to expand its equity related automated order-routing systems [*i.e.*, the Designated Order Turnaround ("DOT") and Limit Order Turnaround ("LMT") Systems, and the Opening Automated Report Service ("OARS")]. *See* File No. SR-NYSE-84-26. Specifically, commentators pointed to the NYSE expansion of its DOT and LMT Systems, and OARS, to route electronically certain designated market and limit orders for index options directly to the specialist post for execution. *See* Security Exchange Act Release No. 21289 (September 5, 1984) 49 FR 30975 (September 20, 1984). No fees or commission charges are levied on member firms for market orders executed at the opening and during the day though OARS and the DOT System and for the immediately executable limit orders handled by the LMT System. *See* Phlx July 27 letter, *supra* note 7, at 36; and CBOE July 27 letter, *supra* note 7, at 10.

[75] In this connection, several commentators questioned the Commission's statement, in the May Release, that "the NYSE, historically, has used its resources for the purposes of innovation and assuring efficiency in its order-routing, execution and inter-market communications systems in connection with the equities markets." May Release, *supra* note 4, 49 FR at 19504. *See, e.g.*, Phlx July 27 letter, *supra* note 7, at 46; and CBOE July 27 letter, *supra* note 7, at 22. *See also* letter from Harvey L. Pitt, Esq. to Edward A. Wilson, FOIA Officer, SEC, dated July 27, 1984.

[76] The Commission notes that the existing options exchanges have undertaken certain similar practices simultaneously with the implementation of their respective new options markets. For example, Amex implemented an automated order routing system for certain small options orders based upon its equity order-routing system, similar to the NYSE's. Securities Exchange Act Release Nos. 21058 (June 15, 1984), 49 FR 25551 (June 21, 1984) (equity), and 21441 (October 31, 1984), 49 FR 44573 (November 7, 1984) (options). *See* Securities Exchange Act Release Nos. 20811 (April 2, 1984), 49 FR 13932 (April 9, 1984) (CBOE), and 19774 (May 12, 1983), 48 FR 27878 (June 17, 1983) (Phlx). In addition, when CBOE first commenced trading, it granted for virtually no cost permanent memberships to all existing and future members of the Chicago Board of Trade. *See* Securities Exchange Act Release No. 20202 (September 20, 1983), 48 FR 43752, at 43753 n.6 (September 26, 1983). In its comment letter, CBOE distinguished these instances from the NYSE's alleged anticompetitive activities because the NYSE was providing cross-subsidies out of "monopoly" revenues. CBOE July 27 letter, *supra* note 7, at 31–32. The Commission notes, however, that for all but a handful of individual stock options classes the options exchanges have complete monopolies.

[77] Phlx July 27 letter, *supra* note 7, at 22; CBOE July 27 letter, *supra* note 7, at 27.

[78] Options Study, *supra* note 11, at 1023.

[79] CBOE July 27 letter, *supra* note 7, at 6 and 17.

[80] *See, e.g.*, CBOE July 27 letter, *supra* note 7, at 9 and Amex letter, *supra* note 7, at 14.

[81] Amex letter, *supra* note 7, at 14.

an environment in which multiple trading is not being expanded. As noted above, the NYSE proposed, and the Commission is approving, NYSE entry into the standardized options market for individual securities on the basis of its participation in an amended version of the Stock Allocation Plan. As a result, the NYSE will be authorized to trade only a small number of listed stock options.[83]

None of those options would overlie stocks on which the other exchanges also are trading options, limiting dramatically the opportunities to exploit unfairly any of the alleged competitive advantages the other commentators have noted.[83] The NYSE could at most compete indirectly with other equity options exchanges in seeking to attract investors to the options it trades rather than the stock options offered elsewhere. Such indirect competition, however, would not appear susceptible to the predatory or other unfair competitive concerns averred by the other options exchanges. Indeed, to the extent NYSE entry results in such indirect competition, the Commission finds it to be in furtherance of the purposes of the Act.[84]

Accordingly, the Commission does not believe that, in a trading environment characterized by the pro-rata allocation of new underlying equities, the NYSE's resources would enable the NYSE to achieve any unfair competitive advantages over the existing options exchanges.[85] Indeed, at least some of the commentators acknowledged that NYSE entry in the absence of multiple trading is unlikely to have any significant anticompetitive effects. For example, after summarizing the competitive concerns raised by NYSE entry in a multiple trading environment, CBOE conceded: "These burdens on competition might not occur if permanent continuation of the present ban on multiple trading could be assumed."[86] In addition, to the extent NYSE attempts to employ specific unfair or predatory acts or practices, the Commission is capable of dealing with those specific acts or practices through its inspections program, review of proposed SRO rule changes and enforcement authority, among other things.[87]

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[82] In this connection, the Commission does not agree with the Phlx's contention (as well as CBOE's) that, in view of the NYSE's express preference for options multiple trading [see NYSE June 15 letter, *supra* note 7, at 19–20] and the limited NYSE potential for profit in an options program without multiple trading, the NYSE inevitably must seek multiple trading in order to create an economically viable options program. Phlx July 27 letter, *supra* note 7, at 38 n.1. *See* CBOE July 27 letter, *supra* note 7, at 2–3; and Amex letter *supra* note 7, at 17 n.53. Rather, the Commission believes it is reasonable for the NYSE to conclude that, in conjunction with its index options program and the possibility of trading options on over-the-counter securities [*see* Securities Exchange Act Release No. 20691, (February 23, 1984), 49 FR 7682 (March 1, 1984)], the NYSE'S options program may well be successful even if limited to a small number of listed stock options. Moreover, the Commission, as a general matter, does not believe it is appropriate to substitute its judgment for the business judgment of an SRO when the SRO decides to introduce a new product, so long as the product and its regulatory structure is consistent with the purposes of the Act. Thus, even if the NYSE seeks to commence trading options on individual listed stocks in the hope that at some time in the future the Commission will approve options multiple trading, the Commission does not believe that the NYSE's decision to take such a business risk is inappropriate so long as the program before the Commission today is consistent with the purposes of the Act and the program's success or failure would not otherwise threaten the NYSE's ability to fulfill its responsibilities as an SRO. As discussed more fully below, we believe the NYSE's proposal is consistent with the Act and would not impair the NYSE's ability to perform its other self-regulatory duties.

In any event, by approving the NYSE's proposal to become a fifth participant in the Allocation Plan, the Commission does not intend to address the merits of continuing indefinitely the Allocation Plan. Conversely, even accepting for the sake of argument the contention that the NYSE would operate its stock options program more successfully in a multiple trading environment, the Commission does not mean to signal in any way by its approval of the NYSE entry proposal that it has determined now to allow the NYSE to multiply trade listed stock options in the future.

[83] In the May Release, the Commission requested commentators to address whether, in light of the NYSE's failure to dominate the markets for either index options or index futures, the concern that the NYSE would be able to compete unfairly to attract options order flow, in a multiple trading context, remained valid. May Release, *supra* note 4, 49 FR at 19595. *Cf.* File No. SR–NYSE–83–29; and Securities Exchange Act Release No. 20202 (September 20, 1983), *supra* note 76. None of the commentators claimed that the NYSE is a dominant force in the market for either index options or index futures, although some commentators noted that the NYSE is far from a failure in these markets. *See* Phlx July 27 letter, *supra* note 7, at 51; and Amex letter, *supra* note 7 at 28. Phlx, CBOE and Amex, however, indicated that it was inappropriate to compare the stock index options and futures markets with the individual equity options market. *See* Phlx July 27 letter, *supra* note 7, at 52; CBOE July 27 letter, *supra* note 7, at 16; and Amex letter, *supra* note 7, at 24. The Commission recognizes that the index options, index futures and individual options markets differ in important respects. In the absence of more directly analogous experience, however, the Commission believes that the NYSE's failure to dominate either of the derivative index product markets indicates that it may not be able readily to transfer its predominant position in the stock market to individual options. At the very least, it is consistent with the Commission's conclusion that the NYSE will not be able to compete unfairly with other options exchanges under the terms of its proposed limited entry into trading individual options.

[84] Indeed, as a general matter, Phlx asserts that the NYSE must use its resources to somehow better the marketplace for individual options trading. In this connection, Phlx suggests that, as a prerequisite to NYSE entry, the NYSE must demonstrate that the current options exchange are deficient in some respect. Phlx notes that "the NYSE points to no inherent problems in, or needs of, the existing single equity options markets that the NYSE's proposal is designed either to cure or to fulfill." Phlx July 27 letter, *supra* note 7, at iii. In addition, Phlx contends that "the NYSE [does not] suggest, much less prove, that its proposed options market professionals or facilities will somehow be better equipped than (or even equally as equipped as) those of the existing options exchanges or more suited to the handling of options trading." *Id.* at 19–20.] Accordingly, Phlx believes the NYSE has failed to satisfy its burden of proof.

The Commission notes, however, that these considerations are not part of the relevant statutory framework. Section 19(b) of the Act, and Rule 19b–4 thereunder, require the Commission to evaluate all SRO proposals in light of the various relevant statutory goals, including the goals of protecting investors and maintining a fair and orderly marketplace, as well as assuring that no SRO action imposes an unnecessary or inappropriate burden on competition. Accordingly, while section 19(b) requires that the NYSE's proposed rule change be consistent with the purposes of the Act, it does not require the NYSE to demonstrate that it will better handle options trading than the existing options exchanges or that there is a serious deficiency in the current handling of options tradings which the NYSE will remedy. *See* note 87, *infra*.

[85] This is not to say that, if the NYSE were in direct competition with the existing options exchanges (*i.e.*, if multiple trading were allowed), the NYSE's resources necessarily would provide it with an unfair competitive advantage. Rather, it is in recognition of the fact that the rule changes before the Commission today, and the Commission's decision on those proposals, do not raise the question of such direct competition.

[86] CBOE July 27 letter, *supra* note 7, at 2. The Amex also appeared to concede that the competitive concerns raised in its letter would be lessened if the NYSE were limited to trading stock options not also traded on another exchange. Amex letter, *supra* note 7, at 25–28 and 30–35.

[87] In addition, certain commentators suggested that the NYSE proposals are inconsistent with the federal antitrust laws. *See* Amex letter, *supra* note 7, at 23–25, and Attachment A; and Phlx July 27 letter, supra note 7, at 10, 11, 22, 30, and 38. The Commission is not specifically charged with the enforcement of the federal antitrust laws. The Act, however, contains its own competition standard for evaluating proposed rule changes. Section 6(b)(8) of the Act requires that "[t]he rules of [an] exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act." As interpreted by the courts and elaborated by the legislative history of the 1975 Amendments, it is clear that neither the Commission in its own rulemaking nor the exchanges are required to pursue the least anticompetitive alternative. *See Belenke* v. *S.E.C.*, 600 F.2d 193, 199–200 (7th Cir. 1979); *Bradford Nat'l Clearing Corp.* v. *S.E.C.*, 590 F.2d 1085, 1105; and Senate Committee on Banking, Housing and Urban Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, ("Senate Report"), S. Rep. No. 94–75, 94th Cong., 1st Sess. 30 (1975). Rather, the Commission is required to consider competitive implications in light of the other purposes of the Act such as the protection of investors and maintenance of fair and orderly markets. Thus, while the Commission has concluded that NYSE entry into the individual options market is pro-competitive because it allows a new entrant into an existing market without substantially disrupting the existing market structure, the Commission also believes that NYSE entry may help protect investors by providing an opportunity for the expertise and experience of the NYSE to be applied to individual options trading. Accordingly, the Commission disagrees with the Phlx comment that there are no benefits associated with NYSE entry. *See* Phlx July 27 letter, *supra* note 7, at 19–20. Instead, the Commission believes that NYSE entry

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In addition, while the Commission recognizes that the technical facilities developed in connection with the NYSE equity market were readily adopted to the NYSE's index options market (in part because such systems were sophisticated and extensively used), the Commission does not believe that this type of facilities expansion, even without the levy of separate fees, should be viewed as anticompetitive.[88] The Commission believes that NYSE's ability to apply existing systems to the options floor will enhance efficiency in their options market. The Commission rejects the assertion that limitations should be placed on the NYSE in implementing these systems simply because they have been created for its stock market. Moreover, in light of the possibility that use of these systems may substantially increase the willingness of firms to encourage investors to trade in NYSE's option market, the Commission believes that the determination not to initially set fees for the usage of those systems is a reasonable business decision and not predatory competition. Furthermore, the Commission notes that the NYSE pricing policies in this connection are the same as those employed for some time on the NYSE equities floor and are substantially similar to all of the equity-related small order routing and execution systems currently operated by the other national securities exchanges.[89]

With respect to the efficiencies that commentators assert the NYSE might be able to provide for firms routing stock/option combination orders, the Commission does not find unfair any advantage that might accrue to the NYSE if it were to develop such facilities. Virtually every marketplace, by virtue of its size, facilities, experience, market making talent, location or other resources, has facilities or capabilities which it will seek to exploit in competing with other market centers. To deny an exchange the opportunity to develop new systems or programs for that reason would stifle innovation and evolution in the market. More importantly, to deny the securities industry and public investors the benefits, if any, of improved order routing techniques would be inconsistent with the statutory goal of increasing opportunities for efficient execution of securities transactions.[90] Thus, the fact of such advantages, unless they were exploited unfairly, is not a basis for disapproving the entry of a new market participant.

Finally, in view of the foregoing discussion, the Commission does not believe that it is necessary to require the NYSE to operate its options program as a separate cost center in order to ensure that it does not compete unfairly. Indeed, those new options programs which the Commission previously has approved, have been operated by each exchange with some form of subsidization; [91] *i.e.*, the programs both had significant development costs and operated at losses in their first months of operation. Some continue to operate at a loss.

The Commission addressed this issue at the inception of an NYSE options index program. In this connection, the Commission approved a proposal which, among other things, offered free options trading rights on the NYSE to persons and organizations who were not NYSE members, although certain commentators had asserted that this was "unfair," "anticompetitive," or "predatory." [92] The Commission concluded, however, that "as a general matter, in developing a market for a new financial product, it may be extremely difficult, if not impossible, to avoid some form of operational subsidization." [93]

The Commission accepts the fact that the expenditure of funds from the NYSE's general resources for initial development costs and to support short-term operating costs is generally necessary to the development of a new options program. Indeed, such a short-term subsidy is, on balance, pro-competitive because it assists the entry of a new competitor.[94] Accordingly, in the absence of unfair or predatory practices the Commission believes it is unnecessary and inappropriate to compel operation of a newly implemented NYSE stock options market as a separate cost center.

E. Procedural Issues

The Commission received substantial commentary on the format for consideration of the NYSE Entry and Allocation Plan Proposals. In particular, three commentators—CBOE, Phlx, and PSE—asserted that the Commission is required to hold oral hearings or publicly announced conferences during which all interested persons may testify and be accorded an opportunity for "effective cross-examination" [95] rights in connection with the Proposals.[96] In addition, several Congressmen have urged the Commission to hold public hearings.[97] As discussed more fully below, the Commission believes that oral hearings are not required as a matter of law.[98] In addition, because the issues surrounding the NYSE proposal have been addressed on several previous occasions, and ample opportunity has been afforded and utilized to submit written comments on the NYSE Entry Proposal, the Commission also does not believe that further hearings are necessary as a

will provide opportunities for additional market making capital and trading techniques to be applied to the markets for options on individual listed stocks.

[88] For example, because of their nature and size, the transactions for which fees have been waived for options orders executed through the NYSE's DOT, LMT and OARS procedures (*i.e.*, market orders executed at the opening and during the day and immediately executable limit orders, of 100 contracts or less) require relatively little floor broker involvement. Moreover, the member firms pay the installation costs for their respective terminals and transaction fees for those limit orders which are not immediately executable. Thus, the Commission believes that member firms are assessed fees and incur costs which are generally related to the costs involved in providing these services.

[89] *See, e.g.*, File No. SR-Amex-83-31; Securities Exchange Act Release No. 20572 (January 17, 1984), 49 FR 2686 (January 24, 1984).

[90] *See* section 11A(a)(1)(C)(i) of the Act.

[91] *See* Securities Exchange Act Release No. 20202, *supra* note 76, 48 FR at 43753.

[92] *Id.* 48 at 43752. This proposal invited members of any one or more other securities and commodities exchanges to apply to the NYSE for one-year, free options trading rights. Members of the New York Futures Exchange, Inc. were invited to apply for three-year, free options trading rights.

[93] *Id.*, at 43753.

[94] As the DOJ indicated, it is irrelevant "whether the funds supporting the program's operation are called capital contributions, loans or an operating subsidy, or whether the expenses and revenues from options trading are accounted for in a separate cost center." DOJ letter, *supra* note 7, at 17.

[95] *See* Phlx October 29 letter, *supra* note 7, at 2.

[96] Although CBOE, Phlx, and PSE addressed this issue in their comment letters on NYSE Entry, Phlx subsequently submitted an additional comment letter dedicated exclusively to the public hearing issue. *See* October 29 letter, *supra* note 7. In that letter, Phlx emphasized the need for hearings that are more formal in nature than the "notice and comment" hearings already held by the Commission. In this connection, Phlx stated, "[i]n short, notice and comment procedures result in a dry paper record comprised solely of the untested 'evidence' which the commentators choose to submit." *Id.* at 8. In addition, Phlx indicated that, although full scale hearings may not be necessary, an additional opportunity for public comment, with the opportunity for cross-examination, is necessary. Phlx stated that an oral hearing must be held because, among other things, "[o]nly an oral hearing, with an opportunity for reasonable cross-examination, will allow the Commission to explore the factual bases for the NYSE's presently unsworn statements of 'fact'." *Id.* at 11.

[97] *See* text accompanying notes 99–102, *infra*.

[98] Section 19(b)(1) of the Act governs the manner in which proposed rule changes must be filed by SROs and considered by the Commission. The requirements set forth in section 19(b) of the Act are similar to those set forth in the Administrative Procedure Act ("APA") regarding agency actions involving informal decisionmaking. *See* 5 U.S.C. 551–558 (1976). *See* Senate Report, *supra* note 87, at 128–31.

matter of policy. Accordingly, the Commission has determined not to hold oral, or other more formal, public hearings.

While the Commission on rare occasion has conducted oral hearings regarding proposed SRO rule changes,[99] section 19(b) requires only that it solicit written comments.[100] By publishing appropriate notice of the NYSE proposal and soliciting written comments on the proposal, the Commission complied with the procedural requirements of section 19(b) and Rule 19b–4 thereunder.[101] By providing notice and comment hearings on the NYSE proposal and the various amendments to the proposal, as well as specifically soliciting comments on the principal issues raised by the NYSE proposal in the extensive May Release,[102] the Commission has adopted a flexible procedure that amply comports with its responsibilities under the federal securities laws.[103]

Phlx asserts that the record in connection with the NYSE filing does not support what it views as the rescission of agency action,[104] *i.e.*, reversal of the Options Study and the Commission's "settled single equity options policy,"[105] including its "ban on the NYSE from trading options on single equity stocks."[106] Accordingly, Phlx requests disapproval of the NYSE proposal or, alternatively, that the record be supplemented extensively, by the "same type of fact-finding as the Options Study conducted (*e.g.*, interviews, data collection, economic studies, and taking of oral testimony) . . . ."[107] Indeed, Phlx states that "a major change in policy, especially where that policy is based on a record of facts, studies and testimony, may be effected only if the change is supported by at least an equally persuasive body of evidence."[108] In support of this contention, Phlx cites *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Company* ("*Motor Vehicle*").[109]

The Commission believes that Phlx's argument based on the *Motor Vehicle* decision is inapposite. First, the Commission believes that the factual predicate for the Phlx's argument, that the Commission took agency action in the Options Study to establish a ban on NYSE entry in the stock options market, is incorrect. The Options Study provided a discussion of both the benefits and burdens of NYSE entry but did not contain specific recommendations on that issue. In addition, the Commission did not adopt, as its own determinations, any of the Options Study's discussions concerning market structure issues.

As a related matter, Phlx believes that there are many factual determinations that the Options Study left unresolved which relate to the NYSE's proposal, and which the Commission must address in order to create an adequate record for Commission approval of the NYSE proposal, in accordance with the Act. Primarily, these factual issues concern the impact of multiple trading on the exchanges trading options on individual listed stocks. That, however, is not the proposal currently before the Commission. Therefore, the Commission believes that it clearly has met its statutory responsibilities under section 19(b) to obtain informed public comment. As discussed earlier, the Commission has published for comment

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[99] For example, in September and October 1979 the Commission held oral hearings with respect to a proposed rule change by the National Association of Securities Dealers, Inc. to amend its rules governing the giving and receiving of selling concessions, discounts or other allowances in connection with fixed price offerings of securities. *See* File No. SR NASD–78–3.

[100] In particular, section 19(b)(1) of the Act, and Rule 19b–4 thereunder, require SROs filing proposed rule changes with the Commission to state in their submission, among other things: the terms of the proposed rule change; the basis and purpose of the proposed rule change; and whether the proposed rule change will impose any burden on competition. Section 19(b)(1) also directs the Commission to "publish notice [of the proposal] together with the terms of substance of the proposed rule change or a description of the subjects and issues involved," and to "give interested persons an opportunity to submit written data, views and arguments concerning such proposed rule change." *See* section 19(b)(1) of the Act. *See also Belenke v. SEC*, 606 F.2d 193 (7th Cir. 1979).

[101] The commentators have emphasized that the NYSE proposal involves many significant issues with potentially far-reaching implications for the options markets. Because the Commission recognized the significance of the issues involved in the NYSE proposals, the Commission chose not to rely on its original solicitation of comment. Rather, the Commission again solicited comment on the proposal and published the May Release, *supra* note 4, containing a detailed description of the proposed rule change, a discussion of the market structure and related issues it raises and specifically solicited comments on those and other issues raised by the NYSE proposals. In response to the May Release, the Commission received several lengthy and detailed comment letters, each of which addressed the principal issues raised in the May Release. In addition, some commentators addressed issues not explicitly raised in that Release (*e.g.*, NYSE and Commission compliance with section 19(b)(1) of the Act, and the potential anti-trust concerns arising from NYSE entry into the individual listed stock options market, *see* note 87 *supra*.)

[102] Phlx contends that the MYSE's June 15 letter, *supra* note 7, constitutes an amendment to the NYSE proposal that was improperly filed and noticed. Phlx July 27 letter, *supra* note 7, at 54–56 and 58–59. This contention is incorrect. Nowhere in the June 15 letter does the NYSE state that it is disavowing its proposal to participate in the Allocation Plan; to the contrary, the June 15 letter, as amplified by the NYSE's August 30 letter, *supra* notes 7 and 8, makes it clear that the NYSE has no present intention to seek Commission authority to engage in multiple trading. Rather, the Commission considers the June 15 letter as a policy statement by the NYSE of what it believes is the most appropriate market structure for standardized options. While the Commission believes this letter contains interesting information, the Commission does not believe that the letter is a *de facto* amendment of the NYSE proposed rule change necessitating a formal amendment by the NYSE or formal notice by the Commission. *See* NYSE August 30 letter, *supra* note 8.

[103] Section 19(b)(1) of the Act and Rule 19b–4 thereunder were not meant to be rigid in their application. As represented in the Phlx comment letter, Congress required an explanation or justification to accompany the proposed rule change "in part to assure 'informed public comment' pursuant to a standard equal to the 'standard of policy justification that the Administrative Procedure Act imposes on the SEC." *See* Phlx July 27 letter, *supra* note 7, at 54.

Phlx also notes that the legislative history of the 1975 Amendments suggests that, where "fundamental policy issues are involved, . . . oral hearings or publicly announced conferences might be most appropriate." Senate Report, *supra* note 87, at 30. Phlx apparently reads section 19(b)(1) and its legislative history, to provide a two-tiered format for the review of proposed rule changes. One tier would involve proposed rule changes containing fundamental policy issues. With regard to these proposals, oral hearings or publicly announced conferences are appropriate ("formal decision-making"). The second tier would include all other proposed rule changes, and would require only notice and coment hearings ("informal decision-making"). The Commission agrees that section 19(b)(1) would not require the same proceedings for all SRO proposals. Indeed, the Commission feels that a flexibile approach is essential in considering and acting upon SRO proposed rule changes. In the instant case, however, the Commission is satisfied that its efforts to obtain informed public comment have been more than adequate to meet its responsibilities under the Act.

[104] The Commission notes that Phlx and other commentators now acknowledge that the NYSE proposal to trade listed stock options does not include a proposal to multiply trade these options. Phlx October 29 letter, *supra* note 7, at 15–16. Because of their concerns that multiple trading is part of the NYSE's future plans, however, they assert that in-depth consideration of the multiple trading issue be undertaken. Nevertheless, as indicated previously, The Commission does not believe that it needs to address that issue in order to act on a limited NYSE entry proposal that does not contemplate multiple trading, but merely the addition of the NYSE as a fifth participant in the current Allocation Plan.

In addition to the significant public policy issues inherent in the NYSE's Proposals, Phlx has suggested that public hearings (with the opportunity for cross-examination) are necessary because the existing options exchanges' rules would have to be amended in the event of NYSE entry. In particular, Phlx stated, "the fact that the NYSE (and not the Phlx) is proposing revisions of the Phlx's rules, as well as notions of fundamental fairness embodied in section 19(c)'s oral hearing requirement, mandate that such revisions should not be forced upon the Phlx unwillingly without the procedural protections afforded by a full oral hearing." *See* Phlx October 29 letter, *supra* note 7, at 10. The Commission notes, however, that Phlx has addressed the relevant market structure issues in connection with NYSE entry, including the future of the Allocation Plan *See* Phlx July 27 letter, *supra* note 7, at 50.

[105] *Id.* at 61.

[106] *Id.* at 65.

[107] *Id.*

[108] *Id.* at 63.

[109] 103 S. Ct. 2856 (1983).

two releases describing the entire proposal and soliciting comments on all aspects of it, as well as an additional release soliciting more specific comments. As a result, the NYSE proposal has been officially open for public comment for a total of six months.[110]

Second, even if the Options Study's discussion of NYSE entry into the options market could be deemed to constitute an agency determination to deny NYSE entry, the Commission believes it has a more than an adequate written record before it to make a determination at this time to approve the NYSE proposed rule changes.[111]

Accordingly, the Commission believes that the record in connection with the NYSE proposed rule change, which includes very extensive comment letters from all of the existing options exchanges and others, is adequate. Moreover, the Commission believes all factual information necessary to make a reasoned determination regarding the present NYSE proposal is available. Accordingly, the Commission does not believe public hearings are necessary under the Act, to supplement the record.

The Commission further believes that policy reasons in support of holding public hearings do not outweigh the countervailing policy reasons in support of avoiding further delay and the expenditure of additional resources. In this connection, the Commission has provided numerous opportunities for public comment from all parties interested in the NYSE's proposal to trade individual listed stock options. With regard to the related issues raised by the Options Study, the Commission also has given interested persons numerous opportunities to discuss the specific question of NYSE entry as well as various other aspects of the future structure of the options markets. Clearly, the existing exchanges have taken full advantage of these numerous opportunities to comment. In addition to lengthy submissions on the question of NYSE entry during the Options Moratorium, each of the options exchanges has now submitted at least one comment letter on the current NYSE proposal.[112]

Furthermore, it does not appear that oral hearings would afford the Commission an opportunity to elicit qualitatively more information from interested persons. Rather, the Commission believes that such hearings would adversely effect the NYSE by resulting in a substantial delay in action on their proposal for the purpose of providing a forum for further expression of views that already have been clearly articulated to the Commission. The Commission also believes that oral hearings would unnecessarily drain industry and Commission resources. Accordingly, the Commission has concluded that it has given interested persons an adequate opportunity to submit written data, views and arguments concerning the NYSE proposed rule changes, consistent with section 19(b) of the Act.

IV. Findings and Conclusion

As discussed above, the Commission believes that the NYSE Proposals adequately respond to substantive regulatory concerns raised by the commentators. In addition, because the NYSE proposals would further legitimate purposes of the Act (including the protection of investors) without imposing unnecessary competitive burdens, the Commission believes that it is appropriate to authorize the NYSE to trade individual options on listed stocks.

The Commission has reviewed carefully the rules proposed by NYSE to accommodate the listing and trading of options on individual listed stocks. For the reasons set forth above, the Commission has concluded that the rules provide for adequate and proper regulation of the proposed options program. Accordingly, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6 of the Act and the rules and regulations thereunder.[113]

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-4291 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

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[110] *See* Securities Exchange Act Release No. 20613 and Securities Exchange Act Release No. 20921, *supra*, notes 1 and 4, respectively.

[111] In addition, the Commission does not believe that there is any need to supplement this written record with oral testimony and the opportunity for cross-examination. Phlx, on the other hand, has cited three reasons in support of holding oral hearings and affording commentators cross-examination rights in connection with the NYSE Proposals: (1) To compel the NYSE to make "detailed factual demonstrations" in support of its unsubstantiated assertions, including the NYSE's statement that its proposal "will serve investors by enabling them to hedge against risks associated with the ownership of listed stocks;" (2) to permit the NYSE to offer, and the other commentators to evaluate, evidence presented by expert studies or expert witnesses in support of the NYSE's positions, some of which contrast with the Options Study's recommendations; and (3) to permit the commentators to explore "the numerous questions of motive and credibility which are raised by the NYSE proposal," particularly in connection with the ability of the NYSE's options program to be profitable in light of NYSE trading of only one or two single equity options." *See* Phlx October 29 letter, *supra* note 7, at 11-15.

Although the Commission appreciates the value of cross-examination, it does not believe that it is a necessary part of this administrative proceeding. Rather, the Commission notes, that the parties opposed to the NYSE proposal have availed themselves of numerous opportunities to evaluate, present evidence and attempt to refute the arguments and evidence used by the NYSE in support of its proposal. Oral hearings are unnecessary to assure the NYSE and the commentators an adequate opportunity to present their respective positions. In addition, the Commission believes that, based on its experience and expertise, it is capable without oral cross-examination to assess the relevance and creditibility of the written comments submitted on the proposals.

[112] Indeed, the Commission believes it has been more than accommodating in meeting the options exchanges' interest in commenting on the NYSE proposal. The Commission provided an ample comment period (originally five weeks extended to nine weeks) in connection with the May Release. Moreover, the Commission has continued to accept all comments received subsequently. Indeed, the Commission received and considered a comment letter on the NYSE proposal as late as the end of October 1984. *See* Phlx October 29 letter, *supra* note 7.

[113] The NYSE has represented to the Commission that it is prepared to implement comprehensive surveillance procedures in connection with its listed stock options program. As with other new options programs, the Commission conditions the actual start-up of trading in the NYSE's listed options program on completion by the NYSE of an adequate intra- and inter-market surveillance program, including surveillance of proprietary trading by registered stock traders and COTs after leaving the equity floor.

[Release No. 21762; File No. SR-Phlx-85-2]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Change by Philadelphia Stock Exchange, Inc.

February 14, 1985.

Pursuant to section 19(b) (1) of the Securites Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 24, 1985, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Phlx is amending its arbitration rule (Rule 950) is connection with recent amendments to the Uniform Arbitration Code developed by the Securities Industry Conference on Arbitration and already adopted by a number of self-regulatory organizations. Proposed amendments to Rule 950 include the following: (1) The jurisdictional limit in section 2 for small claim proceedings

and related counter claims would be raised from $2,500 to $5,000, and the $15 flat filing fee would be replaced by a series of fees, the maximum fee being $100; (2) section 4 would prevent the six year time limitation on arbitrations from barring a claim which a court directs to arbitration; (3) under section 7, the statute of limitations would be tolled when only a claimant rather than all parties files a submission agreement; (4) section 10 would allow each party, even in small claim proceedings, one peremptory challenge as well as unlimited challenges for cause; (5) under section 13, a responding party who pleads only a general denial as an answer could be barred from presenting any facts or defenses at the time of the hearing, and a responding party who fails in his answer to state all available defenses and relevant facts could be barred from presenting additional defenses and facts; (6) also under Section 13, the Director of Arbitration would be permitted to preliminarily determine whether claims involving multiple claimants, respondents, or third party respondents should proceed in the same or separate arbitrations with the final determination with respect to joining, consolidation and multiple parties under this subsection made by the arbitration panel; (7) section 27 would permit amended pleadings prior to appointment of a panel, although after a panel had been appointed no new or different pleadings could be filed except for a responsive pleading or with the panel's consent; (8) section 31's schedule of fees and deposits for arbitration would be restructured, lowering the fees and deposits for claims under $2,500 while generally raising fees and deposits for claims over $10,000; and (9) also under section 31, arbitrators would be allowed to assess costs in a dispute that was settled or withdrawn subsequent to the first hearing. According to Phlx, the statutory basis for the proposed rule change is 6(b)(5) of the Act.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the Phlx.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed amendments are substantially the same as the amendments to rules of other self-regulatory organizations, recently published for public comment, considered and approved by the Commission.[1] The Commission believes accelerated approval is appropriate insofar as the proposed rule change will foster consistent arbitration procedures among the self-regulatory organizations.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4295 Filed 2-20-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of reporting and recordkeeping requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before March 15, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of forms, request for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street NW., Room 200, Washington, D.C. 20416. Telephone: (202) 653-8538.

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-3785.

Information Collections Submitted for Review

Title: Application for Small Business Size Determination
Form Nos.: SBA 355, 1340
Frequency: On occasion
Description of Respondents: Forms are completed by firms that require a formal size determination to qualify for SBA assistance.
Annual Responses: 4038
Annual Burden Hours: 16150
Type of Request: Extension.

Title: Relative Costs for Small and Large Business in Supplying Products and Services for Government and Private Sector Markets
Frequency: One time, non recurring
Description of Respondents: The data will be collected from small and large businesses and is used to estimate the cost of obtaining procurements, and producing goods and services for, federal government agencies in comparison to private sector clients. The information is needed to identify any barriers to participation, especially by small businesses, in federal procurement.
Annual Responses: 374
Annual Burden Hours: 125
Type of Request: New.

[1] The Commission has approved provisions similar to those contained in proposed amendments to Rule 950 for the National Association of Securities Dealers (SR-NASD-84-18; Securities Exchange Act Release No. 21295, September 7, 1984; 49 FR 36040, September 13, 1984); the Municipal Securities Rulemaking Board (SR-MSBR-84-5; Securities Exchange Act Release No. 21407, June 14, 1984; 49 FR 25332, June 20, 1984); the American Stock Exchange (SR-Amex-84-24; Securities Exchange Act Release No. 21442, October 31, 1984; 49 FR 44574, November 7, 1984); the Midwest Stock Exchange (SR-MSE-84-6; Securities Exchange Act Release No. 21508, November 20, 1984, 49 FR 46857, November 26, 1984), the Chicago Board Options Exchange (SR-CBOE-84-26; Securities Exchange Act Release No. 21476, November 9, 1984; 49 FR 45687, November 19, 1984) and the New York Stock Exchange, Inc. (SR-NYSE-84-30; Securities Exchange Act Release No. 21542, December 6, 1984; 49 FR 28403, December 12, 1984).

Dated: February 14, 1985.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-4249 Filed 2-20-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0478]

ASEA-Harvest Ventures II; Issuance of Small Business Investment Company License

On June 22, 1984, a notice was published in the **Federal Register** (33192) stating that an application had been filed by ASEA-Harvest Ventures II, 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.

Interested parties were given until the close of business July 22, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0478 to ASEA-Harvest Ventures II to oprate as a small business investment company.

Dated: February 14, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-4251 Filed 2-20-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2182]

Alabama; Declaration of Disaster Loan Area

Franklin and Lawrence Counties and the adjacent Counties of Colbert, Limestone, Lauderdale, Marion, and Winston in the State of Alabama constitute a disaster area because of a snow and ice storm which occurred on January 31, 1985. Applications for loans for physical damage may be filed until the close of business on April 15, 1985, and for economic injury until the close of business on November 12, 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.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations	11.125

The number assigned to this disaster is 218211 for physical damage and for economic injury the number is 628300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 12, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-4250 Filed 2-20-85; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 35
Thursday, February 21, 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

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 25, 1985, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Request for modification of an Order imposed in granting Federal deposit insurance:

Universal Trust Company, San Juan, Puerto Rico

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-4366 Filed 2-19-85; 1:26 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act", (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 25, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiative, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Applications for Federal deposit insurance and for consent to purchase assets and assume liabilities and establish three branches:

Unibank, Steubenville, Ohio, a proposed new bank, for Federal deposit insurance, for consent to purchase the assets of and assume the liability to pay deposits made in four offices of AmeriTrust Company National Association, Cleveland, Ohio, and for consent to establish three of those four offices as branches of Unibank.

Applications for consent to merge and establish branches:

First-Citizens Bank & Trust Company, Raleigh, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with First State Bank, Winterville, North Carolina, and for consent to establish the four open and one approved but unopened offices of First State Bank as branches of the resultant bank.

First-Citizens Bank & Trust Company, Raleigh, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with Farmers Bank, Pilot Mountain, North Carolina, and for consent to establish the sole office of Farmers Bank as a branch of the resultant bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-4367 Filed 2-19-85; 1:26 pm]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:45 p.m. on Thursday, February 14, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank in Eads, Eads, Colorado, which was closed by the Senior Deputy Comptroller for

Bank Supervision, Office of the Comptroller of the Currency, on Thursday, February 14, 1985; (2) accept the bid for the transaction submitted by OMNIBANK of Kiowa County, National Association, Eads, Colorado, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (C)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-4368 Filed 2-19-85; 1:26 pm]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 26, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, February 28, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1985-3: Rod Diridon, Supervisor
Draft advisory opinion #1985-5: Rep. Joe Kolter, Committee to Re-elect Joe Kolter
Draft advisory opinion #1985-6: Stuart M. Pohl on behalf of Laborers Local 91, Political Action Fund
Explanation and Justification of regulations governing "testing the waters" activities
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-4422 Filed 2-19-85; 3:24 pm]

BILLING CODE 6715-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 15, 1985.

TIME AND DATE: 10:00 a.m., Friday, February 22, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of James Clarke v. T.P. Mining, Inc., Docket No. LAKE 83-97-D. (Issues include whether the administrative law judge appropriately approved the settlement of a discrimination case.)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-4375 Filed 2-19-85; 1:51 pm]

BILLING CODE 6735-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 25, 1985.

PLACE: Marriner S. Eccies Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne Assistant to the Board. (202) 452-3204 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 15, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4301 Filed 2-19-85; 8:48 am]

BILLING CODE 6210-01-M

7

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, March 6, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW. Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of February, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523-5920.

Date of Notice: February 15, 1985.

Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85-4394 Filed 2-19-85; 2:29 pm]

BILLING CODE 7550-01-M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 25, 1985.

A closed meeting will be held on Tuesday, February 27, 1985, at 10:00 a.m. An open meeting will be held on Thursday, February 28, 1985, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C.

552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Treadway, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 27, 1985, at 10:00 a.m., will be:

Formal order of investigation.
Report of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, February 28, 1985, at 2:30 p.m., will be:

1. Consideration of whether to publish a release soliciting comments on various concepts, including two approaches designed to harmonize disclosure and distribution practices for multinational offerings. For further information, please contact Martin Meyrowitz at (20) 272-3250.

2. Consideration of the General Counsel report on the Commission's Bankruptcy Program.

In December 1983 the Commission considered and adopted a report on the Commission's bankruptcy program prepared by Commissioner Longstreth in which he recommended changes to the Commission's approach to its statutory responsibilities under the Bankruptcy Code to participate in reorganization cases on behalf of public investors. At that time, the Commission directed the General Counsel to prepare a report with recommendations after one year's experience in administering the changed program. The General Counsel's report requests the Commission to adopt a series of guidelines to direct the staff in the exercise of the Commission's statutory responsibilities under the Bankruptcy Code as special advisor to the courts in reorganization cases and its responsibilities under the federal securities laws to enforce those laws against debtors undergoing reorganization. For further information, please contact Michael A. Berman at (202) 272-2498.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272-3195.

Shirley E. Bollis,
Assistant Secretary.
February 19, 1985.

[FR Doc. 85-4369 Filed 2-19-85; 1:26 pm]
BILLING CODE 8010-01-M

9

SECURITIES AND EXCHANGE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 5350 2/7/85).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, February 4, 1985.

CHANGE IN THE MEETING: Additional meeting.

The following item was considered at a closed meeting scheduled for Wednesday, February 13, 1985, at 3:25 p.m.

Regulatory matter bearing enforcement implications.

Chairman Shad and Commissioners Treadway, Cox and Marinaccio determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

Shirley E. Hollis,
Assistant Secretary.
February 19, 1985.

[FR Doc. 85-4369 Filed 2-19-85; 1:01 pm]
BILLING CODE 8010-01-M

federal register

Thursday
February 21, 1985

Part II

Environmental Protection Agency

40 CFR Parts 23 and 100

Judicial Review Under EPA-Administered Statutes; Races to the Courthouse; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 23 and 100

[FRL 2752-51]

Judicial Review Under EPA-Administered Statutes; Races to the Courthouse

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: In 1980 EPA issued a rule fixing a definitely ascertainable time when Clean Water Act rules would be considered issued for purposes of judicial review. Today's final rule expands the 1980 rules to apply to some other actions under the Clean Water Act and establishes similar rules for other EPA-administered statutes, and is intended to bring greater fairness to "races to the courthouse."

EFFECTIVE DATE: This rule will be effective on April 22, 1985.

FOR FURTHER INFORMATION CONTACT: Alan W. Eckert, Office of General Counsel (LE-132A), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7606.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 4, 1984, EPA proposed to establish a definitely ascertainable time and date of various Agency actions for purposes of judicial review. 49 FR 23152. EPA proposed that the time and date of most EPA actions reviewable in the various courts of appeals be fixed at 1:00 p.m. eastern time, fourteen days after the publication of a **Federal Register** document, or fourteen days after signature for unpublished documents. A comment period of sixty days was provided.

EPA received two comments. EPA has carefully considered these comments and has decided to issue a final rule identical to the proposed rule.

II. Basis and Purpose of the Rule

A. Experience Under the Clean Water Act Racing Rule

The proposed rule was based on a rule published on April 17, 1980, governing the timing of issuance of Agency regulations for the purposes of judicial review under the Clean Water Act. 45 FR 26046. Under that rule, a regulation (such as an effluent limitations guideline) issued under the Clean Water Act was considered issued for purposes of direct appellate judicial review under section 509(b) of the Act at 1:00 p.m. eastern time on the date that is two weeks after the date when notice of the action appears in the **Federal Register.**

The purpose of the 1980 rulemaking was to bring greater fairness to so-called "races to the courthouse." In these races, litigants who believe that certain courts are likely to be more receptive to their arguments than others seek by various means to be the first to be informed of an Agency action and then to be the first to file a petition for review in one of the twelve United States courts of appeals. Under 28 U.S.C. 2112(a), any subsequent petition for review in a different court of appeals must be forwarded to the court where a petition was first filed. That court may then forward all the petitions to any other court "for the convenience of the parties in the interests of justice." Of course, as the winner of the race hopes, the court may also retain all the petitions and decide the challenges. The practices of forum shopping and races to the courthouse were described in detail in the preambles to the proposed Clean Water Act racing rule, 44 FR 32006 (June 4, 1979), and to the final rule, 45 FR 26046 (April 17, 1980).

EPA's rule did not eliminate Clean Water Act races to the courthouse, but it made them fairer. By setting a definitely ascertainable time of issuance that was two weeks after the publication of the rule in the **Federal Register,** racers could assure themselves of at least a tie in the race by simply appearing at the clerk's office at the appointed time with a petition for review. The rule eliminated the walkie-talkies, human signalling chains, and open long-distance telephone lines that had characterized earlier races described in the preamble to the proposed rule.

28 U.S.C. 2112(a) provides no explicit direction to courts in resolving ties. However, when petitions for review are filed simultaneously in more than one court, courts have typically conferred among themselves to designate one court to act as the court of first filing. See *United Steelworkers* v. *Marshall,* 592 F.2d 693, 695 (3rd Cir. 1979) (Third and Fifth Circuits agreed to confer); *American Public Gas Ass'n* v. *FTC,* 555 F.2d 852, 861 (D.C. Cir. 1976) (Fifth and D.C. Circuits agreed to confer); *Virginia Electric and Power Co.* v. *EPA,* 610 F.2d 187, 189 n. 5 (4th Cir. 1979) (recognizing appropriateness of conference procedure).

EPA's experience with its racing rule under the Clean Water Act has been entirely satisfactory. Courts and racers alike have relied upon it to determine the priority in time of multiple petitions for review. Moreover, when EPA adopted an identical deferral mechanism prior to issuance of the final Clean Water Act racing rule, the reviewing court upheld it unanimously. *Virginia Electric and Power Co.* v. *EPA, supra.*

B. Experience Under Other Statutes

Racing has been restricted or eliminated by Congress in enacting judicial review provisions in several other EPA-administered statutes. The Clean Air Act, the Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Water Act all provide for exclusive judicial review in the D.C. Circuit of EPA's nationally-applicable regulations. These provisions eliminate a great many racing opportunities. Other statutes, however, provide racing opportunities that litigants have exploited. EPA described in the preamble to the proposed rules two racing incidents under the Uranium Mill Tailings Radiation Control Act of 1978 and the Federal Insecticide, Fungicide, and Rodenticide Act. 49 FR 23152 (June 4, 1984). These disruptive incidents provided much of the incentive for EPA to issue the rules published today.

C. EPA's Response

EPA believes that races to the courthouse disserve the public interest. They waste the time of Agency employees who must respond to the racers' continual requests for information on the status of pending actions and they frequently involve expensive, elaborate schemes to be first to file. See, e.g. 44 FR 32009 (June 4, 1979). Not only are these schemes unfair to racers with less financial resources, they are undignified parodies of the legal process with which EPA does not wish to be associated.

Accordingly, with the rules adopted today, EPA seeks to eliminate the worst abuses associated with races to the courthouse under those EPA-administered statutes that allow racing and under which races are reasonably likely to occur.

III. Response to Public Comments

EPA received two written comments, raising several issues. EPA's response to those comments follows:

A. One commenter noted that the Administrator has discretion to depart from the deferral requirements of these rules, because each provision is preceded by the words, "Unless the Administrator otherwise explicitly provides [in a particular action]." The commenter contended that this would allow the Administrator to issue a rule that is immediately effective, but with a

deferred effective date, depriving affected persons of their right to preliminary relief on judicial review.

Such an action is only a theoretical possibility. EPA recognizes that the courts would not follow the rule's deferral of the issuance date if EPA sought to make a rule or action effective prior to its issuance for judicial review purposes.

B. The same commenter observed that, under the "otherwise explicitly provides" provisions, the Administrator might make an action immediately effective. Because of this residual authority, the commenter contended, affected persons would have to prepare to race in all cases, on the chance that the Administrator might eliminate the deferral requirement.

Under the Administrative Procedure Act, codified at 5 U.S.C. 551 *et seq.*, an agency may not make a final rule effective less than 30 days after its publication in the **Federal Register**, except "for good cause found and published with the rule." 5 U.S.C. 553(d). EPA uses this authority very sparingly, and in most cases those affected by an action can rely on the customary fourteen-day delay in judicial review promulgation, and a considerably longer delay in the effective date. The authority granted by 5 U.S.C. 553(d) is reserved for cases of urgent need, and such cases inherently cannot be predicted, nor can timely notification be given the public. Thus, although the commenter correctly notes that in these cases, a race to the courthouse could occur, EPA sees no way to prevent this in the unusual case where the public interest compels a rule to be immediately effective. In some cases, it may be possible, as the commenter suggested, for the Agency to make a rule effective only a few days after publication, and to provide a date of issuance for judicial review purposes before that date, but after publication. Such situations should be addressed individually when they arise.

C. One commenter objected to the provisions governing actions not published in the **Federal Register**. Under these rules, such actions are effective fourteen days after they are signed. The commenter objected that affected persons may have no notice of the action, and contended that the rule would deprive potential litigants of due process.

Most potential litigants interested in actions covered by the regulations will have actual notice of non-**Federal Register** documents. For example, parties in pesticide cancellation hearings and other formal hearings conducted by EPA receive mailed notice of final decisions of the Administrator. The rule issued today will have the beneficial effect of establishing a fixed trigger for commencing the judicial review process. The commenter's concern—that someone entitled to seek judicial review, and who has no notice of the action, will later be barred from obtaining review by a preclusive judicial review provision—addresses a matter not within the scope of this rulemaking. Any such claim can be raised in judicial proceedings if it arises in practice. See, e.g., *NRDC* v. *EPA*, 673 F.2d 400, 407 (D.C. Cir. 1982).

IV. Section-by-Section Analysis

Section 23.2 Clean Water Act

Section 23.2, governing judicial review under the Clean Water Act, is closely modeled on the former 40 CFR Part 100 (which EPA is today revoking), which set the time of the Administrator's action for purposes of judicial review at 1:00 p.m. eastern time, two weeks after the date of publication in the **Federal Register**. However, the provision has been extended to cover EPA actions regarding state-submitted National Pollutant Discharge Elimination System (NPDES) permit programs under section 402 of the Act, and NPDES permit issuance decisions reviewable under section 509(b)(1)(F). No races have occurred under these provisions. However, these actions could be the subject of a race to the courthouse, and are not covered by the former racing rule.

Because EPA does not publish notice in the **Federal Register** of some of the actions covered by sections 509(b)(1), such as final decisions on appeals of NPDES permit actions to the Administrator, an alternative means of fixing the time of the action for purposes of judicial review has been devised. The final rule follows the former Clean Water Act rule for any action for which notice is published in the **Federal Register**. For other actions, the time and date of the action is set at the same time of day, two weeks after the date when the action is signed.

A principal purpose of the rule is to allow any potential litigant to ascertain the correct date easily from the **Federal Register** and the action documents themselves without resort to extrinsic sources. The litigant can do this simply by inspecting the action document. If in its heading the letters "FRL" appear, it is a "**Federal Register** document" as defined in § 23.1, and it will not be promulgated for purposes of judicial review until two weeks after it appears in the **Federal Register**. A typical heading for a **Federal Register** document might be:

40 CFR Part 425

[FRL–2411–3]

Leather Tanning and Finishing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

Documents that EPA intends to publish in the **Federal Register** always include an "FRL–" number in brackets, sometimes accompanied by other identification codes. If a document bears no "FRL–" number, the final rules rely on the date of signature to identify the action date. EPA's standard practice is to mark all signed documents with the date of signature.

Section 23.3 Clean Air Act

Judicial review under the Clean Air Act is governed by section 307(b), which restricts judicial review of certain enumerated actions, and any others determined by the Administrator to be "of nationwide scope or effect," to the United States Court of Appeals for the District of Columbia Circuit. Actions covered by the second sentence of section 307(b), which places judicial review in the court of appeals "for the appropriate circuit," are subject to racing. These include approvals of State implementation plans (section 110), innovative technology waivers (section 111(j)), new source waivers (section 112(c)), delayed compliance orders (section 113(d)), smelter orders (section 119), and PSD applicability determinations. EPA is aware of no races that have occurred regarding actions taken under these sections. Because races are certainly possible, EPA accordingly has included such actions under the racing rules.

The rule parallels the rule described above for the Clean Water Act, except that the action date is not deferred for two weeks if notice is published in the **Federal Register**. For **Federal Register** documents, Congress has specified the date of publication in the **Federal Register** as the trigger date for judicial review. Section 307(b)(1) provides that petitions for review must be filed "within sixty days from the date notice of such promulgation, approval, or action appears in the **Federal Register**, . . ." For actions not published in the **Federal Register**, however, no such restriction applies, and EPA has deferred the trigger date until two weeks after signature.

Section 23.4 Resource Conservation and Recovery Act (RCRA)

RCRA rulemaking actions are reviewable only in the D.C. Circuit. However, Congress provided that certain EPA actions on individual RCRA

permits, and on state hazardous waste management programs, are reviewable in the court of appeals for the district in which the petitioner "resides or transacts such business." RCRA section 7006(b). Because races could occur when these actions are taken, EPA has established an action date for judicial review purposes according to the same system described above for the Clean Water Act.

Section 23.5 Toxic Substances Control Act (TSCA)

Section 19 of TSCA provides for judicial review of certain TSCA rules, and quality control orders under section 6(b)(1), in the United States Court of Appeals for the D.C. Circuit or for the circuit in which the petitioner resides or has his principal place of business. The final rule is identical in substance to the new Clean Water Act rule.

Section 23.6 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

FIFRA rulemaking generally is not reviewable in the courts of appeals. However, section 16(b) provides for judicial review in the court of appeals for the circuit in which the petitioner "resides or has a place of business" of "any order issued by the Administrator following a public hearing . . .." These include pesticide cancellation and suspension orders issued after a hearing. Because these orders are entered after hearings to which potential litigants will be parties, the final rule sets the trigger date at two weeks after the date of signature, even if the order is published in the **Federal Register.**

Section 23.7 Safe Drinking Water Act.

Like the Clean Air Act, the Safe Drinking Water Act provides for direct review in the courts of appeals of both rules and other determinations. Actions may be filed in the "appropriate circuit," which the statute does not define. Because the racing rule must cover both actions that are filed in the **Federal Register** and those that are not, it is the same as § 23.1, the final Clean Water Act rule.

Section 23.8 Uranium Mill Tailings Radiation Control Act (UMTRCA)

This statute provides for direct appellate review only of standards that EPA publishes as rules. Accordingly, the racing rule published today makes no provision for actions that are not published in the **Federal Register.**

Section 23.9 Atomic Energy Act

Reorganization Plan No. 3 of 1970 transferred to EPA from the Atomic Energy Commission certain of the Commission's authority to issue rules to protect public health and the environment from radiation hazards from source, byproduct, and special nuclear material. Authority to issue these rules appears in 42 U.S.C. 2201 and judicial review of the rules is governed by 28 U.S.C. 2342 and 2343, which allow review in the court of appeals for the circuit where the petitioner resides or has its principal office, or in the D.C. Circuit.

Because EPA's authority is exercised solely through issuance of regulations, the final racing rule does not provide for review when notice is not published in the **Federal Register.** In other respects, the rule follows the Clean Water Act rule described above.

Section 23.10 Federal Food, Drug, and Cosmetic Act

Authority to set tolerances for residues of pesticides in foods was transferred by Reorganization Plan No. 3 of 1970 from the Secretary of Health, Education, and Welfare to EPA. Judicial review of certain tolerance-setting orders is governed by 21 U.S.C. 346a(i) and 348(g), which authorize the filing of a petition for review in the court of appeals for the circuit where the petitioner resides or has his principal place of business. This provision applies only when an adjudicatory hearing has been held under 21 U.S.C. 346a(d)(5) or 21 U.S.C. 348(f). The racing rule published today follows the final Clean Water Act rule, to allow for actions that may not be published in the **Federal Register.**

V. Conclusion

EPA has determined to publish its final racing rule identical to the proposed rule. These final regulations will have no significant economic impact. Their principal economic effect will be to make racing to the courthouse simple and inexpensive, so that litigants who are not well financed (such as small businesses and public interest groups) can compete equally with opponents having greater financial resources. For these reasons, the rules will not have a significant impact on a substantial number of small entities. Similarly, under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major because, for the reasons noted above, it should not have any significant economic impacts. This final rule imposes no record-keeping or reporting requirements.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at: Room 545 West Tower, Environmental Protection Agency, 401 M Street SW., Washington, D.C.

Authority: Clean Water Act, sections 501(a), 509(b), 33 U.S.C. 1361(a), 1369(b); Clean Air Act, sections 301(a)(1), 307(b), 42 U.S.C. 7601(a)(1), 7607(b); Solid Waste Disposal Act, sections 2002(a), 7006(a), 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, section 19(a), 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, sections 16(b), 25(a), 7 U.S.C. 136n(a), 136w(a); Safe Drinking Water Act, sections 1448(a)(2), 1450(a), 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, sections 161, 189, 42 U.S.C. 2201, 2239; 28 U.S.C. 2343, 2344; Federal Food, Drug, and Cosmetic Act, sections 701(a), 408, 409, 21 U.S.C. 371(a), 346a, 348.

List of Subjects

40 CFR Part 23

Judicial review; Races to the Court House.

40 CFR Part 100

Administrative practice and procedure, Courts, Water pollution control.

Dated: February 12, 1985.

Lee M. Thomas,

Administrator.

1. 40 CFR Part 23 is added to read as follows:

PART 23—JUDICIAL REVIEW UNDER EPA—ADMINISTERED STATUTES

Sec.

Sec.

Authority: Clean Water Act, Secs. 501(a), 509(b), 33 U.S.C. 1361(a), 1369(b); Clean Air Act, secs. 301(a)(1), 307(b), 42 U.S.C. 7601(a)(1), 7607(b); Solid Waste Disposal Act, secs. 2002(a), 7006(a), 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, sec. 19(a), 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, secs. 16(b), 25(a), 7 U.S.C. 136n(a), 136w(a); Safe Drinking Water Act, secs. 1448(a)(2), 1450(a), 42 U.S. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, secs. 161, 189, 42 U.S.C. 2201, 2239; 28 U.S.C. 2343, 2344; Federal Food, Drug, and Cosmetic Act, secs. 701(a), 408, 409, 21 U.S.C. 371(a), 346a, 348.

§ 23.1 Definitions.

As used in this part, the term:

(a) "**Federal Register** document" means a document intended for publication in the **Federal Register** and bearing in its heading an identification code including the letters "FRL."

(b) "Admininstrator" means the Administrator or any official exercising authority delegated by the Administrator.

§ 23.2 Timing of Administrator's action under Clean Water Act.

Unless the Administrator otherwise explicity provides in a particular promulgation or approval action, the time and date of the Administrator's action in promulgation (for purposes of sections 509(b)(1) (A), (C), and (E)), approving (for purposes of section 509(b)(1)(E)), making a determination (for purposes of section 509(b)(1) (B) and (D), and issuing or denying (for purposes of section 509(b)(1)(F)) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on (a) for a **Federal Register** document, the date that is two weeks after the date when the document is published in the **Federal Register**, or (b) for any other document, two weeks after it is signed.

§ 23.3 Timing of Administrator's action under Clean Air Act.

Unless the Administrator otherwise explicitly provides in a particular promulgation, approval, or action, the time and date of such promulgation, approval or action for purposes of the second sentence of section 307(b)(1) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on (a) for a **Federal Register** document, the date when the document is published in the **Federal Register**, or (b) for any other document, two weeks after it is signed.

§ 23.4 Timing of Administrator's action under Resource Conservation and Recovery Act.

Unless the Administrator otherwise explicitly provides in taking a particular action, for purposes of section 7006(b), the time and date of the Administrator's action in issuing, denying, modifying, or revoking any permit under section 3005, or in granting, denying, or withdrawing authorization or interim authorization under section 3006, shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a **Federal Register** document, two weeks after the date when the document is published in the **Federal Register**, or (b) for any other document, two weeks after it is signed.

§ 23.5 Timing of Administrator's action under Toxic Substances Control Act.

Unless the Administrator otherwise explicitly provides in promulgating a particular rule or issuing a particular order, the time and date of the Administrator's promulgation or issuance for purposes of section 19(a)(1) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a **Federal Register** document, two weeks after the date when the document is published in the **Federal Register**, or (b) for any other document, two weeks after it is signed.

§ 23.6 Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of entry of an order issued by the Administrator following a public hearing for purposes of section 16(b) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after it is signed.

§ 23.7 Timing of Administrator's action under Safe Drinking Water Act.

Unless the Administrator otherwise explicitly provides in a particular promulgation action or determination, the time and date of the Administrator's promulgation, issuance, or determination for purposes of section 1448(a)(2) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a **Federal Register** document, two weeks after the date when the document is published in the **Federal Register** or (b) for any other document, two weeks after it is signed.

§ 23.8 Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.

Unless the Administrator otherwise explicitly provides in a particular rule, the time and date of the Administrator's promulgation for purposes of 42 U.S.C. 2022(c)(2) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when notice of promulgation is published in the **Federal Register**.

§ 23.9 Timing of Administrator's action under the Atomic Energy Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of an order for purposes of 28 U.S.C. 2344 shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when notice thereof is published in the **Federal Register**.

§ 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of an order issued after a public hearing for purposes of 21 U.S.C. 346a(i) or 348(g) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a **Federal Register** document, two weeks after the date when the document is published in the **Federal Register**, or (b) for any other document, two weeks after it is signed.

§ 23.11 Holidays.

If the date determined under §§ 23.2 to 23.10 falls on a federal holiday, then the time and date of the Administrator's action shall be at 1:00 p.m. eastern time on the next day that is not a federal holiday.

PART 100—JUDICIAL REVIEW UNDER CLEAN WATER ACT [REMOVED]

2. 40 CFR Part 100 is removed.

[FR Doc. 85–3992 Filed 2–20–85; 8:45 am]
BILLING CODE 6560–50–M

federal register

Thursday
February 21, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 779, 780, 783, 784, 800, 816, 817 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order; Notice of Suspension

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 779, 780, 783, 784, 800, 816, 817, and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order

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

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is suspending certain portions of its regulations which: (1) Define "agricultural activities or farming" on alluvial valley floors (AVF's); (2) set the areal extent and activities for the bond that operators must post to insure reclamation of surface coal mining operations; (3) set forth performance standards applicable to the construction, maintenance and reclamation of roads associated with surface coal mining operations; (4) require underground mine operators to handle earth materials and runoff so as to restore approximate premining recharge capacity; (5) require operators to redress material damage to structures caused by subsidence only to the extent required by State law; and (6) provide exemptions to the special permanent program standards applicable to operations on prime farmlands. In addition, OSM is removing a previous suspension addressing fish and wildlife information requirements in permit applications, thereby reinstating the fish and wildlife information rules originally promulgated in 1979. OSM is taking these actions chiefly as a result of a District Court decision in Round II of the present litigation on OSM's permanent program regulations. The suspension of the provision relating to the restoration of hydrologic recharge capacity for underground mines implements a representation the Secretary of the Interior made in a brief filed with a U.S. District Court. The suspensions will be effective until proposed and final rules can be promulgated.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Assistant Director for Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; (202) 343-4264.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth general regulatory requirements governing surface coal mining and the surface operations and surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and set performance standards to be achieved by different operations. *See* 30 CFR Chapter VII.

On March 13, 1979, OSM published regulations implementing the permanent regulatory program of Title V of the Act. 44 FR 14902 *et seq.* A number of these regulations were challenged by States, coal industry representatives and citizen and environmental groups. *In Re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. 1980) (In Re: Permanent (I)). The District Court issued decisions in February 1980 and in May 1980. The parties appealed the District Court's decisions in *In Re: Permanent (I)* but the D.C. Circuit Court remanded the case on motion of the parties pending the outcome of OSM's program of regulatory reform. *In Re: Permanent (I)*, Order, February 1, 1983 (D.C. Cir).

Many of the regulations originally promulgated in 1979 were revised and repromulgated during 1983 as part of OSM's extensive program of regulatory reform. Citizen and environmental groups as well as States and industry representatives again challenged some of these new regulations in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. 1984) (In Re: Permanent (II). In that case the Court divided its consideration of the challenged regulations into four rounds of briefing and oral argument. This notice of suspension addresses those regulations remanded by the October 1, 1984 Memorandum Opinion in Round II of *In Re: Permanent (II)*. An amended Order was filed on December 10, 1984, specifying which rules were remanded.

An explanation of each of the regulations to be suspended, the basis upon which the Court remanded them to the Secretary and the effect of the suspension of each regulation is provided below. Where necessary, OSM intends to propose revisions to the remanded rules consistent with the Court's Round II opinion.

It is important to recognize that this suspension notice, although affecting the Code of Federal Regulations, is an interpretative statement which describes how the Secretary is already implementing Court's decision. Even in the absence of this notice, the Secretary's actions must be consistent with the Court Order.

Most State programs were approved prior to the promulgation of the 1983 rules, and are generally based on OSM's 1979 rules. In a few instances, State program amendments were approved based on the 1983 revisions. State programs will remain in effect until the Director of OSM has examined the provisions of each State program to determine whether changes are necessary and has notified the State regulatory authority pursuant to 30 CFR 732.17(d) that a State program amendment is required.

With respect to Federal lands, the Secretary is continually required to make programmatic decisions, such as whether and under what conditions to issue a Federal lands permit. Although 30 CFR 740.11 makes State programs applicable on Federal lands, the Secretary will not take any action which is inconsistent with the Court's October 1, 1984 opinion regardless of the provisions of the applicable State program.

This suspension notice has a direct effect on Federal Program States, except as provided below, and on Indian lands, the rules for which directly reference the remanded sections.

Additionally, this suspension notice is no reflection on the Secretary's intent to appeal the Court's decision on any of these regulations.

II. Discussion of Rules Suspended

Section 701.5 Definition of "Agricultural Activities or Farming" as Related to Alluvial Valley Floors

On June 28, 1983, OSM promulgated its permanent regulatory program rules governing surface coal mining operations on or near alluvial valley floors. 48 FR 29802. The rules included a definition for "agricultural activities or farming." Congress used the term "agricultural activities" in the definition of alluvial valley floors in Section 701(1) of the Act and the term "farming" in section 510(b)(5)(A) of the Act in describing permit requirements. The Court remanded the definition in § 701.5 which treats the terms "agricultural activities" and "farming" as synonymous because it believed the use of different terms might indicate a congressional intent to prescribe different meanings to those terms. *In Re: Permanent (II)* (Memorandum Opinion filed October 1, 1984) at 31. (Mem. Op.) Accordingly, OSM suspends the

definition at this time pending proposal of a rule which is consistent with the Court's Order.

Reinstatement of Sections 779.20, 780.16, 783.20, and 784.21 Fish and Wildlife Information Requirements

Among the provisions at issue in *In Re: Permanent (I)* was former 30 CFR 779.20 (1979), which required each surface mining permit application to contain specified fish and wildlife resources information, including a study of fish and wildlife habitat within the proposed mine plan area and the portions of the adjacent area where effects on such resources could reasonably be expected to occur. Former 30 CFR 783.20 (1979) set forth an identical requirement for the underground mining permit application. The purpose of these regulations was to aid the permit applicant in demonstrating to the regulatory authority how it would comply with the performance standards set forth at 30 CFR 816.97 for the protection of fish, wildlife and related environmental values. See the discussion in the preamble to the 1979 rules, 44 FR 14902, 15037–15038 (March 13, 1979).

Plaintiffs in the *In Re: Permanent (I)* suit also challenged former 30 CFR 780.16 (1979) which required each applicant to submit a fish and wildlife reclamation plan consistent with the performance standards prescribed in § 816.97. Former § 780.16 (1979) required the applicant to explain how it planned to minimize the adverse effects of its mining operations on fish, wildlife and related environmental values and how it intended to enhance such resources when practicable. The regulation also required statements covering all species and habitats identified through the consultation process conducted pursuant to § 779.20 (1979). Under former 30 CFR 784.21 (1979), a similar plan had to be submitted with underground mining permit applications. OSM promulgated these regulations to prevent harm to threatened or endangered species and other wildlife, or their habitats, which are protected under State, Federal or international laws. *See* 44 FR at 15052.

Apart from their specific challenge to the fish and wildlife requirements, industry plaintiffs also argued that the Secretary did not have the power to prescribe uniform standards for permit processing and bonding requirements because section 501(b), which grants the Secretary authority to promulgate regulations pursuant to "procedures and requirements for preparation, submission and approval of State programs," fails to explicitly list permitting and bonding.

The District Court rejected industry's challenge to the Secretary's general authority to promulgate uniform permit processing and bonding requirements, stating that specific listing of these requirements was not necessary since "the structure of the Act, the general grants of rulemaking authority, and section 501(b) support the Secretary's power to develop permitting and bonding regulations." *In Re: Permanent (I)*, February 26, 1980 Memorandum Opinion at 31. However, the District Court proceeded to strike down both § 779.20 and § 780.16 because it could find no authority in the permitting and bonding sections of the Act for the Secretary to require fish and wildlife information in the permit application or the reclamation plan. *In Re: Permanent (I)*, February 26, 1980 Memorandum Opinion at 38–39. Accordingly, pursuant to the Court's February 1980 Memorandum Opinion, OSM suspended these provisions, together with §§ 783.20 and 784.21, the corresponding regulations for underground mining permit applications. 45 FR 51547 (August 4, 1980).

Peabody Coal Company appealed the District Court's decision rejecting industry's challenge to the Secretary's general rulemaking authority under the Surface Mining Act. It asserted that the Secretary has no authority to require permit applicants to submit any items of information beyond those specifically enumerated in the Act. *See In Re: Permanent Surface Mining Regulation Litigation*, 653 F.2d 514, 517 (D.C. Cir.), *cert. denied*, 454 U.S. 822 (1981). The Circuit Court found that the District Court was correct in holding that the Act's explicit listing of information requirements is not exhaustive and does not preclude the Secretary from requiring additional information needed to insure compliance with the Act. *Id.* at 527. The Circuit Court was careful to note that challenges to individual regulations were separately adjudicated in the District Court and that the Circuit Court was not assessing the Secretary's justifications for individual regulations. *Id.* at 517–18.

Relying on the District Court's February 1980 Opinion, in 1983 OSM did not repromulgate regulations calling for fish and wildlife information in the permit application and reclamation plan when OSM revised the performance standards found in § 816.97 for the protection of fish, wildlife and related environmental values. *See* 48 FR 30312, 30316 (June 30, 1983).

In Round II of *In Re: Permanent (II)*, which gives rise to the present suspension notice, the environmental plaintiffs challenged the Secretary's 1983 regulations claiming they fail to require operators to supply information on fish and wildlife resources in permit applications. In his Round II brief, the Secretary agreed with the plaintiffs that the Circuit Court's decision supports his authority to require fish and wildlife data. However, the Secretary did not ask the District Court to reinstate the previously suspended fish and wildlife information rules, but rather urged the Court to allow OSM the opportunity to propose a rule requiring the information the Secretary deems necessary for permit approval. (Government brief at 130.) Instead, the District Court held that the Circuit Court's decision upholding the District Court's February 1980 decision relating to permitting and bonding had effectively reinstated the fish and wildlife information rules remanded in that decision. Thus, the Court ordered the Secretary to reinstate the remanded regulations. *In Re: Permanent (II)*, October Op. at 58.

The Court held that the Secretary could not revoke the reinstated regulations until he conducted a new rulemaking and articulated a rational explanation for his actions. *Id.* at 57. The effect of this suspension notice is formally to reinstate 30 CFR 779.20, 780.16, 783.20 and 784.21, pursuant to the Court's October 1, 1984 Opinion in *In Re: Permanent (II)*.

OSM intends to propose new rules delineating the permit application information requirements for fish and wildlife resources.

Sections 800.11(b) and 800.13(a)(2) Incremental Bonding and Phase Bonding

OSM promulgated final permanent program rules on bonding and insurance requirements on July 19, 1983. 48 FR 32932. Section 800.11(a) requires the permit applicant to file with the regulatory authority (RA) a bond made payable to the RA and conditioned upon faithful performance of all requirements of the Act, the regulatory program and the permit. The Court remanded two provisions of the bonding rules to the Secretary in its October 1, 1984 decision. Mem. Op. at 46, 47.

Section 800.11(b) allows an operator to post a bond for an area smaller than the entire area to be mined in a given permit term. This practice is often referred to as "incremental bonding." The Court remanded § 800.11(b) to the Secretary holding that it contradicts the Act "to the extent that it allows the bond to be posted for an area less than

the entire area to be mined within the initial permit term." Mem. Op. at 46. Accordingly, OSM is suspending § 800.11(b) to be consistent with the Court Order.

As a result of the Court's decision, all bonds must apply to the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term.

Section 800.13(a)(2) allows miners to post bonds separately to guarantee specific phases of reclamation within the permit area. The Court remanded the rule, holding that nothing in section 509 of the Act authorizes the Secretary to split the bond into specific phases of reclamation as contemplated by § 800.13(a)(2). Mem. Op. at 47. Thus, OSM is suspending the rule to comply with the Court Order and will subsequently propose its removal from the Code of Federal Regulations.

Sections 816.150, 816.151, 817.150, 817.151, and 701.5 Roads

On April 16, 1982, OSM proposed permanent program regulations addressing the design, construction, use and maintenance of roads used in surface coal mining operations. 47 FR 16592. The proposal included a road classification system for primary and ancillary roads used in surface mining activities and underground mining activities based on frequency of road use. As a result of comments received, OSM determined that a classification based on the purpose of the road instead of the frequency of road use would more accurately categorize as primary the roads which have the potential for greater adverse environmental impacts. *See* 48 FR 22111–22112 (May 16, 1983). Therefore, the final rule promulgated on May 16, 1983 categorizes roads according to the purposes for which the roads are used. See 30 CFR 816.150(a) and 817.150(a); 48 FR 22110.

The Court held that the promulgation of the classification system in 30 CFR 816.150(a) violated the Administrative Procedure Act (APA), 5 U.S.C. 553, and remanded this section of the rule to the Secretary for proper notice and comment. Mem. Op. at 28. In the amended Order filed December 10, 1984, the Court remanded §§ 816.150, 816.151, 817.150(a) and 817.151 which are all dependent upon the roads classification system, as well as the definition of road set forth in § 701.5. This suspension implements that Order. OSM intends to propose new regulations which define the term "road" and which address the design, construction, use and maintenance of roads used in surface coal mining operations.

The Tennessee Federal program, 30 CFR Part 942, adopted at 49 FR 38874 (October 1, 1984), was the subject of a separate notice and comment period subsequent to the promulgation of the roads rules, during which time the public was apprised of the specific content of the national regulations. *See* 49 FR 26898 (June 29, 1984). Sections 942.816 and 942.817 of the Tennessee Federal program, as finally adopted, incorporate by reference Parts 816 and 817 of Chapter VII, including the roads rules. Additionally, specific roads performance standards were added in Tennessee to augment the national rules. Thus, although the Court remanded § 816.150(a) because OSM's final rule promulgated on May 16, 1983 was based on inadequate notice and comment, the public had adequate opportunity to comment on the roads rules as they apply in Tennessee. Accordingly, all of the roads regulations suspended by this notice remain in effect in the Tennessee Federal program.

Section 817.41(b)(2) Restoration of Recharge Capacity

Section 817.41(b)(2) provides for the protection of groundwater quantity by requiring underground miners to handle earth materials and runoff in a manner designed to allow movement of water to the groundwater system so as to restore approximate premining recharge capacity of the reclaimed area, excluding coal mine waste disposal areas and fills. Industry plaintiffs challenged this new provision (which had not been included in the Secretary's 1979 rules) because the specific provision in section 515(b)(10) of the Act requiring the restoration of recharge capacity interrupted by surface mining does not appear in the corresponding provision of the Act, section 516(b)(9), for underground mining. The **Federal Register** preamble to § 817.41(b)(2) did not address this issue. *See* 48 FR 43997 (September 26, 1983). Therefore, in his Round III brief in *In Re: Permanent (II)* filed December 17, 1984, the Secretary stated his intention to suspend the rule pending development of a more complete administrative record concerning the legal and policy considerations associated with requiring underground mine operators to restore hydrologic recharge capacity. (Government brief at 5.) In accordance with the statement in the December 17, 1984 brief, this notice suspends § 817.41(b)(2).

As was made clear to the District Court, the suspension of 817.41(b)(2) does not affect the applicability of any of OSM's other reclamation requirements, such as the requirement in 30 CFR 817.41 (1983) to conduct underground mining and reclamation activities in a manner to minimize disturbances and prevent material damage to the hydrologic balance, or the obligation in 30 CFR 817.133(a) (1983) to restore disturbed areas to conditions capable of supporting premining or higher or better uses.

The Secretary intends to initiate further rulemaking proceedings on the issue of restoration of recharge capacity associated with underground mines.

Section 817.121(c)(2) Remedies for Subsidence Damage Limited by State Law

On June 1, 1983, OSM promulgated 30 CFR 817.121(c)(2) which requires an operator to redress material damage to surface structures or facilities resulting from subsidence only to the extent required by State law. 48 FR 24638. This rule represented a change from previous § 817.124 (1979) which required the operator to redress subsidence-caused material damage irrespective of State law. 44 FR 15440 (March 13, 1979).

The Court held that it was improper for OSM to adopt without sufficient notice a final rule that represented a complete reversal of policy from the 1979 regulation. Mem. Op. at 11. Accordingly, the Court remanded the regulation to be repromulgated in accordance with the notice and comment requirements of the APA. By this notice, OSM suspends the portion of § 817.121(c)(2) which the Court remanded. OSM intends to repropose the suspended rule.

The Tennessee Federal program, 30 CFR Part 942, 49 FR 38874 (October 1, 1984) was the subject of a separate notice and comment period subsequent to the adoption of § 817.121(c)(2). *See* 49 FR 26898 (June 29, 1984). Section 942.817 incorporates 30 CFR Part 817 by reference, thereby adopting § 817.121(c)(2) for the Tennessee program. Because the public had an adequate opportunity to comment on § 817.121(c)(2) as it applies in the State of Tennessee, the portion of § 817.121(c)(2) suspended by this notice will remain effective in Tennessee until the completion of the national rulemaking reproposing § 817.121(c)(2).

Section 823.11(a) Exemption From Special Prime Farmland Performance Standards for Coal Preparation Plants, Support Facilities and Roads

Under 30 CFR 823.11(a), land occupied by coal preparation plants, support facilities, and roads associated with surface and underground mines, which are actively used over an extended time

period and which affect a minimal amount of land, is excluded from the special prime farmland performance standards of 30 CFR Part 823. *See* 48 FR 21446, 21452–21454 (May 12, 1983). These performance standards address soil removal and stockpiling, soil replacement, and the revegetation and restoration of soil productivity. The exemption for such facilities associated with underground mining was suggested by the Court in its May 16, 1980 opinion. *In Re: Permanent (I)*, May 16, 1980 Memorandum Opinion at 1–3. In extending the exemption to listed surface facilities of both surface and underground coal mining operations, OSM reasoned that these long term uses and their effects were similar for both types of mining. *See* 48 FR at 21452 (May 12, 1983).

The Court held that the Secretary ignored basic differences between surface and underground mining operations when he promulgated the rule. According to the Court, in underground mining the surface facilities are used for an extended period of time and that, consequently, the soil removed incident to their construction must be maintained and stored for that same time period. By contrast, the Court stated that in surface mining, the topsoil need not be stored for many years, but rather it could be redistributed over areas disturbed by surface operations as surface mining activity progresses. The Court, therefore, remanded the regulation to the Secretary insofar as it addressed facilities used in surface mining. Mem. Op. at 22–23. This suspension implements that direction. The suspension of the exemption as it relates to facilities used in surface mining means that prime farmland occupied by all coal preparation plants, support facilities and roads that are part of the surface mining activities must meet the applicable prime farmland performance standards.

With respect to underground mining, the Court found that the exemption properly applies to the enumerated surface facilities that are "actively used over extended periods of time where such uses affect a minimal amount of land." 30 CFR 823.11(a); Mem. Op. at 23. Thus, the exemption remains applicable to the specified surface facilities of underground mines. However, the Court found that the regulation does not specify what constitutes an "extended" period of time or a "minimal" amount of land. Mem. Op. at 23. The Court therefore directed the Secretary to provide guidelines limiting the scope of this exception for listed facilities related to underground mining. *Id.* OSM intends to propose a rule to clarify the scope of the exemption as it applies to underground mine surface facilities in accordance with the Court's opinion.

Section 823.11(b) Exemption From Special Prime Farmland Performance Standards for Impoundments

Under the Act and its implementing regulations, prime farmland must be returned to its premining capability after the mining operation is completed. *See* section 519(c); 30 CFR 785.17(e)(1), 800.40(c)(2) and 823.15. However, in 30 CFR 823.11(b), 48 FR 21446 (May 12, 1983), OSM created an exception to that requirement for certain water bodies left by operators after mining.

On October 1, 1984, the Court held that the regulation as written provided an impermissibly broad variance from the post-mining use of prime farmland. Mem. Op. at 21. Accordingly, OSM suspends § 823.11(b). The suspension of this rule will mean that the regulatory authority cannot approve the retention of impoundments as satisfying the operator's obligation to restore prime farmland to premining equivalent levels of yield.

The Court did not reach the issue of whether or not water bodies would be allowable under the Act as a beneficial part of prime farmland use. OSM is, therefore, considering proposing a new rule which would allow impoundments that are beneficial to agricultural activity.

III. Procedural Matters

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The promulgation in 1983 of the rules being suspended was not a major action and for the same reasons, neither is this suspension.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the suspension will not have a significant economic impact on a substantial number of small entities for the same reasons that the promulgation of the rules in 1983 did not have such an impact.

National Environmental Policy Act

The effect of the suspensions covered by this notice is covered in two environmental impact statements prepared by the Department of the Interior. These are the Final Environmental Impact Statement OSM–EIS–1 and the Final Environmental Impact Statement OSM–EIS–1: Supplement. These are on file at the OSM Administrative Record at 1100 L Street, NW., Washington, D.C.

Paperwork Reduction Act

No new information collection requirements are imposed by these suspensions. The reinstated information collection requirements of §§ 779.20, 780.16, 783.20 and 784.21 were previously approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029–0035, 1029–0036, 1029–0038, and 1029–0039, respectively.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 800

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 823

Agriculture, Coal mining, Environmental protection, Surface mining, Underground mining.

In consideration of the foregoing, the following regulations in 30 CFR Parts 701, 779, 780, 783, 784, 800, 816, 817 and 823 are amended.

Dated: February 14, 1985.

Leona A. Power,

Acting Assistant Secretary for Land and Minerals Management

PART 701—[AMENDED]

§ 701.5 [Amended]

1. In § 701.5, the definition of "agricultural activities or farming" is suspended.

2. In § 701.5, the definition of "road" is suspended except as cross-referenced in § 942.701 of this chapter.

PART 779—[AMENDED]

§ 779.20 [Amended]

3. The Note suspending § 779.20 is removed.

PART 780—[AMENDED]

§ 780.16 [Amended]

4. The Note suspending § 780.16 is removed.

PART 783—[AMENDED]

§ 783.20 [Amended]

5. The Note suspending § 783.20 is removed.

PART 784—[AMENDED]

§ 784.21 [Amended]

6. The Note suspending § 784.21 is removed.

PART 800—[AMENDED]

§ 800.11 [Amended]

7. Section 800.11(b) is suspended insofar as it allows the bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term.

§ 800.13 [Amended]

8. Section 800.13(a)(2) is suspended.

PART 816—[AMENDED]

§§ 816.150 and 816.151 [Amended]

9. Sections 816.150 and 816.151 are suspended except as cross-referenced in § 942.816 of this chapter.

PART 817—[AMENDED]

§ 817.41 [Amended]

10. Section 817.41(b)(2) is suspended.

§ 817.121 [Amended]

11. In § 817.121(c)(2), the phrase "[t]o the extent required under State law" is suspended except as cross-referenced in § 942.817 of this chapter.

§§ 817.150 and 817.151 [Amended]

12. Sections 817.150 and 817.151 are suspended except as cross-referenced in § 942.817 of this chapter.

PART 823—[AMENDED]

§ 823.11 [Amended]

13. Section 823.11(a) is suspended insofar as it excludes from the requirements of Part 823 those coal preparation plants, support facilities, and roads that are surface mining activities.

§ 823.11 [Amended]

14. Section 823.11(b) is suspended.

(30 U.S.C. 1201 *et seq.*)

[FR Doc. 85-4152 Filed 2-20-85; 8:45 am]

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Thursday
February 21, 1985

Part IV

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Underground Uranium Mines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2777-1]

National Emission Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Underground Uranium Mines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. District Court for the Northern District of California has ordered EPA to promulgate a final standard for airborne emissions of radionuclides from underground uranium mines by April 10, 1985, or to find that radionuclides are clearly not a hazardous pollutant. The Agency has chosen to propose a work practice standard which is designed to reduce emissions of radon-222 from underground uranium mines to the atmosphere.

DATES: The record will be held open until March 28, 1985, to allow comments on the testimony presented at the public hearing. However, to allow maximum time for consideration of comments on the proposed rule, they must be received by March 25, 1985. A public hearing on this proposed rule is scheduled for February 27–28, 1985, in Albuquerque, New Mexico. Requests to participate in the hearing should be made by February 25, 1985.

ADDRESSES: Comments should be sent to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Attention: Docket No. A–79–11.

The hearing will be held at the Albuquerque Convention Center, Picuris-Sandia Room, 401 2nd Street, NW., Albuquerque, N.M. from 9.00 a.m.–5:00 p.m. each day. Requests to participate in the hearing should be made in writing to Richard J. Guimond, Director, Criteria and Standards Division (ANR–460), U.S. Environmental Protection Agency, Washington, D.C. 20460.

All requests should include an outline of the topics to be addressed in the opening statement and the names of the participants. Presentations should be limited to 30 minutes.

The rulemaking record is contained in Docket No. A–79–11. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Paul J. Magno, Environmental Standards Branch (ANR–460), Criteria and Standards Division, Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557–0704.

SUPPLEMENTARY INFORMATION:

I. Supporting Documents

A draft Background Information Document for the proposed standard has been prepared and single copies may be obtained by writing the Program Management Office, Office of Radiation Programs (ANR–458), U.S. Environmental Protection Agency, Washington, D.C. 20460, or by calling (703) 557–9351. Please refer to "Draft Background Information Document: Proposed Standards for Radon-222 Emissions to Air from Underground Uranium Mines." This document contains a description of the uranium mining industry, projected exposures and risks to nearby individuals and to populations, and descriptions of radon-222 control methods.

II. History of Radionuclide Standards Development

On April 6, 1983, EPA announced in the **Federal Register** its proposed standards for sources of emissions of radionuclides from four categories: (1) Department of Energy (DOE) facilities; (2) Nuclear Regulatory Commission (NRC)-licensed facilities and non-DOE Federal facilities; (3) elemental phosphorus plants; and (4) underground uranium mines.

On February 17, 1984, the Sierra Club filed suit to compel final action in the U.S. District Court for the Northern District of California, pursuant to the citizens' suit provision of the Act (*Sierra Club* v. *Ruckelshaus*, No. 84–0656 WHO). On July 25, 1984, the Court granted Sierra Club's summary judgment motion and ordered EPA to promulgate standards or make a finding that radionuclides are not a hazardous air pollutant within 90 days of the date of the order.

On October 23, 1984, EPA withdrew its proposed standards for radionuclide emissions from the following catagories: (1) Elemental phosphorus plants; (2) DOE facilities; (3) NRC-licensed facilities and non-DOE Federal facilities; and (4) underground uranium mines (49 FR 43906, October 31, 1984). The proposed standards for the first three categories were withdrawn because the Administrator determined that current practice provides an ample margin of safety in protecting the public health from the hazards associated with exposure to radionuclides from these sources. In the case of underground uranium mines, the Administrator withdrew the proposed standard because it did not meet the legal requirements of section 112 of the Clean Air Act. Simultaneous with this action, the Agency published an Advance Notice of Proposed Rulemaking for radon-222 emissions from underground uranium mines to solicit additional information on control methods such as bulkheading and other forms of operational controls for radon-222 which would meet the legal requirements of section 112 (49 FR 43915, October 31, 1984). The Agency also published at that time an Advance Notice of Proposed Rulemaking for radon-222 emissions from licensed uranium mills (49 FR 43916, October 31, 1984).

On October 31, 1984, the U.S. District Court, Northern District of California issued an order requiring the Administrator and the Agency to show cause why they should not be held in contempt of the Court's July 25 order. A court hearing was held on November 21, 1984, to consider the issue. In a ruling on December 11, 1984, the Court found the Administrator and the Agency in contempt and ordered the following remedial action:

1. (a) Issue within 30 days of the date of the order final radionuclide emission standards for DOE facilities, NRC-licensed and non-DOE Federal facilities, and elemental phosphorus plants, and

(b) Issue within 120 days of the date of the order final radionuclide emission standards for underground uranium mines; or

2. Make a finding based on the information presented at hearings during the rulemaking, that radionuclides are clearly not a hazardous pollutant.

The Agency promulgated final standards for DOE facilities, NRC-licensed and non-DOE Federal facilities, and elemental phosphorus plants on January 17, 1985 (50 FR 5190, February 6, 1985), although it is noted that the Agency intends to pursue its pending appeal of this portion of the District Court's order. This notice proposes a standard for underground uranium mines in conformance with the District Court's order; EPA intends to promulgate a final standard for underground uranium mines by April 10, 1985, thereby fully complying with the Court's order.

III. Summary of Withdrawal Decision

When the Agency first proposed a standard for underground uranium

mines in April 1983, the available technical information suggested that no practical technology existed for achieving satisfactory reductions in radon-222 emissions to air from underground uranium mines and therefore, an emission standard was not feasible. Nonetheless, the Agency concluded that the magnitude of the risk to nearby individuals and the total population resulting from exposure to radon-222 emissions from these mines warranted regulatory attention. Therefore, the Agency proposed an ambient concentration limit for underground uranium mines that would limit the annual average radon-222 concentration in air due to emissions from an underground mine to an annual average of 0.2 pCi/l above background in any unrestricted area.

Analysis of the likely reduction in health risks afforded by the proposed standard showed that while risks to nearby individuals were reduced about ten-fold, the risks to the total population were only slightly reduced. The lack of population risk reduction is due to the fact that radon-222 releases would not be reduced by the proposed rule; they would only be more widely dispersed.

On October 23, 1984, the Agency withdrew its proposed standard for underground uranium mines. At that time, the Agency issued an Advance Notice of Proposed Rulemaking (ANPR) to solicit information on methods, such as bulkheads, sealants, and mine pressurization, that may be available to control radon-222 emissions from the mines. Comments were requested on a number of specific topics and were to be submitted by April 15, 1985. Although the Agency's current rulemaking effort must be completed before this date to satisfy the District Court's order, EPA is still soliciting the information requested in the ANPR and is extending the deadline for receipt of this information to September 30, 1985. This information will be used by the Agency in its long-term consideration of radon-222 emission controls for underground uranium mines. The results of this study may lead to some modification of the Agency's standard.

IV. Summary of Proposed Standard

Based on currently available information, EPA has determined that it is not feasible to prescribe an emission standard for radon-222 emissions from underground uranium mines. Therefore, EPA is proposing a work practice standard based on bulkheading mined-out and temporarily inactive mine areas to reduce the amount of radon-222 emitted to the atmosphere from the mines. The deadline imposed by the District Court requires the Agency to promulgate a standard for underground uranium mines using only the currently available technical information. Specific estimates of the radon-222 emission reduction achieved by the proposed standard cannot be made with existing information. Further, the cost of these proposed requirements can only be generally estimated. However, the costs are not expected to be substantial since the proposed standard generally reflects techniques that the industry has indicated are already in widespread use. EPA intends, once this standard is promulgated, to begin long-term studies, as necessary, to more thoroughly determine the efficiency and cost of bulkheads and other techniques for decreasing radon-222 emissions from the underground uranium mines.

V. Rationale for the Proposed Standard

A. Industry Description

Uranium mining involves the handling of large quantities of ore containing uranium-238 and its decay products. The concentrations of these radionuclides in ore may be up to one thousand times greater than their concentration in other rocks and soils. Uranium mining is generally carried out by either surface (open pit) or underground mining methods, depending on the depth of the ore deposit. Underground uranium mines accounted for about forty percent of the uranium oxide production in 1983. After mining, the ore is shipped to a uranium mill where the uranium is separated for subsequent use.

The uranium mining industry has undergone substantial changes in recent years due to declining demand and competition from low-cost foreign sources. The total number of all types of uranium mines in operation fell from a peak of 432 in 1979 to 135 in 1983. The number of underground mines fell from 300 in 1979 to 95 in 1983 and 26 by November 1984. By January 1985, only 17 underground uranium mines were operating and further reductions are expected during 1985. Production of uranium oxide by underground mines fell from a peak of 9,600 tons in 1980 to 4,100 tons in 1983.

All uranium mining in the United States takes place in the western United States. In general, the mines are located in relatively remote areas. Of the 26 underground mines operating in November 1984, twelve were in New Mexico, two in Colorado, four in Wyoming, six in Utah, and two in Arizona.

B. Radionuclide Emissions from Underground Uranium Mines

Evaluations of radionuclide emissions from underground uranium mining activities indicate that radon-222 is the most significant radionuclide emitted to the above ground air. Radon-222 decays into a series of short half-lived radionuclides which attach to dust particles that become lodged in the lung when inhaled. Thus, the irradiation of the lung, which increases the risk of lung cancer, is predominantly from radon decay products rather than the precursor radon-222. Radon-222 is released from underground mines in relatively high concentrations through a series of ventilation shafts installed at locations along the mine haulage ways. These shafts are designed to sufficiently ventilate the working areas of the mine to keep miners' exposure to radon decay products below permissible levels.

The rate of radon-222 emissions from underground uranium mines is highly variable and depends upon a number of interrelated factors, such as mine ventilation rates, ore grade, exposed surface area, mining practices, and geolgic formations. In addition, these mines can differ significantly in their configuration; for example, some mines have few tunnels and cross sections, while such features are numerous in other mines. The wide diversity among mines makes it difficult to predict emission rates or the effectives of emission reduction practices at any given mine.

Measurement studies made at 27 large underground mines during 1978–1979 showed that radon-222 emissions to air from individual mines ranged from 200 to 30,000 Ci/y with an average to 5600 Ci/y. These mines accounted for 65 percent of the uranium oxide produced by all underground mines in 1978. Based on these measurements, the total radon-222 emissions from all underground uranium mines in 1978 are estimated to be 235,000 Ci/y.

These studies also evaluated the relationship between mine parameters, such as ore production rate, cumulative ore production, ore grade, mine surface area and mine age, and radon-222 emission rates. Of the parameters evaluated, cumulative production was most directly correlated with radon-222 emissions. An evaluation of radon-222 emissions from underground mines operating in 1978 as a function of cumulative ore production showed that 188 or 75 percent of the mines had a cumulative ore production of less than 100,000 tons. The average estimated radon-222 emission rate from each of

these mines was less than 200 Ci/y, and as a group they contributed only five percent of the total curies emitted by all underground mines in 1978. Since the radon-222 emissions from underground uranium mines with cumulative ore productions of less than 100,000 tons are small, the Agency has concluded that these mines need not be covered by the standard. (Cumulative ore production is that total amount of oré removed from a mine since its inception.) In addition, the Agency has decided that this standard should not apply to mines with an annual production of less than 10,000 tons because the life of many small mines is less than 10 years. Consequently, the total production over the lifetime of the mine would not exceed 100,000 tons.

C. Estimates of Exposure and Risk

Individuals living near an underground uranium mine can be exposed to the increased levels of radon-222 being released from the mine ventilation shafts. Radon-222 contained in the outside atmosphere enters homes and other structures built near the mine exhaust vents through doors and windows, as well as other openings in the structure. The radon decay products tend to concentrate indoors, thus exposing the occupants to potentially harmful levels of these radionuclides. Lifetime risks of fatal cancer to individuals living near an underground uranium mine are estimated to range from about one in one thousand to one in one hundred. The potential exists for even greater risks in some situations, e.g., a person living very close to several horizontal mine vents or in areas influenced by multiple mine emissions. EPA estimates the fatal cancer risk to the total population from radon-222 emissions from underground uranium mines to have been about one to four fatal cancer cases per year during the peak production period of 1978–1982. With the decrease in the number of operating underground uranium mines, the risk of fatal cancer is expected to range from four-tenths to two fatal cancer cases per year during the period 1983–1990.

Exposure levels are derived using emission estimates, dispersion modelling, and population data. For any given level of emissions, dispersion models predict concentrations at different distances from the emission source. By combining those estimated concentrations with census data on population densities, the number of people exposed at different levels can be estimated. Several factors suggest that actual exposure levels to nearby individuals will be lower than those estimated. In estimating exposure, the most exposed individuals are hypothetically subjected to the maximum annual average concentration of the emissions for 24 hours every day for 70 years (roughly a lifetime). This does not consider, for instance, the fact that most people in their daily routines move in and out of the specific areas where the emission concentrations are the highest.

The final risk estimates are the product of the exposure levels and the estimated unit-risk factor. Two summary measures are of particular interest: "nearby individual risk" and "total population impact." The former refers to the estimated increased lifetime risk to individuals who spend their entire life at the point where predicted concentrations of the pollutant at highest. Nearby individual risk is expressed as a probability; a risk of one in one thousand, for example, means that a person spending his lifetime at the point of maximum exposure has an estimated increased risk of developing a fatal cancer of one in one thousand. (For comparison, the average lifetime risk of dying of cancer in the United States is about 165 in 1,000. Eliminating a risk of one in one thousand reduces the overall lifetime risk of contracting a fatal cancer by less than 0.6 percent.) Estimates of nearby individual risk must be interpreted cautiously, however, since people generally do not spend their whole lives at the points of maximum concentrations.

The second measure, "total population impact," considers people exposed at all concentrations, low as well as high, and it considers people exposed throughout the United States, as appropriate. It is expressed in terms of annual number of cancer cases, and provides a measure of the overall impact on public health. A total population impact of 0.5 fatal cancer cases per year, for example, means that emissions of the specific pollutant from the source category are expected to cause one case of cancer every 20 years.

The two estimates together provide a better description of the magnitude and distribution of risk in a community than either number alone. "Nearby individual risk" tells us the highest risk, but not how many people may bear that risk. "Total population impact" describes the overall health impact on the entire exposed population, but not how much risk the most persons may bear. Two sources of radionuclide or chemical emissions could have similar population impacts, but very different maximum individual risks, or vice versa. Both estimates are important and are used in making risk management decisions. The risk estimates should not be viewed as precise estimates of likely health damage, but rather as a general indication of a reasonable upper-limit estimate.

Much more is known about the risks from exposure to radiation than exposure to most chemicals. While there is uncertainty in risk estimates from assessments of chemical emissions and radionuclide emissions, there is likely to be much less uncertainty in estimates of risk from radio-nuclide emissions because of the extensive data base on human exposure to radiation. Therefore, a risk estimate of one in one thousand resulting from exposure to radionuclides is likely to be more accurate than the same estimate for chemical exposures. Estimates of risk from radionuclides is much less likely to exaggerate hypothetical maximum risks than are estimates made for chemical exposure.

As a general perspective regarding radiation exposure, everyone is exposed to background radiation due to cosmic radiation, and to radioactivity in minerals, soils, and even our own bodies. Background radiation levels vary across the United States, but average about 100 mrem/y for each person. There is little that people can do to control exposure to background radiation. Over a lifetime, this exposure is estimated to contribute to a fatal cancer risk of about one or two cases for every one thousand people.

D. Control Technology

Because radon-222 is a noble gas and the volume of air discharged through mine vents is very large, there is no practical method to remove radon-222 from the mine exhaust air. Adsorption onto activated charcoal is the most widely used method for removing noble gases from a low volume air stream. However, application of this method to the removal of radon-222 from mine ventilation air at the volumes of air which must be treated would require large, complex, unproven systems which would be extremely costly (i.e., at least $18 to $44 per pound of uranium oxide produced. Currently, the average cost to produce one pound of uranium oxide is about $35.)

An important consideration for the underground uranium mining industry is worker exposure to radon decay products. The industry now employs a number of practices to reduce radon decay product concentrations in the mine to meet occupational exposure standards established by the Mine Safety and Health Administration. These practices, which include

backfilling abandoned areas of the mines with mill tailings and bulkheading abandoned areas of the mine, also have the effect of reducing radon-222 emissions to the above ground air. EPA wishes to avoid setting a standard to control radon-222 emissions to the air that will increase levels of radon-222 and its decay products within the working areas of the mine itself or that will increase significantly time spent in the mine by mine personnel in meeting the standard.

At EPA's request, the U.S. Bureau of Mines carried out an evaluation of the cost and effectiveness of various work practices in reducing radon-222 emissions. These evaluations were carried out using simple models of actual mines and using a number of assumptions not yet field verified. Data from this study suggests that bulkheading could reduce emissions of radon-222 by about 10 to 60 percent from typical mines at a cost ranging from about $4 to $60 per curie reduced or about $0.01 to $0.05 per pound of uranium oxide produced. Based on the peak production year, the total cost to the industry could range from $200,000 to $1,000,000 per year and the amount of population risk reduction achieved could range from one-tenth to two fatal cancer cases per year. These estimates are only hypothetical and are based on installing bulkheads in a presently uncontrolled mine (i.e., a mine without any bulkheads). Further study is needed to estimate actual costs and risk reduction associated with installing bulkheads in currently operating mines. Other methods examined, such as sealing and backfilling, when used in conjuction with bulkheading, may reduce radon-222 emissions further; however, they are not nearly as cost-effective or practical as bulkheading, nor do they achieve the same results in decreasing radon-222 emissions. After considering all the available information on control technologies, the Agency has concluded that bulkheading worked-out and temporarily inactive mine areas to seal the radon-222 before it is vented to the above ground air is a practical and cost-effective method of reducing radon-222 emissions from the mines.

E. Bulkheading

Bulkheads are air-restraining barriers used to isolate inactive mine areas from active mine areas. Bulkheads are commonly used underground uranium mines to isolate inactive mine areas, thereby reducing the amount of ventilation air needed to adequately protect the miners from exposure to radon decay products. By sealing off inactive areas of a mine, most of the radon-222 emanating from the surfaces of these areas will decay in the isolated area, rather than being released into the active airway of the mine. This will reduce exposure to the miners. If the bulkheads are properly constructed and maintained they can also reduce radon emissions to the above ground air. Bulkheading practices vary among mines; some mines make extensive use of bulkheads, while others use few bulkheads.

Current bulkhead construction practices vary with the type of rock in which the mine is located, the proximity of the bulkhead to exhaust airways, and the ultimate purpose of the bulkhead. There are two functional parts to a bulkhead and each has different requirements. The primary part of the bulkhead is the basic structure that fills most of the opening. This is usually a relatively rigid structure that provides primary resistance to mechanical abuse, blasting shocks, pressure differentials, etc. It may be a continuous nonporous membrane itself, or it may support such a membrane which might be attached to this primary structure or sprayed onto it. The important characteristics of this part of the bulkhead are (1) structural strength, which must be maintained for an extended period in the mine-operating environment; and (2) membrane continuity, i.e., it must not crack or develop holes or leaks in the mine-operating environment.

The second part of a bulkhead is the portion that forms the seal between the primary structure and the rock wall of the opening. This portion must also be maintained through blasting shock waves, rock movement, running water, and other adverse conditions of the mine operating equipment. Any break in the seal will allow the radon-222 captured behind the bulkhead to escape into the mine atmosphere.

Because the radon-222 concentration in the sealed-off area behind a bulkhead will build up to relatively high levels (i.e., tens of thousands of picocuries per liter), it is necessary to prevent or minimize any leakage of air from behind the bulkhead into the working areas of the mine. Any such leakage could significantly increase the radon decay product concentrations to which the miners are exposed.

A typical bulkhead usually consists of a timber or metal stud frame covered with lumber, expanded metal lath, plywood, or other sheet products. The lumber, sheeting or lath is then covered by spraying or troweling a sealant onto the basic structure, the joint between the structure and the rock, and the adjacent rock to form a continuous seal and radon barrier.

Since a completely airtight bulkhead is difficult to construct, and changes in the barometric pressure will cause differential pressures across a bulkhead, it is often necessary to maintain a negative differential pressure behind the bulkhead to prevent leakage of contaminated air into the active mine airways. This negative pressure is achieved by bleeding (i.e., removing) air from behind the bulkhead into an exhaust airway. For bulkheads to be effective in reducing radon-222 emissions to above ground air, however, the amount of air bleed necessary to maintain an adequate pressure differential across the bulkhead must be minimized. The smaller the air bleed, the more radon-222 will decay behind the bulkhead rather than being released above ground. One way to accomplish this is to construct tight bulkheads; with the proper use of sealants, bulkheads can be constructed with relatively low leak rates.

F. The Proposed Standard

The complexity in the structure of underground uranium mines and the lack of suitable control technology to capture radon-222 being vented from the mines causes the Agency to conclude that an emission standard is not feasible. The proposal, therefore, is based on a work practice frequency used by the industry.

The proposed standard would require owners or operators of underground uranium mines to install bulkheads to seal off abandoned mine areas and temporarily inactive mine areas. The standard also limits the amount of air exhausted from a bulkheaded area to less than 20 percent per day of the total volume of air contained in the isolated area. Sealing off unused areas of the mines will result in radon-222 decaying in the isolated areas rather than being discharged into the air.

A limit on the rate of removal of air from behind a bulkhead is necessary to provide sufficient residence time for the radon-222 formed in the sealed area to decay. A 20 percent per day value was selected as a balance between the need to minimize the rate of air removed from the sealed area and the need to maintain adequate negative pressure to prevent radon-222 from leaking into active mine airways and increasing the radon-222 decay product exposures to the miners. Our analysis estimates that radon-222 emissions from a bulkhead area are reduced by approximately 50 percent when the air exhaust rate is maintained at 20 percent per day of the total air

volume in the sealed area. Reducing the air exhaust rate to 10 percent per day would increase the emission reduction to approximately 65 percent, but we do not have enough information at the present time to know if this will provide adequate protection of the miners.

The proposed standard is applicable only to large, operating underground mines, i.e., mines which produce over 10,000 tons/year of ore or which have had a cumulative ore production of greater than 100,000 tons during the life of the mine. Our analysis showed that 95 percent of the radon-222 emissions from underground mines result from large mines with a cumulative ore production greater than 100,000 tons.

Most underground uranium mines already install bulkheads to reduce ventilation requirements and to direct air flow. Therefore, it is not possible to estimate the incremental radon-222 emission reductions achieved by the standard because we do not have sufficient information on the extent and nature of present bulkheading practices. To obtain this information will require extensive additional studies including an evaluation of (a) current bulkheading practices and their effectiveness in reducing radon-222 emissions and (b) alternative practices for further reducing radon-222 emissions. (As discussed previously, available technical information suggests that bulkheading could reduce radon-222 emissions by about 10 to 60 percent, based on installing bulkheads in an uncontrolled mine.)

The proposed standard will not significantly increase the radon decay product concentrations to which the underground miners will be exposed. Although installation of bulkheads and inspections and testing required by the standard will result in some additional worker time in the mines, the Agency believes this additional time will be relatively small and has attempted to limit the amount of testing and inspection required by the standard to minimize any additional worker exposure to radon decay products.

Because we do not know the extent of present bulkheading practices, we cannot precisely estimate the cost to meet the proposed standard. As discussed previously, some mines make use of hundreds of bulkheads, while other mines use very few, if any. Based on our present information, we have concluded that bulkheading is the least costly radon-222 emission control method. Limited modelling analysis shows that the costs of installing bulkheads are relatively small (one to five cents per pound of uranium oxide mined). This represents only 0.03 to 0.14 percent of the estimated $35 average cost to produce uranium oxide. Even if these costs are significantly underestimated for some mines, it is highly unlikely that the cost of the standard would exceed one percent of the cost of producing uranium oxide.

G. Alternative Considered

The Agency considered three alternatives to the standard it is proposing today. The first of these alternatives was a level of 100 mrem/y effective dose equivalent continuous exposure from all sources; a single source would be limited to 25 mrem/y effective dose equivalent. This alternative is consistent with EPA standards recently promulgated to limit radionuclide emissions from Department of Energy (DOE) facilities and Nuclear Regulatory Commission (NRC)-licensees and non-DOE Federal facilities. However, this alternative was rejected because the Agency believed that mine owners and operators were likely to rely on preventing human occupancy near a mine, rather than modifying practices within the mine to reduce emissions of radon-222. While this approach would reduce the risk of fatal cancer to the nearby individuals, it would do nothing to reduce the risk to the general population.

The second of these alternatives was to limit the annual average concentration of radon-222 in air to 3.0 pCi/l above background in any unrestricted area. This is consistent with current NRC regulations. The Agency rejected this alternative because it allows for an extremely high individual lifetime risk of about two in one hundred. In addition, such a standard would also likely be achieved by preventing human occupancy near a mine, rather than reducing emissions.

The last of the alternatives considered was a bulkheading standard similar to today's proposal. However, rather than specifying design requirements for bulkheads, it would specify a maximum leak rate across the bulkhead. The Agency considered this alternative as one possible way to ensure that tight bulkheads are constructed in the mines, thereby maximizing the amount of radon-222 decaying behind the bulkhead. After evaluating the technical aspects of specifying a leak rate, the Agency determined that it would be very difficult to accurately measure the rate of air leaking across the bulkhead. These technical difficulties would make it extremely complicated to determine compliance with the standard.

H. Request for Comments

EPA is particularly interested in receiving comments and recommendations on the following issues and questions:

1. Are the quantities of annual and cumulative ore production used to determine the applicability of the standard reasonable values or would higher or lower values be more appropriate? Is there an alternative way to designate mine size for purposes of defining the applicability of the standard?

2. Are the definitions of "abandoned mine areas," "temporarily abandoned mine areas" and "active mine" used in the proposed standard proper or should they be modified?

3. Are the bulkheading design requirements of the proposed standard adequate to ensure the installation of tight bulkheads? Do the requirements contain sufficient flexibility? Are they too specific or not specific enough?

4. Is the air exhaust rate limit of 20 percent per day of the total air volume behind a bulkhead a reasonable value or would a higher or lower value be more appropriate? Is there an alternative way to express this requirement?

5. Are the frequency of the inspections and tests required by the proposed standard reasonable or should these be more or less frequent? Are the types of inspections and tests appropriate or should other requirements be established?

6. Are the reporting requirements of the proposed rule reasonable? Do they represent the minimum documentation necessary to ensure compliance with the rule? Should particular reporting requirements be omitted; should others be added?

7. Are standards needed for permanently closed and/or temporarily closed underground uranium mines? If so, what type of standards should be considered?

The Agency is also soliciting information regarding the cost of building bulkheads to comply with the proposal and the amount of reduction in radon-222 emissions that may be achieved by the proposal.

VI. Miscellaneous

A. Docket

The docket is an organized and

complete file of all information considered by EPA in the development of this proposed standard. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents will be placed in the docket and will be available for inspection and copying during normal working hours.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, requires that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million. Also, it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region. Further, it will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Under Executive Order 12291, this proposed rule was submitted to the Office of Management and Budget (OMB) for review. Any comment from OMB to EPA andy any response to those comments are included in the docket.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposal, if promulgated, would impose reporting and recordkeeping requirements on the owners and operators of underground uranium mines. EPA requests comments on the reasonableness of the information collection requirements and on the costs involved as compared to other means of compliance determinations. Comments on these requirements should be submitted to Docket No. A-79-11, as well as to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW.; Washington, D.C. 20503 (Attention: Desk Officer for EPA). The final rule will respond to any OMB or public comments on the information collection requirements.

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory analysis" describes the effect of the proposed rule on small business entities.

However, section 604(b) of the Regulatory Flexibility Act provides that Section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated have a significant economic impact on a substantial number of small entities."

EPA believes this proposed rule will have little or no impact on small business because the total costs associated with the standard will have relatively little impact on the total cost of producing uranium oxide. In addition, the standard will only apply to large, operating underground uranium mines. (A small business is one that has 750 employees or less.)

For the preceding reasons, I certify that this rule, if promulgated, will not have significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl chloride, Benzene, Arsenic, Radionuclides.

Dated: February 15, 1985.

Lee M. Thomas,

Administrator.

PART 61—[AMENDED]

It is proposed to amend Part 61 of Chapter 1 of Title 40 of the Code of Federal Regulations by adding the following:

Subpart B—National Emission Standard for Radon-222 Emissions From Underground Uranium Mines

Sec.

Authority: Sec. 112 and 301(a) Clean Air Act, as amended, 42 U.S.C. 7412, 7601(a).

Subpart B—National Emission Standard for Radon-222 Emissions From Underground Uranium Mines

§ 61.20 Applicability.

The provisions of this subpart are applicable to owners and operators of active underground uranium mines which currently mine or plan to mine over 10,000 tons/year of ore or which have mined greater than 100,000 tons of ore during the life of the mine.

§ 61.21 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Clean Air Act or in Subpart A of Part 61 and the following terms shall have the specific meanings given below:

(a) "Abandoned area" means a deserted mine area in which further work is not intended except those areas which function as escapeways or ventilation passageways.

(b) "Active mine" means an underground uranium mine from which ore or waste material is actively removed.

(c) "Area" means a manmade underground void from which ore or waste has been removed.

(d) "Bulkhead" means an air-restraining and air pollution control barrier constructed for long-term control of radon-222 and radon-222 decay product levels in mine air.

(3) "Modification" as applied to an underground mine means any major change in the method of operation or mining procedure which will result in an increase in the amount of radon-222 emitted to air. The normal development of a mine, even though it results in an increase in emissions, is not considered a modification for the purposes of this subpart.

(f) "Temporarily abandoned area" means a mine area that has been or will be abandoned for at least six months except those areas which functions as escapeways or ventilation passageways.

(g) "Underground uranium mine" means a manmade underground excavation made for the purpose of removing material containing urnaium for the principal purpose of recovering uranium.

§ 61.22 Standard.

Owners or operators of underground uranium mines subject to this subpart shall install and maintain bulkheads to isolate all abandoned and temporarily abandoned areas according to the requirements of this section.

(a) The bulkhead shall be a structure designed and constructed for long-term

control of the isolated area and shall be sealed to minimize air leakage through the bulkhead. The bulkhead shall be of sufficient structural strength to resist mechanical abuse, blasting shocks, air pressure differentials and rock movement for an extended period of time in the mine-operating environment. The basic bulkhead structure may consist of a timber or metal stud frame, covered with lumber, expanded metal lath, plywood, or other sheet products. It may be a continuous nonporous membrane or it may support such a membrane. A sealant shall be applied onto the basic structure and in the joints between the structure and the rock to form a continuous seal and radon barrier. The sealant shall be of a type that will provide a protective seal, and will not easily crack or develop holes or leaks. A sealant may consist of coatings of mortar, masonry, latex, urethane foam, or similar type materials. A properly constructed and sealed bulkhead shall have no visible cracks or gaps.

(b) If negative pressure behind the bulkhead is used, then a maximum of 20 percent of the total volume of air contained in the sealed area can be exhausted per day.

(c) Upon written application from an owner or operator of an underground uranium mine subject to this subpart, the Administrator may approve alternative bulkheading procedures if such alternative procedures can be shown to provide isolation of the area equivalent to the requirements of paragraph (a) of this subpart.

§ 61.23 Inspection and testing.

The owner or operator of an underground mine subject to the requirements of this subpart shall conduct the following inspections and tests:

(a) A visual inspection of the condition of each bulkhead required under § 61.22 shall be conducted monthly by a qualified representative of the mine owner or operator to determine if, in his or her judgment, the integrity of the bulkhead is in compliance with the requirements of § 61.22(a) A record of each inspection shall be made in accordance with the requirements of § 61.25.

(b) For bulkheaded areas maintained under negative pressure, measurement of the air exhaust rate from the area shall be made at least monthly to determine compliance with the requirement of § 61.22(b). A record of each exhaust rate measurement shall be made in accordance with the requirement of § 61.25.

(c) The mine operator shall also be prepared to demonstrate compliance with the requirements of § 61.22(b) upon request of the Administrator.

(d) Upon written application from an owner or operator of an underground uranium mine subject to this subpart, the Administrator may approve alternative testing and inspection procedures if such alternative procedures can be shown to provide reasonable assurance that the mine is in compliance with the requirements of § 61.22.

§ 61.24 Bulkhead repair.

Bulkheads determined not to be in compliance with the requirements of § 61.22(a) during inspections required under § 61.23 shall be repaired within three days in accordance with the requirements of § 61.22(a).

§ 61.25 Recordkeeping.

Records of inspections and tests required under § 61.23 shall be maintained as described below. These records shall include a bulkhead identifiction number and location and the dates of inspections or tests.

(a) The results of each inspection required under § 61.23(a) shall be recorded as follows:

(1) A description of the condition of the bulkhead including identification of any damage and the extent of damages.

(2) A determination that the bulkhead is in compliance with the specifications of § 61.22(a) or that repairs are needed.

(b) A record shall be maintained for each bulkhead repair carried out under the requirements of § 61.24.

(c) A record shall be maintained for each air flow rate measurement conducted under the requirements of § 61.23(b). These records shall show the results of the tests and the method used. The percent of the total air volume behind the bulkheaded area which is exhausted per day at the measured flow rate shall be recorded.

(d) Records of inspections and tests shall be maintained at the mine and made available for inspection and copying by the Administrator or his designated Agent for a minimum of two years.

(e) A current map or schematic of the mine showing the location of each bulkhead required under § 61.22 and the air volume of the isolated area shall be maintained. Each bulkhead shall be assigned an identification number which shall be used in inspections and tests, and reporting requirements of §§ 61.23 and 61.24. This map shall be kept at the mine and be made available for review by the Administrator or his designated representative.

§ 61.26 Reporting Requirements.

Each owner or operator of an underground mine subject to the requirements of § 61.22 shall comply with the following:

(a) Provide the Administrator annually with a report containing the following information:

(1) The number and approximate volumes of mine areas both abandoned and temporarily abandoned in the previous year.

(2) The number of bulkheads installed to seal off these areas.

(3) The current total number of bulkheads being maintained to meet the requirements of § 61.22.

(4) An estimate of the average amount of air in the bulkheaded areas which is exhausted per day in percent of the total volume per day.

(5) The operator shall also make a statement to the effect that compliance with the testing and inspection requirements of § 61.23 have been or have not been achieved.

(b) This report shall be submitted by March 31, 1986, and annually thereafter. The information included in the report shall be based on data collected during the calendar year immediately preceding the required date of submission of the annual report.

§ 61.27 Source reporting and waiver request.

(a) The owner or operator of any existing source, or any new source to which a standard prescribed under this part is applicable which had an initial startup which preceded the effective date of a standard prescribed under this part shall, within 90 days after the effective date, provide the following information in writing to the Administrator:

(1) Name and address of the owner or operator.

(2) The location of the source.

(3) The type of hazardous pollutants emitted by the stationary source.

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of such source. Identify each point of emission for each hazardous pollutant.

(5) The number and approximate volume of abandoned and temporarily abandoned area in the mine and the number and approximate volumes of these areas which are sealed by bulkheads.

(6) A statement by the owner or operator of the source as to whether he can comply with the standards prescribed in this part within 90 days of the effective date.

(b) The owner or operator of an existing source unable to operate in compliance with the standard prescribed under this subpart may request a waiver of compliance with such standard for a period not exceeding two years from the effective date. Any request shall be in writing and shall include the following information:

(1) A description of the controls to be installed to comply with the standard.

(2) A compliance schedule, including the date each step toward compliance will be reached. Such list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process modifications will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(ii) Date of initiation of onsite construction or installation of emission control equipment or process change;

(iii) Date by which onsite construction or installation of emission control equipment or process modification is to be completed; and

(iv) Date by which final compliance is to be achieved.

(3) A description of interim emission control steps which will be taken during the waiver period.

(c) Changes in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after such change, except that if changes will result from modification of the source, as defined in § 61.02, the provisions of §§ 61.07 and 61.08 are applicable.

(d) The format for reporting under this section is included as Appendix A of this part. Advice on reporting the status of compliance may be obtained from the Administrator.

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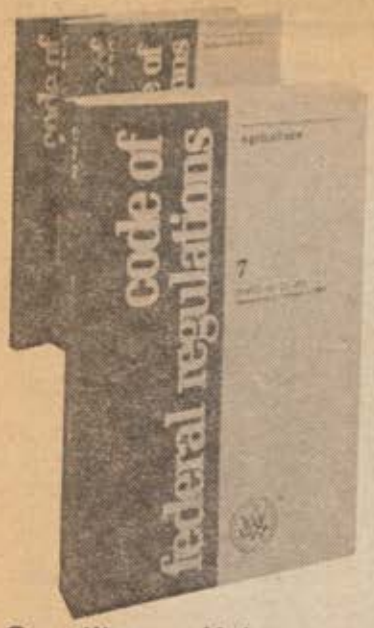

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