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Wednesday
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Agricultural Stabilization and Conservation Service

Air Traffic Control
Federal Aviation Administration

Aviation Safety
National Transportation Safety Board

Cable Television
Federal Communications Commission

Courts
Commodity Futures Trading Commission

Education of Handicapped
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Fuel Economy
National Highway Traffic Safety Administration

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Personnel Management Office

Hazardous Waste
Environmental Protection Agency

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations revoke the Schedule A excepted service appointing authority used by agencies to hire cooks at other than fixed locations, because an adequate supply of candidates for most positions is available through competitive examinations. Revocation will bring the positions filled under the Schedule A appointing authority into the competitive service and permit noncompetitive conversion of their incumbents to competitive appointments. Before the effective date, positions for which examining is still impracticable may be placed under other excepted appointing authorities. Persons serving in those positions may be converted to excepted appointments under those authorities.

EFFECTIVE DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, Staffing Policy Analysis Division, Staffing Group, (202) 632–6000.

SUPPLEMENTARY INFORMATION: The Schedule A authority, 5 CFR 213.3102(b), was established in 1905 for use by all agencies to fill cook positions when the Civil Service Commission found examining to be impracticable. It was reissued in 1939, without the requirement for prior approval of individual exceptions, but with a prohibition against use to fill positions in fixed locations. It has not been amended since.

The authority has been used by relatively few agencies that operate construction or survey camps and dredges. When the Schedule A authority was established, competitive examinations did not produce enough candidates for cook positions in those activities. The availability of competitive applicants for the positions has improved, and many of the positions are now filled in the competitive service. The only positions for which examining is still impracticable are those in survey, construction, or dredging operations which, because of their high mobility or remote location, are characterized by frequent turnover, and for which an adequate labor force can be recruited only by immediate gate hiring on a local basis. Agencies that have such activities have received specific Schedule A authorities for use in local hires. Cook positions could be filled under those authorities as well as under 5 CFR 213.3102(b).

Because there is no longer a general need to fill cook positions outside the competitive service, continuation of an excepted appointing authority available to all agencies is not appropriate. Proposed regulations to revoke the Schedule A appointing authority in 5 CFR 213.3102(b) were published for comment on November 19, 1984 [49 FR 45588]. No comments were received. Therefore, no changes have been made in the final regulations.

On the effective date, persons serving in positions filled under 5 CFR 213.3102(b) may be brought into the competitive service in accordance with the provisions of 5 CFR 316.702. Qualified employees may subsequently be converted to competitive appointments under the provisions of 5 CFR 315.701. Before the effective date, agencies that have positions filled under 5 CFR 213.3102(b) should review those positions to identify any for which examining is still impracticable. If an agency has another excepted appointing authority available that would be appropriate for filling its cook positions, current employees may be converted to excepted appointments under that authority. Requests to establish specific excepted appointing authority for any positions not covered by current exceptions must be submitted in accordance with the provisions of 5 CFR Part 213 and the instructions contained in chapter 213 of the Federal Personnel Manual.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain employees in Federal agencies.

List of Subjects in 5 CFR Part 213

Government employees.

U.S. Office of Personnel Management.
Donald J. Devine,
Director.

PART 213—[AMENDED]

Accordingly, OPM is amending 5 CFR Part 213 as follows:

1. The authority for Part 213 reads as follows:

[5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 comp., p. 218]

§ 213.3102 [Amended]

2. Paragraph (b) of § 213.3102 is removed and reserved.

[FR Doc. 85–6630 Filed 3–19–85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 713 and 722

[Amdt. 2]

Feed Grain, Rice, Cotton, and Wheat Programs for 1984 and Subsequent Crop Years

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the **Federal Register** on September 27, 1984 (49 FR 38085). The interim rule amended the regulations at 7 CFR Part 713 to incorporate the provisions of the Extra Long Staple Cotton Act of 1983. The rule also amended the regulations to provide that producers may participate in the

commodity programs authorized by the regulations only by contracting with the Commodity Credit Corporation to comply with the requirements of such programs. In addition, the regulations were amended to set forth additional requirements with respect to acreage which is eligible to be designated as acreage conservation reserve (ACR).

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: William Harshaw, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, Phone (202) 382-9878.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) 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.

The titles and numbers of the Federal Assistance Program to which this final rule applies are: Cotton Production Stabilization, 10.052; Feed Grain Production Stabilization, 10.055; Rice Production Stabilization, 10.065; and Wheat Production Stabilization, 10.058; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisons of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0092, 0560-0650, 0560-0091, 0560-0030, and 0560-0071 have been assigned.

An interim rule was published in the **Federal Register** on September 27, 1984 (49 FR 38085) making a number of amendments to the regulations found at 7 CFR Part 713 which set forth the terms and conditions of certain commodity programs.

Section 103 of the Agricultural Act of 1949 was amended by the Extra Long Staple Cotton Act of 1983 (Pub. L. 98-88) to set forth a number of requirements governing the price support and production adjustment program for extra Long Staple (ELS) cotton. Those requirements are similar, in most respects, to the requirements which are applicable to the commodity programs for feed grain, rice, upland cotton, and wheat. Accordingly, the interim rule amended the provisions of 7 CFR Part 713 to include the requirements which are applicable to ELS cotton.

A binding contract between the Commodity Credit Corporation (CCC) and the operator and other producers on the farm was first used for the 1983 Payment in Kind (PIK) Program. Subsequently, after affording opportunity for public comment, the Secretary of Agriculture announced that producers deciding to participate in the 1984 commodity programs for wheat, feed grain, upland and ELS cotton, and rice would be required to enter into binding contracts with CCC. Accordingly, the interim rule amended the regulations at 7 CFR Part 713 to include this requirement.

Land devoted to conversation uses under the commodity programs for 1984 and subsequent years is designated as Acreage Conservation Reserve (ACR). This land must meet certain requirements to be eligible for designation as ACR and must be protected from weeds and wind and water erosion. The interim rule amended the regulations at 7 CFR Part 713 to improve and clarify a number of program requirements relating to ACR including the designation of flooded land and summer fallow acreage as ACR. These changes also included a revision of the requirements which are applicable to the replacement seeding of cover crops, the period during which such cover must be maintained, and the maturation of small grains growing on ACR.

Comments were requested from interested persons through November 26, 1984 with regard to the amendments made to the regulations by the interim rule. Since no comments were received, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Parts 713 and 722

Acreage allotments, Cotton, Feed grains, Price support programs, Wheat, and Rice.

Final Rule

Accordingly, the interim rule published at 49 FR 38085, September 27, 1984 is hereby adopted as a final rule without change.

Authority: Secs. 101(i), 103(g), 105B, 107B, 107C, 109, 113 and 1001; 95 Stat. 1242, as amended, 1234, as amended, 1227, as amended, 1221, as amended, 96 Stat. 766, 91 Stat. 950, as amended, 95 stat. 1264, 91 Stat. 917, as amended; 7 U.S.C. 1441, 1444d, 1445b-1, 1445b-2, 1445d, 1445h, 1309.

Signed at Washington, D.C. on March 14, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-6650, Filed 3-19-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Opening of New Port of Entry, Otay Mesa, CA

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adds Otay Mesa, Ca. to the list of Class A ports of entry under the jurisdiction of the San Diego, California district. The opening of this port will allow the Service to provide better service to the public.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3291.

SUPPLEMENTARY INFORMATION: With a view toward providing better services to the public, the Immigration and Naturalization Service commenced operations at the Otay Mesa, Calif. port of entry of January 24, 1985. This port has been designated as Class "A" which means that immigration inspectors are

assigned to that port of entry and the location has been designated a port of entry for all aliens with a full range of immigration services being offered.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates solely to agency organization and management.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organization and functions (government agencies).

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

§ 100.4 [Amended]

Section 100.4(c)(2) is amended by adding in alphabetical sequence "Otay Mesa, Calif." as a Class A port of entry under the jurisdiction of District No. 39—San Diego, Calif.

(Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103))

Dated: March 14, 1985.

Thomas C. Ferguson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-6606 Filed 3-19-85; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Commission Policy Statement on Training and Qualification of Nuclear Power Plant Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to training and personnel qualification and describes the activities that the NRC will use to execute its responsibilities to ensure the health and safety of the public. This Policy Statement provides regulatory guidance called for by the Nuclear Waste Policy Act (Pub. L. 97-425) which directed the NRC to promulgate regulations or other regulatory guidance for the training and qualifications of civilian nuclear power plant operator, supervisors, technicians and other appropriate operating personnel. In recognition of industry initiatives underway to upgrade training programs, the NRC endorses the Institute of Nuclear Power Operations (INPO)-managed Training Accreditation Program in that it encompasses the elements of performance-based training and will provide the basis to ensure that personnel have qualifications commensurate with the performance requirements of their jobs. It remains the continuing responsibility of the NRC to independently evaluate applicant's and licensees' implementation of improvement programs to ensure that desired results are achieved. Nothing in this Policy Statement shall limit the authority or responsibility of the NRC to follow up on operational events or place any limit on NRC's enforcement authority when regulatory requirements are not met. However, while evaluating the effectiveness of this guidance in lieu of a new training regulation, the NRC intends to exercise some discretion in enforcement matters related to training and qualification of nuclear plant personnel and refrain from new rulemaking in this area for a period of at least two years from the effective date of this Policy Statement.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: William T. Russell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-4803.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Waste Policy Act (42 USC 10101 et seq.), section 306, directed the Nuclear Regulatory Commission (NRC) to promulgate regulations or other regulatory guidance for the training and qualifications of civilian nuclear power plant operators, supervisors, technicians and other appropriate operating personnel. This Policy Statement is responsive to the mandate of the Nuclear Waste Policy Act for regulatory guidance on training and qualifications for nuclear power plant personnel. Regulations or regulatory guidance in the remaining areas are being developed separately.

Following the accident at TMI-2, the NRC has emphasized the need to upgrade training and qualifications of nuclear power plant personnel. In the TMI Action Plan, NUREG-0660, 1980, the NRC cited its ongoing study of accreditation of training programs in the industry as a possible means of upgrading training. Since that time, the Institute of Nuclear Power Operations (INPO) has developed a training accreditation program which the NRC has found to be an acceptable means of industry self-improvement in training. The NRC has, therefore, made INPO accreditation the focus of the policy set forth here for training, allowing the industry a minimum of two years of accreditation activity without the introduction of new NRC training regulations.

The following statement sets forth the policy of the NRC with respect to training and qualification and describes the activities that the NRC will use to execute its responsibilities to ensure the health and safety of the public.

Policy Statement

The Commission recognizes that the industry, through the initiatives of the Nuclear Utility Management and Human Resources Committee (NUMARC) and the Institute of Nuclear Power Operations (INPO), has made progress in developing programs to improve nuclear utility training and personnel qualification. While some of these efforts have only recently been initiated, the Commission realizes the importance of industry's initiative and wishes to encourage further self-improvement. Subject to the continued success of INPO programs and NRC's ability to monitor their effectiveness, the Commission will refrain from new rulemaking in the area of training for a minimum period of two years from the effective date of this Policy Statement. While the Commission is deferring rulemaking in this area in recognition of the industry efforts to date, the NRC can only exercise this flexibility as long as the industry programs produce the desired results. It remains the continuing responsibility of the NRC to independently evaluate applicants' and licensees' implementation of improvement programs to ensure these results are achieved and to evaluate the possible need for further NRC action based on the success of industry programs after a two-year period.

The following paragraphs present the NRC policy with respect to licensees' and applicants' programs for personnel training and qualifications.

The nuclear power industry, through programs being coordinated by INPO, has made and is making progress toward improving the training of nuclear power plant personnel by accreditation of training programs. The NRC endorses

the INPO-managed Training Accreditation Program in that it encompasses the elements of effective performance-based training.

The NRC considers the following five elements as essential to acceptable training programs:

- Systematic analysis of the jobs to be performed.
- Learning objectives derived from the analysis which describe desired performance after training.
- Training design and implementation based on the learning objectives.
- Evaluation of trainee mastery of the objectives during training.
- Evaluation and revision of the training based on the performance of trained personnel in the job setting.

The NRC recognizes that the INPO-managed accreditation of utility training includes the following training programs:

- Non-licensed operator.
- Control room operator.
- Senior control room operator/shift supervisor.
- Shift technical advisor.
- Instrument and control technician.
- Electrical maintenance personnel.
- Mechanical maintenance personnel.
- Radiological protection technician.
- Chemistry technicians.
- On-site technical staff and managers.

All utilities have committed to achieving accreditation of each of the above training programs. It is understood that each licensee will exert best efforts to have all such programs ready for accreditation (i.e., final self-evaluation report submitted to INPO) by the end of 1986. It is also understood that applicants for operating licenses will exert best efforts to have all such programs ready for accreditation within two years after issuance of a full-power operating license.

For operating reactors, accreditation of the above training programs constitutes a method acceptable to the NRC for implementing performance-based training. The NRC will continue to review and approve all applicant training programs in accordance with applicable regulations, regulatory guidance, and the Standard Review Plan and to conduct inspections necessary to determine that current regulations and license training commitments are being met. Notwithstanding this Policy guidance, regulations in 10 CFR Part 55 regarding licensed operators will continue to be the basis for evaluation of applications for operators' licenses.

It should be noted that training programs for which regulations are currently in place (e.g., fire brigade, emergency response, security) or which are not subject to INPO accreditation (e.g., quality assurance) are not affected by this Policy Statement.

To assure that the nuclear industry's training program improvements are effective, the NRC will continue to closely monitor the process and its results by the following:

- Recommending a member to serve on each Accrediting Board;
- Having an NRC staff member attend and observe Accrediting Board meetings with the INPO staff and/or the utility representatives;
- Periodically observing accreditation team site visits;
- Accompanying INPO on selected plant evaluations;
- Meeting with INPO to share information on projects and activities;
- Reviewing pertinent accreditation documents;
- Including a training summary evaluation as part of each systematic assessment report of licensee performance (SALP);
- Monitoring plant and industry trends and events that involve personnel errors;
- Conducting operator licensing exams;
- Conducting operator requalification exams, consistent with Commission policy;
- Continuing evaluation of industrywide training qualification program effectiveness; and
- Conducting performance-oriented training inspections to assess the level of knowledge of plant personnel.

In addition, INPO will:

- Continue to manage the industry accreditation program;
- Continue to conduct performance-oriented evaluations of training and qualification programs;
- Make generic accreditation documents (program description and criteria) publicly available; and
- Review and consider NRC recommendations regarding training.

Also, the industry, through NUMARC or other appropriate methods, will:

- Brief the Commission periodically on program status; and
- Provide periodic status reports to the NRC staff including plant accreditation status.

Personnel Qualifications

The NRC and industry recognize that the qualifications of personnel at nuclear power plants should be commensurate with the requirements of the jobs they perform. Since the INPO-managed accreditation and evaluation programs are performance-based, this policy statement assumes that training programs for those positions covered will provide appropriately qualified personnel. For positions outside the scope of the INPO-managed accreditation program, for licensed operators and senior operators, and for all personnel at facilities applying for an operating license, NRC staff will continue to review qualifications in accordance with appropriate regulatory policy guidance.

NRC will use the same general methods described above for training to monitor the industry's progress in improving the qualifications of nuclear power plant personnel.

Enforcement policy

Notwithstanding its Enforcement Policy in 10 CFR Part 2, Appendix C, 49 FR 8583 (March 8, 1984), the Commission will exercise some discretion in selecting appropriate enforcement action for violations involving training in light of the NUMARC/INPO initiative. Licensees who are making reasonable efforts in developing and implementing the INPO/NUMARC programs described above will generally not be cited for violations related to these programs, provided the violations, whether or not identified by NRC, are appropriately corrected in a timely manner. However, violations which are not corrected in a timely manner, violations of any applicable reporting requirement, and any willful violation may be subject to enforcement. Any enforcement action taken during this grace period will be taken only with Commission concurrence. In addition to required reports and inspections, information requests under 10 CFR 50.54(f) may be made and enforcement meetings held to ensure understanding of corrective actions. Orders may be issued where necessary to achieve corrective actions on matters affecting plant safety. In brief, the NRC's decision to use discretion in enforcement in order to recognize industry initiatives in no way changes the NRC's ability to issue orders, call enforcement meetings or suspend licenses when a safety problem is found. Nothing in this Policy Statement shall limit the authority of the NRC to conduct inspections as deemed necessary and to take appropriate enforcement action when regulatory requirements are not met.

Dated at Washington, DC this 14th day of March, 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 85-6631 Filed 3-20-85; 8:45 am]

BILLING CODE 7590-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 140 and 144

Procedures Regarding the Disclosure of Information and the Testimony of Present or Former Commission Members and Employees in Response to Subpoenas or Other Demands of a Court or Other Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission is issuing final rules that establish Commission procedure regarding the disclosure of information and the testimony of present or former Commission members and employees in response to subpoenas duces tecum and subpoenas ad testificandum or other demands of a court or other authority in federal and state proceedings.

EFFECTIVE DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Whitney Adams, Deputy General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–9880.

SUPPLEMENTARY INFORMATION: On November 14, 1984, the Commission published proposed rules establishing procedures regarding the disclosure of information and the testimony of present or former Commission officials and employees in response to subpoenas or other demands of a court. 49 FR 45015. The Commission allowed 30 days for public comment. *Id.* The Commission received no comments and has decided to adopt its proposed rules as final rules with a minor amendment to comport with the transfer of some of its registration functions to the National Futures Association ("NFA").[1] This amendment to § 144.1, which has no substantive effect on the rules as proposed, provides that subpoenas seeking certain registration information, either in the form of testimony or documents, should be served upon the National Futures Association rather than the Secretary of the Commission. Apart from that amendment, the rules are adopted in the same form as they were proposed.

In accordance with the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The rules are designed to establish procedures and proscribe certain conduct of its employees and former employees to insure that the Commission reserves the authority for determining when its records may be disclosed pursuant to subpoena and to recover only the Commission's actual costs, consistent with its statutory authority, in locating and copying documents in response to subpoenas or other demands of a court of other authority. This minimal cost should not have a significant economic impact on any party on whose behalf a subpoena or other demand is issued.

These rules do not call for collection of information from the general public and therefore are not subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects

17 CFR Part 140

Authority delegations (Government agencies), Conflicts of interest, Organization and functions (Government agencies).

17 CFR Part 144

Commission records and information, Fees, Subpoenas, Testimony by employees and former employees, Courts, Government employees.

Accordingly, pursuant to its authority under 5 U.S.C. 301; 7 U.S.C. 4a(j) and 12a(5); and 31 U.S.C. 9701 the Commission hereby adopts regulations and amendments as follows:

1. Chapter I of 17 CFR is amended by adding a new Part 144 to read as follows:

PART 144—PROCEDURES REGARDING THE DISCLOSURE OF INFORMATION AND THE TESTIMONY OF PRESENT OR FORMER OFFICERS AND EMPLOYEES IN RESPONSE TO SUBPOENAS OR OTHER DEMANDS OF A COURT

Sec.

144.0 Purpose and scope.
144.1 Service upon the Commission.
144.2 Service upon an employee or former employee of the Commission.
144.3 Testimony by present or former Commission employees.
144.4 Production or disclosure of records by present or former employees.
144.5 Procedures when production or disclosure of Commission records or information relating to Commission business is sought.
144.6 Fees.

Authority: 5 U.S.C. 301; 7 U.S.C. 4a(j) and 12a(5); 31 U.S.C. 9701.

§ 144.0 Purpose and scope.

(a) The regulations in this part set forth procedures to be followed with respect to the disclosure, in response to a subpoena, order or other demand (collectively "demand") of a court or other authority of any material contained in the files of the Commission, of any information relating to material contained in the files of the Commission or any information acquired by any person while such person is or was an employee of the Commission as part of the performance of that person's official duties or by virtue of that person's official status. Employee as used in this Part includes both members and employees of the Commission. Demand as used in this Part does not include requests for the production of documents in compliance with Fed. R. Civ. P. 34.

(b) Nothing in this Part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, the Sunshine Act, 552b, or the Commission's implementing regulations in Part 145, 17 CFR 145.0, *et seq.*, or pursuant to Congressional subpoena or pursuant to other Commission regulation. Nothing in this part otherwise permits disclosure of information by the Commission except as is provided by statue or other applicable law.

[1] By order issued October 1, 1984, NFA was authorized to perform, on behalf of the Commission, certain functions concerning the registration of futures commission merchants and their associated persons, commodity trading advisors and their associated persons, commodity pool operators and their associated persons, and the registration of introducing brokers and their associated persons. 49 FR 39593 (October 9, 1984). The Commission has not delegated authority concerning the registration of floor brokers, leverage transaction merchants and associated persons of leverage transaction merchants. The Commission's order became effective on December 3, 1984. 49 FR 45418 (November 16, 1984). Among the functions transferred to NFA was the maintenance of a system of records in connection with its registration responsibilities for which NFA was to serve as the official custodian on behalf of the Commission. 49 FR at 39595. As the Commission stated:

> This Order, which is issued under seal, shall constitute Commission certification that NFA has the official capacity to maintain the registration records of the agency and to certify as to their maintenance, authenticity and completeness. In this connection, NFA has undertaken to provide timely such certifications, affidavits, and testimony as may be necessary to authenticate documents and information contained in the registration records for which NFA has custody upon request of the Commission and its staff, and in connection with requests of other Federal, state or local officials and with subpoenas or other appropriate document requests by private parties (footnotes omitted). *Id.*

Accordingly, in recognition of NFA's capacity as custodian of some of the Commission's records, requests for records in the possession and control of NFA should be made, and under new § 144.1(e) of these regulations are required to be made, upon the NFA through its general counsel.

(c) This part is intended to provide guidance for the internal operations of the Commission and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the Commission.

§ 144.1 Service upon the Commission.

(a) Subject to paragraph (e) of this section, the Secretary of the Commission is the only person authorized to accept service of a demand directed to the Commission or to an employee of the Commission for documentary information contained in or relating to information contained in the files of the Commission.

(b) Any such demand must be addressed to the Secretary of the Commission, 2033 K Street, NW., Washington, D.C. 20581.

(c) In the event that any such demand is attempted to be served upon an employee of the Commission other than the Secretary of the Commission, unless otherwise directed by the Commission's General Counsel, that employee shall respectfully decline to accept service on the ground that the employee is without authority to do so.

(d) The Secretary shall promptly advise the General Counsel of any service of any demand, and the General Counsel shall thereafter advise the Commission regarding the matter.

(e) A demand for information contained in the Commission's files concerning the registration of persons or entities for which authority has been delegated to the National Futures Association must be served upon the National Futures Association, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606, to the attention of the General Counsel.

§144.2 Service upon an employee or former employee of the Commission.

(a) Any employee of the Commission who is served or is attempted to be served with a demand of a court or other authority seeking information or documents relating to the business of the Commission shall promptly advise the General Counsel of the service or attempted service of such demand, the nature of the information or documents sought by the demand and any circumstances that may bear upon the desirability in the public interest of disclosure of the information or the production of documents.

(b) Any former employee of the Commission who is served or is attempted to be served with a demand of a court or other authority seeking information or documents relating to the business of the Commission shall promptly advise the General Counsel of the service or the attempted service of such demand, the nature of the information or documents sought by the demand and any circumstances that might bear upon the desirability in the public interest of the disclosure of the information or the production of documents.

(c) After such further inquiry as appropriate, the General Counsel shall advise the Commission concerning the matter.

§144.3 Testimony by present or former Commission employees.

(a) In any proceeding to which the Commission is not a party, an employee of the Commission shall not testify concerning matters related to the business of the Commission unless authorized to do so by the Commission upon the advice of the General Counsel.

(b) In any proceeding, an employee or former employee of the Commission shall not testify concerning non-public matters related to the business of the Commission unless authorized to do so by the Commission upon the advice of the General Counsel. See § 140.735–9 of these regulations.

§144.4 Production or disclosure of records by present or former employees.

(a) No employee of the Commission shall, in response to a demand by a court or other authority or otherwise in any proceeding in which the Commission is not a party, produce any material contained in the files of the Commission or disclose any information relating to material contained in the files of the Commission or disclose any information or produce any material acquired as part of the performance of the employee's official duties or by virtue of the employee's official status unless authorized to do so by the Commission, provided that Commission authorization shall not be required to comply with a demand solely for Commission documents generally available to the public. In litigation in which the Commission is a party no employee may produce any confidential Commission material without Commission authorization.

(b) No fomer employee of the Commission shall, in response to a demand by a court or other authority or otherwise in any proceeding in which the Commission is not a party, produce without Commission authorization any material contained in or from the files of the Commission acquired as part of the performance of the former employee's official duties while employed by the Commission. No former employee may in any litigation produce confidential material acquired as part of the performance of the former employee's official duties while employed by the Commission unless authorized to do so by the Commission.

§144.5 Procedures when production or disclosure of Commission records or information relating to Commission business is sought.

(a) If in any proceeding oral testimony of an employee or former employee of the Commission is sought concerning matters related to the business of the Commission, an affidavit or, if that is not feasible, a signed statement by the party seeking the testimony or by his attorney, setting forth with particularity a summary of the testimony sought and its relevance to the proceeding, must be furnished to the Commission's General Counsel at the Commission's office in Washington, D.C. When authorization by the Commission is required, any authorization shall be limited to the scope of the demand as summarized in such statement.

(b) If a response to a demand by a court or other authority is required before instructions from the Commission are received, and Commission authorization is required, a Commission attorney shall be designated by the General Counsel to appear and to inform the court or other authority of these regulations and that the subpoena or demand has been referred for prompt consideration by the Commission. The Commission attorney shall request a stay of the demand pending receipt of instructions.

(c) In the event that the court or other authority declines to stay the effect of the demand pending receipt of instructions or in the event that the court rules that there must be compliance with the demand irrespective of instructions not to produce the material or disclose the information sought, the Commission employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand.

§144.6 Fees.

The provisions of § 145.8 of these regulations with respect to fees for production of documents pursuant to the FOIA are applicable to this part.

PART 140—[AMENDED]

2. The authority for § 140–735–9 of Part 140 continues to read:

(Secs. 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), EO11222, 3 CFR, 1964–1965 Comp., as amended, 5 CFR 735.104 and 18 U.S.C. 207(j))

3. Section 140.735–9 of Part 140 is revised to read as follows:

§ 140.735–9 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release. Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations. Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest. In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

Issued in Washington, D.C., on March 14, 1985, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–6520 Filed 3–19–85; 8:45 am]

BILLING CODE 6351–01–M

POSTAL SERVICE

39 CFR Part III

Merchandise Return Service

Correction

In FR Doc. 85–4270 beginning on page 9622 in the issue of Monday, March 11, 1985, make the following correction:

On page 9624, first column, in paragraph .441, first line, insert the word "no" between "If" and "endorsement".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket 79–144; FCC 85–90]

Consideration of Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTIONS: Final rule; Report and Order.

SUMMARY: Amends § 1.1305 of the Commission's Rules implementing the National Environment Policy Act of 1969 (NEPA). Under NEPA the Commission is required to consider whether its actions have a significant effect on the quality of the human environment. This amendment satisfies that requirement with respect to radiofrequency electromagnetic radiation.

The amended rule provides that, in specified services, applications for construction permits, licenses to transmit or renewals thereof, or modifications of facilities or operations will be treated as "major actions" by the Commission if the facility or operation in question would result in human exposure in excess of specified Guidelines for radiofrequency radiation.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert Cleveland, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554 (202) 632–7040

Mr. Stephen Klitzman, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554 (202) 632–6405

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Report and Order

In the matter of responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices, and potential effects of a reduction in the allowable level of radiofrequency radiation on FCC authorized communications services and equipment. [Gen. Docket No. 79–144; FCC 85–90].

Adopted: February 26, 1985.
Released: March 14, 1985.
By the Commission.

I. Summary

1. The Commission is amending Part 1 of its rules implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* (1976). The amendment provides for environmental analysis of major Commission actions that may result in non-compliance with applicable health and safety guidelines for radiofrequency (RF) radiation. Our processing guideline for determining the significance of human exposure to RF radiation will be the "Radio Frequency Protection Guides" adopted in 1982 by the American National Standards Institute (ANSI). At this time, the rule amendment will only apply to major actions taken by the Commission with respect to the following facilities authorized by the FCC Rules and Regulations: (1) Broadcast facilities authorized under Part 73; (2) broadcast facilities authorized under part 74 (subparts A and G only); (3) satellite-earth stations authorized under Part 25; and (4) experimental facilities authorized under part 5. An accompanying *Further Notice of Proposed Rule Making*, also being issued today, proposes to categorically exclude other FCC-regulated facilities and operations from the provisions of this rule, except for shipboard satellite-earth terminals.

II. Background

2. On June 7, 1979, the Federal Communications Commission (FCC) issued a *Notice of Inquiry* (NOI) concerning the responsibility of the FCC to consider biological effects of radiofrequency (RF) radiation when licensing facilities and authorizing equipment that utilize RF energy. [1] The NOI was designed to: (1) Assist the FCC in determining whether it is appropriate for the Commission to take any action under health and safety standards for exposure to RF radiation, and (2) provide documentation so that the FCC can adequately participate in rulemaking proceedings of other agencies to assure that any standards adopted adequately take into account the impact on the licensees and equipment regulated by the FCC.

3. As a result of the comments received in response to the FCC's NOI and our assessment of the Commission's statutory responsibilities under the National Environment Policy Act of 1969 (NEPA) [2], the Commission issued a

[1] *Notice of Inquiry*, General Docket No. 79–144, 44 FR 37008 (1979), 72 F.C.C. 2d 482 (1979).

[2] 42 U.S.C. 4321 *et seq.* (1976).

Notice of Proposed Rule Making (NPRM), on February 18, 1982, proposing to amend § 1.1305 of the Commission's Rules and Regulations implementing NEPA [3], by expanding the list of "major actions" subject to the Commission's environmental processing standards, 47 CFR 1.1305. It proposed that applications for equipment authorizations would be treated as "major actions" triggering environmental assessment when the equipment in question did not comply with RF radiation emission standards. It was also proposed that applications for construction permits or licenses to transmit would be treated as "major actions" triggering environmental assessment when the proposed operation would result in the exposure of workers or the general public to levels of RF radiation in excess of safe levels established by federal agencies which have jurisdiction to set such standards.

III. Discussion

A. General

4. A total of twenty-three filings of comments and reply comments were received at the FCC in response to the Commission's NPRM in Docket 79-144 and all comments have been considered. The respondents included individuals, broadcast groups, major corporations, trade associations, a labor union, local government officials, and the U.S. Environmental Protection Agency. A list of the parties filing comments and reply comments in this proceeding can be found in Appendix 2.

5. With a few exceptions, respondents to the NPRM generally supported the thrust of the Commission's proposal. The general tone of the comments indicated a desire by many respondents that the Commission clearly establish a policy regarding RF radiation hazards and clarify Commission and licensee responsibilities in this area of growing public concern. Several of the respondents also suggested the Commission take actions that, we believe, go beyond the scope of this proceeding. Although various broadcast groups, such as the National Association of Broadcasters (NAB), the TV Broadcasters All Industry Committee (TVBAC), the Association for Broadcast Engineering Standards, Inc. (ABES), and the National Association of Public Television Stations basically supported the proposed rule, they and others urged the Commission to issue a policy statement dealing with federal preemption of local and state standards for RF radiation. For example, TVBAC urged the Commission to "issue a Policy Statement which clearly and forcefully asserts its authority and intention to preempt unwarranted state or local RF radiation standards that arbitrarily limit or preclude communications services to the public."

6. Two respondents felt that the Commission should not adopt the proposed rule amendment at this time. The Utilities Telecommunications Council (UTC) recommended "that the Commission postpone adoption of its proposal until the EPA or another responsible federal agency establishes a legally enforceable exposure standard." UTC felt that it would be premature for the FCC to adopt its proposed rule in view of the fact that various federal agencies "are only in the preliminary stages of standard development and in light of the disparate views and positions of scientists the world over concerning what constitutes a radiation 'hazard'. . . ."

7. Similarly, RCA Corporation, while endorsing the concept of national standards and while recognizing the proposed Commission regulation as "meritorious," nonetheless felt that the Commission should "defer adoption of the regulations implementing NEPA until such time as the Federal agencies issue suitable radiation standards." RCA feared that if the Commission adopted regulations before the issuance of federal standards, "such regulations may be ineffective, inappropriate, or detrimental to those persons regulated thereunder." The UTC and RCA comments, however, were outweighed by those comments supportive of our taking action at this time.

8. It is our judgment that the Commission is required to make a threshold determination as to whether the facilities it approves are "major Federal actions significantly affecting the quality of the human environment," thus triggering environmental review, regardless of whether federal guidelines or standards currently exist for general public exposure to RF radiation. [4] The Commission cannot avoid its independent legal obligation under NEPA to make its own determination as to the environmental impact of its "major actions." Rather, the Commission must comply with its procedural duties under NEPA "to the fullest extent, unless there is a clear conflict of statutory authority." [5] Just as "[c]onsideration of administrative difficulty, delay or economic cost will not suffice to strip [NEPA] of its fundamental importance," *id.*, so too, the mere absence of a federal standard or individual agency expertise does not absolve the Commission of its NEPA responsibilities. Thus, an agency "cannot refuse to give serious consideration to environmental factors merely because it thinks that another agency should assume the responsibility for promoting the policies of NEPA." [6]

B. Guidelines for RF Radiation Exposure

9. A major topic of discussion among the respondents was the matter of which RF standard or guideline the Commission should use as its criterion for identifying a "major action" for processing under the NEPA rules. The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has jurisdiction to establish RF exposure standards for workers. The U.S. Environmental Protection Agency (EPA) has the authority to recommend safe levels for exposure of the general public to RF radiation. Our NPRM noted that OSHA had previously issued a radiation protection guide for workers, [7] and that

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[3] *Notice of Proposed Rule Making*, General Docket No. 79-144, 47 FR 8214 (1982), 89 F.C.C. 2d 214 (1982). *See also* 47 FR 10871 (1982) and 47 FR 27384 (1982) (*Correction* and *Order Extending Time for Filing Comments and Reply Comments*).

[4] *See* 42 U.S.C. 4322(2)(c) (1976). *See also* NOI, *supra* note 1, at para. 12-13; NPRM, *supra* note 3, at para. 11; *State of Alaska v. Andrus*, 591 F.2d 537, 540-41 (1979), *quoting Natural Resources Council, Inc. v. Morton*, 388 F. Supp. 829, 834 (D.D.C. 1974), *aff'd mem.*, 527 F.2d 1386 (D.C.Cir.), *cert. denied*, 427 U.S. 913 (1976). ("The term 'actions' refers not only to actions taken by federal agencies; but also to decisions made by the agencies such as the decision to grant a license, which allows another party to take an action affecting the environment.") Under NEPA, each federal agency is required to prepare a detailed environmental impact statement for any "major" action it takes "significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(c). Such a statement need not be prepared whenever the agency can satisfy itself that its proposed action will not significantly affect the environment. The NEPA guidelines issued by the Council on Environmental Quality (CEQ) also permit agencies to exclude categorically from NEPA processing those actions "which do not individually or cumulatively have a significant effect on the human environment . . ." 40 CFR 1508.4 (1980). Even when a proposed action does not have a significant effect on the human environment, that action may still be taken if the benefits of the action outweigh the environmental consequences. NEPA required only the the benefits be weighed against the costs in any environmental assessment or environmental impact statement.

[5] *See Calvert Cliffs' Coordinating Committee, Inc. v. United States A.E. Com'n.*, 449 F.2d 1109, 1115 (D.C. Cir. 1971).

[6] *See Natural Resources Defense Council, Inc. v. S.E.C.* 432 F. Supp. 1190, 1207-1208 (D.C.D.C. 1977), *rev'd on other grounds*, 606 F.2d 1031 (D.C. Cir. 1979), *citing* S. Rpt. No. 91-296, 91st Cong., 1st Sess. 18-19 (1969).

[7] *See* 29 CFR 1910.97(a)(2). The OSHA guide recommended that exposure not exceed a power density of 10 milliwatts per square centimeter (mW/cm^2) or the mean-squared electric field strength and

Continued

until a federal standard for the general public was developed, we proposed to use the OSHA workers' exposure guidelines for determining what constituted a "major action" with respect to general public exposure to RF radiation. In May 1982, OSHA proprosed to revoke its advisory standards, including the advisory standard for exposure of workers to non-ionizing radiation.[8] However, subsequently, OSHA reconsidered and decided to retain its advisory standard for RF radiation.[9]

10. In light of OSHA's proposed revocation, some respondents felt that the Commission should reconsider its proposal to use the OSHA guidelines. To quote the American Radio Relay League (ARRL), "OSHA's decision to now propose revocation of its advisory standard on worker exposure to nonionizing radiation would effectively knock the underpinnings out of the FCC proposed § 1.1305(d)." Other parties, including most of the broadcast groups, did not think that OSHA's action should affect the Commission's proposal. For example, Satellite Business Systems expressed the opinion that "OSHA proposed to withdraw its standard for procedural reasons related to its powers under its enabling statute. It did not indicate any disapproval of the standard . . . "

11. GTE Service Corporation, Aeronautical Radio, Inc. (ARINC), ARRL, Thomas Agoston, Donald E. Clark, and Motorola, Inc. advanced an alternative approach. They proposed that, in place of the OSHA guidelines, the Commission should use, as an interim or provisional standard, the voluntary RF radiation protection guides issued in 1982 by the American National Standards Institute (ANSI).[10] GTE maintained that:

> Although the Commission has expressed the opinion that it does not have the expertise to *create* health standards for RF and microwave radiation, . . . the Commission does have the expertise to *recognize* a technically sound radiation standard, and, in the absence of other federal agency standards, adopt it as an interim standard. (emphasis in the original)

12. To support its position, GTE pointed to 1982 guidance from the Office of Management and Budget encouraging reliance of federal agencies on voluntary standards.[11] Other parties stated that they either endorsed or did not oppose Commission reliance on the ANSI radiation protection standard as a standard for purposes of application processing under NEPA.

13. Although several of the broadcast groups would have preferred that the Commission use the OSHA radiation protection guide, they indicated that use of the ANSI standard would be acceptable. For example, to quote TVBAC, "[w]hile the ANSI standards are more stringent than the 10 mW/cm² standard at certain frequencies, they are not so stringent as to impair broadcasting services." (TVBAC comments, at 11). Similarly, NAB expressed the view that "[t]he adoption of [the ANSI] standard would pose a hardship in only a few instances and would be infinitely better than the patchwork of unrealistic and varying local standards that is being developed in the absence of federal action." (NAB comments, at 6). NAB maintained that even though there is "no evidence" that the OSHA guideline has failed to protect the public health adequately, "NAB recognizes that good arguments have been made within the scientific community for a frequency-sensitive standard such as the new one proposed by ANSI." (*Id.*)

14. In its Comments, GTE Service Corporation further noted that the Commission has previously "made reference in its rules to nationally recognized standards"[12] as well as "recognized the work done by ANSI in other areas."[13] Citing "strong support" in the record of this proceeding for Commission use of the ANSI standard, GTE, therefore, recommended that "[s]ince the current ANSI standard represents the consensus of the experts active in the field, its recognition by the Commission as an interim federal standard would be in keeping with OMB's guidance and would help to stem the tide of potentially conflicting local standards."

15. Echoing GTE, Motorola, Inc. urged the Commission to "adopt without modification the ANSI standard for human exposure to radiofrequency radiation; it is technically sound and widely supported." Motorola went on to note that "in the absence of Government promulgated standards, it is entirely appropriate for the FCC to employ those formulated by voluntary standards-developing bodies." The ANSI standard, maintained Motorola, "represents the best determination of many knowledgeable parties, and could effectively be used on an interim basis unless or until and appropriate Government agency promulgates new or different standards."

16. In addition to comments filed during the official comment period following our NPRM in this proceeding, the ARRL filed a "Petition for Expedited Special Relief and Declaratory Ruling" on March 20, 1984. In its petition ARRL requested that the Commission issue "at the earliest possible moment" an interim policy statement and status report on the appropriateness of use of the ANSI standard as an RF protection guideline. ARRL restated its recommendation filed previously that the Commission adopt the ANSI C95.1–1982 standard as an interim radiation protection guideline. Similar sentiments were expressed in a letter, dated August 27, 1984, from the Electromagnetic Energy Policy Alliance (EEPA) to Mark S. Fowler, Chariman of the FCC.

17. Significant misgivings about Commission use of the OSHA guidelines were expressed from another perspective in comments of the U.S Environmental Protection Agency (EPA). EPA noted that, "[i]n general, we are in agreement with the subject document as written, but we have reservations about the use of the OSHA occupational standard as an interim standard for exposure of the general public until EPA issues guidelines for exposure of the public." EPA observed that factors related to environmental heat stress and the health of exposed individuals suggested that the OSHA standard "may

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mean-squared magnetic field strength equivalents of 40,000 volts squared per meter squared or 0.25 amperes squared per meter squared, respectively, averaged over any six-minute period. These OSHA guidelines were not developed by OSHA itself, but, rather, represented a direct adoption by OSHA of a preexisting standard developed by a non-government, independent organization, the American National Standards Institute (ANSI). (*See* para. 24, *Infra*).

[8] *See* 47 FR 23477 (1982).

[9] *See* 49 FR 5318 (1984).

[10] ANSI C95.1–1982 (revision of ANSI C95.1–1974). Copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, N.Y. 10017. The ANSI protection guides recommend various time-averaged values for safe exposure in five different frequency bands. Recommended equivalent planewave, free-space power density levels are 100 milliwatts per square centimeter (mW/cm²) for 300 kHz to 3 MHz , 1 mW/cm² for 30–300 Mhz, and 5 mW/cm² for 1500 MHz to 100 GHz, with transitional levels in the intervening frequency bands. Copies of the ANSI recommendations are available from the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018 or from: Standard Sales—IEEE, 445 Hoes Lane, Piscataway, N.J. 08854.

[11] *See* Office of Management and Budget, "Final Issuance of OMB Circular No. A–119, 'Federal Participation in the Development and Use of Voluntary Standards' ", 47 FR 49496 (1982).

[12] *See* GTE Comments, at 5, citing Commission Rules, § 73.317(g)(1)(ii), incorporating the National Electrical Code.

[13] *Id.*, citing *Order Terminating Proceeding* in Docket No. 21371, released August 6, 1982 (FCC 82–359) (Commission terminated docket proceeding to develop standards for RF test sites partially because ANSI was creating such a standard.) *See also* the NOI in this proceeding, *supra* note 1, at para. 9, citing previous Commission reliance on an earlier OSHA/ANSI RF radiation standard.

not provide adequate protection for certain segments of the public."

18. EPA advised that a plan for the development of "Federal Radiation Protection Guidance for Public Exposure to Radiofrequency Radiation" has been prepared by EPA's Office of Radiation Programs. This plan called for release of the proposed guidance for public comment by the fall of 1983 and publication of the final guidance approximately one year later. EPA suggested that "[u]ntil such time, the FCC should consider using a more conservative approach to evaluating public exposure than that provided in the OSHA standard." In December 1982, EPA issued an "Advance Notice of Proposed Recommendations," indicating its intention to develop "Federal Guidance" for exposure of the general public to RF radiation.[14] However, the EPA recommendations have not been officially released as of this date, and we cannot predict what action EPA will ultimately take in this area.

19. Reservations about FCC adoption of the OSHA guidelines were also expressed in comments submitted by Oregon officials Donald E. Clark and Dr. Charles P. Schade. For example, Schade maintained that occupational exposure standards "do not protect persons in the population who might be especially sensitive to radiofrequency energy." He mentioned small children and persons with chronic illnesses as examples of individuals who might be adversely affected by the Commission's use of an occupational standard as a standard for exposure of the general public.

20. There were two reasons for our initial proposal to rely on the OSHA occupational standard as an interim guideline for exposure of the general public. First, no standard had been established by the Federal Government for exposure of the general public to RF radiation. Second, as indicated in the NPRM, we believed that some guideline is necessary to facilitate the Commission's environmental review process until such time as EPA or another responsible federal agency recommends or adopts guidelines or standards for exposure of the general public to non-ionizing RF radiation.[15]

21. Subsequent development, however, as noted, necessitated a reconsideration of our initial proposal. In 1982, OSHA proposed to revoke the occupational RF radiation protection guide. Although OSHA reconsidered its original proposal and ultimately decided to retain the RF advisory standard, that reconsideration was for procedural rather than scientific reasons. Moreover, some of the respondents as noted, pointed out serious problems with Commission reliance on the OSHA occupational standard to evaluate public exposure to RF radiation. Finally, as noted, EPA has not yet developed "Federal Guidance" for public exposure to RF radiation.

22. Absent a federal standard for exposure of the general population, and in the face of the Commission's acknowledged statutory obligation under NEPA, two questions, therefore, remain. Under these circumstances can the Commission rely on existing exposure guidelines in view of the lack of federal standards? If it can, upon which guidelines should it rely?

23. First, we believe that the Commission can rely on existing exposure guidelines as long as they are technically sound and scientifically supportable. This reliance will unable us to fulfill our explicit NEPA statutory obligation to assess the environmental impact of our "major actions" with respect to potential RF and microwave radiation hazards.

24. Second, regarding the exposure guidelines on which the Commission will rely, in light of recent developments, and as a result of comments received in this proceeding, we are modifying our original proposal for evaluating FR radiation exposure (*see* Appendix 1). We are incorporating by reference into our NEPA rules the guidelines recommended by the American National Standards Institute (ANSI) entitled "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz" (ANSI C95.1–1982).[16] We believe that, for the present, our use of the ANSI guidelines will best implement our statutory obligations under NEPA.

25. We have selected the non-government ANSI guidelines to evaluate general population and worker exposure to RF radiation because they are scientifically based and widely accepted guidelines that are applicable to the general population as well as to workers. These ANSI guidelines were both mentioned in the NPRM and, as discussed in more detail below, advocated by a number of the respondents in lieu of the OSHA occupational exposure guidelines. Although we have neither the expertise nor the jurisdiction to *develop* our own radiation exposure guidelines, we believe, as supported by comments received in this proceeding, that the Commission does have the expertise and authority to *recognize* technically sound standards promulgated by reputable and competent organizations such as ANSI. The OSHA radiation protection guide upon which we had originally proposed to rely was based directly on the prior ANSI standard of 10 milliwatts per square centimeter (mW/cm^2) originally issued in 1966.[17] ANSI's revision of that standard, in 1982, reflected recently acquired knowledge of the biological effects of RF radiation. We, therefore, believe that the 1982 ANSI standard is more appropriate than the OSHA advisory guideline. Furthermore, the OSHA guidelines were written as an exposure guide for workers, whereas the 1982 ANSI recommendations "are intended to apply to non-occupational as well as to occupational exposures." The revised ANSI guidelines also apply to a broader frequency range than the OSHA guidelines and, unlike the OSHA guidelines, contain recommendations for exposure in the standard (AM) broadcast band.

26. We would prefer to defer in this area to the expert federal health and safety agencies. We believe, however, that NEPA requires us to consider the environmental impact of the operations and facilities we license or approve, regardless of whether federal standards currently exist or we have the requisite expertise to set such standards. For our purposes we require technically sound and widely recognizes guidelines which are scientifically supportable. Therefore, we have chosen with this rule amendment to rely upon the widely recognized 1982 ANSI RF radiation protection guidelines as an environmental processing trigger.

27. The Commission will be relying upon the ANSI guidelines to facilitate our environmental review obligations under NEPA.[18] Under our NEPA rules, environmental concerns, such as RF radiation exposure, are weighed and balanced in making a public interest determination. If a proposed operation or facility will result in human exposure in excess of the ANSI limits, environmental analysis will be required. However, the application can be amended to reduce or eliminate the possibility for excessive exposure. If an environmental impact statement is necessary, with regard to RF radiation, the ANSI guidelines will be used in determining whether the environmental

[14] *See* 47 FR 57338 (1982).

[15] *See* NPRM, note 3, *supra*.

[16] *See* note 10, *supra*.

[17] *See* 29 CFR 1910.99, "Source of standards," identifying the basis for OSHA's RF radiation guide.

[18] *See* note 4, *supra*.

impact or risks outweigh the benefits of the proposal.

28. We are aware of new or proposed recommendations for exposure to RF radiation promulgated by other organizations subsequent to the issuance of our NPRM. For example, new exposure guidelines, more restrictive than the ANSI standard for exposure of the general public, were released in April, 1984, by the International Radiation Protection Association (IRPA).[19] The National Council on Radiation Protection and Measurements (NCRP) is currently developing RF exposure guidelines for workers and the public. In addition, the American Conference of Governmental Industrial Hygienists (ACGIH) and the National Institute for Occupational Safety and Health (NIOSH) have recommended or are developing recommendations for occupational exposure to RF radiation, and, as discussed previously, EPA has been in the process of developing federal guidelines for RF exposure. While IRPA has now issued guidelines and other groups may do so in the future, we believe that the Commission should act on the basis of the record before us at the present time rather than postpone action indefinitely as we seek the ultimate standard. It is possible that we may revisit this issue and recommend use of a different standard in the future. However, for the present, the record before us supports use of the 1982 ANSI standard.

C. License Renewals and Modifications

29. We have determined that we are legally obligated under NEPA to include license renewal and facility modification applications within the scope of our environmental processing guidelines. To clarify as well as quality the applicability of our amended NEPA processing rules to such applications, we would note the following points. First, both the NEPA case law [20] and regulations of the Council on Environmental Quality implementing the statute [21] make clear that the statutory term "major Federal action" includes both new and continuing Federal activities such as initial licensing as well as license renewals and modifications.

30. Second, NEPA encompasses continuing as well as initial federal actions so as to make environmental quality and environmental protection ongoing concerns of every federal agency.[22] Third, with its emphasis on ongoing environmental quality and protection under ever changing environmental circumstances, the NEPA statute does not provide for grandfathering of any existing facility or project.[23] The procedural requirements of the statute, however, are not applicable to, or triggered by, existing facilities but only apply to, and are triggered by, applications for new facilities, or renewals or modifications, the approval of which would constitute "major Federal actions significantly affecting the quality of the human environment."[24]

31. Finally, based on industry comments received in this proceeding, it is our expectation that, in fact, the vast majority of license renewal and facility modification applications will comply with the ANSI standard we are incorporating today into our NEPA processing guidelines.[25] Thus, our approval of such applications in most instances will not constitute a "major Federal action significantly affecting the quality of the human environment" so as to trigger environmental processing with respect to RF radiation. Therefore, as indicated earlier, we expect that most licensed operations seeking renewal or modification of a previously approved facility without increasing their RF emissions, would, in effect, be exempted from further Commission environmental processing of the particular application. Remaining then for such processing would be those applications which would not comply with the RF radiation standards, including a minority of applications for new facilities, license renewals, and modifications of existing facilities.

D. Evaluation of Compliance

32. Many respondents raised questions that related to the evaluation of whether a facility or operation was in compliance with a given standard. For example, American Telephone and Telegraph (AT&T) expressed its concern that "the intent of the proposed rule is not sufficiently clear and . . . this slight ambiguity may result in an unnecessary burden to the Commission as well as applicants." AT&T argued that the proposed rule should address "real, not merely hypothetical, situations in which the emission or exposure guidelines would be exceeded." AT&T urged that the rule make specific reference to exposure "under normal working conditions" and "using standard maintenance and repair practices" and, with respect to public exposure, should make specific reference to exposure "in normally accessible areas."

33. Concern over measurement procedures, particularly in the near-field of a radiating source, was expressed by some respondents. Motorola felt that adoption of the proposed rules without establishing measurement procedures was "in effect, adoption of no [r]ules at all. . . . [E]nforcement of the rules could be next to impossible in near-field situations. We urge the Commission to promulgate [r]ules *only* after appropriate measurement procedures have been established. . . ." (emphasis in original).

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[19] "Interim Guidelines on Limits of Exposure to Radiofrequency Electromagnetic Fields in the Frequency Range from 100 kHz to 300 GHz," published in *Health Physics*, Vol. 46, No. 4, pp. 975–984 (April 1984).

[20] *See, e.g., Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766, 775 (1983) ("The federal action that affects the environment in this case is permitting *renewed* operation of [the Three Mile Island—1 nuclear reactor]."] (emphasis added); *People* vs. *Nuclear Energy* vs. *Nuclear Regulatory Commission*, 678 F.2d 222, 231 (D.C. Cir. 1982) (The " 'major federal action' in the case of TMI-1 is . . . the Commission's continued exercise of supervisory responsibility over its operation and maintenance."). *See also Far East Broadcasting Co., Inc.*, 65 F.C.C. 2d 496 (1977) (FCC denied petition opposing license renewal on basis of alleged radiation effects.)

[21] *See, e.g.*, 40 CFR 1508.18 (1978) defining "major Federal actions" to "include new and continuing activities." *See also Lee* v. *Resor*, 348 F. Supp. 389, 395 (M.D. Fla. 1972) (citing CEQ guidelines applying NEPA requirements to continuing programs or activities.)

[22] *See, e.g., Lathan* v. *Volpe*, 455 F.2d 1111, 1118, 1121 (9th Cir. 1971) (NEPA does not apply retroactively, but it is applicable to continuing those ongoing federal projects, including those commenced prior to January 1, 1970, the effective date of the NEPA statute); 40 CFR 1502.9(c)(1)(ii), the CEQ regulation requiring agencies to modify environmental analyses in order to take into account "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact;" *Scientists' Institute for Public Information, Inc.* v. *AEC*, 481 F.2d 1079, 1088 (1973); *Monarch Chemical Works, Inc.* v. *Exxon*, 452 F. Supp. 493 (D.C. Neb. 1978), *aff'd* 604 F.2d 1083 (8th Cir. 1979); *Bennett* v. *Taylor*, 505 F. Supp. 800 (D.C. La. 1980).

[23] Although both the NEPA statute and the accompanying legislative history are silent on grandfathering, the legislative intent is explicit in its enunciation of concern for ongoing environmental quality, a value which will be endangered by, and inconsistent with, grandfathering of facilities despite possibly changing environmental circumstances and standards. Consider for example, the situation of an FM radio facility first licensed under one RF exposure standard in 1985. When it comes up for renewal seven years later, the application should be examined in the light of *current* environmental circumstances for RF exposure standards in 1992 in order to protect both environmental quality and the public health and safety at that time. Grandfathering such a facility in 1985, however, would preclude such an examination.

[24] *See, e.g.*, 40 CFR 1508.18 defining "major Federal actions."

[25] *See, e.g.*, Comments of Motorola, Inc., the NAB, and the TVBAC, para. 11–13, *supra*.

Motorola, therefore, suggested that the Commission consider relying upon the new ANSI standard as a basis for an RF radiation criterion in its NEPA processing rules because that standard provides for an alternative measurement technique for near-field exposure.

34. NAB also mentioned potential measurement problems and pointed out that far-field measurement techniques and formulas may not be applicable in the near-field. NAB suggested that broadcasters be allowed to rely on actual measurements made by qualified engineers in lieu of being obliged to use far-field formulas for characterizing RF energy levels.

35. In its comments, NAB also discussed the problem of locations where many different sources of RF energy are present. NAB contended that "[i]n some instances, there is no practical alternative but to locate a variety of transmitting antennas on one tall buidling or mountain peak. At these locations, the cumulative radiation levels might exceed the new ANSI standard—but almost never in any area accessible to the public." NAB suggested that the Commission should consider various methods to prevent exposure to hazardous radiation at these sites but maintained that "[n]o license or applicant should be subjected to special processing where transmitting equipment under that licensee's control by itself produces radiation levels not in excess of the standards."

36. In order to address these various concerns related to the determination of compliance with standards, and to give guidance to our licensees, we plan to issue a technical bulletin which will be developed by Commission staff before the effective date of our rule amendment. This bulletin will discuss prediction methodology, evaluation of exposure situations, measurement problems, multiple source siting, and other relevant issues. For example, in the case of a simple, isolated, broadcast antenna, a "worst-case" prediction for power density in the far-field of the antenna can be made by dividing the effective isotropic radiated power (EIRP) by either $4\pi R^2$ or πR^2 (depending on whether 100% ground reflection is assumed), where R = the minimum distance from the antenna where people might be exposed. Although generally applicable in the far-field, this prediction method could also be used to estimate a "worst-case" *upper limit* for intensities in the near-field of simple, isolated, broadcast antennas. The use of such a formula could provide *prima facie* evidence that a station would be in compliance with the ANSI standard. Other appropriate methods would be acceptable for evaluating compliance, including actual measurement data as suggested by NAB.

37. With regard to AT&T's concerns over the interpretation of standards, we believe that the ANSI standard on which we propose to rely is reasonably clear as to its applicability. Since we intend to rely on guidelines established and defined by a qualified, non-government, standard-setting organization, we are not in a position to rewrite or modify them. Such guidelines should be self-explanatory, and it will be the responsibility of the applicant to demonstrate compliance with them. However, to avoid confusion our forthcoming bulletin will discuss applicability of the ANSI standard and its interpretation. It should be emphasized that *accessibility* is a key factor in determining compliance with an exposure standard. Compliance can often be realized by appropriate restrictions on accessibility to the environment surrounding an RF transmitting source.

38. In the future, it is expected that various standard-setting agencies and organizations will be issuing information on prediction methods and measurement procedures for use in evaluating exposure to RF radiation. For example, ANSI, EPA, and NCRP (*see* para. 28, *supra*) are all working separately to develop further documentation on this topic. In the meantime, as noted, the ANSI C95.1–1982 standard incorporates certain measurement guidelines.[26] Therefore, our reliance on the ANSI standard should address the concerns expressed regarding the need for Commission clarification of measurement procedures.

39. Concerning the problem of multiple transmitters at the same location, if a proposed facility or modification would result in an incremental increase in RF radiation in an accessible area causing overall non-compliance with the specified guidelines, then we can see no practical way to address this situation other than to require an environmental assessment of the proposal. *Existing* facilities that are not proposing modifications in their operations or are not applying for renewal would not be subjected to NEPA processing under our rules. In the case of renewals at multiple-use sites, all licensees involved will be *jointly* responsible for resolving problems that may arise relative to exposure to RF radiation. Further guidance on evaluation of multiple-use situations will be provided in the bulletin.

E. Docket 79–163 and Categorical Exclusion

40. Motorola, Inc., although generally supporting the Commission's proposed rule, urged us to incorporate the substance of Docket No. 79–163 into this rulemaking proceeding. Docket 79–163 involves amending the Commission's rules for implementing NEPA so that the rules will be in accordance with the latest directives of the Council on Environmental Quality (CEQ).[27] In particular, Motorola argued that the "categorical exclusion" principle of the rules proposed in Docket 79–163 should be incorporated here.[28] According to Motorola, incorporation of the categorical exclusion principle "will most effectively accommodate the likelihood that most applications for equipment authorizations or transmitting facilities will *not* have a significant affect [sic] on the quality of the human environment and thus be *explicity excluded* from the Commission's environmental processing requirements." (emphases in original)

41. The Commission understands the concerns of Motorola regarding this issue. We believe, however, that it is beyond the scope of this present rulemaking proceeding to incorporate into it the substance of Docket No. 79–163. This present proceeding is narrowly limited in both scope and purpose and is designed solely and simply to add an RF radiation criterion to the Commission's environmental processing rules. Docket No. 79–163, on the other hand, is a much broader proceeding which would amend the entire set of Commission rules for implementing NEPA in accordance with revised NEPA regulations issued by the Council on Environmental Quality. We believe this latter proceeding deserves separate, thorough consideration by the Commission. Inclusion of this more extensive proceeding within the confines of the present rulemaking would only confuse the latter's consideration and delay its completion. With regard to Motorola's desire for

[26] *See* ANSI C95.3–1973, "American National Standard Techniques and Instrumentation for the Measurement of Potentially Hazardous Electromagnetic Radiation at Microwave Frequencies" and ANSI C95.5–1981, "American National Standard Recommended Practice for Measurement of Hazardous Electromagnetic Fields—RF and Microwave." Both publications are available from ANSI. *See* note 10, *supra*, for address.

[27] *See* 44 FR 38913 (1979).

[28] The CEQ guidelines allow agencies to identify actions which do not normally have a significant effect on the quality of the human environment and to "categorically exclude" such actions from environmental processing requirements. *See* 40 CFR Parts 1500–1508, *et seq.*

"categorical exclusion" as proposed in Docket 79-163, we point out that, by establishing a threshold for radiation review under our NEPA procedures in Docket 79-144, we are, in effect, already categorically excluding certain types of transmitting operations and facilities. Moreover, we are proposing in the accompanying *Further Notice* a broader application of the principle of categorical exclusion.[29]

F. Federal Preemption of Local and State Standards

42. We continue to be aware that, largely due to the lack of a federal standard, various state and local jurisdictions around the country either have adopted or have proposed standards for exposure of the general public to RF radiation. The issue of federal preemption of such local and state RF standards was a recurring theme in many of the comments. Several of the respondents stressed the need for a federal radiation standard to preempt possibly inconsistent and nonuniform state and local regulation of RF radiation.[30] Others called for the issuance of a Commission policy statement on federal preemption of state and local RF exposure standards that may adversely affect operations and public availability in interstate telecommunications services.[31]

43. We have reviewed these comments closely and given the matter serious consideration. However, we do not believe it is necessary at this time to resolve the issue of federal preemption of state and local RF radiation standards.[32] Should non-federal RF radiation standards be adopted, adversely affecting a licensee's ability to engage in Commission-authorized activities, the Commission will not hesitate to consider this matter at that time.

G. Other Issues

44. Various respondents raised a few other issues, mostly dealing with particular operations or exposure situations. For example, the Radio Officers Union (ROU) of the National Marine Engineers' Beneficial Association, AFL-CIO, submitted comments pertinent to the maritime mobile service. Although ROU could foresee no RF hazards associated with conventional maritime radio transmitters and ship radar equipment, the union felt that shipboard satellite earth stations posed a potential hazard that should be promptly addressed by OSHA and the FCC. The ROU stressed that there are presently no safety regulations with regard to both installation and operation of ship earth terminals. According to the ROU, the primary hazard of such equipment results from their antennas frequently being mounted only a few feet above deck level. The union also expressed concern about port operation of satellite equipment with regard to tankers, LNG carriers, ammunition ships, and similar vessels, as well as the potential for exposure of persons standing dockside.

45. Some respondents urged the Commission to exclude certain types of transmitters from consideration under the NEPA processing rules because of the apparent incapacity of these devices to cause potentially hazardous exposure to RF radiation. For example, Motorola mentioned portable radios operating between 300 kHz and 1 GHz with output powers of seven watts or less. NAB suggested an exemption for mobile electronic news gathering ("ENG") equipment used by broadcasters. According to NAB, "these services also pose virtually no health hazard because of the transient nature of the exposure." NAB further urged the Commission to exclude all transmitters with power outputs below ten watts from the environmental assessment rules. Similarly, ARINC urged the Commission to exclude the aeronautical mobile service from consideration under § 1.1305, and ARRL proposed an exemption for amateur radio.

46. These issues are important and are of concern to the Commission. Suggestions concerning the placement of antennas and the possible categorical exclusion of specific types of transmitters provide us with useful information that can be used in the development of FCC policy with respect to the evaluation of the environmental impact of Commission actions. Our rule amendment will only apply to transmitting facilities that, in our judgment, could have a significant environmental effect with regard to RF radiation exposure. Other types of transmitters such as those discussed above would be categorically excluded from the provisions of the rule as proposed in our *Further Notice*[33]

47. Another topic mentioned by several respondents was the matter of FCC participation in the rulemaking activities of health and safety agencies such as EPA and OSHA. TVBAC pointed out that one of the original purposes of this docket was to provide documentation the Commission could use in assisting other government agencies in developing RF safety standards that would adequately take into account the impact of standards on FCC regulatees. TVBAC, ABES, and CBS all encouraged the Commission to be an active participant in the proceedings of other federal agencies. To quote TVBAC, "[t]he FCC should actively encourage and assist EPA and OSHA in developing definite national RF radiation standards with due regard for their effect on publicly important comunications services."

48. In this context, it should be noted that the Commission has cooperated with EPA in its development of "Federal Guidance" for public exposure to RF radiation. The Commission has participated in meetings of an interagency working group that was established by EPA to assist it in preparation of its guidelines. The FCC also maintains a liaison relationship with other agencies which may be involved in future standard-setting activities with regard to RF radiation.

IV. Conclusions

49. As a result of our consideration of the comments and reply comments received in this proceeding and an analysis of the Commission's statutory obligations, we have come to the following conclusions regarding potential radiofrequency (RF) radiation hazards from FCC-regulated operations and facilities. Although the Commission has neither the expertise nor the authority to develop its own health and safety standards, we are required by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* (1976), to consider whether Commission actions will significantly affect the quality of the human environment, 42 U.S.C. 4332(2)(c). For this reason, we are today amending our rules implementing NEPA to provide for assessment under our environmental rules of applications for construction permits or licenses to transmit, including renewals and

[29] *See* para. 58, *infra*, for discussion of our proposal regarding categorical exclusion.

[30] *See, e.g.*, Comments and Reply Comments of the American Radio Relay League (ARRL), and CBS, Inc.

[31] *See, e.g.*, Comments and Reply Comments of the TVBAC, the NAB, and Thomas C. Agoston.

[32] To our knowledge, only Portland and Multnomah County, Oregon, the Commonwealth of Massachusetts, the state of New Jersey , and the New York Port Authority have adopted RF radiation standards concerning general population exposure. The New York Port Authority standard applies solely to facilities transmitting from the World Trade Center in New York City. A few other states are also considering the adoption of RF radiation exposure standards. For further details of these state and local actions, *see* comments or reply comments filed in this proceeding by the American Radio Relay League, the Association for Broadcast Engineering Standards, Inc., the National Association of Broadcasters, and the TV Broadcasters All Industry Committee.

[33] *See* para. 58, *infra*.

modifications thereof, which would result in non-compliance with applicable health and safety standards for exposure to RF radiation. Our concern is that any significant impact on the human environment with respect to RF radiation should be taken into account as a part of Commission procedures for approving transmitting facilities and operations.

50. We had originally proposed to evaluate exposure of the population at large on the basis of advisory guidelines issued by the Occupational Safety and Health Administration (OSHA) for exposure of workers to RF radiation. However, the OSHA radiation protection guide was based on a non-government exposure standard which has since been revised in light of current knowledge of the biological effects of RF radiation. The revised standard is written to apply to both workers *and* the general public. Several respondents in this proceeding urged us to use this widely recognized RF exposure standard, issued in 1982 by the American National Standards Institute (ANSI), as an interim guideline. Some respondents, including the EPA, expressed concern over our original proposal to use a standard that may not offer sufficient protection for the public with regard to radiation exposure. Additionally, the Office of Management and Budget has encouraged government use of voluntary, non-government standards whenever possible.

51. We believe the fact that there are currently no mandatory federal standards for exposure of the public to RF radiation does not excuse us from our obligations under NEPA to evaluate FCC actions for significant environmental impact. Therefore, we have modified our original proposal by adding a provision for using the revised ANSI standard as a processing guideline for human exposure to RF radiation. The ANSI standard will be the triggering mechanism for environmental assessment in all situations where our rule amendment applies.

52. We believe that applications for transmitting facilities which are in compliance with applicable health and safety standards for RF radiation would not ordinarily have a significant effect on the environment and thus would not fall within our NEPA analytical processes, at least with regard to RF radiation. On the other hand, applications for facilities that are not in compliance with applicable health and safety standards for RF radiations will require a more thorough analysis of their environmental impact.[34] The amendment to our rules that we are making today will assure that analysis. In our view then, our statutory obligations under NEPA with respect to RF radiation will have been satisfied.

53. Therefore, we are today adding a new paragraph (d) to subpart I of part 1 of the Commission's Rules (*see* Appendix 1).[35] Under this rule, a narrative environmental statement and processing under our NEPA rules will be required for initial and renewal licensing applications or for applications seeking modifications of existing facilities for the services and facilities listed below if the operation in question would not comply with the applicable guidelines for exposure of workers or the general public to radiofrequency radiation. This rule change uses noncompliance with guidelines issued by a widely recognized, non-government organization as the processing trigger for invoking our environmental processing procedures.

54. The rule amendment we are adopting today will initially only apply to actions taken by the Commission with respect to the following facilities authorized by the FCC Rules and Regulations: (1) Broadcast facilities authorized under Part 73; (2) broadcast facilities authorized under Part 74 (subparts A and G only); (3) satellite-earth stations authorized under Part 25; and (4) experimental facilities authorized under part 5. Based on information received to date in this proceeding, we believe that there is sufficient evidence that transmitting facilities in these categories could possibly create situations in which applicable safety standards for exposure to RF radiation might be exceeded. Because facilities in the above categories may operate with relatively high power levels or may be located in or near accessible areas, such facilities will be subject to this rule amendment and possible NEPA processing.

55. Maximum power limitations for broadcast facilities authorized under Part 73 range from 50 kilowatts (AM radio) to over megawatts (UHF television). Also, for applicable Part 74 facilities there are no limitations on maximum power under Subpart A (experimental broadcast stations), and under Subpart G (low power television) no maximum for effective radiated power is stipulated. Therefore, these various broadcast facilities may operate with effective radiated powers (ERP) of thousands to millions of watts. Since broadcast transmitters are sometimes located in areas that are accessible to workers or the general public, and broadcast stations generally transmit over major portions of a 24 hour day, it is possible that such transmitters could cause exposures in excess of safety standards. Moreover, comments filed previously in this proceeding presented evidence that it is possible for some broadcast facilities to create conditions that might lead to significant human exposure to RF radiation.[36]

56. Transmitting satellite-earth stations authorized under Part 25 of the FCC Rules and Regulations operate with very high ERPs. However, the high degree of directionality of the transmitted beam makes excessive exposure unlikely. Our experience over the past several years in this area and on-site measurements have demonstrated that normal design and operating practice make it highly unlikely that workers or the general public would be exposed to excessive levels of RF radiation from these facilities. Nevertheless, we believe it necessary to subject these facilities to the provisions of this rule because of the high amounts of RF energy involved. Similarly, experimental facilities authorized under Part 5 may operate with relatively high power levels, and, therefore, will be subject to this rule amendment.

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[34] It should also be noted that under the Commission's present rules implementing NEPA, the Commission may, on its own motion or on the motion of an interested person, decide that the preparation of an environmental impact statement is warranted. 47 CFR 1.1305(c) (1977). *See also* 47 CFR 1.1313(b)(2) with regard to staff responsibility for preparing a draft environmental impact statement.

[35] The final language of the rule we are issuing has been modified from the text of the proposed rule in several respects, all of which, we believe, are within the scope of our original NPRM. We have modified the proposed rule so that it will only apply to certain services and have added a note to that effect. We have clarified the introductory clause to make clear that we are adding to the "major actions" listed in paragraph (a) and to the provisions of paragraph (c) of § 1.1305 of the Commission's NEPA rules. We have deleted the proposed paragraph dealing with *emission* standards for RF radiation since the only applicable standard would be the one established for microwave ovens by the Food and Drug Administration, and no evidence has been presented that microwave ovens constitute a hazard to the public from RF radiation. We have added language to clarify the applicability of this rule to license renewals and modifications of existing facilities, as fully explained in para. 29–31, *supra*. We have revised the language in paragraph (d) to incorporate by reference into our NEPA processing rules the ANSI standard, C95.1–1982. Finally, we have deleted reference to federal standards or guidelines in order to allow for flexibility in our consideration of the applicability of such standards or guidelines to our statutory obligations under NEPA.

[36] *See* NPRM, note 1, *supra*, at para. 19, 39–43, 95–96.

57. It should be noted at this point that we have already been reviewing radiation hazards of land based satellite-earth stations as part of our domestic satellite-earth station licensing process since our 1972 *Memorandum Opinion and Order* in Docket No. 16495.[37] Since the rule amendment we adopt today will be applicable to satellite-earth stations authorized under Part 25 of the FCC Rules, it will supersede the 1972 action.

58. With regard to other categories of FCC-regulated operations and facilities, because of relatively low operating power levels, intermittent use, or relative inaccessibility, it appears unlikely that they would cause exposure in excess of safety standards during routine use. Therefore, we are today also issuing a *Further Notice of Proposed Rule Making*[38] in which we propose to exclude from the provisions of this rule other transmitting facilities and sources which are not included in the categories listed above. Through this *Further Notice* we are soliciting information, comments, opinions, and suggestions relevant to the legitimacy of this proposed categorical exclusion. Comments received in response to this *Further Notice* will be used to determine whether further revisions are necessary at this time in the FCC's rules with respect to this issue and whether there are other RF sources and transmitting facilities which should be subject to this rule amendment. As discussed in note 34, *supra*, even though we are proposing to exclude a large number of Commission actions from consideration under this rule, the Commission "on its own motion or on motion of any interested person, may determine that the environmental consequences of a particular action are such as to warrant preparation of an environmental impact statement." *See* § 1.1305(c) of the FCC Rules and Regulations.

59. In our *Further Notice* we are also proposing the inclusion of shipboard-satellite earth stations, authorized under Part 83, Subpart AA, of the FCC Rules and Regulations, in the category of facilities to which our rule amendment would apply. We believe that, because of the relatively high effective radiated power of ship-satellite earth stations, and because of the questions regarding safety raised by the ROU, an environmental analysis of some of these transmitters may be necessary. Even though the transmitted beams from these antennas are highly directional, there may be reason to be concerned over the possibility of excessive exposure. However, we point out that at this time the inclusion of these facilities is only a proposal, and we believe that a complete record in support of this action is needed. We invite comment on this proposal.

60. Regarding paperwork burden, it should be noted that most applicable FCC forms already incorporate, or will be modified to incorporate, a short provision inquiring as to whether the application would constitute a major action under our NEPA rules. This check-off procedure will still be applicable with regard to the amended rule. Moreover, we believe that the overwhelming majority of applications to the Commission will not be subject to environmental impact analysis as provided for in our NEPA rules and by this amendment.

61. While we are aware of the adoption of standards in this area by local and state authorities, we do not believe it is necessary at this time to resolve the issue of federal preemption of state and local RF radiation standards. Should non-federal standards be adopted, adversely affecting a licensee's ability to engage in Commission-authorized activities, the Commission will not hesitate to consider this matter at that time.

62. In summary, because of the requirements of the National Environmental Policy Act, we are adopting an amendment to Part 1 of our rules which will enable the Commission to consider whether its actions will significantly affect "the quality of the human environment" with respect to human exposure to radiofrequency radiation. At the present time we will rely on provisions of the ANSI RF radiation standard as a processing guideline to evaluate applications under our environmental processing rules. We believe that our use of the widely recognized ANSI standard will, at this time, best meet our obligations under NEPA for environmental analysis of exposure to RF radiation.

V. Regulatory Flexibility Act Final Analysis[39]

A. Reason for Action

The Commission has considered comments received in response to its *Notice of Proposed Rule Making* in Docket 79-144. The comments received generally support the view that a clarification of Commission responsibilities is required to avoid confusion among those entities regulated by the Commission regarding their own responsibilities with respect to potential hazards of radiofrequency (RF) radiation. Furthermore, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* (1976), requires the Commission to consider whether the facilities and operations it licenses or authorizes will significantly affect "the quality of the human environment." For these reasons, we are amending our rules implementing NEPA to address situations involving non-compliance with standards for exposure to RF radiation.

B. The Objective

The Commission is amending its rules implementing NEPA in order to clarify its policy with regard to potential hazards from RF radiation emitted by transmitting facilities that we license or authorize and to comply with our legal obligations under NEPA.

C. Legal Basis

This action is based on the obligations imposed on the Commission by NEPA, *supra*, and is in furtherance of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r) (1978). These provisions permit the Commission to make rules and regulations not inconsistent with other existing laws, "as may be necessary in the execution of its functions," and "to carry out the provisions of" the Communications Act.

D. Description, Potential Impact, and Number of Small Entities Affected

It is expected that there will be no significant impact on most small entities that the FCC regulates. Small entities that may be in violation of present or future health and safety standards for RF radiation could be affected because of corrective actions that might be necessary to bring them into compliance. However, we believe that the great majority of the facilities licensed or authorized by the Commission will be in compliance with the indicated radiation guidelines.

E. Recording, Recordkeeping, and Other Compliance Requirements

No specific record-keeping requirements are contained in the new rules. Certain applicants for construction permits, licenses, renewals,

[37] *See* In the Matter of *Establishment of Domestic Communications-Satellite Facilities by Non-Government Entities*, 38 F.C.C. 2d 665, 700-704 (1972).

[38] *Further Notice of Proposed Rule Making*, Gen. Docket 79-144, FCC 85-91, published March 18, 1985.

[39] This analysis is made pursuant to the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 603.

and facility modifications may be expected to show compliance with an RF radiation exposure standard. "Major actions," as defined under our NEPA rules, will include facilities not in compliance with provisions of standard C95.1–1982 recommended by the American National Standards Institute. Applicants for construction permits, licenses to transmit or renewals, thereof, or modifications to existing facilities must notify the Commission when the operation in question would not comply with the provisions of the guidelines indicated in § 1.1305(d) and indicate what corrective measures or precautions will be taken to assure compliance. Such notice can be provided through applicable FCC forms which already incorporate, or will be modified to incorporate, a short provision inquiring as to whether particular applications constitute a "major action" under our NEPA rules.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

There are none of which we are aware. This action is designed to bring our rules into compliance with the provisions of NEPA, as well as to inform our regulatees what the Commission expects of them with regard to RF radiation exposure. We are pointing to existing or future standards and regulations which may apply to our regulatees, and no overlap or duplication is foreseen.

G. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objective

Because of our legal obligations under NEPA, we believe it necessary to amend our rules to address the environmental impact of RF radiation emitted from transmitting facilities we authorize. We see no reasonable alternative to this action, and the new rule appears to offer the most logical approach to assure compliance with applicable standards. There are alternative ways of addressing this issue. For example, we might have considered adopting our own radiation standards independent of these set by other agencies. Such standards could conceivably have less impact (or more) on small entities. However, we believe that we have neither the expertise nor the authority to set health and safety standards, and we choose to defer to other agencies or a qualified non-government organization in establishing safe levels for RF radiation. We might also have chosen to take no action at all. However, this would be inadvisable for at least two reasons. First, we are legally obligated under NEPA to determine whether Commission "major actions" significantly affect "the quality of the human environment." Secondly, we believe that our regulatees desire and expect us to clarify our mutual responsibilities in this important area of growing public concern.

VI. Ordering Clauses

Accordingly, it is ordered that, effective October 1, 1985, Part 1 of the Commission's Rules and Regulations, 47 CFR Part 1, is amended as set forth in Appendix 1, and that the amendment will be applicable to applications filed on or after this effective date. This action is taken pursuant to the provisions of section 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r), and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Further information on this matter may be obtained by contacting Dr. Robert Cleveland, Office of Science and Technology, (202) 632–7040, or Mr. Stephen Klitzman, Office of General Counsel, (202) 632–6405.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

PART 1—[AMENDED]

Subpart I, Part 1, Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new paragraph (d) to § 1.1305 to read as follows:

§ 1.1305 Major actions.

* * * * *

(d) In addition to the actions listed in paragraph (a) and to the provisions of paragraph (c) of this section, and notwithstanding the provisions of paragraph (b) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, or Commission actions authorizing modifications in existing facilities, will be treated as major actions if the facility or operation in question would result in exposure of workers or the general public to levels of radiofrequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz," (ANSI C95.1–1982), issued by the American National Standards Institute (ANSI), 1430 Broadway, New York, New York 10081, and copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.

Note.—The provisions of paragraph (d) shall only apply to facilities and services licensed or authorized under Parts 5, 25, 73, and 74 (Subparts A and G only) of the FCC Rules and Regulations.

Appendix 2

Respondents to *Notice of Proposed Rule Making* in Docket 79–144 (Listed Alphabetically)

(1) Aeronautical Radio, Inc. ("ARINC"; reply comments only).

(2) Thomas Charles Agoston.

(3) American Radio Relay League, Inc. ("ARRL"; comments and reply comments).

(4) American Telephone and Telegraph Company ("AT&T").

(5) Association for Broadcast Engineering Standards, Inc. ("ABES").

(6) CBS, Inc. ("CBS").

(7) Donald E. Clark, County Executive, Multnomah County, Oregon.

(8) Doubleday Broadcasting Company, Inc.

(9) GTE Service Corporation ("GTE"; comments and reply comments).

(10) Motorola, Inc. (comments and reply comments).

(11) National Association of Broadcasters ("NAB"; comments and reply comments).

(12) National Association of Public Television Stations.

(13) Radio Officers Union, National Marine Engineers' Beneficial Association, AFL–CIO ("ROU").

(14) RCA Corporation ("RCA").

(15) Satellite Business Systems ("SBS").

(16) Charles P. Schade, M.D., Health Officer, Department of Human Services, Multnomah County, Oregon.

(17) TV Broadcasters All Industry Committee ("TVBAC").

(18) U.S. Environmental Protection Agency ("EPA").

(19) Utilities Telecommunication Council ("UTC").

[FR Doc. 85–6583 Filed 3–19–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 1 and 21

[Gen. Docket No. 80-112]

Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors found in Appendix B of the Final Rule (Second Report and Order) in this proceeding concerning the Instructional Television Fixed, Multipoint Distribution, and Private Operational Fixed Microwave Services (published in the Federal Register on February 13, 1985, 50 FR 5983).

FOR FURTHER INFORMATION CONTACT: Susan C. Belardi (202) 634-1843 or 634-1860.

Erratum

In the matter of amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to The Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service (General Docket No. 80-112).

Released: March 13, 1985.

The Second Report and Order in the above captioned proceeding (FCC 84-568) released February 1, 1985 (50 FR 5983) contained errors in Appendix B. The two errors are listed below:

On FR page 5991, Grants by Random Selection, paragraph number two should read:

§ 1.822 [Amended]

2. "Section 1.822 is removed and § 1.823 is now retitled "General Selection Procedures", redesignated as new § 1.822 and paragraph (a) is revised as follows . . ."

§ 1.1622 [Amended]

On FR page 5992, § 1.1622(e) introductory text is also revised to read as follows:

* * * * *

(e) No preferences pursuant to § 1.1622(b)(2) or (b)(3) shall be granted to any LPTV or MDS applicant whose owners, when aggregated, have an ownership interest of more than 50 percent in the following media of mass communications, if the service areas of those media as described herein wholly encompass or are encompassed by the protected predicted contour, computed in accordance with § 74.707(a), of the low power TV or TV translator station for which the license or permit is sought, or computed in accordance with § 21.902(d), of the MDS station for which the license or permit is sought.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-6577 Filed 3-19-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 42 and 43

[CC Docket No. 78-302; FCC 83-33]

Changes Regarding Provisions for the Reporting of Detailed Traffic Statistics of Telephone Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that routine submission of detailed traffic statistics is unnecessary for it to meet specific regulatory responsibilities. Based on the burden the proposed reporting requirement would place on the carriers and the Commission, it has decided that the proposed reporting requirement is not in the public interest and therefore will not modify the Rules to require such data.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Feldman, Common Carrier Bureau, (202) 632-7084.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 42 and 43

Communications common carriers, Reporting and recordkeeping requirements.

Report and Order (Proceeding Terminated)

In the matter of changes in Parts 42 and 43 of the Commission's rules so as to provide for the reporting of detailed traffic statistics of telephone common carriers (CC Docket No. 78-302; FCC 83-33).

Adopted January 20, 1983.

Released January 24, 1983.

By the Commission.

Introduction

1. On September 28, 1978, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*)[1] to change Parts 42 and 43 of the Commission's Rules to provide for the reporting of detailed traffic statistics of telephone common carriers. The *NPRM* proposed to require each telephone common carrier operating an automated Centralized Message Data System (CMDS) to file with the Commission periodic reports in standardized form. These reports would consist of MTS and WATS traffic data, data on all tariff rates in effect, and a report listing all plant and facilities in place.

Background

2. The American Telephone and Telegraph Company developed the CMDS as part of an industry-wide project begun in the early 1970's. The CMDS is an automated system for collecting detailed traffic statistics. Though managed by AT&T, it includes a large percentage of non-Bell traffic. The CMDS data base is used by the carriers for various purposes, such as providing basic toll traffic statistics used in toll separations and division of revenue studies. It is also used in the development of MTS and WATS demand models, which AT&T has used in rate cases before the Commission. The CMDS is also used by AT&T as a source of information for the Interim Cost Allocation Manual (84 FCC 2d 384), which was developed to prescribe specific procedures to be followed by AT&T in allocating costs among its interstate services.

3. In the past, the Commission has been involved in traffic and demand studies for interstate MTS. AT&T has voluntarily submitted traffic data to assist in the Commission's efforts. Foreseeing a continuing need for these data in the future, the Commission initiated this proceeding to formalize the data request. The Commission viewed the requested data as being useful in analyzing the demand for telecommunications services and assessing the revenue impact of proposed rate changes.

Comments

4. Comments on the *NPRM* were filed by AT&T, USITA, GTE and IDCMA, with AT&T and MCI filing reply comments. Both AT&T and GTE discuss the enormity of the data request. Though expressing its willingness to provide the Commission with CMDS data, AT&T points out that the proposal in the *NPRM* would result in the Commission's receiving over 125 computer tapes annually. According to AT&T, the Commission's processing of these tapes would require substantial computer time and a large staff, which could potentially cost millions of dollars annually. To meet this information request, AT&T contends that it would compile and retain over 1,000 reels of magnetic tape annually, with annual storage costs alone after the first five

[1] 69 FCC 2d 672.

years of approximately $180,000.[2] GTE also states that compliance with the proposed rules would be costly. It estimates it would incur start-up costs of $450,000 and subsequent annual costs of $160,000.

5. In addition to the large expense of implementing the CMDS reporting requirement there are other complications (discussed by both AT&T and GTE) that would arise from the reporting of these data. Because AT&T anticipates the need to make changes in the CMDS in order to meet current and future CMDS objectives, AT&T points out that the proposed rule changes would have a tendency to freeze the CMDS design, thereby precluding necessary improvements. Moreover, AT&T reports that some of the information requested by the Commission would require considerable new programming and processing due to terminology differences, resulting in extensive costs to both carriers and the Commission.

6. The Independent Data Communications Manufacturer's Association, Inc. (IDCMA) states that the Commission's proposal represents a worthwhile step in obtaining data on monopoly services. As more and more economic data submitted by AT&T are based on computer generated analyses, IDCMA suggests that AT&T should be required to file economic support data in computer readable form. IDCMA asserts that without such data, the ability of interested parties to analyze computer generated support data from AT&T is significantly limited. In its reply comments, MCI also discusses this point, stating that there is a need to insure that raw data submissions be in an unbiased form and that such data can be used by regulators to achieve a just result. It insists that such reporting requirements as proposed are necessary for the Commission to achieve its regulatory goals.

7. The proposed rule states that the traffic reports will not be routinely available for public inspection. While USITA supports this, AT&T contends that it does not go far enough. Since customers' identities as well as market information could be gleaned from the traffic reports, AT&T asserts that participation would be contrary to the business interests of the Bell System and independent telephone companies. This public disclosure could result in independent and Bell System companies limiting their voluntary participation in CMDS. In its Comments, GTE also emphasizes the voluntary nature of independent telephone company participation in the CMDS, stating that it has the discretionary right to restrict this flow of data. MCI argues that AT&T's view on the confidentiality of this data is too restrictive and that the sole interest to be protected is the confidentiality of the individual customer. While IDCMA agrees with MCI that the confidentiality of the customer should meet AT&T's requirement for protection, it goes further, asserting that the CMDS traffic data should be subject to disclosure in relevant rate proceedings.

[2] The *NPRM* proposed to require AT&T to retain CMDS traffic and tariff reports for twenty years and facilities reports for five years (69 FCC 2d 673).

Discussion

8. Since the adoption of the *NPRM*, most of the Commission's use of CMDS data has been limited to demand studies involving four city-pairs, which represent only a small portion of the requested data. Though initial attempts have been made to develop a demand model for telecommunications services using the CMDS data base, the limited staff and resources now available to the Commission are insufficient to carry out this effort. Other potential uses for the CMDS data base would also demand greater resources than are available to the Commission. Moreover, as the emphasis of Commission policy moves in the direction of removal of regulatory restrictions, the close scrutiny of extremely detailed traffic data takes on less importance, so that we see no need to seek additional resources to regularly carry out these functions.

9. Rather than attempt to develop the fully independent capacity regularly to analyze these data, we will continue with our current practice of requiring specific data and analysis from the carriers as needed. This process has worked well in the past without imposing severe burdens on the Commission or the carriers. For example, in analyzing AT&T's general rate increase tariff filings,[3] we required AT&T to perform certain statistical analyses using the CMDS data base. In a similar manner, we can require data submissions or analyses based upon the CMDS as needed in implementing the Interim Cost Allocation Manual or in pursuing any other necessary regulatory function. Thus, regular submission of this massive data base is unnecessary.

10. Given the fact that the requirement for routine submission of CMDS data is unnecessary for the Commission to meet specific regulatory responsibilities and given the burden this proposed reporting requirement would place on the carriers and the Commission, we determine that the proposed reporting requirement is not in the public interest and should not be adopted.

[3] 86 FCC 2d 956 (1981).

11. Therefore, it is ordered, that this proceeding, which proposed changes in Parts 42 and 43 of the Commission's Rules to provide for the regular reporting of detailed traffic statistics, is terminated.

12. It is further ordered, that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

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

Note.—This delay in publication is due to non-receipt of the document by the FCC liaison officer and the Office of the Federal Register, due to an oversight.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-6581 Filed 3-19-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-78-01, Notice 7 and No. FE 84-01; Notice 3]

Light Truck Average Fuel Economy Standards; Model Years 1985-86

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: In October 1984, NHTSA published in the **Federal Register** a final rule amending the light truck average fuel economy standard for model year 1985 and establishing a new standard for model year 1986. The agency received two timely petitions for reconsideration of the final rule, one from the Center for Auto Safety and the other from the Environmental Policy Institute. Both petitioners requested that the standards for model years 1985 and 1986 be set at higher levels. This notice denies the two petitions for reconsideration.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: On October 22, 1984, NHTSA published in

the **Federal Register** (49 FR 41250) a final rule amending the light truck average fuel economy standard for model year 1985 and establishing a new standard for model year 1986. As discussed by that notice, the issuance of light truck average fuel economy standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. See 15 U.S.C. 2002(e).

The October 1984 notice reduced the 1985 composite light truck standard from a level of 21 mpg to 19.5 mpg. That action was initiated in response to a petition for rulemaking submitted by Ford. The agency's decision to reduce the standard was based on changed conditions since the standard had been issued. The original 1985 standard was based primarily upon Ford's maximum fuel economy capability, since that company had the lowest projected fuel economy, accounted for a substantial share of light truck sales, and faced serious economic harm if standards were set at levels above its capability to achieve with a product mix reflecting marked demand. As discussed by the October 1984 final rule and accompanying analyses, an unexpected shift in consumer demand toward larger trucks and engines occurred subsequent to the issuance of the original 1985 standard, due primarily to diminishing gasoline prices instead of the steadily increasing prices that had previously been expected. This change in market demand led to a 1.5 mpg loss in Ford's 1985 light truck average fuel economy capability. Other major domestic manufacturers experienced similar losses in expected light truck average fuel economy capability. The new 1985 standard was based on a consideration of the statutory factors listed above, using the latest available information and data.

The October 1984 final rule also established a 1986 composite standard of 20.0 mpg, based on a consideration of the statutory criteria. Equivalent separate standards for two-wheel drive and four-wheel drive light trucks were established for both model years 1985 and 1986.

The agency received two timely petitions for reconsideration of the final rule, one from the Center for Auto Safety (CFAS) and the other from the Environmental Policy Institute (EPI). Both petitioners requested that the agency reinstate the 21.0 mpg standard for model year 1986. After carefully evaluating the issues raised by the petitioners, the agency has determined that the petitions should be denied. The issues raised by the petitioners are discussed below.

Both petitioners argued that the agency should place greater weight on the need of the nation to conserve energy. CFAS stated that "overriding concern" must be given to the need to conserve energy and alleged that NHTSA had given little attention to this factor other than reciting a few basic facts about the amount and cost of imported petroleum. EPI expressed concern that the current oil glut is temporary and alleged that the agency had decreased its commitment to vehicle fuel economy standards. CFAS also argued that the overall energy conservation impact of relaxing light truck fuel economy standards on overall gasoline consumption is higher than that estimated by NHTSA since the agency did not specifically consider the point that light trucks represent an increasing percentage of the new passenger vehicle fleet.

The agency rejects the allegations that it has given little attention to the need of the nation to conserve energy or that it has decreased its commitment to vehicle fuel economy standards. The preamble to the final rule stated that the agency agrees that the need of the nation to conserve energy remains strong and that the nation still faces the risk of energy problems in the future. While projections of future energy availability are subject to great uncertainty, the agency recognizes that the current energy glut may be temporary and that energy imports and prices could rise in the future.

The agency notes, however, that while energy conservation is the purpose of Title V of the Motor Vehicle Information and Cost Savings Act, the need of the nation to conserve energy is one of four factors that must be considered in determining "maximum feasible average fuel economy level". As such, it does not "override" the other factors of technological feasibility, economic practicability, and the effect of other Federal motor vehicle standards on fuel economy.

As discussed by the October 1984 final rule, restriction of product offerings by Ford to achieve a 1.5 mpg average fuel economy benefit (the amount necessary for Ford to meet the originial 1985 standard) could result in sales reductions of 100,000 to 180,000 units, with employment losses of 12,000 to 23,000 positions at Ford, its dealers and suppliers. While the need to conserve energy is important, the agency does not believe that factor justifies negative economic impacts of this magnitude, which go beyond the realm of "economic practicability" as contemplated in the Act. This is particularly true since such sales restrictions could merely shift purchasers of larger trucks to other manufacturers, with the result that no net fuel economy benefit would be achieved.

Setting a standard at a level where Ford would be required to force sales mix shifts to achieve a fuel economy benefit of somewhat less than 1.5 mpg would result in similar adverse effects, although of a lesser magnitude. Again, however, such a standard would result in little or no net fuel economy benefit, since consumers could easily meet their demand for larger light trucks by shifting purchases to other manufacturers which continue to offer larger light trucks.

The agency could conceivably set a standard at a level sufficiently high that an industrywide mix shift would be required. Consumers would then be unable to obtain the vehicles they need by shifting purchases of larger light trucks from one manufacturer to another. However, the negative economic consequences would be much greater than those discussed above and clearly beyond the realm of "economic practicability" as contemplated in the Act. This same analysis is applicable both to requests for reinstating the original 1985 standard and requests for establishing a 1986 standard at a level higher than that which Ford could meet.

CFAS stated that sales of light trucks have increased from 17.9 percent of new vehicle sales in 1978 to 21.4 percent in 1983. That organization argued that the reason for this trend is that trucks are being substituted for passenger cars which have higher fuel economy and that the agency should have specifically addressed this point in considering the effect of its light truck fuel economy standards on energy consumption. The implication was that light truck sales could increase significantly at the expense of passenger car sales as a result of the October 1984 final rule. NHTSA has no reason to believe this, and no evidence was presented by CFAS or any other party to support this supposition. The agency did use the latest available data concerning light

truck sales and projections for future sales, as well as for other issues concerning the need of the nation to conserve energy.

Both CFAS and EPI objected to the agency's consideration of market demand in establishing or amending fuel economy standards. CFAS argued that Congress passed the Act because the market did not demand vehicles with fuel efficiency high enough to meet the need of the nation to conserve energy and that Congress intended fuel economy standards to lead the market rather than the market lead fuel economy standards. CFAS also stated that adjustment for changed market conditions is not a part of technical feasibility or economic practicability. That organization stated that NHTSA cannot arbitrarily make up an adjustment to the standards that Congress specifically ruled out. CFAS also argued that marketing strategies can be changed to shift market emphasis to smaller light trucks which are fully capable of handling the jobs of larger trucks and vans.

Market demand is a factor that has always been considered by the agency and is an implicit part of the consideration of economic practicability. In a free market economy, market demand is one of the primary determinants for what manufacturers will be able to sell. Simply put, consumers need not purchase what they do not want. A standard set without regard to market demand could be overly stringent and economically impracticable.

Changed market demand was one of the bases relied on by NHTSA in a rulemaking completed in June 1979 which reduced the 1981 light truck average fuel economy standard. See 44 FR 36975, 36980 (June 25, 1979). (The agency did not specifically use the term "changed market demand" but instead referred to "adverse mix shifts," i.e., mix shifts which reduce fuel economy.) In that rulemaking, the agency concluded that Chrysler's 1981 fuel economy capability had been reduced, in part because consumers were purchasing more of Chrysler's trucks with options like air conditioners and step bumpers.

NHTSA's consideration of market demand does not indicate however, that the agency's fuel economy standards are based solely or primarily upon market demand. As discussed above, the agency is required to establish standards at the maximum feasible average fuel economy level based upon four factors. Economic practicability is only one of those four factors, and market demand is only one aspect of economic practicability. The agency agrees that it would be inappropriate under the Act to simply let market demand determine fuel economy standards.

Manufacturers have made and are continuing to make significant improvements in fuel economy based upon technological advances and the introduction of new, more compact light trucks. These continuing actions are meeting the need of the nation to conserve energy. In this situation, NHTSA does not believe that it is appropriate to set fuel economy standards at levels where manufacturers would find it necessary to significantly restrict product availability, whether by dropping particular models or engines which consumers demand or by marketing efforts which result in a model mix that is significantly different from one based on free market demand for the reasonably fuel efficient products which are currently being made available. As discussed above, such overly stringent standards would result in serious economic impacts on manufacturers and the employees. Serious economic consequences could also be felt by consumers. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger light trucks, the availability of which would most likely be affected by standards set at too high a level. As noted above, product restrictions might simply shift consumers to other manufacturers, resulting in no fuel economy gains. Moreover, given the small number of manufacturers which produce larger light trucks, competition in that market could significantly be reduced. Overly stringent standards necessitating product restrictions by all manufacturers producing larger light trucks could prevent consumers, including businesses, from purchasing the types of vehicles which adequately meet their needs.

NHTSA rejects the allegation by CFAS that the agency made an adjustment to the standard that Congress specifically ruled out. Section 502(f)(1) of the Act states that the Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (b) so long as such standard meets the requirements of subsection (b). The agency did not, as suggested by EPI, amend the 1985 standard for the purpose of protecting Ford, or other manufacturers, from paying penalties for noncompliance. Rather, NHTSA amended the standard because it no longer met the requirements of the statute. As discussed above, the changes in market demand which occurred after the original standard was issued changed the maximum feasible average fuel economy level. The agency was correct in considering market demand since it is an implicit part of economic practicability. Section 502(f)(1) and the accompanying legislative history indicate that Congress expected the agency to amend average fuel economy standards that no longer meet the requirements of the statute.

With respect to economic practicability, CFAS also argued that the statutory penalties for not meeting a standard are small enough not to affect sales. That organization apparently was suggesting that NHTSA should consider payment of penalties as an alternative to product restrictions. Similarly, EPI alleged that Ford is engaging in a "gas-guzzler" marketing strategy and argued that if Ford is determined to cater to consumer preference for heavy, large engine trucks it is free to do so under the law but should be willing to pay preestablished penalties.

The statements of both CFAS and EPI concerning payment of penalties evidence a misunderstanding of the Act. Under section 507 of the Act, noncompliance with fuel economy standards (taking account of available credits) is unlawful conduct. Petitioners appear to assume that penalties are merely a tax. In assessing economic practicability, the agency must consider the ability to meet a standard rather than the ability to pay the penalties for not meeting a standard. The agency also finds no basis for accepting EPI's allegation that Ford is engaging in a "gas guzzler" marketing strategy. Confidential information submitted by Ford indicated that it has made significant efforts at marketing its compact light trucks as part of its efforts to improve its average fuel economy.

CFAS argued that the 1986 standard was adjusted down by the same 1.5 mpg as the 1985 standard, based on changed consumer demand and the assumption that manufacturers would not incorporate new technology. That organization argued that manufacturers should carry over some of the fuel saving technology already in use on their comparable passenger cars such as improved transmissions with lockup converters and better air/fuel metering.

In establishing the 1986 standard, the agency did not simply "adjust down" the level by a 1.5 mpg factor or assume that manufacturers would not incorporate new technology. As discussed above, the agency based the standard on a consideration of the statutory requirements. As part of this process, the agency carefully evaluated

the average fuel economy capability of individual manufacturers. Based in part on the determination that Ford could incorporate new technology between model year 1985 and 1986, the agency established a higher standard for model year 1986 than model year 1985. With respect to incorporating the technologies noted by CFAS, the agency notes that these technologies are already in extensive use in light truck models. For example, the use of fuel injection by Ford has significantly increased that company's fuel economy capability. The agency concluded that further expansion of the use of these technologies, or the use of additional technologies, is not feasible for model year 1986.

EPI raised several issues it termed public interest considerations, including concerns that a final rule decreasing a fuel economy standard encourages dependence on oil imports and sends the message to manufacturers and consumers that energy conservation is unnecessary. The agency disagrees. The final rule clearly indicates that the agency appropriately took account of the need of the nation to conserve energy and that the amendment merely reflects changed conditions since the original standard was issued. Several issues raised by EPI concerning the effect of the amendment on Chrysler were fully addressed in the October 1984 notice.

With respect to the 1985 standard, CFAS raised a legal argument concerning whether the amendment was timely. The petitioner noted that NHTSA has stated that the agency does not have authority to amend a fuel economy standard once the model year begins. CFAS argued that while the amendment was issued on October 16, 1984, the 1985 model year had begun at least as early as October 2, 1984. CFAS argued that according to the agency's interpretation, the original fuel economy standard for model year 1985 must stand.

The agency's opinion that it does not have authority to amend a fuel economy standard once the model year begins was set forth in a letter to Ford, dated August 23, 1984 (and appended to the CFAS petition for reconsideration) and in the October 1984 final rule. The time when a model year begins is imprecise. Model years may differ for different manufacturers and for different vehicles produced by a manufacturer. As discussed by the October 1984 final rule, the single court to address the issue has stated only that a given model year begins in the fall of the preceding calendar year (e.g., fall 1984 is the beginning of the 1985 model year). The court did not specify a particular date for the beginning of the model year. Consistent with the court's general view, the agency disagrees with the apparent suggestion by CFAS that a fuel economy standard is invalid because it is issued on October 16 when it could have been valid if it had been issued by the beginning of October. The context of the agency's opinion that it does not have authority to amend a fuel economy standard once the model year begins was the denial of a petition for rulemaking submitted by Ford because the petition was untimely. The petition in question was submitted on November 21, 1983, and requested amendment of the 1984 light truck average fuel economy standards. As noted by the October 1984 final rule, a rulemaking proceeding would involve agency analysis of the petition, preparation and publication of the necessary supporting documentation, a minimum public comment period, analysis of comments, and preparation and publication of the documentation necessary to accompany the final decision. Since model year 1984 began in the fall of 1983, it is clear that the agency could not have amended the 1984 light truck standards in response to the petition prior to the start of that model year.

For the reasons discussed above, the petitions for reconsideration submitted by the Center for Auto Safety and the Environmental Policy Institute are denied.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 49 CFR 1.50)

Issued on March 15, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-6641 Filed 3-19-85; 8:45 am]

BILLING CODE 4910-59-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records; Amendments

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: This amendment of 49 CFR 830.2 in the Board's rules governing notification of aircraft accidents and incidents will make it clear that the scope of the exclusions in the definition of "substantial damage" relating to "engine failure" and "damage limited to an engine" extends solely to an occurrence where there is a failure of or damage to only one engine.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: The Safety Board has established rules (49 CFR 830.2) defining aircraft accidents in which the operator is required to immediately notify the Board of the accident and to preserve certain records. An aircraft accident is defined to include occurrences in which the aircraft receives substantial damage. Substantial damage in turn is defined as damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which normally requires major repair or replacement of the affected component. "Engine failure" and "damage limited to an engine" are among the items which are considered not to involve substantial damage.

On May 5, 1983, a Lockheed L-1011 operated by Eastern Airlines, Inc., took off from Miami International Airport en route to Nassau, Bahamas. While descending through 15,000 feet, the low oil pressure light on the No. 2 engine illuminated. The crew shut down the No. 2 engine, and the captain decided to return to Miami to land. En route to Miami, the No. 3 engine failed and about 5 miles later the No. 1 engine failed. The aircraft descended without power from 13,000 feet to about 4,000 feet before the No. 2 engine was restarted. A one-engine landing was made at Miami International Airport; there were no injuries to anyone on the airplane. The No. 2 engine sustained minor damage, but the cost of replacing the two failed engines was several million dollars.

An Eastern Airlines official informally questioned the Board's classification of the occurrence as an accident apparently based on an interpretation that the exclusion relating to "engine failure" or "damage limited to an engine" applied to the occurrence. Since "engine failure" is singular and since

"damage limited to an engine" is by its terms restricted to one engine, the Board has believed that the terms could not be construed to cover an occurrence which involves a multi-engine failure. In order to make it even clearer that the exclusion for engine failure or damage applies only when only one engine fails or is damaged, the Board will amend the definition of substantial damage to insure that the exclusion for engine failure or damage to an engine is understood as being confined to instances where only one engine is affected.

This amendment is not subject to the Regulatory Flexibility Act because it is a clarification and an interpretative rule and thus the notice and public comment procedure requirements of 5 U.S.C. 553 do not apply.

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq.), and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

List of Subjects in 49 CFR Part 830

Administrative practice and procedure, Aviation safety.

PART 830—[AMENDED]

§ 830.2 [Amended]

* * * * *

Accordingly, 49 CFR 830.2 is hereby amended by revising the definition of "Substantial damage" as follows:

"Substantial damage" means damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of this part.

Signed at Washington, D.C. on this 12th day of March 1985.

Jim Burnett,

Chairman.

[FR Doc. 85-6573 Filed 3-19-85; 8:45 am]

BILLING CODE 7533-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 40800-4100]

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule; technicial amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment revising the method of determining fish trap volume in the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The intended effect of this rule is to express clearly the intent of the FMP and to avoid confusion in the construction of fish traps.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on October 9, 1984 (49 FR 39553) to implement the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP). The final rule as published did not clearly express the intent of the FMP regarding the determination of fish trap volume. Section 641.24(b)(5) states that the maximum allowable size for fish traps fished in the fishery conservation zone (FCZ) shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume, but the regulation is silent as to how the volume of a trap is determined. As a result, there has been some confusion as to whether trap volume is limited to a trap's holding capacity, or whether trap volume also includes the volume of the funnel(s).

The intent of the FMP is clear from its reference to scientific studies on the relationship between trap size and fishing effectiveness and to the laws of other countries that regulate fish trap size. The FMP intended that fish trap volume be determined by measuring the external dimensions of the trap and that trap volume include the volume of funnel(s) enclosed by those dimensions.

Accordingly, § 641.24(b)(5) is revised to specify the manner of determining fish trap volume, so as to reflect more accurately the intent of the FMP. This clarifiying language will eliminate confusion on the part of fish trappers who are required to apply for permits and also will facilitate enforcement of trap volume restrictions.

List of Subjects in 50 CFR Part 641

Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 15, 1985.

Carmen J. Blondin,

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

PART 641—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 641 is amended as follows:

1. The authority for Part 641 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.24, paragraph (b)(5) is revised to read as follows:

§ 641.24 Gear limitations.

* * * * *

(b) * * *

(5) The maximum allowable size for fish traps fished in the FCZ shoreward of the 50-fathom isobath (300-foot contour) is 33 cubic feet in volume. Fish trap volume is determined by measurement of the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom isobath.

[FR Doc. 85-6623 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 41270-5026]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This action is necessary to allow (1) a mechanism for adjustments to the minimum size limit for surf clams, (2) a revision of the method of inspecting surf clams for compliance, (3) a requirement that surf clam cages be tagged, and (4) a presumption that the landing or possession of surf clams landed or harvested by a permitted vessel on a day during which the vessel was authorized to fish in the fishery conservation zone (FCZ), were caught in the FCZ and are subject to the Federal minimum size limit. The intended effect

of this rule is to reduce the mortality rate caused by discarding undersized clams, resulting in greater short- and long-term yield from the resource, and to facilitate enforcement of the minimum size limit.

EFFECTIVE DATE: Section 652.25 is effective April 12, 1985. All other provisions are effective on April 14, 1985.

ADDRESSES: Copies of the amended FMP, the environmental assessment, and the regulatory impact review are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, 617–281–3600, ext. 262.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England Fishery Management Council. A notice of availability for the proposed amendment was published in the **Federal Register** on December 3, 1984 (49 FR 47278). Amendment 5 revises management measures for surf clams.

The original FMP was approved by the Council in November 1977; it was refined and extended indefinitely by Amendments 1–3. Amendment 3, approved in 1981, established a procedure to specify annual quotas, and also imposed a minimum legal size for surf clams of 5½ inches. The regulations implementing Amendment 3 contained at § 652.25 provisions that included a minimum size limit for surf clams of 5½ inches, allowed fishermen to reserve from inspection 10 percent of the full cages of surf clams aboard a vessel, and provided for a tolerance of no more than 240 undersized surf clams in any single inspected cage. This resulted in a combined tolerance of about 19 percent for sublegal surf clams.

When the minimum size limit was developed, the Council tried to balance conflicting goals. The 5½ inch size was considered optimum in terms of product value, although maximum yield per recruit for surf clams occurs at a smaller size of approximately 4¾ inches. Surf clams occur in beds that vary within a size range, so that even careful fishermen catch some small clams. The tolerance in the implementing regulations, therefore, was considered necessary to minimize discarding where small clams have been harvested despite efforts to harvest legal-sized clams. Discards are considered wasteful since it is estimated that about 50 percent of the discarded clams die.

The size distribution of surf clams combined with the fixed minimum-size limit, at times, has resulted in discard rates of up to 50 percent of the clams harvested when fisherman cull their catches to ensure that their harvests are legal sized.

Amendment 5 amends the provisions of the FMP to read:

> There is a surf clam minimum size limit. After consultation with the Council and opportunity for public comment, the Regional Director shall adjust, by increments no less than 0.25", the surf clam minimum size limit to a value less than 5.5" as necessary, so that discards on average do not exceed 30 percent of the trip catch. In no event shall the size limit be less than 4.75". When data indicate the clams have grown sufficiently, the limit would be increased, ultimately reaching the 5.5" limit. There is a tolerance of 240 undersized clams per cage but no more than 50 clams per cage under 4.75". If any cage is in violation of the size limit, the entire load is in violation. In adjusting the size limit the Regional Director shall consider current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource. No person shall harvest or possess surf clams smaller than the minimum size limit.

Under Amendment 5, the Regional Director would first have to decide, based on a statistically acceptable sample of information, whether discards in the fishery on average have exceeded the 30 percent target level set by the Amendment and what, if any, size adjustment would limit discards to the target levels. The preferred method of making these analyses would be to adopt the methodology used as a basis for adjusting the size limit from 5½ inches to 5¼ inches in October 1984. In that instance, heavy reliance was placed on analysis of assessment, size distribution, survey, and interview data by the NMFS Northeast Fisheries Center, in addition to any other information provided to NMFS and to the Council. Alternative methods of analysis would similarly employ a statistically and scientifically valid, representative set of data.

The Regional Director will consult with the Council as to his findings and will seek its advice on adjustment to the size limit. If adjustment is indicated, the Regional Director may select any of the following values (5½, 5¼, 5, or 4¾ inches); i.e., the change could be ¼, ½, or ¾ inch at any one time.

Amendment 5 retains the allowance of 240 surf clams per cage less than 5¼ inches. The set-aside portion of the previous tolerance was removed based on testimony given to the Council that the set-aside had not proved useful.

Amendment 5 also adds the requirement that all surf clam cages must be tagged before they are off-loaded from the vessel with tags to be supplied by the Regional Director, and that tags may not be removed until cages are emptied at the processing plant. Vessel operators in both the New England and Mid-Atlantic Areas will be required to attach tags to each cage of clams before off-loading, and to record the tag numbers in their logbooks. Processors will be required to note the tag numbers in their logbooks and, immediately after the cage in emptied, to remove and retain the tags for collection or disposal as specified by the Regional Director. Tagging is intended to improve enforcement of the size limit, thereby decreasing violations and the resultant landing of large numbers of small clams.

Amendment 5 adds the provision that all surf clams landed by a Federally licensed vessel the day during which it is authorized to fish in the FCZ are presumed to have been caught in the FCZ and subject to the Federal size limit. This measure, which is enforceable at dockside, will improve the enforcement of the FMP.

To alleviate any possible confusion regarding the notification procedure to be utilized in adjusting the minimum size limits of surf clams, two sentences were added to § 652.25(a)(1).

Response to Comments

This final rule is essentially the same as the proposed rule, with several changes made for clarity, completeness, and consistency and to respond to numerous oral and written comments on the proposed rule. Bcause of potential consistency problems that could occur if the Table of Contents and the rule were reorganized as proposed, §§ 652.7 through 652.10 were not redesignated and a new § 652.7 was not added. Instead, a new § 652.11 Cage identification is added following the current § 652.10.

The presumption in § 652.22 is revised to facilitate enforcement of the FMP and to make it clear that evidence that surf clams were not caught in the FCZ may be introduced.

The response to written comments is based upon the section numbers as they appeared in the proposed rule. Written comments are on file from the U.S. Coast Guard and the State of New Jersey. Comments received on the rule, and NOAA's responses, are discussed below.

Comment 1: Several commenters asked questions about the operation of the Regional Director's decision framework for selecting the size limit.

Response: The preamble to the final rule was expanded to describe more fully the process that would be used to determine if the discard rate has exceeded the 30 percent target level set by the Amendment, and to decide what size adjustment, if any, would be appropriate to limit the level of discards.

Comment 2: Several commenters said that the definition of "authorized fishing day" required clarification.

Response: The definition is deleted from the final rule because NOAA has expanded § 652.22(f)(2) removing the term "authorized fishing day."

Comment 3: Commenters stated that an additional paragraph should be added to the "Prohibition" section to encompass actions required by the FMP.

Response: The proposed rule paragraph (j) has been redesignated as (k) and a new paragraph (j) was added to make clear that all persons are obligated to comply with tagging requirements from off-loading to the point of processing, not just those to whom tags were issued initially.

Comment 4: Administrative details of the tagging program appeared for the first time in the proposed regulations. Comments received from individuals involved in the enforcement and prosecution of the EMP suggested changes to make the regulations more precise and to assure their more efficient operation.

Response: In response to these suggestions, changes were made (1) to specify where the tags will be attached to cages or other containers so that the tags will be more visible; (2) to specify how used, unused, and outdated tags will be removed from circulation; and (3) to specify which representatives of a vessel may obtain a resupply of tags for the vessel.

Comment 5: Uncertainty was expressed over the meaning of proposed regulations at § 652.7(c) which provided that "(c)hanges in specifications of the tagging program will be made by the Regional Director in consulation with the Council." Commenters opined that the term envisioned initiation of substantive rulemaking without criteria to define the scope of the rulemaking.

Response: The regulation was based on a portion of the FMP which provides that, "(i)nformation to be shown on the tags shall be determined by the Regional Director, in consultation with the Council, but will include at least the information needed to establish a chain of evidence adequate for enforcement of the surf clam minimum size limit from the vessel through the transportation system to the processor, inclusive." General Counsel has determined that contents of tags sufficient to support an enforcement case is primarily a legal matter and not appropriate for submittal to the formality of a consultation process with the Council by regulations, in addition to the routine opportunity for notice and comment on proposed changes to regulations. NMFS would request and welcome advice of the Council on tag contents to the extent that the practical operations of the fishery which are known to the Council members are at issue. An additional consultation process over this detail could also prove counterproductive, obstructing expeditious changes in an important feature of the tagging program. Accordingly, proposed paragraph (c) has been eliminated from the final regulations.

Comment 6: Question was raised about the scope of the provision at § 652.7(d)(3) (now § 652.11(c)(4)) stating that "(a)ny cage of surf clams found in commerce without a tag is in violation of these regulations." Concern was expressed that such provision could encompass cages of surf clams harvested under jurisdiction of the states.

Response: Limiting language has been added to this section to specify that only surf clams harvested and possessed under the jurisdiction of this FMP are covered by the language of this regulation.

Additional Comments: It is noted that § 652.23 "Closed Areas", has not been modified by this amendment. Criteria for closing and reopening of closed areas is a matter of substance which requires separate study and action by the Council for Revision. Thus, references to the 5½ inch size as a criteria for closure and reopening will remain in § 652.23 unless revised by action of the Council.

Classification

The Regional Director determined that the amendment these rules would implement is necessary for the conservation and management of the Atlantic surf clam and Ocean quahog fisheries and that is is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from the Council at the address listed above.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary is published at 49 FR 47278.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic effect on a substantial number of small entities. Both large and small businesses are affected by the current size limit problem, and will benefit by the solution contained in the amendment. The impacts of the amendment do not favor large businesses over small businesses, except to the extent that the smaller processors and the independent vessels that work with them have traditionally been more dependent on larger surf clams than have been the large, vertically integrated processors that also use smaller surf clams and ocean quahogs. In 1984, changes in the market apparently altered this traditional pattern so that all processors now have a demand for clams under 5½ inches. These findings indicate an alternative to any continuing dependence on the larger clams. In the event that the size limit was reduced all the way to the minimum size of 4¾ inches, there might be an impact on both the large and small businesses involved in the fishery. However, the criteria and process for changing the size limit make it unlikely that the limit will go as low as 4¾ inches. Furthermore, even this potential impact is already being mitigated by the currently increasing average size of surf clams as existing year classes in the population mature.

Sections of this rule contain a collection of information requirement subject to the Paperwork Reduction Act, which was submitted to the Office of Management and Budget and approved under Control Number 0648-0016.

The Council determined that this rule will affect the State's coastal zone and will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management (CZM) programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland. On 7 August 1984, letters were sent to all of the States listed above stating that the Council concluded that Amendment 5 is consistent to the maximum extent practicable with the State's CZM program as understood by the Council. Maryland and Rhode Island have a 5.5" surf clam minimum size limit, Massachusetts has a 5" minimum size limit, and New York has a 4" minimum size limit. The letters to those States

recommended that State minimum size limits be revised to match the proposed size limit to facilitate enforcement while also noting that the FCZ catch presumption is intended to minimize the impact of these differences. Maine, Massachusetts, Connecticut, New York, Pennsylvania, Delaware and Maryland responded, and agreed with the consistency determination. Maryland also responded, that it will change its size limit to conform with this amendment.

Section 652.25 of this rule must be effective on April 12, 1985, to continue the current 5¼ inch size limit for surf clams. The 5¼ inch size limit was implemented by emergency regulations that expire on April 12, 1985. A lapse in the regulations would cause the size limit to revert to 5½ inches. This would have a detrimental effect on the industry because fishermen would have to adjust their operations to unnecessary short-term changes in the size limit. To avoid such a lapse, the Assistant Administrator finds for good cause that it would be contrary to the public interest to delay the effective date of § 652.25 of these regulations for the full 30-day period otherwise required under section 553(d) of the Administrative Procedure Act. Therefore, § 652.25 of these regulations is effective April 12, 1985.

List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Reporting requirements.

Dated: March 15, 1985.

Carmen J. Blondin,

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

For the reasons set out in the preamble, 50 CFR Part 652 is amended as follows:

PART 652—[AMENDED]

1. The authority citation for Part 652 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by adding a new entry § 652.11 "Cage identification."

3. In § 652.5, paragraph (a)(1) is amended by revising paragraphs (v) and (vi) and by adding a new paragraph (vii), and paragraph (b)(1) is amended by revising paragraphs (xi) and (xii) and by adding a new paragraph (xiii) to read as follows:

§ 652.5 Recordkeeping and reporting requirements.

(a)(1) * * *

(v) Price per bushel, by species;

(vi) Meat yield per bushel, by species; and

(vii) Tag numbers from cages purchased, by vessel.

* * * * *

(b)(1) * * *

(xi) Price per bushel;

(xii) Buyer; and

(xiii) Tag numbers from cages used.

* * * * *

4. In § 652.7, is amended by adding new paragraph (h)(3), paragraph (j) is redesignated as (l), and new paragraphs (j) and (k) are added to read as follows:

§ 652.7 Prohibitions.

* * * * *

(h) * * *

(3) Any surf clam cage tags issued under § 652.11(b).

* * * * *

(j) No person may possess surf clams harvested under this FMP in containers that are not tagged as required by § 652.11.

(k) No person may use surf clam cage tags issued under § 652.11(b) in a manner inconsistent with the terms of § 652.11(c).

* * * * *

5. A new § 652.11 is added to read as follows:

§ 652.11 Cage identification.

(a) *Tagging.* Before off-loading, all cages and other containers that contain surf clams must be tagged with tags provided annually by the Regional Director under paragraph (b) of this section. Tags must be fixed on or as near as possible to the upper crossbar of the cage or container, or to the corresponding part of a tub or other container used for carrying the clams. Tags must not be removed until cages are emptied at the processing plant, at which time the processor must promptly remove and retain them for collection or disposal as specified by the Regional Director.

(b) *Acquisition and return of tags.* (1) An initial supply of tags will be issued to each individual vessel by the Regional Director prior to the beginning of each fishing year. The number of tags issued will be based on the previous year's landings.

(2) Additional tags may be obtained, if required, by the vessel owner, master, or mate, upon written request to the Regional Director.

(3) Tags will expire at the end of the fishing year for which they were issued. Unused tags must be returned to the Regional Director within 30 days after the end of the fishing year.

(c) *Use of tags.* (1) Tags are not transferable among vessels, and must be returned when a permit expires by reason of a vessel's being sold or otherwise removed from the fishery.

(2) Alteration, theft, destruction, transfer, or other misuse of tags is a violation of these regulations.

(3) Loss or theft of tags must be reported to the Regional Director in writing within twenty-four hours.

(4) Any cage of surf clams harvested within the jurisdiction of this FMP that is found in commerce without a tag is in violation of these regulations.

(5) Processors must promptly remove the used tag after a cage is emptied, and retain the tag for collection or disposal as specified by the Regional Director.

(d) *Presumption.* Clams in cages or containers with colored numbered tags matching those issued to a vessel under these regulations will be presumed to have been taken by that vessel.

6. In § 652.22 paragraph (a)(2) is amended by revising sentences 3 and 4, and paragraph (f) is amended by redesignating the existing text as paragraph (1) and by adding a new paragraph (2) to read as follows:

§ 652.22 Effort restrictions.

(a)(1) * * *

(2) *Hours.* * * * The vessel owner or operator must send the Regional Director written notice of the owner or operator's selection or cancellation of allowable surf clam fishing periods for that vessel. All selections or cancellations must be provided to the Regional Director no less than 15 days prior to the intended effective date. * * *

* * * * *

(f) *Presumption.*

(1) * * *

(2) The landing or possession of surf clams harvested by a vessel permitted under this FMP on a day during which such vessel was authorized to fish in the FCZ will be *prima facie* evidence that such surf clams were caught in the FCZ and are subject to the Federal size limit.

7. Section 652.25 is revised to read as follows:

§ 652.25 Size restrictions.

(a) *Minimum length.* A minimum size limit for surf clams of 5½ inches in length is imposed in all areas of the fishery with the following exceptions:

(1) *Size limit selections.* The Regional Director will select the size limit, after consultation with the Council, from among the following values: 5½, 5¼, 5, and 4¾ inches. The size limit will be selected to reduce discards of surf clams to less than 30 percent, on average, of

trip catches. The Regional Director will monitor current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate. The Secretary will publish notice of any adjustments in the **Federal Register**. The public may comment on the minimum size adjustment for 15 days after the date of publication. After consideration of public comments, the Secretary may publish notice in the **Federal Register** of any changes in the adjusted minimum size limit.

(2) *Tolerance.* (i) When the minimum size limit is greater than 4¾ inches, as many as 240 surf clams in any full cage may be less than the legal minimum size, but no more than 50 clams in any full cage may be less than 4¾ inches.

(ii) When the minimum size limit is 4¾ inches, no more than 50 clams in any full cage may be less than 4¾ inches.

(iii) If any inspected cage is found to be in violation of paragraphs (2) (i) through (ii) of this section, all cages in possession landed by the same vessel from the same trip will be deemed in violation of the size limit.

(b) *Measurement.* Length is measured at the longest dimension of the surf clam.

[FR Doc. 85-6674 Filed 3-15-85; 5:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 54
Wednesday, March 20, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapter X

[Docket Nos. AO–160–A62–RO2, etc.]

Milk in Middle Atlantic and Other Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreements and To Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A62-RO2
1001	New England	AO-14-A60
1002	New York-New Jersey	AO-71-A74-RO1
1006	Upper Florida	AO-356-A21
1007	Georgia	AO-366-A23
1011	Tennessee Valley	AO-251-A26
1012	Tampa Bay	AO-347-A24
1013	Southeastern Florida	AO-286-A31
1030	Chicago Regional	AO-361-A21
1032	Southern Illinois	AO-313-A32
1033	Ohio Valley	AO-166-A53
1036	Eastern Ohio-Western Pennsylvania	AO-179-A48
1040	Southern Michigan	AO-225-A36
1044	Michigan Upper Peninsula	AO-299-A23
1046	Louisville-Lexington-Evansville	AO-123-A52
1049	Indiana	AO-319-A33
1050	Central Illinois	AO-355-A22
1062	St. Louis-Ozarks	AO-10-A56
1064	Greater Kansas City	AO-23-A55
1065	Nebraska-Western Iowa	AO-86-A42
1068	Upper Midwest	AO-178-A38
1075	Black Hills	AO-246-A18
1076	Eastern South Dakota	AO-260-A26
1079	Iowa	AO-295-A35
1093	Alabama-West Florida	AO-366-A2
1094	New Orleans-Mississippi	AO-103-A43
1096	Greater Louisiana	AO-257-A31
1097	Memphis	AO-219-A39
1098	Nashville	AO-184-A46
1099	Paducah	AO-183-A38
1102	Fort Smith	AO-237-A32
1106	Southwest Plains	AO-210-A44
1108	Central Arkansas	AO-243-A36
1120	Lubbock-Plainview	AO-328-A25
1124	Oregon-Washington	AO-368-A13
1125	Puget Sound-Inland	AO-226-A30
1126	Texas	AO-231-A52
1131	Central Arizona	AO-271-A25
1132	Texas Panhandle	AO-262-A35
1134	Western Colorado	AO-301-A18
1135	Southwestern Idaho-Eastern Oregon	AO-380-A4
1136	Great Basin	AO-309-A25
1137	Eastern Colorado	AO-326-A22
1138	Rio Grande Valley	AO-335-A30
1139	Lake Mead	AO-374-A9

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision finds that federal milk marketing orders should not be amended to provide a separate classification and price for milk used to produce butter and nonfat dry milk. Such milk now is classified and priced under the orders on the same basis as milk used to make hard cheeses and certain other manufactured dairy products.

This recommendation is based on the record of a public hearing held in Alexandria, Virginia, on July 25–27, 1984. The hearing was requested by the National Milk Producers Federation on behalf of 25 dairy farmer cooperative associations.

DATE: Comments are due on or before April 19, 1985.

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

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding:

Notice of Hearing: Issued June 22, 1984; published June 27, 1984 (49 FR 26239).

Notice of Rescheduled Hearing: Issued July 3, 1984; published July 6, 1984 (49 FR 27769).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the aforesaid specified marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. However, no participants at the hearing testified about any potentially adverse impact of the proposals on small businesses.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. No changes to the orders are contemplated.

The findings and conclusions set forth below are based on the record of a public hearing held at Alexandria, Virginia, on July 25–27, 1984, pursuant to a notice of hearing issued July 22, 1984 (49 FR 26239), and a notice of rescheduled hearing issued July 3, 1984 (49 FR 27769).

The material issues on the record relate to:

1. Whether to provide separate classification and pricing in all Federal milk marketing orders for milk used to make butter and nonfat dry milk;

2. The need for emergency action with respect to issue No. 1.

Findings and Conclusions

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

1. Whether To Provide Separate Classification and Pricing in all Federal Milk Marketing Orders for Milk Used To Make Butter and Nonfat Dry Milk

The orders should not be amended on the basis of this proceeding to provide a separate use-classification and pricing mechanism for milk and cream used to produce butter and nonfat dry milk. Such milk should continue to be

classified and priced the same as other milk used to produce hard cheeses and other manufactured dairy products (currently at the Minnesota-Wisconsin series price for manufacturing grade milk).

The National Milk Producers Federation (Federation), on behalf of certain of its member cooperatives, proposed that each order be changed to establish a new utilization classification for milk and cream used to produce butter and nonfat dry milk. The price for such milk would be the Minnesota-Wisconsin (M–W) price for manufacturing grade milk, or a butter-nonfat dry milk formula price, whichever was lower. If the calculated formula price was above the M–W price, then the M–W price would prevail. If the formula price was below the M–W price, then the minimum price to handlers for that milk would be the formula price for that month. Emergency action was requested to amend all the orders by October 1, 1984, either as proposed, or by providing temporarily a credit that would achieve the intended pricing relief through a different mechanism.

A spokesperson for the Federation, presenting the position of 25 member cooperative associations of the NMPF for the hearing record, offered the following testimony in support of their proposal:

1. As raw milk supplies tighten, competition for milk among cheese plants in the Minnesota and Wisconsin area will drive up the Minnesota-Wisconsin (M–W) price.

The Federation's witness pointed out that milk production has been declining since February 1984, due to several factors: (1) The Milk Diversion program (MDP), which involves approximately 38,000 dairy farmers in the United States who collectively represented about 22 percent of the milk marketed in 1982 and wo agreed to participate by contracting to reduce their production 9.4 billion pounds during the January 1984–March 1985 period; (2) a 50-cent per hundredweight assessment on all milk marketed and a 50-cent per hundredweight reduction in the support price; (3) a reduction in the prices received by farmers in 1983 compared to 1981 in real terms of $.72; (4) higher production costs; (5) higher interest rates; and (6) improved off-farm opportunities and reduced labor availability. The witness testified that he expects that milk production for 1984 will be 2.5 percent to 4.5 percent below that of 1983. However, he noted that from January through July 1984, minimal decreases have taken place. Consequently, the last quarter milk marketings are expected to be approximately five percent less than those of 1983, as participating dairy farmers reduce output further in order to meet their contracts. Thus, he expects milk available for manufacturing uses to be down 11.6 percent from the fourth quarter of 1983.

As the supply of raw milk is reduced, competition among manufacturing plants for this milk will increase. The witness anticipates that stronger markets for cheese and whey will be seen, but that any increase in gross returns to butter-powder plants will be moderated by a flat market for nonfat dry milk.

The witness testified that the M–W price is greatly influenced by the value of milk made into cheese. He pointed out that in 1983 two hundred and seventy-five plants were surveyed monthly in Minnesota and Wisconsin, and that these plants purchased 60 percent of the manufacturing grade milk of these two states. Approximately 78 percent of that milk was purchased by cheese plants. Furthermore, the witness cited two studies that determined the correlation between the M–W price and the prices of cheese and butter-nonfat dry milk for the two different time periods. In one of the studies, an analysis of data for the period of January 1971 through January 1975 was performed and the findings were:

—99.4 percent of the changes in the M–W price were related to variations in the price of butter, nonfat dry milk, and cheese;
—99.3 percent of the M–W price changes were associated with variations in cheese prices; and
—86.1 percent of the M–W price changes were associated with variations in butter and nonfat dry milk prices.

In the other study, which analyzed data for the 10-year period of 1970–79, the correlation coefficient between changes in the M–W price and changes in the price of cheese was found to be .91, whereas the relationship between changes in the prices of butter-nonfat dry milk and changes in the M–W price was statistically insignificant with a correlation coefficient of .596.

The Federation's witness looked back to the 1973-early 1974 period, when a declining milk supply situation, similar to the one being experienced now, occurred. At that time a strong demand for dairy products relative to supply resulted in higher prices for all products, expecially cheese. The M–W price rose $2.26 from July to December, an increase of 34 percent.

2. In times of close balance between supply and demand for milk, cheese is no longer a residual product; butter and nonfat dry milk alone become the balancing wheel for the dairy industry.

The proponent's witness claimed that there exists much greater variation in the volumes of milk processed into butter and nonfat dry milk than into cheese, and that the variation in volumes of milk processed into butter and nonfat dry milk is greater when milk supply and demand are in closer balance than when large surpluses exist. In addition, the witness maintained that butter-nonfat dry milk plants are able to handle milk with a higher than average percent of butterfat; and, that when supply and demand are in close balance, the percent of butterfat in receipts at butter-powder plants is much greater than during times of surplus. Furthermore, because cheese plants receive primarily whole milk, a minimal variation is seen in the composition of raw product at those plants regardless of the milk supply-demand situation.

3. Butter-powder manufacturers will not be able to recover from the market sufficient revenue to cover the costs of maintaining their operations.

As the M–W price rises relative to the returns at butter-powder plants, plant margins decline. The witness alleged that by the fall of 1984, the M–W price could rise to a level greater than the ability of butter-powder plants to pay for milk. The witness speculated that increases in the price of cheese and whey would result in a M–W price of $13.10 per hundredweight. He also predicted that the gross return to butter-powder plants would be $14.31. Such a scenario would yield a margin at butter-powder plants of $1.21, a level less than their production costs.

In addition, the witness testified that he expects butter-powder production costs to rise. He cited a study which revealed that average costs rise in butter plants and powder plants when volumes deviate from capacity. The witness stated his vew that on the average, butter-powder plants will be running at 50 percent capacity this fall due to sharp reductions in milk supplies.

4. No alternative exists for some butter-powder plants.

The proponent's witness testified that as the butter-powder margins decline, all milk cannot move to higher-valued alternative uses because of the location of plants and the location and timing of available milk supplies. He concluded that some butter and powder will have to be produced.

5. Butter-powder plants have been protected against severe financial losses in the past.

The witness recalled the July through December 1973 period when the M–W

price rose $2.26, an increase of 34 percent. By October 1973, butter-powder plants were experiencing negative gross returns, and this situation continued through February 1974. At that time, he noted, the Department of Agriculture provided relief to plants making butter-powder in 27 markets.

6. Butter-powder plants need to be maintained because of their ability to serve markets as balancing plants; therefore, they must always be protected against severe financial losses.

The proponent's witness claimed that unforeseen shortages in the cheese market and in the supply of raw milk can quickly occur and disrupt normal marketing relationships. During such times, butter-powder operations experience decreases in their margins and increased production costs. The witness stated that an adequate number of butter-powder facilities must be preserved, because they create orderly conditions during times of high milk production by preventing raw milk supplies from glutting the market which would cause milk prices to decline.

Because the Department must adhere to administrative procedures when implementing changes that provide relief in the industry, the witness urged that a "safety-net" be placed in all the milk marketing orders on a permanent basis so it would be there when needed to protect balancing plants against severe losses.

7. The cost of maintaining operations that balance the fluid market should be uniformly shared by all producers since the balancing function is a service of benefit to all producers.

The cost of balancing now is borne solely by the members of the organizations that operate butter-powder plants, according to the Federation's witness. He held that a uniform sharing among all producers on the market of the lower returns realized from making milk into butter and powder would be more equitable.

8. A formula price which minimizes the losses incurred by butter-powder plants must be implemented.

Proponent claimed that the primary objective of the proposal is to price the reserve milk at a level which will assure the maintenance of adequate facilities to dispose of reserve milk supplies. The witness cited a study which indicated that the production cost per hundredweight of milk used in a butter-powder is $1.42; however, he proposed that the formula's make allowance should be $1.32, thus providing an incentive for milk to move to higher-valued uses where possible.

The witness further testified that the formula would only minimize losses, not ensure profits, because the make allowance chosen is a very conservative figure. He pointed out that $1.42 is a cost of production figure from a study observing very efficient plants; therefore, any extrapolation to other plants generally would increase the amount. In addition, the $1.42 was reduced ten cents. Consequently, he maintained, the most modern of plants would have to absorb costs in excess of ten cents before the formula would become operative.

In addition, the witness said that operation of the butter-powder formula would not reduce total revenues to dairy farmers. Although less money would be paid into the pool, the cooperatives would be able to pay higher returns to their members due to decreased raw material costs. Thus, income to all dairy farmers would be more evenly distributed.

The Federation's proposal was supported by the testimony of five organizations present at the hearing. Although these organizations were represented by the Federation's witness, they elected to individually submit additional evidence.

A spokesperson for Milk Marketing Inc. (MMI), speaking on behalf of MMI and Michigan Milk Producers Association (MMPA), both of which are cooperative associations that together represent about 15,000 dairy farmers, offered the following testimony in support of the Federation's proposal:

1. Most butter-powder plants represent the last-use outlet for milk when supplies are short. Moreover, most cheese plants receive steady supplies of milk and are demand-driven. Some cheese plants do some balancing, but these plants are extremely difficult to identify.

The witness pointed out that for the first half of 1984, cheese plants in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas had not experienced any significant decreases in receipts from those in 1983, while the butter-powder plants in those areas received as much as 47 percent less milk than they had in 1983. He also stated that on a national basis, similar changes in May of 1984 compared with May of 1983 occurred. Production of nonfat dry milk and butter decreased 16 percent and 12 percent, respectively, while production of all cheese was down only one percent.

2. Cheese plants cannot balance the milk supply as efficiently as butter-powder plants can due to higher fixed cost levels at the cheese manufacturing facilities.

3. The alternative for butter-powder plants, which is to invest capital in cheese operations, is not a viable one because at the present time there is already an overcapacity in cheese facilities. Moreover, in the long run the additional facilities may not be necessary to meet the cheese processing capacity required in this country.

4. Over-order charges may not cover all of the costs incurred by butter-powder operations.

5. The make allowance of $1.32 is an appropriate margin.

The witness cited data from seven plants operated by MMI and MMPA (six butter-powder operations and one powder operation); running at peak efficiency, cost per hundredweight ranged from $1.28 to $1.33. However, cost per hundredweight rose when the plants were operated at less than capacity. At 60 percent capacity, cost was in excess of $1.57 per hundredweight.

The Federation's proposal was supported by the statement of the spokesperson from Dairylea Cooperative Inc., on behalf of the following cooperatives who market most of their milk in the New York-New Jersey milk marketing area: Dairylea, Allied Federated Cooperatives Inc., Holland Patent Cooperative, Northeast Dairy Cooperative Federation Inc., Oneida-Madison Milk Producers Cooperative Association and Upstate Milk Cooperative, Inc. The following points were raised:

1. Butter-powder manufacture is the main market balancing activity.

The witness said that the variation in butter production during any year is great. He testified that during 1983, in the New York-New Jersey marketing area, receipts used in butter manufacturing varied from a high of 12.3 million pounds of cream in April to a low of 3.6 million pounds in September. Likewise, powder manufacture exhibited an extremely wide seasonal swing in 1983, ranging from 122.8 million pounds of skim milk in June to only 39.5 million pounds in November. In addition, the witness stated that the seasonal variation within the year is substantially less for cheese than for butter-powder, with deliveries of milk to cheese plants being on a regular basis during the year. Furthermore, the witness maintained that a close relationship exists between the seasonality of cheese production and producer receipts; thus, he concluded that there is very limited balancing of the fluid market through cheese plants.

2. The high degree of seasonal variation in butter and powder

production results in a substantial amount of unused plant capacity during much of the year and a resultant high per unit processing cost.

3. The proposed formula price would be operative only if market balancing facilities were sustaining substantial losses.

The witness stated that the formula would only apply when and if a substantial distortion were to occur between the market values of butter and powder and the M–W price. This "safety valve" would only be triggered when necessary in order to limit economic losses; for it is not merely a downward price adjustment, functioning whether conditions warrant its application or not.

4. The $1.32 make allowance is a conservative figure.

The witness cited data compiled by the federation, which revealed that during the period of 1981–1983, $1.32 was the lowest margin that occurred, and then in only one month. The witness stated that to set a margin lower than $1.32, which is 20 cents below the $1.52 average margin of the three-year period, would be unreasonable.

Adoption of the proposal was supported by the statement of the spokesperson from Agri-Mark Inc., on the following basis:

1. In the New England marketing area, butter-powder plants perform the daily, seasonal, and cyclical balancing functions.

The witness testified that daily receipts at Agri-Mark butter-powder plants can vary 25 to 80 percent from the high to the low day of a week, depending on the month in question. To illustrate seasonal balancing, the witness referred to the five-year period 1978 through 1983, when the average high to low deviation of receipts used to manufacture butter-powder was 60 percent, while that of cheese was 25 percent.

The witness stated that butter-powder plants cyclically absorb a disproportionately large share of both surplus production and volume decline. In 1982, when the manufacture of storable products peaked in the New England marketing area, butter-powder plants processed 65 percent more milk than they had in 1979, while cheese plants processed 14 percent more. Contrarily, in June of 1984, as milk production was declining, butter-powder plants processed only 63 percent of the volume they processed in 1983, while cheese plants were processing 93 percent of their 1983 volumes.

2. The decision to build a butter-powder plant is based on market conditions.

The witness testified that prior to determining what type of manufacturing plant to build, one must observe the market's surplus production at various times of the year. The witness said that cheese plants are not as efficient as butter-powder plants in handling swings in milk production. Therefore, if a marketing area does not have a steady enough supply of milk, the rational decision would be to build a butter-powder plant.

3. The dairy farmers (i.e., cooperative members) who service the market and bear the high costs of maintaining capacity in butter-powder plants, should have some minimum degree of price protection if the situation occurs that cheese prices push the M–W price to such a level that the manufacturers of butter and powder suffer severe financial losses.

4. The proposed butter-powder formula will not result in a guaranteed return to manufacturers of butter and powder; rather, it will limit their losses if a cheese tilt occurs in the M–W price.

5. Butter-powder plants cannot recover all of their costs through handling charges.

The witness testified that handling charges cover testing and, to a limited extent, balancing costs. If the butter-powder operators tried to extract the full balancing cost from the fluid handlers they supply, then other suppliers of milk, who do not perform any balancing, could offer their milk at a lower price and gain a share of the market. The witness concluded that the charge assessed the fluid handlers is what the market will bear.

The Federation's proposal also was supported by the testimony of the spokesperson from Interstate Milk Producers' Cooperative, whose members supply over 35 percent of the milk marketed under the Middle Atlantic order. The witness testified that butter-powder plants in the Middle Atlantic marketing area play a vital role in balancing milk supplies and fluid demand in the Middle Atlantic region. Such a service benefits all producers associated with the market.

The Federation's proposal was supported by the testimony of the spokesperson from Land O' Lakes on the following basis:

1. Adoption of the formula price will not retard the movement of milk to higher-valued uses.

The witness stated that if manufacturing plants wish to keep their pool plant status, then they must adhere to the Federal order shipping requirements. Refusing to ship the required amount would expel them from the pool and would force them into a situation where they would be competing with pool plants for milk without the benefit of drawing funds from the pool.

In addition, the witness countered the charge brought forth by the proposal's opponents that formula pricing would encourage butter-powder plants to increase their give-up charges; and thus, halt or slowdown the movement of milk into higher-valued uses. He stated that if the formula price were in effect, then the give-up charges would be lower than they are when there is no need for the formula price to be operative. Furthermore, the witness said that if the formula price were in effect, then butter-powder plants would be in a position where they would be losing approximately 20 cents per hundredweight, since the margin from 1981 to 1983 has averaged $1.52 while the formula grants a margin of $1.32. It was his view that the give-up charges would reflect such a loss situation. The witness concluded that if a cooperative could extract a return greater than the $1.32 margin proposed by selling its milk rather than producing butter and powder, then milk would move.

2. The dairy industry must maintain some butter-powder plants because they are outlets for surplus milk production.

The witness stated that increases in the M–W price without adoption of the proposal would cause major losses at many butter-powder plants and would lead to business failures.

The witness then addressed an argument of the opponents that all producers should not share in the losses of proprietary butter-powder operations and accept a decrease in their return, when the proprietary plant operators do not share profits with their own supplying producers, when they are made. He expressed the view that a loss of outlets for surplus milk would be detrimental to producers.

3. The formula price must only apply to butter-powder plants when market conditions warrant its use.

The witness stated that the purpose of the proposed formula price is to minimize financial losses at butter-powder plants so that the necessary capacity is maintained. The margin of the formula price would be set 20 cents less than the average margin observed at butter-powder plants during the period of 1981 through 1983. Therefore, before the formula price would become operative, most butter-powder plants would have to absorb some losses and operate at a level below the profit line.

He added that the Federation's proposed formula price is unlike others proposed previously, because it is not to

be implemented during specified months whether or not it is needed; rather, market conditions would prescribe its use and make it operative.

The witness also stated that the proposed formula price should not be the sole price applied to milk used in the manufacture of butter and powder. He said that the guaranteed low margin would cause butter-powder plants to be in permanent distress, always operating at a loss of approximately 20 cents.

In addition, the witness testified that the formula price should not be applied to those cheese plants that claim to perform the balancing function. He stated tht the M-W price is dominated by Upper Midwest cheese manufacturers. Thus, he maintained that it also is an accurate reflection of what cheese manufacturers are willing and able to pay for milk. Therefore, he concluded that the M-W price is already a cheese price formula.

4. Unlike proposed formula prices in the past, the Federation's proposal would involve all of the markets across the United States. The witness testified that adoption of the proposal would not affect the ability of butter-powder plants located in different parts of the country to compete with each other, because all 45 orders would be amended.

5. The yield factors included in the Federation's proposed formula are appropriate.

The witness stated that the yield factors for butter (4.27 pounds per hundredweight) and for nonfat dry milk (8.3 pounds per hundredweight) were developed by three prominent researchers in the dairy industry, Professors Jacobson, Hammond, and Graf. Through the use of a theoretical formula, he also developed yield factors for butter (4.24 pounds per hundredweight), nonfat dry milk (8.2 pounds per hundredweight), and dry buttermilk (0.45 pounds per hundredweight).

Although the witness's computed yields in total exceeded those proposed by the Federation, he expressed the view that the proposed formula is practical, void of unnecessary detail, and accounts for the fact that dry buttermilk carries a lower price than nonfat dry milk.

The Federation's proposal was opposed by the statement of the spokesperson from the Milk Industry Foundation (MIF) and the International Association of Ice Cream Manufacturers (IAICM). The MIF is a trade association which represents approximately 300 processors and distributors of fluid milk and fluid milk products. Its member companies operate 800 plants and process about 75 percent of the total fluid milk processed, bottled, and consumed in the United States. The IAICM represents ice cream manufacturers; its member companies operate 600 plants which manufacture about 80 percent of the total ice cream and related products consumed in the United States. The following points were raised:

1. The issue is based on speculation.

The witness disagreed with proponent's expectation that the M-W price would rise to a level that would cause distress at butter-powder plants. Further, he stated that due to large CCC stocks of cheese and continued CCC purchases of cheese (he expected CCC purchases of cheese to total 100 million pounds for the July-September period), significant increases in wholesale cheese prices should not be expected. He also expressed a view that until the stocks diminish and the purchases cease, the price of cheese should not rise above the government sellback level.

2. Rare occurrences should not be accepted as a basis for permanent changes in Federal milk marketing orders.

The witness stated that only three of the 45 Federal milk orders currently have butter-powder snubber price formulas to be applied to the manufacturing class of products if conditions warrant their use. However, he pointed out that in the past ten years, these snubber provisions had been operative for only a few months in 1979.

3. Market forces, not formula prices, should dictate where resources flow.

The witness stated that market forces, particularly product prices, should allocate milk between the various manufactured products. He held the view that a fourth class of milk, based on a formula price, would interfere with normal market forces, and that the production of butter and powder thus would be more profitable so that manufacturers would be more reluctant to make milk available for other uses. The witness concluded that such circumstances would make it both difficult and costly for fluid milk handlers and ice cream manufacturers to obtain needed raw milk supplies.

4. Margins gained by butter manufacturers in June and July of 1984 should offset any reduction in margins that might be experienced this fall.

The witness noted that while cheese prices were fairly stable in June and early July, the wholesale butter price increased. The butter price rose 18 cents, from $1.43 per pound on June 1 to $1.61 per pound on June 29. And, for the early part of July (the 1st through the 20th), the butter price averaged $1.58 per pound.

5. The M–W price should not be replaced by butter-powder formula pricing.

The witness maintained that the M–W price is a reliable indicator of the price of raw milk, for it is derived from the prices paid by several hundred plants to farmers. On the contrary, he said that the value used in the formula is based on the transactions on the Chicago Mercantile Exchange, which can be very few or none.

In addition, he maintained that the manufacturing cost ("make") allowance proposed is in conflict with that used in the Federal price support program for milk. Currently, the make allowance used in the support program for milk. Currently, the make allowance used in the support program is $1.22, whereas the proposed make allowance of the formula is $1.32.

6. No particular segment of the dairy industry should be given priority over any other segment.

The witness held the view that the dairy industry operates as an integrated system, with each part depending on the other. He said that the fluid milk handler depend on the butter-powder plants and all balancing plants to dispose of the surplus milk. He added that if it were not for the fluid markets, then the balancing plants would not exist and cooperative members would lack outlets for all of their production. Therefore, the witness urged that the Federal milk marketing orders not be changed in favor of any one segment.

A spokesperson offered testimony in opposition to the Federation's proposal on behalf of four Florida cooperatives who collectively produce and market approximately 80 percent of the fluid milk requirements of the State. They are the Independent Dairy Farmers' Association, Inc.; Suncoast Milk Producers' Cooperative; Tampa Independent Dairy Farmers' Association; and Upper Florida Milk Producers' Association. He testified that:

1. Exemptions from the application of the Federation's proposed changes, if adopted, should be granted to the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas.

The witness stated that the period of surplus production in the three Florida milk marketing areas is generally confined to April, May, and June. He said that during that short flush period, the surplus milk is moved from Florida to both butter-powder and cheese plants located throughout the southeast region of the United States. Thus, he stated that lowering the price to producers for milk used in the manufacture of butter and

powder would not assist in the orderly disposition of surplus milk in the Florida markets.

2. If adopted, the formula price for milk used to produce butter and nonfat dry milk should be utilized on a permanent basis.

The witness questioned why the formula price would be a good measure of the value of milk used to produce butter and powder when it was less than the M–W price, but would not be so considered when it was greater.

3. The M–W price was adopted in order to eliminate price formulas and their inherent problems.

The witness stated that in the late 1950's and early 1960's, formula pricing prevailed in the milk order programs. However, due to some difficulties encountered, this pricing system was replaced by the M–W price series, a single price for manufactured uses under the Federal orders.

The witness stated that the main source of contention when considering formula pricing was, and still is, the make allowance. He maintained that it is difficult to select an allowance which, when applied, would be equitable to both processors and producers at any given time. He concluded that formulas require a level of expertise with respect to determining the appropriate make allowances, and he is of the opinion that the Secretary is not able to provide this expertise.

4. Adoption of the Federal's proposal would lead to a misallocation of resources in the dair industry.

The witness stated that if butter-powder plants were obligated to pay only the formula price for milk, then they would be insulated from normal market forces. Thus, butter-powder plants would manufacture products without regard to the consumer demand for those products because they would be assured a reasonable return. He added that the Secretary should consider some alternative solution for butter-powder plants, if they truly need some type of relief. In his view, adoption of the Federation's proposal would remove butter-powder operations from the competitive mainstream of the dairy industry and would give them special assurance of cost recovery.

The Federation's proposal also was opposed by a spokesperson for the Trade Association of Proprietary Plants (TAPP)—which represents 30 privately owned manufacturing plants, 28 of which are located in Wisconsin and two in Illinois—on the following bases:

1. The M-W price is the appropriate price for raw milk used in manufacturing.

The witness stated that the M-W price reflects the competitive price paid for Grade B milk in Minnesota and Wisconsin. He held the view that the following attributes apply to the M-W price:

—It relates Grade A manufacturing milk prices to Grade B prices;
—It provides equitable competition between the fluid and manufacturing segments of the dairy industry;
—It allows for the proper competitive pricing and movement of milk and allocation of resources within the dairy industry; and
—It maintains a competitively based price alignment and equity between the price support and Federal order programs.

2. A lower administered price that guarantees a competitive profit for milk going into butter and powder use (relative to the M-W price) would not allow for the proper distribution of resources in the dairy industry.

The witness indicated that the proposed formula price would insulate butter-powder operations from competition, and thus would encourage the maintenance of inefficient or unneeded butter-powder operations. He stated that a lower price for milk used in the manufacture of butter and powder would impede the shifting of milk to cheese use, and thus would perpetuate a rise in the M-W price.

3. Adoption of the Federation's proposal would create inequities in the dairy industry.

The witness claimed that a separate class for butter and powder with a lower price would cause inequities between regulated and unregulated manufacturers. He stated that Wisconsin relies on out-of-state markets for about 80 percent of the products made from its milk production. He maintained that out-of-state competitors have the advantage of location and lower transportation costs; therefore, any additional price breaks would create trade barriers to the movement of Wisconsin manufactured products.

The witness also stated his view that there would be an inequity between the Federal order and price support programs if the proposal were adopted because the proposed formula price incorporates a make allowance of $1.32, whereas the price support make allowance is $1.22. The witness also held that the proposal favors specific manufacturing uses over others, which would create further inequity between cheese and butter-powder operators.

4. The real advantage of the formula price for butter-powder plants would be in the spring.

The witness stated that the proponent's proposal would be a year round price concession and would have a greater impact during the spring flush season when larger volumes are manufactured into butter and powder than in the fall. He pointed out that because the make allowance of the formula price is 10 cents greater than that of the price support program, a profit in selling Federal order plant butter-powder to the Government over butter-powder from unregulated plants would be assured.

5. A lower price for milk used in butter-powder would result in a lower price to producers.

6. The formula price, if adopted, should be the permanent price for milk used in the manufacture of butter and powder. The witness stated that the Federation's proposal ensures the best of two worlds for butter-powder operations, because they would always be charged the lower of the formula price or the M-W price.

7. The give-up charges imposed by butter-powder operators for spot load sales would increase if the formula price were effective.

A spokesperson for the National Farmers Organization (NFO), which markets milk on behalf of its member producers in 15 Federal marketing order areas, offered the following testimony in opposition to the Federation's proposal:

1. Creation of a Class IV price would result in lower returns to dairy farmers.

The witness stated that the purpose of the proponent's proposal is to reduce the price of milk going into butter and powder. He held that such a purpose is not appropriate because the dairy farmers have just withstood a substantial reduction in the price of milk and should not be subject to further reductions at this time. He added that producers should receive the full use value of their milk not needed for Class I uses, as pointed out in the Secretary's 1974 decision on snubbers.

2. The Minnesota-Wisconsin price series is the most reliable indicator available for pricing milk for manufactured uses.

The witness stated that the M-W price is based on the actual prices paid by several hundred plants for Grade B milk, and thus is reflective of competitive forces. He expressed the view that, on the contrary, the butter portion of the proposed snubber price formula would be based on the very thin and infrequent trading activity on the Chicago Mercantile Exchange. The witness pointed out that the price on the Exchange could be changed without any transactions taking place. Also, he

claimed that the price of powder used in the formula is questionable because it would come from unidentified sources.

3. Federal order pricing should not create a competitive disparity between regulated and unregulated processors of butter and powder.

According to the witness, much of the total butter and powder (over one-third of the butter and about one-fourth of the powder) produced in the United States is manufactured by plants in the states of Minnesota and Wisconsin that pay the M-W price for raw milk. He implied that these mainly unregulated plants would be at a disadvantage if the regulated manufacturers were able to purchase raw product at a lesser cost. He added that such a situation could lead to disorderly marketing conditions in the product markets.

4. The Federal milk orders should not guarantee a profit margin to any segment of the dairy industry.

The witness expressed the view that adoption of the butter-powder snubber formula price would assure profits to the regulated manufacturers of butter and powder, who are mainly cooperative organizations. He maintained that the health of the processing industry should not be preserved through regulations that would shift revenues from all producers to the particular producers who are members of the cooperatives.

5. The manufacturers of butter and powder should offset any future losses with the windfalls they have received over the past few years.

The witness stated that because the M-W price has been below the CCC support price for milk over the last several years, butter and powder operators have been able to purchase their raw milk supplies for less than the CCC intended and to sell their products to the CCC at full support prices. He also pointed out that over the past several years, the M-W price has been below the snubber price.

One other spokesperson for NFO stated opposition to the proposal on the basis that its objectives conflict with other Federal programs designed to reduce milk surpluses.

The witness for the Natonal Independent Dairy Foods Association (NIDA) offered the following testimony in opposition to the Federation's proposal:

1. The objective of the Federation's proposal conflicts with the objective of the market order system.

The witness stated that the objective of the market order system is to encourage the highest-valued use of milk and thus maximize the return to dairy farmers. However, he said that the objective of the proponent's proposal is to provide some relief to butter-powder manufacturers if the M-W price were to rise beyond the ability of butter-powder plants to pay for milk. Thus, the witness held the view that the proposed action is contradictory and, therefore, inappropriate.

2. Butter and powder plants were built so that certain organizations could monopolize the market.

The witness alleged that cooperative built butter-powder plants for the purpose of gaining control over large numbers of producers and their supplies of milk, after they lobbied for legislation (which passed) that encouraged increased output without a matching increase in demand. Thus, he said they achieved market dominance and sold the surplus to the Government.

3. The proposed amendments are unnecessary.

The witness stated that the thrust of Congress' mandated dairy programs is to eliminate surplus milk supplies; and if necessary, two additional 50 cent per hundredweight reductions in the support price will take place in 1985 in order to achieve the desired goal.

In light of these actions, he held the view that a balance between milk supply and demand would eliminate any future need for amendments to help preserve surplus outlets.

4. Federal orders should not be changed to benefit products that do not have a market and are not anticipated to have one in the future. The witness stated that there is not broad consumer market for nonfat dry milk, only a government market; and, under the current law and regulations, it has a limited future.

5. Total producer returns from the pool should not be further suppressed by reducing the price of milk used in butter and powder.

The witness said that many producers have already endured financial hardships due to increased production costs, the 50 cents per hundredweight assessment, and the reduction in the support price. He held the view that one further reduction in their returns would be illogical.

A spokesperson for Borden, Inc., which operates 45 dairy plants pooled under Federal milk marketing orders and nine nonpool plants, gave the following testimony in opposition to the Federation's proposal:

1. The Federation's proposal is based upon speculation.

The witness pointed out that in May 1984, the Federation's formula price (using midwest market prices) would have been 23 cents higher than the basic formula price. He surmised that the proponent was speculating that sometime the M-W price might rise above the formula price. However, he urged the Secretary to not approve proposals based upon speculation.

2. Shifts in production should not be inhibited.

The witness stated that if the market order system were allowed to function properly, changes in demand for different products would be recognized and milk supplies would shift accordingly. He said that such a normal shift in production would result from cheese plants in Minnesota and Wisconsin bidding higher prices for milk to be used in the production of cheese; and, this probably would lead to a higher M-W price. However, if the proposed formula price were operative, he said the balancing of milk to market needs would be destroyed, with milk flowing to where no commercial demand for it exists due to the subsidized butter-powder milk cost. He said that such a situation would raise cheese milk prices even higher, with the result of increasing both the M-W price and the subsidy further. The witness concluded that adoption of the proposal would place the Government in the embarrassing position of subsidizing the production of butter and powder that it eventually would buy back, while commercial demand would go unfilled.

3. Adoption of the Federation's proposal would create a competitive advantage for butter-powder operators regulated by Federal order pools and their producers over those who are unregulated.

4. The cost of balancing the market should be borne by those producers who create the imbalance. The witness stated that to subsidize those who create the imbalances of milk in markets would not correct the problem, but would only serve to perpetuate the seasonal peaks and valleys.

5. Circumvention of the objectives of the dairy programs recently passed by Congress should not be made possible through amendments to the Federal orders.

The witness cited the Omnibus Budget Reconciliation Act of 1982 and the Dairy and Tobacco Adjustment Act of 1983 as attempts by Congress to decrease the milk surpluses, and thus reduce the large cost to taxpayers arising out of such surpluses. He held the view that efforts on the part of producer groups to change the Federal milk orders so that the regulations function counter to legislation are not appropriate.

A spokesperson for Farmers Union Milk Marketing Cooperative—a marketing and bargaining association of more than 7,000 milk producers who

reside in the states of Wisconsin, Minnesota, Iowa, Illinois, and Michigan—opposed the Federation's proposal on the following bases:

1. Adoption of the Federation's proposal would have a significant downward impact on all producer returns if the formula price to become operative.

The witness stated that butter and nonfat dry milk were the end uses of about 14 percent of Grade A milk marketed in Federal milk marketing areas in 1983 and the end use of about 19 percent of the total national milk supply. Thus, he expressed the view that price reductions on that much milk would not be without significant impact.

2. Market forces should be allowed to allocate milk supplies and industry resources.

The witness stated that if the butter-powder formula price were operative, then operators of butter-powder plants would be insulated from changing market conditions for dairy products. Therefore, he believed that the butter-powder operators would purchase Grade A milk below the value of that milk to other buyers and manufacture products without regard to the commercial demand for them. Consequently, he said, the adjustment of the dairy industry in response to market signals would be inhibited, and milk would not flow to those manufactured dairy products for which demand is strong and growing. He also added that butter-powder plants would continue to manufacture strictly for the CCC, while the cheesemakers who would be willing to pay farmers in excess of the Class IV price for their milk would not be able to produce sufficient quantities of cheese to meet commercial demand.

3. Class I handlers should pay for all services provided by the butter and powder operators.

The witness stated that all producers should not be required to subsidize the butter-powder operators so that they would be able to supply their fluid handlers with milk below cost. He added that if the Class I handlers were charged the actual cost of the milk and for the services provided, then they might turn to other (i.e., other than the proponents), more efficient, suppliers.

4. The sole purpose of the Federal milk marketing orders is to assure that adequate supplies of fluid grade milk are available to meet consumers' demand in an orderly and economic manner. The witness alleged that the proponent's proposal would not adhere to the objectives of the Federal milk marketing order system and therefore, should be rejected.

A spokesperson for the Washington State Dairymen's Federation, an agricultural trade association representing over 1,000 dairy farmers, opposed the Federation's proposal on the following bases:

1. The objective of the federation's proposal conflicts with the philosopy of the support price program.

The witness stated that to amend the Federal orders as requested is to protect butter and powder facilities at the expense of cheese plants. He said such action would mark a departure from the philosophy behind the support program which provides for equal competition for milk among manufacturing plants. He added that over time the disparity between the prices of milk for use in manufactured products, i.e., Class III and Class IV, would be greater as cheese milk becomes scarce due to butter and powder plants guaranteed profitability and the need to run these at near capacity.

2. Class IV pricing should be considered at a later time, when a national blend pricing provision can also be considered. The witness held the view that simultaneous consideration of both issues is essential in providing equitable treatment of all producers.

3. Class IV pricing would lower the potential blend price of milk during times of tight supply.

The witness stated that dairy farmers can ill afford Class IV pricing at this time.

4. If the Federation's proposal is adopted, the butter-powder formula proposed should be used all of the time. The witness stated that full time use of the formula price would both eliminate any confusion which may arise concerning which pricing method is to be used at a given time, and increase producer returns when the formula price is greater than the M–W price.

The spokesperson for the Wisconsin Cheese Makers Association, which represents over 160 manufacturers and wholesalers of cheese and butter in 12 states, offered the following testimony in opposition to the Federation's proposal:

1. The objective of the Federation's proposal, a universal sharing of the cost of balancing by all producers, is contrary to policy. The witness cited a finding from a previous proposal for relief for balancing plants which stated that the costs of providing a balancing service should be recovered from the fluid handlers who receive the benefits of such service; thus, he concluded that the Federation's proposal should be denied.

2. Adoption of the proposal could lead to inequities between butter plants.

The witness stated that in Wisconsin there are plants that produce only butter, and that do not get milk directly from producers; rather, they buy cream from cheese factories. He added that the price they pay is a factor (1.26 to 1.28) multiplied by the Chicago Mercantile Exchange Grade A butter price. He concluded that adoption of a Class IV price would give butter-powder plants in other areas a competitive advantage over these Wisconsin butter plants.

3. Adoption of the proposal could create a very disorderly situation in the market.

The witness expressed the view that the Class IV price would act as a subsidy to butter-powder plants, which would enable them to keep milk that otherwise would go to cheese plants. In addition, he claimed that once the formula price becomes effective, it would perpetually be operative because milk would flow to where there is a profit, in butter-powder; therefore, the demand for milk by cheese operators would be stimulated further. Consequently, the M–W price would rise.

4. The marketplace should determine how milk is utilized, otherwise the CCC stockpile of butter and powder will grow.

5. During certain times of the year, butter and powder plants are not the sole balancers of the market.

The Federation's proposal was opposed by the spokesperson for Kroger on the following bases:

1. Incorporation of a butter-powder snubber would only serve to reduce returns to producers and prevent milk from being attracted to higher-valued uses. The witness held the belief that such action would not be advisable at this time when supplies of fluid milk are needed in the southeastern states.

2. Changes in the Federal orders should not be made in order to prolong the existence of unnecessary capacity in butter and powder.

The witness believed that much of the butter-powder production that would be encouraged by adoption of the proposal would not have a commercial market in which to sell, and would thus be purchased by the CCC. He said that the taxpayers would be burdened with such CCC purchases unnecessarily, for the milk could have been used in higher-valued use products.

3. The Federation's proposal should not be all inclusive. The witness alleged that inclusion of all 45 milk marketing areas would only encourage the establishment of butter-powder plants in those areas where they presently do not exist.

4. The objective of the Federal order program is to ensure that milk moves to the highest-valued uses whenever possible. The witness held the view that the adoption of the Federation's proposal, in essence, would mean that farmers do not want milk to be moved to higher-valued uses whenever possible; and if such is the case, then it was his opinion that the order regulations should not be maintained.

5. Producers should not have to endure one more decrease in their returns in order to preserve butter-powder plants.

The witness expressed concern that producers' returns have declined due to the MDP assessment and due to the reduction in the support price. He added that further reductions could lead to business failures, and thus should not be made.

6. If adopted, the formula price should be used at all times. The witness stated that the full time operation of the formula price for butter and powder would allow producers to get the benefit of higher returns whenever butter-powder values exceed the M–W price.

The spokesperson for Kraft, Inc., which operates several manufacturing plants located in 13 states and regulated under various Federal milk marketing orders, opposed the Federation's proposal on the following basis:

1. If adopted, the Class IV price should be the effective price for all surplus milk outside of Minnesota and Wisconsin.

The witness held the view that plants outside of Minnesota and Wisconsin, which manufacture products in addition to butter and powder, incur high per unit costs due to extreme seasonality and idle capacity. Thus, he believed that they should be protected from unduly high prices caused by competition for manufacturing milk supplies in the M–W area.

The witness pointed out that from 1980 to 1983, production of cheese in the combined East South Central and West South Central regions of milk orders, during the lowest months of production, showed a reduction of 80 percent, 76 percent, 61 percent, and 48 percent respectively. He added that in 1982, the Kraft plants in the Southeast experienced a seasonality in Grade A milk used for manufacturing that was three times greater than the seasonality of Grade A milk retained by its North Central area plants.

In addition, the witness showed that milk output reduction in the South were greater than in the M–W states. In June 1984, milk production in the South was nine percent less than that in June of 1983. However, in the M–W states this figure was only 3.7 percent. He added that due to Federal order shipping requirements exceeding 50 percent in most of the milk areas outside of the M–W region, each one percent decline in the milk supply results in a two percent reduction in milk for manufacturing. Consequently, receipts at Kraft manufacturing plants in the South in June 1984 were reduced 23.4 percent from those in June 1983. Kraft plants in the North Central area experienced a reduction of only 3.5 percent for the month.

Furthermore, he stated that the comparatively higher per unit cost of producing cheese in the South led to the closing of a Kraft manufacturing plant in Tennessee in the early part of 1984.

Discussion

The proponents are concerned that handlers of milk used in butter and/or powder under Federal orders will be forced to operate at a loss if the M–W price is too high relative to product prices for butter and powder. The basic issue in this proceeding is whether a new classificaton of milk use should be permanently provided in the orders, along with a "safety-net" pricing provision that would tend to limit any losses that butter and powder plant operators could incur if the M–W price is too high relative to the market values of butter and powder. Thus, under such a situation, all producers would share in the losses associated with providing balancing services for the fluid market.

Butter, nonfat dry milk, and cheese plants have long served as outlets for Grade A milk that was surplus to the fluid needs of Federal order markets. The minimum prices for surplus milk established under the orders were fixed at a level intended to "clear" the markets of that surplus milk. If the order prices were too high, it would be difficult for handlers of reserve milk supplies to find an outlet for the milk. If the prices were too low, processors would be encouraged to associate milk supplies with the market just for manufacturing purposes. Also, Federal order handlers of surplus milk would have a cost advantage over unregulated processors of manufactured products. Thus, the M–W price was chosen as a competitively determined price in an unregulated market that would serve effectively as a market-clearing price for surplus milk in Federal order markets.

Foremost among the arguments presented in support of adopting the proposals is the contention that butter and nonfat dry milk operations serve as the true balancing wheels for the dairy industry. We must conclude that this statement may be true in many markets. But in many other markets, cheese plants also are utilized to help balance fluid milk needs.

Data contained in sources officially noticed at the hearing indicate that there is generally less seasonal variation in the quantities of milk, skim milk, and cream used to produce cheese than to produce butter and nonfat dry milk for all Federal milk orders combined. This was determined by computing monthly index numbers of the daily pounds of milk, skim milk, and cream used in each product for 1975, 1978, and 1983. Analyses also indicated that in 1983 the seasonal variation in milk used to produce each product was substantially less than in both 1975 and 1978. However, the milk used to produce cheese showed greater seasonal variation during the year than either receipts of producer milk or the pounds of producer milk used in Class I. This suggests that some milk used in cheese production still serves a balancing function.

Further analysis reveals, however, that what appears to be the case generally is not necessarily the case in specific instances. The pounds of milk used in 1983 to produce butter and powder were computed as a percentage of the total milk used to produce manufactured dairy products for the individual orders. In some orders, the percentage of milk, skim milk, and cream used to produce butter and powder (combined basis) is too small to support a conclusion that butter and powder plants represent the only balancing outlets for milk. Some examples include the Alabama-West Florida order, 5.0 percent; the Michigan Upper Peninsula order, 2.6 percent; the Chicago Regional order, 8.8 percent; and the Indiana order, 5.0 percent. These numbers indicate that in some markets cheese plants still play a major role in balancing the market's Class I needs. These data for 1983, a year when milk supplies were plentiful, suggest that in at least 14 Federal order markets, cheese plants play a major role in balancing the fluid market. Eleven Federal order markets in 1983 did not use any milk to produce nonfat dry milk, although some milk or cream was used to produce butter in most of those markets.

Limited data were presented for the New York-New Jersey market to show that receipts of milk at two plants (one a powder and cream plant and the other a butter-powder plant) were much greater on weekends than on weekdays. No data of a similar nature were presented for any cheese plant operations. Such limited data are inadequate to confirm

that butter and powder operations in fact do the balancing for most Federal order markets to the extent that the proposal should be adopted.

In considering whether the proposal should be adopted, there are other factors as well that should be evaluated before a decision is made that all producers should share in any losses that might occur through the operation of butter-powder plants. Much of the information that would be needed in this regard was not provided at the hearing. For example, the record provides very little information concerning the available capacities for manufacturing butter, nonfat dry milk and cheese in the various order markets. Lacking such information, it is not possible to conclude for most Federal order markets that surplus raw milk supplies cannot be directed to cheese plants as an economic alternative outlet when the M–W price is high relative to the market values for butter and/or nonfat dry milk. It is noted that the record indicates that the Upper Midwest order market has sufficient cheesemaking capacity so that most, if not all, of the market's reserve milk could be directed to cheese if product prices warranted such a decision. The record does not demonstrate that any handler in that market would have to lose money because the only outlets available for surplus milk were butter-powder plants.

The record also indicates that at least two cooperatives (Agri-Mark and Dairylea) in large measure balance their own fluid milk operations. The fact that some cooperatives operate butter-powder plants for the purpose of balancing mostly their own Class I, or fluid, milk operations, raises critical questions about whether other producers should pay the cost of balancing the cooperatives' fluid milk needs. Again, the record does not provide information about which Federal order markets, if any, have substantial fluid milk facilities operated by cooperatives. Even if it could be concluded that non-member producers and others should help pay the cost of balancing, the extent to which cooperatives do balance their own fluid milk operations is not revealed for most, if not all, of the markets involved in this proceeding. Accordingly, we cannot conclude from the record that all producers should help share losses for butter-powder operators as a general rule.

Some witnesses for cooperative associations indicated in cross-examination that their butter-powder plants also supply cream and/or cream blends to ice cream makers. However, the extent to which this occurs, or whether such plants are the major sources of milk products for ice cream makers, is not revealed on this record. Also not revealed in this regard is whether the prices at which such products are sold, and the volumes sold, would help offset the costs of operating butter-powder plants.

The record discloses that some cooperatives operate butter and powder plants and cheese plants. When the type of price relationships that proponents are concerned about actually develop, it appears that losses associated with butter-powder plant operations might be partially or wholly offset by positive margins for cheese (or other products). Again, the record is not adequate in this proceeding to determine whether most cooperatives operate both types of plants, or whether the majority of cooperatives operate one or the other, but not both types of plants. Even where only butter-powder plants exist (if there is such a market), there is no clear basis for concluding that the operators of butter-powder plants should have losses shared by other producers on the market while any positive margins are to be retained only by the plant operators.

Another question concerns whether all products must take reduced returns in any month that the apparent margin would indicate a loss to butter-powder plant operators. It is possible for the apparent margins to be positive for a period of many months before the opposite occurs. Thus, a question arises as to whether such margins should offset negative apparent margins for some time before actual losses to cooperatives should be shared. Moreover, in some markets at least, over-order charges are involved, which may be based on the costs of balancing the fluid markets. There was some limited reference to the matter of over-order charges; however, the record is not adequate to establish the extent to which balancing costs are or are not paid by the fluid milk handlers. But if handlers in any market are paying additional charges above the order prices to cover the cost of balancing their fluid needs, it would not appear that other producers in that market should have to experience reduced returns to the extent thos costs are covered by other sources of revenue.

It should be noted that butter and powder were cast together in virtually all of the testimony at the hearing. Yet the individual market data suggest that in some markets there may be plants that make butter or powder separately. For example, 1983 data show that milk or cream was used to produce butter, but not skim milk power, from milk pooled under the Tampa Bay, Upper Florida, Georgia, Alabama-West Florida, Michigan Upper Peninsula, Central Illinois, Memphis, Central Arkansas, and Greater Louisiana orders. Whether these data indicate separate plants that make butter only, or whether they show that plants that make both butter and powder received only cream for use in butter cannot be established from the data.

The lack of information referred to above makes it difficult to deal with some of the questions that would have to be decided in order to conclude that all producers must permanently share losses incurred by butter-powder plant operators.

The proponents cited as precedent for the proposed amendments a 1974 temporary action to provide a butter-powder snubber price in 19 orders. However, there is little, if any, similarity between the conditions that existed then, as depicted in the 1974 decision (39 FR 11915), and the current conditions reflected in the record of this proceeding. Moreover, the action taken in 1974 was temporary.

In 1974, there was concern that cooperatives would have more surplus milk to process in the flush production months. Cheese plants were already operating at capacity and butter-powder plants had to be used to handle the overflow. Additional cheesemaking capacity was being developed, but could not be ready in time to handle the spring flush supplies.

In contrast, this record suggests that at least in some areas there currently is no need to develop additional cheesemaking capacity. Unlike the situation in 1974, cooperatives now are concerned that as milk production declines they will have to operate butter-powder plants at less than full capacity, and thus at higher per unit production costs.

Another aspect of the 1973–74 situation that was vastly different from the one that exists now is the level of uncommitted stocks held by the Commodity Credit Corporation (CCC) under the dairy price support program. Such uncommitted stocks at the end of the 1972–73 marketing year (March 31) were as follows: Butter, 86.8 million pounds; nonfat dry milk, none; and cheese, 1.7 million pounds.[1] This was in

[1] Official notice is taken of Tables 3, 4, and 5 in the ASCS Commodity Fact Sheet, 1983–84 Dairy Price Support Program, March 1984, published by the Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250.

sharp contrast to the levels of uncommitted stocks (inventories) held by CCC for the week ending July 27, 1984. At that time, CCC held 319 million pounds of butter; 1,375.5 million pounds of nonfat dry milk; and 878.7 million pounds of cheese. Given the large stocks of cheese held by CCC, it is difficult to envision that in the near future the type of price disparities projected by the proponents at the hearing could exist for any extended period of time. Nevertheless, for December 1984, the proposed "snubber" price was 23 cents per hundredweight below the M–W price.[2]

In the 1973–74 situation, by the time a hearing was held (March 1974), the M–W price had already substantially exceeded the "snubber" price (provided in several other orders) for October 1973 through February 1974 by amounts varying from 47 cents to $1.19. In contrast, the hearing in this proceeding was held in July 1984, and from that time through November 1984 the proposed "snubber" price exceeded the M–W price by amounts varying from 56 cents for July to 33 cents for November.

Thus, in 1973–74, the disparity between the M–W price and the market value of butter and nonfat dry milk obtained from 100 pounds of whole milk (or its equivalent in the form of cream and skim milk) was a reality. In 1984, there was only one month in which the feared price relationships actually existed. Nevertheless, the average apparent margin for all of 1984 was $1.61 per hundredweight, 29 cents higher than the make allowance reflected in the proposal under consideration.

Substantial changes have occurred in the dairy industry since 1974.[3] In 1974, producer milk deliveries under all Federal orders totaled 67,778 million pounds. Ten years later, producer milk receipts totaled 95,757 million pounds, an increase of 41 percent. At the same time, the use of producer milk in Class I increased only slightly, from 39,293 million pounds in 1974 to 41,091 million pounds in 1983, a 4.6 percent increase. From 1974 to 1983, the amount of milk available for non-fluid uses increased by about 26 billion pounds. Some of these changes were due to addition of new orders or new territory to marketing areas when orders were merged. However, the bulk of the increase in production was due to greater output per producer.

In 1974, the total producer milk used to produce butter, nonfat dry milk and cheese amounted to 15,578 million pounds; 5.89 percent was used in butter, 33.67 percent was used in nonfat dry milk, and 60.43 percent was used in cheese. In 1983, total producer milk used in the three products was 42,901 million pounds, or 2.7 times as much as ten years earlier. Four percent of the 1983 volume was used in butter, 27 percent in skim milk powder, and 69 percent in cheese. Nearly 75 percent of the increased volume used in these products in 1983 was used to produce cheese. The use of milk (milk, cream, and skim milk) in butter production in 1983 was 85 percent greater than in 1974. Milk used in cheese was up 210 percent from 1974. Thus, the larger growth in manufactured milk products during that time was in cheese production.

It is concluded that the conditions that led to the 1974 decision to provide temporary price relief to handlers of milk used in butter-powder are unrelated to the conditions that are the subject of this proceeding. The fact that certain actions were taken based on those earlier conditions may not be relied upon as justification for taking any action in this proceeding.

Twenty-five interested parties filed briefs of proposed findings of facts and conclusions following the close of the hearing.

Briefs filed by the parties that attended and participated in the hearing generally supported the same position reflected in testimony or other evidence offered at the hearing. However, the brief filed by Kraft clearly indicates a much firmer opposition to adoption of the proposals. Kraft concludes, in the brief, that the proposal should not be adopted, but urges the department to take the initiative to explore alternative ways of dealing with the problems that are the subject of this proceeding.

Eleven briefs were submitted by interested parties that had not participated at the hearing. Of those, three were not received in accordance with the presiding Administrative Law Judge's specific instructions regarding filing deadlines with respect to date of receipt by the Hearing Clerk. The other eight briefs were in opposition to adoption of the proposals, including briefs filed by the Departments of Agriculture of the States of Minnesota and Wisconsin.

NFO, in its post-hearing brief, asked that the hearing be reopened to receive evidence concerning announcements that cooperatives in certain marketing areas would pay over-order prices to their producers. NFO's request claimed that in order to provide the type of price relief requested by proponents, it would be necessary for cooperatives to demonstrate that they were sustaining operating losses by showing that they could only pay member producers a price below the market blend price.

This request to reopen the hearing is denied. The additional evidence that NFO would hope to adduce through a reopening of the hearing would not be crucial in determining that the proposal should not be adopted.

In its brief, NFO also requested that Official Notice be taken of an Emergency Final Decision dated August 22, 1984, Docket No. AO–356–A22 et al. That decision involved increasing the Class I differentials in 11 southeastern orders by 20 cents per hundredweight for the months of September 1984 through February 1985, and providing temporary hauling credits for handlers who obtained supplemental milk for Class I use from other milk order markets during those months. Another issue involved in the decision was a temporary change in the method of computing bases under the base-excess plans included in eight orders.

The NFO brief expressed the view that any action taken to reduce producer returns in the proceeding involved herein would be contrary to the intent of the amendments noted above for certain orders in the Southeast.

This request for official notice is denied. The decision in question concerned only temporary provisions due to expire at the end of February 1985. Therefore, there is little, if any, relevance of that decision to the permanent changes that were proposed in this proceeding, especially since in this case emergency action also is denied.

There also is another procedural matter to be addressed. One of the sources of information that the proponent's witness wanted to have received in evidence as an exhibit was marked as Exhibit No. 12, but was not received into evidence. It was, however, made an offer of proof. Moreover, direct references by witnesses to material contained in the proposed exhibit were officially noticed.

All the post-hearing briefs were silent regarding the Administrative Law Judge's ruling that proposed Exhibit 12 would not be received into evidence. Also, at the hearings, it appeared that the decision to take official notice of material contained in proposed Exhibit

[2] Official notice is taken of Dairy Market News, Volume No. 51, Report Nos. 27 through 52, dated July 6 through December 28, 1984, and Volume No. 52, Report No. 2, dated January 11, 1985, published by the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

[3] Official notice is taken of Federal Milk Order Market Statistics, Annual Summary for 1974, 1975, 1978, and 1983, issued by the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

12, which was specifically referenced by witnesses, was acceptable to those witnesses who wished to rely on material contained therein. Accordingly, further review of this matter does not seem warranted and the ruling to exclude the exhibit from evidence stands.

2. The Need for Emergency Action With Respect to Issue No. 1

The proponents of the proposals considered at the hearing, and others who supported adoption of the proposals, requested that the Secretary omit the issuance of a recommended decision and the opportunity to file written exemptions. They maintained that emergency action was needed to amend the orders as proposed in order to avoid possible serious financial losses by the operators of federally regulated butter-powder plants.

Virtually all who opposed adoption of the proposals also opposed emergency action.

The preceding discussion of issue No. 1 concludes that no action is recommended. Accordingly, the request for emergency action is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. It is noted that several of the briefs contained factual material not included in the evidence adduced at the hearing. The Department's General Regulations (7 CFR Part 900), Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Order, provide in § 900.9(b) *Briefs, proposed findings and conclusion,* that "Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case shall not be considered in the formulation of the marketing agreement or marketing order." Thus, the record evidence may not be expanded through the briefing process. Accordingly, any information so provided has been disregarded in reaching the findings and determinations set forth in this decision. Except as just noted, these briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

It also is noted that some briefs were not received at the Department within the time frame specified at the hearing by the Administrative Law Judge. The briefing period, and the specific dates provided, recognized that the proponents were requesting emergency action, i.e., deletion of a recommended decision. In order for the Department to fully consider the emergency action issue, it was essential that briefs be filed on time. Thus, any brief not received in accordance with the Administrative Law Judge's directions has not been considered in developing this decision.

Determination

The findings and conclusions of this decision do not require any changes in the regulatory provisions of the 45 respective orders regulating the handling of milk in the aforesaid specified marketing areas.

List of Subjects in 7 CFR Chapter X

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on: March 15, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-6649 Filed 3-19-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 211, 272 and 302

[Docket 42721—Notice No. 85-6; CAB EDR-478, PDR-89]

Applications for Permits to Foreign Air Carriers; Essential Air Transportation to the Freely Associated States; and Rules of Practice in Proceedings

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of comment period.

SUMMARY: The Department grants a request to extend the comment period on regulations the CAB had proposed concerning the grant of a special class of foreign air carrier permit to Freely Associated State Air Carriers, and to make provision for the guarantee of subsidized essential air transportation to the Freely Associated States with eligibility of Freely Associated State Foreign Air Carriers for subsidy under certain conditions. The regulations implement the provisions of the Aviation Agreement supplementary to the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands (currently part of the Trust Territory of the Pacific Islands). This Notice extends the initial comment period on the proposed rules, originally set as March 4, until April 4, and the reply comment period, originally set as March 25, until April 25, 1985.

DATES: Comments on the proposed rule must be received on or before April 4, 1985. Reply comments must be received on or before April 25, 1985.

ADDRESS: Comments should be directed to the Docket Clerk, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Peter B. Schwarzkopf, Office of Assistant General Counsel for International Law, C–20, (202) 472–5621; Teresa Smith, Office of Essential Air Service, S–60, (202) 426–9820; or Joanne Petrie, Office of Assistant General Counsel for Regulations and Enforcement, C–50, (202) 426–4723; U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking adopted December 24, 1984 (EDR–478, PDR–89, 50 FR 95, January 2, 1985), the Civil Aeronautics Board proposed regulations concerning the grant of a special class of foreign air carrier permit to Freely Associated State Air Carriers, and the guarantee of subsidized essential air transportation to the Freely Associated States. Freely Associated State Air Carriers could apply for limited cabotage rights, and would be eligible for subsidy under certain conditions. The regulations implement the Aviation Economic Agreement (Article IX of the Federal Programs and Services Agreement) supplementing the Compact of Free Association between the United States, the Federated States of Micronesia and the Marshall Islands. (The latter are currently part of the Trust Territory of the Pacific Islands.) The Compact is now pending before Congress for adoption.

The Civil Aeronautics Board Notice provided for comments to be filed by March 4, 1985, with reply comments to be filed by March 25. With the statutory termination of the Civil Aeronautics Board on January 1, 1985, under the Airline Deregulation Act of 1978, and the Civil Aeronautics Board Sunset Act of

1984, the Department of Transportation is now reponsible for the disposition of these rules.

By petition filed on March 4, 1985, the Federated States of Micronesia (FSM) has requested an extension of the time for filing comments for thirty days, until April 4, 1985. In support of its petition the FSM states that communications and other difficulties have prevented a timely response. The petition further notes that intensive negotiations are currently pending which may have a direct effect on these regulations. Comments at this time would, therefore, be premature. These negotiations should be sufficiently advanced to permit comments within thirty days. Finally, the petition states that since implementation of the Compact is not anticipated for a number of months, no party would be adversely affected by the requested extension.

The request for an extension of time is granted. The proposed rule is complex and significantly affects the interests of the Government of the Federated States of Micronesia. It is important that the Department have the benefit of that Government's careful consideration of the proposed rules. Since it is alleged that current negotiations may have an impact on these regulations, we believe that it is clearly in the public interest to grant the FSM the short additional time requested so that the FSM will be in a position to comment on all relevant considerations. It appears that implementation of the Compact is not imminent. There is, therefore, no necessity to adhere rigidly to the time periods originally set.

Accordingly, pursuant to 49 CFR 5.25, and under authority assigned to the Assistant General Counsel for Regulation and Enforcement in 14 CFR 385.20, I find that the Government of the Federated States of Micronesia has shown a substantive interest in the proposed rules and good cause for the extension, and that the extension is in the public interest. Therefore, the request of the Federated States of Micronesia for an extension of time to file comments in Docket 42721 is granted. Comments are now due April 4, 1985. Reply comments are now due April 25, 1985.

Issued in Washington, D.C., on March 18, 1985.

Samuel Podberesky,

Acting Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 85-6693 Filed 3-19-85; 8:45 am]

BILLING CODE 4910-62-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN-018; A-4-FRL-2799-6]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Approval of the Transportation Control Plan Portion of CO SIP for Nashville-Davidson County; TN; Redesignation of a TSP Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve two State Implementation Plans (SIP) revisions submitted by Tennessee. One involves a revision to the transportation control plan portion of the 1982 carbon monoxide (CO) SIP for Nashville and Davidson County and the other involves the redesignation of the La Follette particulate (TSP) nonattainment area to attainment.

On February 3, 1983, EPA proposed to disapprove Tennessee's 1982 CO SIP for the metropolitan Nashville-Davidson County area. Subsequently, EPA disapproved it in the April 5, 1984, **Federal Register** (49 FR 13522). The disapproval was partially based upon Nashville's failure to implement the transportation control plan (TCP) portion of their SIP. Since that time, Nashville has reconsidered and submitted the revised TCP portion and has satisfied EPA's transportation control plan requirements by substituting measures from the contingency plan for those measures not implemented.

The redesignation of the La Follette TSP nonattainment area is based on eight quarters of ambient monitoring data showing attainment and an EPA-approved control strategy.

The public is invited to submit written comments on these proposed actions.

DATE: To be considered, comments must reach us on or before April 19, 1985.

ADDRESSES: Written comments should be addressed to Michael Cooper of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

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

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Cooper, Air Management Branch, EPA Region IV at the above address and telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On July 18, 1984, Tennessee submitted two SIP revisions for EPA approval. These revisions went to public hearing in Nashville on May 4, 1984, and were approved by the Tennessee Air Pollution Control Board on June 4, 1984. EPA today proposes to approve these revisions as discussed below.

Transportation Control Plan for Nashville-Davidson County

The 1977 Amendments to the Clean Air Act added a new Part D to Title I of the Act. Under this part, the states were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; section 129(c) (uncodified) of Pub. L. 95-95). The revised plans were to provide for attainment by December 31, 1982, unless the state demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (section 172(a)(2)), and requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (section 123 (c) (uncodified) Pub. L. 95-95).

As detailed in the **Federal Register** of February 3, 1983 (48 FR 5058), the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County CO nonattainment area on February 13, 1979. The state requested that EPA extend the attainment date for the CO standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 CO SIP revision on June 30, 1982, and EPA proposed to disapprove it on February 3, 1983. The revisions submitted by the state/local agency failed to provide fully approvable plans for Transportation

Control Measures (TCMs), Basic Transportation Needs (BTNs), Resource Commitments, Reasonable Further Progress (RFP) and an acceptable Inspection and Maintenance (I/M) program. For a full discussion of these SIP revisions and EPA's evaluation of them the reader may consult the February 3, 1983 (48 FR 5058), proposal notice disapproving the CO plan and the final disapproval notice of April 5, 1984 (49 FR 13522), invoking the funding restrictions and the ban on construction of major new or modified stationary sources of carbon monoxide in the Nashville-Davidson County nonattainment area. On July 31, 1984 (49 FR 30466), EPA removed the funding restrictions and the construction ban imposed on April 5, 1984, upon receiving an approved, signed contract for the operation of the I/M program.

Nashville's 1982 CO SIP revision, which EPA disapproved as discussed above, contained six TCMs which comprised the TCP. The reason for disapproval of the two transportation control measures, return to 1980 level of service for transit and signal optimization program, was because they were not being implemented. Subsequently, the return to 1980 level of service for transit measure has been replaced with a "two-cent gas tax" equivalent and the ridesharing program measures from the contingency package. Also, the signal optimization program has been reevaluated and its implementation is under way. EPA has concurred with these revisions and is today proposing full approval of the TCP portion of the 1982 Carbon Monoxide SIP for the Nashville-Davidson County CO nonattainment area. EPA anticipates that the missing items of the CO plan will be submitted in the near future and will take action on those items upon receipt of the materials.

Redesignation of La Follette TSP Nonattainment Area

Tennessee has requested that EPA change the attainment status of a portion of the city of La Follette in Campbell County from primary and secondary nonattainment for TSP to attainment. Tennessee has submitted ambient air quality data collected at a monitoring site in La Follette as the basis for the redesignation request. Specifically, the most recent complete eight quarters of air quality data (1982 and 1983) show no violations of the TSP NAAQS as summarized below.

La Follette	Max. 24-hr. µg/m³		AGM[1]	Primary[2]	NAAQS	
	1st	2d			Secondary[2]	AGM[3]
1982	188	129	58	260	150	75
1983	156	121	56			

[1] Annual Geometric Mean.
[2] Not to be exceeded more than once per year.
[3] This is one yearly number, not to be exceeded.

In addition to air quality data, EPA redesignation policy requires evidence of an EPA approved control strategy for the redesignation of a nonattainment area. Tennessee drafted and adopted on April 26, 1979, a control strategy for La Follette. This control strategy is based on RACT determinations involving the control of fugitive dust on plant property, hours of operation restrictions, and a reduction in the sources' allowable stack emissions. Specifically, Tennessee adopted regulatory requirements (Tennessee rule 1200–3–19–.12) in the form of new categorical visible emissions and emission limitations for the sources affecting the nonattainment area. This subject is discussed in further detail in a Technical Support Document which is available for inspection at the EPA Region IV office. EPA approved Tennessee's plan for the La Follette TSP nonattainment area in the February 6, 1980, **Federal Register** (45 FR 8004).

Therefore, on the basis of eight quarters of air quality data showing attainment and evidence of an EPA-approved control strategy, EPA proposes to approve the redesignation of the La Follette TSP nonattainment area to attainment.

Proposed Action

EPA has reviewed the submitted material and found it to meet EPA requirements. EPA is today proposing to approve (1) the Transportation Control Plan part of the 1982 CO SIP for Nashville-Davidson County because revisions to the TCM's have been made and (2), the redesignation of the La Follette TSP nonattainment area to attainment on the basis of eight quarters of air quality data and an EPA-approved control strategy.

The public is invited to participate in this rulemaking by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

(Sections 107, 110 and 172 of the Clean Air Act, (42 U.S.C. 7407, 7410 and 7502))

Dated: February 14, 1985.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 85–6617 Filed 3–19–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300122; FRL–2797–7]

Dodecachlorooctahydro-1,3,4-Metheno-2H-Cyclobuta[CD]Pentalene; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document (1) proposes the revocation of tolerances for residues of the insecticide dodecachlorooctahydro-1,3,4-metheno-2*H*-cyclobuta[cd]pentalene (dechlorane; mirex) in the fat of meat from cattle, goats, hogs, horses, poultry, and sheep; milk fat; eggs; and in or on "all raw agricultural commodities," (2) discusses the residue levels which will be utilized by USDA in their residue monitoring program upon revocation of the livestock tolerances; and (3) addresses the existing FDA action level for residues in fish. This proposed regulatory action was initiated by the Environmental Protection Agency.

DATE: Written comments, identified by the document control number [OPP–300122], must be received on or before May 20, 1985.

ADDRESS: By mail, submit comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a 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. 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:

By mail: Patricia Critchlow, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issed a notice, published in the **Federal Register** of December 29, 1976 (41 FR 56703), that all registered products containing mirex were cancelled, effective December 1 or December 21, 1976, or December 1, 1977, depending on the particular product. No existing stocks of mirex were to be sold, distributed, or used after June 30, 1978, except that stocks of Mirex Harvester Ant Bait 300, registered for use against certain ants on Hawaiian pineapples and existing on December 1, 1977, might be sold and used for that purpose until supplies were exhausted, except that aerial application was not allowed after December 31, 1977.

The tolerances established for residues of mirex in the fat of meat from cattle, goats, hogs, horses, poultry, and sheep at 0.1 part per million (ppm); milk fat and eggs at 0.1 ppm; and all raw agricultural commodities (exclusive of eggs, milk fat, and the fat of cattle, goats, hogs, horses, poultry, and sheep) ("all raw agricultural commodities") at 0.01 ppm were not revoked concurrently with the cancellation of the pesticide registrations because of the pesticide's slow rate of degradation and its persistence in the environment.

The tolerance for "all raw agricultural commodities" also excluded fish. However, because unavoidable residues of mirex had been found to occur in fish, an action level of 0.1 ppm for residues of mirex in fish was established by the Food and Drug Administration (FDA) based on EPA's recommendation, published in the **Federal Register** of April 7, 1978 (43 FR 14736).

To deal with the issue of persistent pesticide chemicals that have been cancelled, the EPA developed the "Policy Statement on Revocation of Tolerances For Cancelled Pesticides", published in the **Federal Register** of September 29, 1982 (47 FR 42956). This statement, which was a joint agreement among the EPA, USDA and the FDA, describes the policy for the revocation of tolerances for cancelled pesticides and replacement of such tolerances with action levels to cover unavoidable residues occurring in the U.S. food supply as a result of environmental contamination from past legal usage of the pesticides. The policy statement detailed the factors which EPA would consider when setting appropriate action levels. These same factors would be used to lower the action levels as subsequent surveillance data, reviewed periodically, indicated that the residue levels found in the environment had dissipated further.

Based on the above facts and the guidance provided in the policy statement, the Agency now proposes to revoke the existing tolerances in 40 CFR 180.251 for the residues of mirex in the fat of meat of cattle, goats, hogs, horses, poultry, and sheep; milk fat; eggs; and in or on all raw agricultural commodities.

Based on available monitoring data, the Agency will recommend to FDA that the existing action level of 0.1 ppm for residues of mirex in fish be retained. In addition, USDA will be advised that, for purposes of conducting their residue monitoring programs, it would be appropriate for them to continue utilizing the residue level of 0.1 ppm in the fat of meat from livestock (including cattle, goats, hogs, horses, and sheep, poultry, and rabbits which they have been using for this purpose. The various action levels would be reassessed in the future if results of USDA or FDA monitoring show a further decline in the residue levels.

Since no findings of mirex residues have been reported in other raw agricultural commodities, the Agency proposes that no action levels should be established to replace the tolerances of 0.1 ppm for residues of mirex in milk fat and in eggs and the 0.01 ppm tolerance for residues in or on "all raw agricultural commodities."

Any person who has registered or submitted an application under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for the registration of a pesticide which contains mirex may request within 30 days after publication of this document in the **Federal Register** that this proposal to revoke the mirex tolerances listed in 40 CFR 180.251 be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposal to revoke the tolerance for residues of mirex listed in 40 CFR 180.251. Comments must bear a notation indicting the document control number, [OPP–300122]. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in reviewing the comments. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

In order to satisfy requirements for analysis as specified by Executive Order 12291, and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a proposed regulatory action is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this proposed regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. Revocation of the existing tolerances for residues of mirex in milk fat, eggs, and raw agricultural commodities should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises may have gained through the continuance of these tolerances. Since the tolerance level for residues in fat of meat proposed for revocation is the same as the level being recommended to USDA for use in their monitoring programs, the primary impact from this revocation would be a change from an "acceptable" level to an "unavoidable" level of residues.

This proposed regulatory action has been submitted to the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a

substantial number of small businesses, small governments, or small organizations.

As this regulatory action is intended to prevent the sale of foodstuffs primarily where the subject pesticide has been used in an unregistered or illegal manner, it is anticipated that little or no economic impact would occur at any level of business enterprises.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

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

(Sec. 408 (e) and (m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (e) and (m)))

PART 180—[AMENDED]

§ 180.251 [Removed]

Therefore, it is proposed that 40 CFR Part 180 be amended by removing § 180.251.

Dated: March 7, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-6329 Filed 3-19-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-9-FRL 2801-2]

Arizona; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Arizona for final authorization, public hearings and comment period.

SUMMARY: The State of Arizona has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Arizona's application and has made the tentative decision that Arizona's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). Arizona's application for final authorization is available for public review and comment and public hearings will be held to solicit comments on the application.

DATE: Public hearings are scheduled for April 18, 1985 in Phoenix, and April 19, 1985, in Tucson. Representatives of the Arizona Department of Health Services will participate in the public hearing held by EPA on this subject. All comments on Arizona's final authorization application must be received by the close of business on April 19, 1985.

ADDRESSES: Copies of Arizona's final authorization application are available during the hours of 8:00 to 4:30 at the following addresses for inspection and copying: Arizona Department of health Services, 2005 N. Central, Phoenix, Arizona 85004 Phone: (602) 257-0022;

U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW. Washington, D.C. 20460, Phone: (202) 382-5926: U.S. EPA Region 9, Library-Information Center, 215 Fremont Street, San Francisco, CA. 94105, Phone: (415) 974-8076. Written comments should be sent to Chuck Flippo, EPA Region 9 (T-2-1), 215 Fremont Street, San Francisco, CA 94105. EPA will hold the public hearings from 1:00 pm to 5:00 pm on April 18 in Phoenix at 2005 N. Central, 4th floor Conference Room, and on April 19 in Tucson at the Ramada Inn, 401 N. Freeway.

FOR FURTHER INFORMATION CONTACT: Chuck Flippo, EPA Region 9, RCRA Programs Section (T-2-1), 215 Fremont Street, San Francisco, CA 94105, Phone: (415) 974-8128 (FTS: 454-8128).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization, as described below.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 69226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

II. Arizona

Arizona received Phase I interim authorization on August 18, 1982. Arizona did not apply for any of the components of Phase II interim authorization. On October 31, 1984, Arizona submitted a complete application for final authorization. Prior to its submission, Arizona solicited public comment and held public hearings on its draft application.

EPA has reviewed Arizona's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Arizona. In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold public hearings on its tentative decision on Thursday, April 11, 1985 at Phoenix, and Friday, April 12, 1985 in Tucson. The public may also submit written comments on EPA's tentative determination until April 12, 1985. Copies of Arizona's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

In the review of the State's official application, EPA identified a potentially significant statutory issue concerning Arizona's authority to assess penalties for each day of a continuing violation. The discussion of penalty authority in the Attorney General's Statement identified a statutory limit on the

amount of fine that can be fixed for felonies. It was not clear whether each day of a continuing violation would be considered a separate violation for purposes of assessing these maximum fines. Arizona's Attorney General's Office has stated that each day would be considered a separate violation, and has revised the Attorney General's Statement to clarify this.

EPA also identified several changes which need to be made in the Memorandum of Agreement (MOA) between EPA and the Arizona Department of Health Services (ADHS). Under our current Cooperative Arrangement, EPA and ADHS jointly issue RCRA permits, since Arizona does not presently have permitting authority. The MOA for final authorization incorrectly provides that 30 days after final authorization of the Arizona program, EPA-issued permits would terminate and ADHS-issued permits would operate as the RCRA permit. Arizona has been informed that EPA-issued permits continue in force until terminated under 40 CFR 270.43, or by agreement between EPA and the permittee. The State and EPA will revise the MOA to clarify this.

In describing the procedures, EPA would follow in taking an enforcement action in Arizona, the MOA provides that EPA will notify the State at least 30 days in advance of taking action. It then appears to provide the State an additional 30-day period during which time the State could argue against EPA's determination that the State's action had been inappropriate. However, such a requirement would hinder EPA's right to take enforcement action when needed. The State has agreed to clarify that there is only one 30-day notice period.

A recent review of the Arizona program found that ADHS has fallen well short of its inspection commitments for Fiscal Year 1985, continuing an historical problem in meeting inspection targets. This and other problems are identified in a capability assessment of Arizona's program that accompanies the Notice of Tentative Determination. Also included is a draft Letter of Intent which, when in final form, will commit the State to correcting deficiencies outlined in the capability assessment, and will help to assure a strong and effective hazardous waste management program. The State must complete and sign a fiscal Letter of Intent which meets EPA requirements for specific commitments as soon as possible. The State must show fulfillment of these actions and procedures committed to under that signed Letter of Intent prior to the final decision on authorization. This performance will be assessed before a final decision on State program approval is made.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Arizona. EPA expects to make a final decision on whether or not to approve Arizona's program by May 30, 1985 and will give notice of it in the **Federal Register.** The notice will include a summary of the reasons for the final determination and a response to all major comments.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and the U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in the authorized State until the State adopted those requirements as State law.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6925(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, HSWA applies authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Arizona after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than Arizona's, the U.S. EPA will administer and enforce those portions of the HSWA in Arizona until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Arizona is authorized to implement a HSWA requirement or prohibition the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist the U.S. EPA's implementation of the HSWA under a Cooperative Agreement. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Arizona is not being authorized for any requirement implementing the HSWA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: February 11, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-6698 Filed 3-19-85; 8:45 am]

BILLING CODE 6050-50-M

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40 CFR Part 464

[OW-FRL-; 2799-5]

Metal Molding and Casting Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On February 15, 1985, EPA announced in the **Federal Register** the availability of additional data and further analyses of the supplemented record that will be used to support final rulemaking for the metal molding and casting (foundry) point source category (50 FR 6572). EPA is extending the period for comment on the proposed regulation from March 18, 1985 to April 8, 1985.

DATE: Comments must be submitted to EPA on or before April 8, 1985.

ADDRESSES: Comments must be submitted in triplicate to Mr. Donald F. Anderson, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: Docket Clerk, Metal Molding and Casting (Foundry), Rules; or delivered to the Docket Clerk, Room 911, East Tower, Waterside Mall, between the hours of 9:00 a.m. and 4:00 p.m. The supplementary data and technical, economic, and environmental analyses are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Donald F. Anderson on (202) 382-7189 for information regarding the technical data, and Drusilla Hufford on (202) 475-8816 for information regarding the economic data.

SUPPLEMENTARY INFORMATION: On February 15, 1985, EPA published in the **Federal Register** a notice of availability and request for comments on additional data and further analyses of the supplemented record that will support final rulemaking for the metal molding and casting (foundry) category (50 FR 6572). The February 15, 1985 notice stated that comments were to be submitted on or before March 18, 1985.

The Agency agreed to provide a copy of the record material to two industry trade associations (American Foundryman's Society (AFS), and American Die Casting Institute (ADCI)) to facilitate their reviews and timely submissions of comments. However, delayed reproduction of the record and loss in shipment to AFS of many of these documents has foreshortened the remaining period for review and comment. EPA has decided to extend the comment period for three weeks, until April 8, 1985. This extention will give all members of the public adequate time to review and comment fully on these record materials.

Dated: March 13, 1985.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 85-6619 Filed 3-19-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-39]

Deletion of AM Application Acceptance Criteria; AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the comment/reply comment dates as they appear in the Preamble of the Proposed Rule in this proceeding concerning the Deletion of AM Application Acceptance Criteria and Amendment of the Rules Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services (published in the **Federal Register** on February 28, 1985, 50 FR 8169). In addition, Commissioner Henry Rivera's dissenting statement, inadvertently omitted in the original, is included here.

DATES: Comments are now due by June 14, 1985 and replies by July 15, 1985 (as shown in the text of the Proposed Rule, FR page 8171, paragraph 17).

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, (202) 632-7792.

William J. Tricarico,

Secretary, Federal Communications Commission.

Dissenting Statement of Commissioner Henry M. Rivera

In the matter of Deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's Rules.

I dissent from the initiation of this untimely and ill-advised rulemaking. I have seldom opposed the solicitation of public comment on proposed rule changes, even if my initial reaction to a proposed rule change is negative. I must do so in this instance, however, because: (i) The objectives of the current rule, particularly § 73.37(e)(2),[1] have not been accomplished; (ii) the need for the § 73.37(e)(2), and policies like it, is greater today than when the FCC added that rule to the books in 1980; (iii) the factual premises used to justify the proposed rule change are riddled with errors; and (iv) the plan to delete of § 73.37(e)(2) is among the most blatantly insensitive proposals ever made by this Commission with respect to minority interests.

The most offensive misstatement in the *Notice of Proposed Rulemaking* (NPRM) is that § 73.37(e) has "served its purpose."[2] This is untrue. As now drafted, § 73.37(e) is intended to bring radio service to unserved or underserved communities and to increase minority and non-commercial radio service. When the FCC adopted § 73.37(e)(2) in 1980, incorporating the latter two eligibility criteria, it did so to address significant shortcomings in the structure of the broadcast industry.[3]

In the four years § 73.37(e)(2) has been in effect, the Commission has issued just 115 authorizations pursuant to that section. Of those authorizations, 13 have been issued to minorities and one has been issued to a non-commercial applicant. By any benchmark, it is ludicrous to suggest that the issuance of just 14 licenses for purposes identified as "of pressing importance" only four years ago is a mark of success and a mission accomplished.

The proposed repeal of § 73.37(e) is all the more untimely in view of statistics on minority ownership of the mass media generally. In 1980, approximately 1 percent of the radio and television stations were minority owned. Today, minorities own about 1.8 percent of broadcast facilities. In the peak year (1983), that number stood at approximately 1.9 percent. By 1984, progress stopped and backsliding began. The number of minority owned stations has declined from 196 in October 1983 to 188 as of August 1984.[4] When viewed

[1] Section 73.37(e)(2) specifies application acceptance criteria for unlimited time stations on the 25 domestic AM Clear Channels. These criteria were recently revised to include minority-controlled and noncommercial applications. *See Clear Channel Broadcasting in the AM Broadcast Band*, 76 FCC 2d 1345 (1980), *recon. denied*, 83 FCC 2d 218 (1980).

[2] *Notice of Proposed Rulemaking* (NPRM), at para. 12.

[3] The Commission observed that: "Paramount among the competing needs which new stations can help to satisfy are, in our view, the need for more minority owned stations, of which there are fewer than 200 among over 8,000 AM and FM stations . . . As we have already noted, we attached high importance to fostering the participation of heavily under-represented minorities in the ownership and the operation of broadcast stations. All three branches of federal government have recognized this as a major need." *Clear Channel AM Broadcasting, supra*, 78 FCC 2d at 1368.

[4] "Broadcasting Facts," National Association of Broadcasters (Washington, D.C., October 1983 and August 1984).

against the backdrop of these data, the bald assertion that § 73.37(e)'s purpose has been accomplished is almost beyond belief.[5]

The majority also complains that § 73.37(e) "* * * afford(s) minority and non-commercial entities an exclusive arrangement that would *exclude* other entities, irrespective of their merit." [6] My colleagues protest too much. Between 1980 and 1984, of the 115 unlimited time authorizations that were granted pursuant to § 73.37(e)(2), over 50, percent went to daytime-only licensees converting to full-time operation and 39 percent went to new station applicants other than minorities or noncommercials. Given these facts, how my colleagues can conclude that minorities and non-commercial applicants "exclude other entities" is a mystery.

Nor does the majority's claim that "ample opportunity has been provided for entities and localities meeting the requirements of § 73.37(e) to express their needs" [7] provide credible justification for repeal of subsection (e)(2). As noted, that part of the rule has only been on the books in its current form since 1980. Less than two years after we began accepting unlimited time applications on the U.S. Clear Channels the Commission imposed a freeze on the acceptance of applications.[8] Thus, potential minority and noncommercial applicants enfranchised by the 1980 amendment of § 73.37(e)(2) were quickly disenfranchised by a freeze on new applications. In July of 1984, that freeze was finally lifted.[9] Now, just six months later, the Commission proposes to delete § 73.37(e) in its entirety on the basis that there has been "ample opportunity" for the rule to work due its 20-year existence. The majority completely ignores the fact that the latest version of § 73.37(e) has been in actual operation just two years.

Likewise untrue is the majority's statement that deletion of § 73.37(e) will not prejudge the outcome of the pending foreign Clear Channel proceeding.[10] In that proceeding, the Commission proposes to apply the acceptance criteria specified in § 73.37(e)(2) to new unlimited time applications tendered for new foreign Clear Channels. The instant proposal, predicated as it is on the view that the goals of the rule have been met, clearly cannot help but prejudge the outcome of the foreign Clear Channel proceeding. If the rule is deleted in this proceeding, as a matter of logic, if not as a matter of law, § 73.37(e)(2) would also be found inapplicable to the foreign Clear Channels. The only thing that is not clear is the basis for the abrupt change from the view held by the Commission in 1984, when it advocated the application of § 73.37(e)(2) to the licensing of the foreign Clear Channels on the ground that the 100 to 125 new stations created by our 1980 domestic clear channel decision would be inadequate to meet the needs identified by the FCC in the 1980 revision of § 73.37(e).[11]

The majority's "service maturity" argument is also unfounded. Essentially, my colleagues maintain that § 73.37(e) can be eliminated because the AM radio service has been around so long that it is mature. In support, the NPRM notes that the rule has existed for twenty years, that there has been ample time for potential applicants to express interest, and that current demand is low.[12] This reasoning bears no relation to the reality, at least as far as minority applicants are concerned. First, as explained above, § 73.37(e)(2), which contains the minority incentive, has been on the books only five years, not two decades. Second, unlimited time applications on the channels governed by § 73.37(e)(2) (iv) and (v) have been accepted for only two years because of the freeze imposed on such applications. As the FCC found in 1980, these new opportunities were sorely needed by minorities, who had not been in a position to apply for major market radio stations when they first became available years ago [13] and had long since been foreclosed from these markets due to saturation. Furthermore, those AM applicants who have been able to file in a city of any size are certain to face competing applications from other parties. The continued keen interest in unlimited time AM stations demonstrated by this competition belies the majority's claim about low demand. In this context, the basis for the justifications offered by the majority in support of its finding that the AM service is "mature" is debatable, to say the least.

Lastly, the majority argues that § 73.37(e) should be eliminated because it is now antiquated when compared to the recently revised FM allotment criteria.[14] This is untrue. When one takes into account the fact that the criteria "other public interest matters" was intended to encompass the need for non-commercial and minority licensees,[15] one finds that the recently revised FM criteria are vitually identical to the criteria now embodied in § 73.37(e).

This rulemaking proposal rests on a foundation of sand. And, like the buttresses of a sandcastle under a wave, its essential underpinnings collapse in the face of analysis. The rule under challenge—§ 73.37(e)(2) (iv) and (v) in particular—is narrowly drawn to further important public policy objectives. The conditions prompting adopting of this rule have worsened; the need for the rule remains pressing. In these circumstances, the proposed deletion of § 73.37(e)(2) is nothing short of an abuse of discretion.[16] To avert a significant legal and policy error, the Commission should abandon this misguided initiative forthwith.

[FR Doc. 85-6578 Filed 3-19-85; 8:45 am]

BILLING CODE 6712-01-M

[5] The affront caused by this misstatement is even greater in view of the fact that the percentage of minority population in the United States has grown at a rate of over 2% per year from 1980 to 1985. The meager number of minority owners of broadcast facilities is not only declining in absolute terms, it is declining on a per capita basis as well.

[6] *NPRM* at para. 12 (emphasis added).

[7] *NPRM* at para. 10.

[8] *Public Notice* 82-97, effective February 25, 1982.

[9] *Public Notice*, "Freeze Lifted on AM Class I-A Clear Channels effective July 17, 1964."

[10] *Notice of Proposed Rulemaking* (Foreign Clear Channels), Docket No. 84-281, 49 FR 18567 (May 1, 1984).

[11] The Commission noted that "[i]t appears that the primary issues pertaining to the use of these foreign clear channels are some of the same issues that were addressed previously in the Commission's *Report and Order* in Docket No. 20648, *Clear Channel Broadcasting in the AM Broadcast Band*, . . .", — FCC 2d —, 49 FR 18567 (May 1, 1984), at para. 6. The Commission went on to say that: "Because of the relatively short time that has elapsed since the adoption of the 1980 *Report and Order*, we believe that resolution of issues reached in that proceeding can also be applied in this proceeding. In light of this, we propose to adopt identical or similar standards for new full-time Class II stations on the foreign Clear Channels as were adopted in Docket No. 20642." *Foreign Clear Channels, supra*, at paragraph 6.

[12] NPRM at paras. 10-12.

[13] *See generally*, Communications Amendments Act of 1982, Pub. L. 97-259, amending section 309(i) of the Communications Act and accompanying Conference Report, H.R. Rep. No. 97-768, at 43-44 (August 19, 1982) (noting societal discrimination against minorities and consequent underrepresentation in broadcast industry).

[14] NPRM at para. 9. These are:

(1) First full time aural service.

(2) Second full time aural service.

(3) First local service.

(4) Other public interest matters.

[Co-equal weight is given to priorities (2) and (3)].

[15] *Notice of Inquiry and Notice of Proposed Rulemaking*, 45 FR 26391 (March 18, 1980) at para. 5 and Separate Statement of Commissioner Tyrone Brown.

[16] *See Office of Communications of the United Church of Christ* v. *FCC*, 560 F.2d 529 (2nd Cir. 1977) reversing FCC order relaxing the EEO rules on the grounds that the Commission had not, nor could not have found that the problem motivating the rules has been cured.

47 CFR Part 73

[MM Docket No. 85-53; RM-4903]

Pyramid Broadcasting Corp.; TV Broadcast Stations in Paris, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF Television Channel 46 to Paris, Illinois, in response to a petition for reconsideration filed by Pyramid Broadcasting Corporation of Illinois. The assignment could provide a first television service for Paris.

DATES: Comments must be filed on or before May 6, 1985, and reply comments on or before May 21, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations. (Paris, Illinois) (MM Docket No. 85-53 RM-4903).

Adopted: February 15, 1985.
Released: March 14, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration, a petition for reconsideration of the *Memorandum Opinion and Order*, Mimeo No. 4363, released May 23, 1984, which dismissed a petition for rulemaking filed by Paris Broadcasting Corporation. On December 21, 1983, Paris Broadcasting Corporation advised the Commission that it was no longer interested in pursuing the petition and requested that it be withdrawn. Pyramid Broadcasting Corporation of Illinois ("Pyramid") subsequently filed a petition for reconsideration, requesting assignment of UHF Television Channel 46 to Paris, Illinois. Pyramid has stated its intention to apply for the channel, if assigned.

2. Paris (population 9,885),[1] seat of Edgar County (population 21,725) is located in the eastern part of the state, south of Danville, Ill. The requested channel could provide the first television broadcast service for the community. The channel can be assigned consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

3. In view of the fact that the proposed assignment could provide a first local television service to Paris and because of the recent expression of interest, we believe that the proposal warrants consideration. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Paris, Illinois		46+

4. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 6, 1985, and reply comments on or before May 21, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John C. Quale, Barry D. Wood, Anne D. Neal, Wiley, Johnson & Rein, 1776 K Street, NW., Washington, DC 20006.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rulemaking to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheurele, Mass Media Bureau, 634-6530. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

[1] Population figures taken from the 1980 U.S. Census.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-6576 Filed 3-19-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 85-61; FCC 85-102]

Implementation of the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes changes in the Commission's rules and regulations regarding equal employment opportunities in the cable industry. This action is necessitated by the passage of the Cable Communications Policy Act of 1984 which sets a national cable equal employment opportunity policy. This action is intended to revise our rules and regulations to conform with the Cable Communications Policy Act of 1984.

DATE: Comments are due by May 6, 1985, and replies are due by June 5, 1985.

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

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

The collection of information requirement contained in this proposed rule making has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

Notice of Proposed Rule Making

In the matter of amendment of Part 76 of the Commission's rules to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984, MM Docket No. 85-61.

Adopted: March 1, 1985.
Released: March 6, 1985.

By the Commission.

Introduction

1. On October 30, 1984, the Cable Communications Policy Act of 1984 (Cable Act) was signed into law.[1] This legislation establishes guidelines for the regulation of cable systems in the areas of ownership, channel usage, franchising, rates and service regulations and equal employment opportunity requirements. By this *Notice of Proposed Rule Making*, the Commission proposes to amend its rules to implement the equal employment opportunity provisions of the Cable Act.[2]

Background

2. The Commission has broad experience in the enforcement of equal employment opportunity (EEO) standards in the cable industry. Our rules currently require all operators of cable television systems to afford equal opportunity in employment to all qualified persons; they may not discrimanate against any person in employment because of race, color, religion, national origin or sex. In addition, each cable operator must establish and file with the Commission an equal employment opportunity program which includes specific practices designed to assure equal opportunity in employment. Finally, we require cable operators to file an annual employment report with the Commission.

3. Section 634 of the Cable Act codifies equal employment opportunity policies and requirements for the cable industry. This section of the Cable Act sets forth the requirement that each cable operator establish a program to ensure equal employment opportunities. In addition, the Cable Act states that cable operators must file an annual employment report with the Commission and defines the contents of that report. The Cable Act also gives the Commission two additional responsibilities. First, the Commission must certify annually those cable systems that are in compliance with these EEO provisions. Second, the Commission must periodically investigate the employment practices of each cable system to review and verify its compliance with the prescribed EEO standards.

Discussion

4. The Cable Act states that equal opportunity in employment shall be afforded by each cable operator and that no person shall be discriminated against in employment because of race, color, religion, national origin, age or sex.[3]

5. The Cable Act sets forth a number of provisions to ensure equal employment opportunity in the cable industry. In this regard, it delineates the policy, program and practices that cable operators must establish to ensure equal employment opportunity. Section 634(d)(1) specifically requires that the Commission, not later than 270 days after the effective date of the Act, and after notice and opportunity for hearing, prescribe rules to ensure that the cable industry carries out these equal employment opportunity provisions.[4] In this *Notice of Proposed Rule Making*, we propose the rule changes we believe are required to implement these provisions. We seek comment from all

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[1] Cable Communications Policy Act, Pub. L. 98-549, section 1 *et seq.*, 98 Stat (1984).

[2] A separate *Notice of Proposed Rule Making* was issued to implement provisions other than those pertaining to equal employment opportunity. *See Notice of Proposed Rule Making* in MM Docket No. 84-1296, 49 FR 48765 (1984).

[3] *See* section 634(b) of the Cable Act.

[4] Our EEO authority does not preclude states and franchising authorities from requiring more stringent EEO standards as local circumstances and needs may necessitate. *See* section 634(i) of the Cable Act and House Report at 93.

interested parties on our proposed rule changes.[5]

Scope of the Rule

6. Section 634(a) of the Cable Act defines the cable entities subject to the EEO provisions. It states that these provisions:

> Shall apply to any corporation, partnership, association, jointstock company, or trust engaged primarily in the management or operation of any cable system.

The House Report notes that section 634 applies to cable "entities" rather than cable "operators" that manage or operate cable systems pursuant to any existing or future franchises.[6] The House Report also emphasizes that both individual cable systems and the regional and national headquarters of a company, to the extent such operations are primarily engaged in the management of any cable system, are subject to the provisions of this section. Thus,

> Where a subsidiary or affiliate of a corporation or other entity has primary responsibility for the management or operation of one or more cable systems, the affiliate or subsidiary, and the cable system it manages or operates, will be subject to the requirements of this section as separate employment units; the parent entity will not be subject to the requirements of this section. Similarly, other affiliates or subsidiaries of the parent entity, if not engaged primarily in the management or operation of any cable system, also will not be subject to the requirements of this section.[7]

7. In addition, section 634(h) broadens the scope of systems subject to the EEO provisions. This section states that "the term 'cable operator' includes any operator of any satellite master antenna television system, including a system described in section 602(6)(A)." [8] Section 602(6)(A) includes "a facility that serves only to retransmit the television signals of 1 or more television broadcast stations." The legislative history of the section provides no further interpretation, except to emphasize that operators of satellite master antenna television systems (SMATV) are subject to the requirements of this section whether or not such systems only serve commonly owned apartment units without crossing public rights of way. Thus, the definition of a cable system is more expansive for the EEO provisions than for the other sections of the Cable Act. We note that the Commission does not now license most SMATV systems or require that they register with the Commission before they begin operation. Thus, the Commission is generally not in a position to identify SMATV systems subject to these requirements. We seek comment on how we can identify SMATV systems. For example, is the general filing requirement, proposed in the attached Appendix A, sufficient or should we require a registration system similar to cable.

8. The scope of our EEO rules differs in several respects from the Cable Act. First, our EEO rules apply to all "operators" of cable television systems rather than the "entities" described in the statute. We believe that this difference constitutes a minor change in terminology with no substantive effect. However, to achieve consistency with the Cable Act, we propose to amend our rules accordingly. Second, the definition of a cable television system in our rules differs from that described in the statute. Most of these differences were discussed in our earlier *Notice of Proposed Rule Making* implementing other provisions of the Cable Act. These differences will be resolved in that docket and referenced in the Report and Order in this proceeding. Finally, section 634(h) includes more video distribution systems as "cable systems" for purposes of EEO enforcement than for other sections of the Cable Act. We propose to modify our rules concerning the scope of entities subject to EEO enforcement so that they conform with the statute. Unless specifically noted below, all cable entities are subject to the EEO provisions described below.

EEO Policy

9. Section 634(b) of the Cable Act requires that each cable entity afford equal opportunity in employment. This section, thus, sets the general policy that cable entities are prohibited from discriminating on the basis of race, color, religion, national origin, age or sex. This provision is similar to § 76.311(a) of the Commission's rules except that the Cable Act adds a specific prohibition against age discrimination. We propose to add the age category and to change the language of our rules to conform with the Cable Act, as shown in Appendix A.

10. Section 634(c) of the Cable Act requires that each cable entity establish, maintain and execute a continuing program of specific practices to ensure equal employment opportunity in every aspect of its employment policies. The Cable Act sets forth the following five steps each entity shall take as part of its EEO program:

(1) Define and review the responsibility of each level of management with regard to the application and enforcement of its EEO policy;

(2) Inform its employees and recognized employee organizations of the EEO policy;

(3) Solicit the assistance of sources of qualified applicants, without regard to race, color, religion, national origin, age or sex, to fulfill its employment needs;

(4) Conduct a continuing program to exclude discrimination on the basis of race, color, religion, national origin, age or sex in its personnel practices and working conditions; and

(5) Continually review its job structure and employment practices to ensure genuine equality of opportunity at all levels.

11. In general, this subsection corresponds to § 76.311(e) of the Commission's existing rules. There appear to be only minor differences between the Commission's present EEO rules and the Cable Act. Among these differences is the addition of the prohibition of age discrimination in the statute. We propose to change our rules to incorporate these differences. These changes are contained in Appendix A.

EEO Program

12. Section 634(d)(2) directs the Commission to promulgate rules that specify the manner in which each cable entity shall, to the extent possible:

(1) Disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business;

(2) Use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation;

(3) Evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area;

(4) Undertake to offer promotions of minorities and women to positions of greater responsibility;

(5) Encourage minority and female entrepreneurs to conduct business with all parts of its operation; and

(6) Analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in

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[5] The proposed rule changes are contained in Appendix A.

[6] *See* House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (hereinafter House Report) at 86.

[7] *See* House Report at 86.

[8] This is modified in subsection (h)(2) by excluding any system which, in the aggregate, serves fewer than 50 subscribers. Subsection (h)(3) states that in cases where the cable operator is the owner of a multiple unit dwelling, the requirements of this section shall apply only to those employees primarily engaged in cable telecommunications.

implementing its equal employment opportunity program.

13. The legislative history notes that the requirements of this subsection conform in large part to the Commission's required EEO program under our existing regulations in § 76.311(f). For example, our rules state that each cable entity must disseminate its equal opportunity program by posting notices in its offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights. This section of the Cable Act adds a requirement that the Commission design rules to encourage cable systems to conduct business with minority and women entrepreneurs. We believe this can be acomplished by requiring cable entities, to the extent possible, to affirmatively seek bids from minority and female entrepreneurs for contracted work. We propose to incorporate subsection (d)(2) by modifying our rules as shown in Appendix A.[9] We request comment on the reorganization and the proposed rules that specify how each cable entity may accomplish each goal.

Reporting Requirements

14. Section 634 of the Cable Act requires that the Commission monitor the EEO performance of cable entities. The statute requires all entities with more than five full-time employees to file an annual employment report with the Commission. The Commission is required to certify annually that each cable entity is in compliance with the prescribed EEO standards. The Commission also must investigate each cable entity at least once in five years to review its employment policies and practices and verify the accuracy of its annual employment report.

15. The proposed reporting and certification requirements are presented below. In developing these requirements, we have taken the following criteria into consideration. First, the reporting requirements must provide the Commission with sufficient information to enable us to fully carry out our statutory EEO enforcement responsibilities. Second, we have attempted to minimize to the extent possible the burden on individual cable operators. Finally, in order to process the required data from over 3,000 employment units every year, we believe that it will be necessary to automate our review of cable system EEO performance to a significant degree and to select certification procedures that are simple for the Commission to administer. Comments are requested on all aspects of the following proposals.

16. *Annual Report.* Section 634(d)(3) of the Cable Act requires that each cable entity with more than five full-time employees file an annual employment report with the Commission. This report must identify by race and sex the number of full-time and part-time employees in each of the following job categories:

(A) Officials and managers;
(B) Professionals;
(C) Technicians;
(D) Sales persons;
(E) Office and clerical personnel;
(F) Skilled craft persons;
(G) Semiskilled operatives;
(H) Unskilled laborers; and
(I) Service workers.[10]

The statistical report must also include the number of minorities and women in the relevant labor market for each job category. In addition, this report must be available for public inspection at the central office of each cable entity and at any location that has more than five full-time employees on a regular basis.

17. The Commission currently requires each cable employment unit and headquarters unit (EEO unit) to file an annual employment report (FCC Form 395A).[11] EEO units with five or more full-time employees must submit the number of employees by race and sex for each job category. Employment units with fewer than five full-time employees must submit FCC Form 395A, but they are exempt from completing the employee data portion of the form. These annual statistical reports must be retained for five years and made available for public inspection at the principal workplace of the employment unit or another accessible place.[12]

18. There are several differences between our existing rules and the requirements of the Cable Act. Under our rules, employment units with five or more full-time employees must file detailed statistical reports. The Cable Act requires only those entities with more than five full-time employees to file an annual report. In addition, the Cable Act adds a labor force data requirement to the statistical report. Finally, there are several differences between the terms used in the statute and the comparable Commission rules. For example, the Cable Act refers to the "central office" while our rules use the term "principal workplace." We propose to change our rules to conform to these provisions of the Cable Act.

19. We propose to revise FCC Form 395A as shown in Appendix B. We note that subsection (d)(3) does not require employment or headquarters units with five or less full-time employees to file an annual report. However, we propose to require these cable entities to submit page one of this form, which contains various identifying information, including ownership and telephone number. This proposal, which is equivalent to our existing requirement, will enable us to identify those entities subject to the reporting requirement and will allow us to keep consistent records, especially for cable entities that may meet the reporting cut-off in some years but do not meet it in other years. Comments are requested on this approach.

20. As required by subsection 634(d)(3) of the Cable Act, we propose that each employment and headquarters unit with more than five full-time employees be required to submit FCC Form 395A on an annual basis. The information on this form will include the number of full-time employees for each listed job category by race and sex for one payroll period in January, February or March of the year during which the report is filed. Each employment unit should use the same payroll period each year. We request comment on whether any changes should be made to the format or the information requested on this form.

21. In particular, we request comment on whether the job titles listed for each job category are appropriate for the cable industry. (The current job category definitions and job titles are shown in Appendix B.) The legislative history provides no guidance regarding an appropriate defintition for each of the job categories. In fact, they are not mentioned in the discussion of this subsection. However, with regard to the related annual certification and investigation processes of subsection (e), the House Report notes "that the Commission has not recently reconsidered the job category definitions required for the existing

[9] Sections 76.12(g) and 76.311(g) of our rules require that each cable entity submit to us a copy of its EEO program. We propose to delete this requirement. Compliance with our EEO rules will be determined through a new certification procedure described below.

[10] These job categories are determined by the Office of Management and Budget and are presently used by the Commission for its EEO reporting requirements. These categories are also used government-wide for all industries. *See* Appendix B for complete definitions of these terms.

[11] *See* § 76.311(c) of our rules. An employment unit is either a single cable system or two or more cable systems under common ownership or control that are interrelated in their local management, operation, and utilization of employees. A headquarters unit is a headquarters office of a multiple system operator if the work of that office is primarily related to the operation of more than one employment unit.

[12] *See* § 76.311(j) of our rules.

annual statistical employment report." The House Report then directs the Commission to reexamine these "job categories for the specific purpose of ensuring that the definitions accurately reflect the nature of the categories and the specific positions within them."[13] In this regard, we seek comment on any changes to the definitions of the job categories. As an example, we cite the sales person category that is defined as:

> Occupations engaged wholly or primarily in direct selling. This category would include advertising agents and cable service sales personnel (sales representatives).

In this regard, we seek comment on any changes to the definitions of the job categories. For example, in the sales person category set forth above, should the job titles "subscriber sales" and "advertising sales" be classified together? Would a reclassification better reflect the different skills needed to perform these jobs, if that is indeed the case?

22. The Cable Act also requires each cable entity to provide annual data on part-time employment. The existing FCC Form 395A requests the number of part-time employees by race and sex for each of the listed job categories separately. In order to minimize this reporting burden, we propose that these data be combined into two categories. The first grouping would include the upper four job categories (i.e., officials and managers, professionals, technicians and sales persons) and the second would include the aggregate of all other job categories. We request comment on whether this information would fulfill the requirements of the statute.

23. Section 634(d)(3) of the Cable Act states that each cable entity must include the numbers of women and minorities for each job category in the relevant labor market as part of its annual statistical report. The proposed FCC Form 395A is designed to include the source of these labor force data, the relevant geographic area, the percent of women and minorities in the labor force and the percent of women and minorities in the labor force by job categories.[14] We believe labor force data are available through each state's employment security division and accessible at an employment center located near the cable system. We recognize that labor force data on the basis of occupational availability for the individual job categories may not be readily available. In those instances, we would not require more than the aggregate labor force data. We request comment on the availability of aggregate and job category specific labor force data and whether there are alternative data that might satisfy this statutory requirement.

24. *Commission Certification.* Section 634(e)(1) of the Cable Act requires the Commission to "certify" on an annual basis that each cable entity, including each headquarters unit, is in compliance with paragraphs (b), (c) and (d) of section 634 of the Cable Act. The Cable Act states that cerfication is to be based on information in the possession of the Commission including the annual employment report. The House Report suggests that other available relevant information, such as complaints filed by employees or applicants, information from the franchising authority or information submitted by public or private organizations, shall be considered by the Commission when determining compliance. The legislation does not, however, provide specific guidance on how the Commission should carry out the process of certifying cable systems. Accordingly, we believe that the Commission has considerable discretion in implementing this responsibility. For example, the Commission could simply continue to collect the current information on the annual employment report (FCC Form 395A with the addition of labor market data) and require the cable entity to submit an affidavit that it has an EEO policy and program in full compliance with section 634 of the Cable Act. On the other hand, the Commission could require substantial additional filings to ensure compliance with each of the specific requirements contained in paragraphs (b), (c) and (d) of section 634. This additional information might include the data on applicant flow, hires, salaries, promotion, recruitment sources, and minority and female contract information.

25. In developing the process by which the Commission may certify that a cable entity is in compliance with paragraphs (b), (c) and (d) of section 634, we have attempted to develop a proposal that fully meets the intent of the statute without being unduly burdensome on either the cale industry or Commission resources. Thus, we propose to add several elements to the existing FCC Form 395A.[15] This additional information would include the numbers of hires and promotions and a list of recruitment sources contacted by the cable operator over a twelve month period. We propose to categorize these data by the upper four job categories and the aggregate of all other job categories. We believe that this information is a good indication of whether a cable operator is implementing the principal elements of the EEO policies and program enumerated in subsections (b), (c) and (d). In particular, we believe these data will provide verification that the cable operator is undertaking the analysis of its efforts to recruit, hire, promote and use the services of minorities and women required by section 634(d)(2).[16] We seek comment on this and any other proposal.

26. We propose to certify cable entities based on the information contained in our proposed FCC Form 395A and any other relevant information before the Commission. As an aid in this determination, we intend to apply our existing processing guidelines to evaluate the compliance of cable entities with our EEO standards. In the event that further information is deemed necessary, we intend to inquire about the cable entities' efforts. Only when analysis of all available information suggests that the cable entities' EEO efforts are deficient will certification be withheld. We request comment on this procedure.

27. *Commission Investigation.* Section 634(e)(2) of the Cable Act requires that the Commission periodically investigate the employment practices of all cable entities. The Cable Act states that this investigation should occur not less frequently than evey five years for any given cable entitiy. The purpose of these investigations is to detemine whether each cable entity has been in compliance with the requirements of section 634 (b), (c), and (d) of the Cable Act, including whether the entity's employment practices provide minorities and women equal employment opportunities. As part of this investigation, the Commission must also review the accuracy of employment practices and job classification reported in the annual report FCC Form 395. In this regard, the legislative concern was that employees who perform largely clerical or support staff functions would be given job titles or descriptions which

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[13] *See* House Report at 91.

[14] The Commission has traditionally used the concept of labor force which includes unemployed individuals. These data are generally available on either a county, standard metropolitan statisitical area (SMSA), metropolitan statistical area (MSA) or primary metropolitan statistical area (PMSA) basis. Therefore, we are proposing that the cable employment unit use the MSA in which its employment office is located. If the employment office is not located in a an MSA, the county in which it is located may be used. For a national headquarters unit, we think it may appropriate to evaluate labor force availability on a national basis.

[15] *See* Appendix B.

[16] *See* proposed rules 76.75.

would result in them being considered upper job category workers.[17]

28. The legislative history gives the Commission no further guidance with regard to implementing this investigation responsibility. In adopting procedures to fulfill this requirement, we are mindful of the burden this process will impose on the cable industry. In addition, we are concerned that our review function could unduly burden limited Commission resources. In order to minimize these burdens, we proposed to investigate 20% of all cable entities each year and that these investigations rely primarily on a paper process. We propose that cable entities be required to file with the Commission, at the time of the investigation, a report form based in part on FCC Form 395A. This submission, FCC Form 397, would replace the FCC Form 395A filing requirement for the year of the investigation.[18]

29. We propose that this new reporting requirement consist of three parts (*see* FCC Form 397 in Appendix C). The first part asks identifying information of the cable entity and contains a series of questions requiring a "yes" or "no" response addressing the policy aspects and program obligations of section 634 (b), (c) and (d) of the Cable Act. Examples of these questions are: Do all the cable system's officials, managers and supervisors receive information concerning the EEO prgram and their responsibilities in implementing it?; Do you encourage present employees, particularly minority and female employees, to refer minority and female candidates for existing and future job openings?; and, To the extent possible, do you affirmatively seek bids for contracts from minority and female entrepreneurs at all levels of your operation? The cable entity's responses to these questions will enable us verify its compliance with these subsections of the Cable Act. Cable systems with five or less employees will be required to complete only this section of the report.

30. The second part of FCC Form 397 requests the statistical information contained in the annual employment report (Page 2 of proposed FCC Form 395A). No additional burden would be imposed on cable entities by this request since they are already required to file this information on an annual basis.

31. The third and last part of the proposed FCC Form 397 asks that cable entities submit data to support the statistical information contained in the annual employment report. We propose that cable entities be required to submit a list of employees, their current job titles, job categories and a brief description of each employee's primary duties and responsibilities. In addition, we propose to require that cable entities submit a list of all employees hired or pomoted during the year. The employees would be identified by sex and race or national origin. For promotions, this list would also include the job title and classification of that job formerly held as well as that of the present position. We believe that information is sufficient to verify the summary hiring and promotion data contained in the annual employment report. We also propose to require each cable entity to provide a list of the total number of contracts that were open for bid during the preceding twelve month period, the total number of minority and female entrepreneurs that bid on each contract and the total number of contracts that were awarded to minority and female entrepreneurs during the period.

32. Finally, we propose that each cable entity be permitted to submit any additional information it believes is relevant to our evaluation of its compliance with our EEO standards. This information may, for example, explain its performance in a particular area of concern or contain a proposal to revise its employment procedures. We seek comment on all aspects of our proposed FCC Form 397. In particular, we request that parties comment on the proposed investigation report form, in light of the requirements of the statute and our desire to not be unduly burdensome on either the cable industry or the Commission.

33. *On-site Audits.* In the House and Senate Legislative comments, Congress indicated its intent that the Commission employ random on-site audits as part of this compliance determination process.[19] In particular, the legislative history states that

> in order to ensure compliance with this section, the Commission is directed to anually review the employment profiles of reporting employment units, including random on-site audits of some reporting units. These audits will provide the Commission with a basis for determining whether employment profiles are accurately reported on the required annual statistical employment reports, and whether job classifications and employee responsibilities are accurately defined.[20]

Due to their inherent costliness, we believe that these on-site audits will be performed on a more limited basis than our paper investigations. At this time, we intend that these audits will be carried out on a random basis and in response to partcular problem areas that may arise.

Multiple System Operators Reporting Agreement

34. We propose to develop multiple system operators reporting agreements (MRA's). This agreement would permit an MSO to file coordinated certification and investigation reports for all its employment units at one time. All employment units subject to certification or under investigation in an MSO would then be reviewed in the context of its total organizational data and pre-approved reporting format. Each employment unit of the MSO would still be required to meet its individual EEO obligations under the Cable Act. However, we believe that under this procedure compliance costs of the certification and the investigation for an MSO and administrative costs to the Commission will be reduced. We propose that the MRA include:

(1) An analysis of each individual employment unit (a comparison of the unit's staff with the composition of the relevant labor force as required by FCC Form 395A);

(2) An understanding of how the employment units are interrelated organizationally and how the personnel policies and practices are administered. (An organization chart may be appropriate);

(3) A complete listing of job titles with corresponding job category classifications and a brief general description of the job duties and responsibilities for each job title; and

(4) A description of internal audit systems including forms for analyzing personnel actions and provisions for corrective measures where goals are not being met; and a description of

[17] *See* House Report at 91.

[18] Another option for meeting this requirement would encompass reviewing and evaluating the annual FCC Form 395A filings for the previous five years together with complaints of violations by employees or job applicants, and other information presented by the franchising authority and by private or public agencies or organizations. The five years of FCC Form 395A reports would be analyzed for employment trends. If problems are evidenced, the Commission could then request additional information and perhaps perform an on-site audit. We believe this investigation proposal would impose minimal burdens on cable systems and the Commission. However, we are concerned that this proposal may not fully satisfy section 634(e)(2) of the Cable Act which requires that the Commission, as part of its investigation, determine "whether the entity's reports filed pursuant to subsection (d)(3) accurately reflect employee responsibilities in the reported job classification." We seek comment on the merits of this option.

[19] *See* 98th Cong. 2d Session 130 Cong. Rec. S14286 (1984) and House Report at 91.

[20] *See* House Report at 91.

methodology to calculate detailed goals that may be necessary to correct identifiable problem areas.

We believe this proposal will provide benefits to the Commission and the MSO. We seek comment on the merits of this proposal.

Sanctions

35. Section 634(f)(1) of the Cable Act states that if the Commission finds after notice and hearing that an entity has "willfully or repeatedly without good cause" failed to comply with this section, such failure shall be considered a substantial failure to comply with the entire title.[21] Substantial failure to comply with the requirements of the title (the Cable Act) may become in turn an available grounds for the nonrenewal of the system's franchise under section 626 of the Cable Act. However, failure to obtain certification under subsection (e) would not by itself constitute a substantial failure to comply.

36. Section 634(f)(2) authorizes the Commission to impose forfeiture penalties and suspend cable television relay service (CARS) licenses for substantial failure to comply with section 634 of the Cable Act. If the Commission determines through an investigation pursuant to subsection (e), or otherwise, that a cable entity has failed to meet or failed to make best efforts to meet the requirements of this section, it can impose a forfeiture penalty of $200 a day for each violation. Each day of a continuing violation constitutes a separate offense. Although a cable entity shall not be liable for more than 180 days of forfeiture accruing prior to notification by the Commission, no limit is placed on forfeitures imposed as a result of violations which continue subsequent to notification. The House Report notes that it was not the intent of the Committee to create an 180-day general statute of limitation with respect to a cable entity's liability based on when the violation occurred. Further, nothing in this subsection prevents an entity from being subject to all other penalties or remedies available to the Commission under this section or other authority.[22]

37. Section 634(f)(3) states that the provisions of the last two sentences of paragraph (2) and paragraphs (3) and (4) of section 503(b) of the Communications Act of 1934, as amended, apply to the forfeitures of this subsection. These sections state that the Commission cannot impose any forfeiture penalties without first issuing a notice af apparent liability and, at the discretion of the Commission, provide for an opportunity for hearing. Also listed are the factors the Commission must consider in determining the amount of the forfeiture penalty, such as the nature, extent and circumstances of the violations. Finally, section 634(f)(4) requires the Commission to provide for notice to the public and the appropriate franchising authority of any penalties imposed under this section.

38. Section 1.80 of the Commission's rules currently provides for forfeiture penalties to be assessed against persons found to have

willfully or repeatedly failed to comply with any provisions of the Communications Act of 1934, as amended; or any rule, regulation or order issued by the Commission under that Act.[23]

This rule sets forth the procedures the Commission must undertake before imposing any forfeiture penalties. These include the issuance of a notice of apparent liability and providing a reasonable opportunity for response and hearing. Forfeiture penalties are limited to $2000 for each violation. Each day of a continuing violation constitutes a separate offense, but the total forfeiture which the Commission may impose shall not exceed $20,000 for conduct set forth in any notice of apparent liability or notice of opportunity for hearing, if the violator is a cable television system operator.[24] Since our rules state that "[a] forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act," we believe there is no conflict between its provisions and those of section 634(f) of the Cable Act.[25] Therefore, we propose no change in our rules.

EEO Complaint Procedures

39. Section 634(g) of the Cable Act mandates that the Commission provide for complaint procedures for any reported discrimination in employment practices by cable operators or multiple system operators. The Commission has experience in these matters in dealing with broadcast licensees and we propose to invoke similar procedures involving discrimination complaints for cable entities.

40. In July 1978, the Commission entered into a formal Memorandum of Understanding with the Equal Employment Opportunity Commission (EEOC) regarding the exchange of information and the disposition of discrimination complaints involving broadcast licensees.[26] The 1978 Memorandum of Understanding established a procedure for the orderly exchange of information between the FCC and the EEOC and a process for the investigation and resolution of complaints of employment discrimination against broadcast licensees.[27] The EEOC designated the FCC as an agent for the receipt of charges of discrimination for the purpose of assessing timeliness under Title VII of the Civil Rights Act of 1964 (the date the FCC receives the complaint is the same as if the complaint had been filed with the EEOC). Charges received by the Commission are transmitted to the appropriate EEOC Area Office or District Office for processing, investigation and possible remedial relief for the complainant. When the EEOC reaches a probable cause determination and conciliation efforts have failed the EEOC will so notify the FCC. The EEOC also refers complaints against broadcast stations that are not within its statutory jurisdiction to the FCC for our investigation. The EEOC also provides quarterly reports to the FCC regarding the status of outstanding charges, including additional charges filed directly with the EEOC. In our view, it appears desirable to include cable operators in the existing Memorandum of Understanding. We therefore propose to seek to modify this Memorandum to include cable operators and multiple system operators. We also propose to seek the addition of a prohibition against age discrimination. (See Appendix D) We request comment on this proposal.

41. Since the amended Memorandum of Understanding provides for the orderly exchange of information for the investigation and resolution of discrimination complaints involving cable operators, we also propose to eliminate from our rules § 76.311(h), *Report of Complaints*. This section provided that every employment unit submit an annual report to the Commission indicating whether any

[21] Repeated failure to comply is defined in this subsection as three or more failures during any seven year period.

[22] *See* House Report at 92.

[23] Section 1.80(a)(2).

[24] Section 1.80 (b)(1) and (2).

[25] Section 1.80(a).

[26] *Memorandum of Understanding Between the Federal Communications Commission and the Equal Employment Opportunity Commission*, 70 FCC 2d 2320 (1978).

[27] For a general description of the EEOC's statutory authority *See Id.* at 2321 n. 2. The EEOC's jurisdiction extends to employers with 15 or more employees, while that of a state or local agency may be greater. Further, to be timely, a charge must be filed with the EEOC within 180 days after the alleged unlawful employment practice, except as otherwise noted in 29 CFR 1601.13.

complaints have been filed regarding violations of equal employment statutes by a cable operator. We believe that the Memorandum of Understanding and other proposed sections of the *Notice of Proposed Rule Making* make § 76.311(h) unnecessary.

42. The Cable Act specifies that employees, applicants for employment who believe they have been discriminated against by a cable operator or any other interested persons may file a complaint with the Commission. With respect to complaints filed by any interested person, but which do not charge discrimination involving identifiable persons, we propose to process such complaints in a manner similar to our present complaint processing practices. However, because the Act mandates that complaints be "in writing, and shall be signed and sworn to" we shall not process complaints which do not meet these requirements. Thus, if a complaint does not allege facts raising a *prima facie* question of noncompliance with the statute of our rules, we propose that we do not more than notify the complainant that the matters alleged do not warrant further action or inquiry on our part. On the other hand, where a complaint does raise a *prima facie* question of noncompliance, we propose to submit it to the cable entity for a response. The Commission shall then evaluate the submissions and determine what, if any, action is appropriate.[28]

Conclusion

43. By this *Notice of Proposed Rule Making*, the Commission proposes to amend its rules to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984. We request comments on any of the proposed rule changes discussed above. In addition, we encourage all parties to submit any comments they believe relevant to this section of the Cable Act that should be considered herein.

Regulatory Flexibility Act Initial Analysis

44. *Reason for action.* This action is taken to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984.

45. *The Objective.* The legislation and this subsequent Commission action establish guidelines for the regulations of equal employment opportunity policy and practices in the cable industry. This proceeding is intended to institute a national policy to encourage employment opportunities for women and minorities and to ensure non-discrimination in the cable industry.

46. *Legal basis.* Action as proposed for this rule making is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984.

47. *Description, potential impact and number of small entities affected.* In order to implement the equal employment opportunity provisions of the Cable Act, the Commission has proposed to delete some rules, modify others or add new rules. The Cable Act definition of systems subject to the EEO provisions differs in several respects from our current requirements. If we adopt the Cable Act's definition of a cable system as we have proposed, we believe the following entities will be affected. Cable systems with less than 50 subscribers could now come under the scope of the rule. Cable systems that retransmit only local broadcast signals would now be exempt from the EEO provisions. There are approximately 600 such cable systems. The Cable Act includes satellite master antenna television systems which serve more than 50 subscribers within the scope of the EEO provisions.

48. *Recording, record keeping and other compliance requirement:* Cable entities will be required to file an annual employment report with the Commission. This is a new reporting requirement only for the additional cable entities brought under the scope of our rules by the Cable Act. Cable entities will be required to submit additional documentation as part of the Commission's investigation responsibilities as mandated by the Cable Act.

49. *Federal rules which overlap, duplicate or conflict with this rule:* None.

50. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* None.

Paperwork Reduction Act Implications

51. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Presentations

52. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contracts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any writen or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1201 of the Commission's rules.

53. Pursuant to procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before May 6, 1985, and reply comments on or before June 5, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

54. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rule on small entities. The IRFA is set forth

[28] Of course, persons who seek to file petitions to deny a CARS (microwave) application must comply with our procedural requirements as well as the statutory requirements specified in section 309(d) of the Communications Act of 1934, as amended.

above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et seq.) (1981).

55. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in the proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, Northwest).

56. For further information concerning this proceeding, contact Bruce Franca (202) 632-6302, or Glenn Wolfe (202) 632-7069.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 76—[AMENDED]

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

§ 76.12 [Amended]

1. In § 76.12, paragraph (g) is proposed to be deleted in its entirety.

2. A new Subpart E, entitled Equal Employment Opportunity Requirements, is proposed to be added to Part 76 to read as follows:

Subpart E—Equal Employment Opportunity Requirements

Sec.

76.71 Scope of application.
76.73 General EEO policy.
76.75 EEO Program requirements.
76.77 Reporting requirements.
76.79 Records available for public inspection.

Subpart E—Equal Employment Opportunity Requirements

§ 76.71 Scope of application.

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a) of the rules and all satellite master antenna television systems serving 50 or more subscribers.

(b) *Employment units.* The provisions of this subpart shall apply to cable entities as employment units. Each cable entity may be considered a separate employment unit; however, where two or more cable entities are under common ownership or control and are interrelated in their local management, operation, and utilization of employees, they shall constitute a single employment unit.

(c) *Headquarters office.* A multiple cable operator shall treat as a separate employment unit each headquarters office to the extent the work of that office is primarily related to the operation of more than one employment unit as described in paragraph (b) of this section.

§ 76.73 General EEO policy.

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified persons, and no person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) Each employment unit shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of cable system employment policy and practice. Under the terms of its program, an employment unit shall:

(1) Define the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, age or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

§ 76.75 EEO program requirements.

An employment unit's equal employment opportunity program should reasonably address itself to the specific areas set forth below, to the extent possible and to the extent that they are appropriate in terms of employment unit size, location, etc.:

(a) Disseminate its equal opportunity program to job applicants, employees, and those with whom it regularly does business. For example, this requirement may be met by:

(1) Posting notices in the employment unit's offices and places of employment informing employees, and applicants for employment, of their equal employment opportunity rights, and their right to notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency, if they believe they have been discriminated against. Where a significant percentage of employees, employment applicants, or residents of the community of a cable television system or the standard metropolitan statistical area (SMSA) are Hispanic, such notice should be posted in Spanish and English. Similar use should be made of other languages in such posted equal employment opportunity notices, where appropriate;

(2) Placing a notice in bold type of the employment application informing prospective employees that discrimination because of sex, race, age, color, religion or national origin is prohibited and that they may notify the Equal Employment Opportunity Commission, the Federal Communications Commission, or other appropriate agency if they believe they have been discriminated against.

(b) Use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female

applicants, to supply referrals whenever job vacancies are available in its operation. For example, this requirement may be met by:

(1) Placing employment advertisements in media that have significant circulation among minority-group people in the recruiting area;

(2) Recruiting through schools and colleges with significant minority—group enrollments;

(3) Maintaining systematic contacts with minority and human relations organizations, leaders, and spokesmen to encourage referral of qualified minority or female applicants;

(4) Encouraging current employees to refer minority or female applicants;

(5) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever the employment unit hires.

(c) Evaluate its employment profile and job turnover against the availability of minorities and women in its franchise area. For example, this requirement may be met by:

(1) Comparing composition of relevant labor area with the composition of the entity's employees;

(2) Comparing, within each job category of the cable entity, the people available for such positions;

(3) Where there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any protected group and take appropriate action where necessary.

Note.—These data are generally available on a county, standard metropolitan statistical area (SMSA), metropolitan statistical area (MSA) or primary metropolitan statistical area (PMS) basis.

(d) Undertake to offer promotions of minorities and women in a nondiscriminatory fashion to positions of greater responsibility. For example, this requirement may be met by:

(1) Instructing those who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination;

(2) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower paid employees with respect to any of the higher paid positions, followed by assistance, counselling, and effective measures to enable employees with interest and potential to qualify themselves for such positions;

(3) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(e) Encourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by:

(1) Encouraging present employees and contacts with minority organizations to refer minority and female entrepreneurs;

(2) Affirmatively seeking bids from minority and female entrepreneurs for contracted work at all levels of operation.

(f) Analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exists, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Avoiding use of selection techniques or tests that have the effect of discriminating against qualified minority groups or females;

(3) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(4) Examining rates of pay and fringe benefits for present employees with equivalent duties, and adjusting any inequities found.

§ 76.77 Reporting requirements.

(a) *Annual employment report.* Every employment unit shall file with the Commission an annual employment report (FCC Form 395A). However, only employment units with more than five full-time employees need complete the employment data portions of the form. Employment data shall reflect the figures from any one payroll period in January, Feburary, or March of the year during which the report is filed. The same payroll period should be used in each year's annual employment report.

(b) *Investigation report.* At least once every five years, every employment unit shall file with the Commission an investigation report (FCC Form 397). This report should normally be filed at the time of the Commission investigation of its EEO program and practices. Unless specifically requested otherwise, employment units with five or less full-time employees need complete only Part A of the report. Employment data shall reflect the preceding calendar year.

§ 76.79 Records available for public inspection.

(a) A copy of every annual employment report, and any other employment report filed with the Commission, and complaint report that has been filed with the Commission, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the cable entity and the Commission pertaining to the reports after they have been filed and all documents incorporated therein by reference, unless specifically exempted from this requirement, are open for public inspection at the offices of the Commission in Washington, D.C.

(b) Every employment unit shall maintain for public inspection a file containing copies of all annual employment and investigation reports. Each document shall be retained for a period of 5 years. The file shall be maintained at the central office and at every location with more than 5 full-time employees. A central office employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable/operator shall be maintained at the central office. The cable entity shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

§ 76.311 [Removed]

3. Section 76.311 is proposed to be deleted in its entirety.

Appendix B

Annual Report

1. Proposed FCC Form 395A
2. Proposed instructions for FCC Form 395A.
   a. Employment units.
   b. Headquarters units.
3. Definitions for FCC Form 395A under current rules.

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

EMPLOYMENT UNIT IDENT: DO NOT ALTER THIS AREA

198 CABLE TELEVISION ANNUAL EMPLOYMENT REPORT AND APPLICATION FOR EEO CERTIFICATION

OPERATOR LEGAL NAME

FCC FORM 395A
APPROVED BY OMB, 3060-0095, EXPIRES
This sheet is YOUR FCC FORM 395A.
If the employment unit is "local," the communities which comprise it have been pre-printed using the most recent information filed with the Commission.

OWNERSHIP

TELEPHONE NO.

Please correct or complete and return to the Commission

Instructions: Please correct or complete the following list of system communities comprising this local employment unit. Complete the statistics page using any one payroll period in January, February or March of 198_ as the basis for counting and reporting your employees. The same payroll period should be used in each year's employment report.

SYSTEM COMMUNITIES COMPRISING THIS LOCAL EMPLOYMENT UNIT

IDENT	NAME	STATE	TYPE	IDENT	NAME	STATE	TYPE

DATA INFORMATION IS NOT ENTERED BECAUSE SYSTEM EMPLOYS LESS THAN 6 FULL-TIME EMPLOYEES (Initial Here) _____
(Consider as full-time employees all those working 30 or more hours per week.)

CERTIFICATION

THIS REPORT MUST BE CERTIFIED BY THE INDIVIDUAL OWNING THE REPORTING SYSTEM, IF INDIVIDUALLY OWNED; BY A PARTNER, IF A PARTNERSHIP; BY AN OFFICER OF THE CORPORATION, IF CORPORATION; OR A REPRESENTATIVE HOLDING POWER OF ATTORNEY IN CASE OF PHYSICAL DISABILITY OF AN INDIVIDUAL OWNER OR HER/HIS ABSENCE FROM THE UNITED STATES. WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT. 18 U.S.C. SECTION 1001

RETURN THIS SHEET, PROPERLY COMPLETED, WITHIN 60 DAYS OF THE RECEIPT OF THIS FORM

FEDERAL COMMUNICATIONS COMMISSION
RM 6120
WASHINGTON, D.C. 20554

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

SIGNATURE	TITLE
PRINTED NAME OF PERSON SIGNING	DATE SIGNED

( ) SMSA
( ) MSA
( ) PMSA
( ) COUNTY

AVAILABLE LABOR FORCE
SOURCE _____
% WOMEN _____ % BLACK _____
% HISPANICS _____ % OTHER _____

PAY PERIOD DATE

FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian. Alaskan Native	Asian Pacific Islander	Black (Not Hispanic)	Hispanic	White (Not Hispanic)	American Indian. Alaskan Native	Asian Pacific Islander	Black (Not Hispanic	Hispanic	White (Not Hispanic)
Officials & Managers											
Professionals											
Technicians											
Sales workers											
Office & clerical											
Craftspersons (Skilled)											
Operatives (Semi-skilled)											
Laborers (Unskilled)											
Service workers											
TOTAL											

PART TIME EMPLOYEE DATA

UPPER FOUR											
TOTAL											

EMPLOYEE PROMOTIONS (DATA FOR 12 MONTHS)

UPPER FOUR											
TOTAL											

JOB HIRES (DATA FOR 12 MONTHS)

UPPER FOUR												
TOTAL												

OCCUPATIONAL AVAILABILITY SOURCE:

JOB CATEGORIES	Women	Blacks	Hispanics	Others
Officials & managers				
Professionals				
Technicians				
Sales workers				
Office & clerical				
Craftspersons (Skilled)				
Operatives (Semi-skilled)				
Laborers (Unskilled)				
Service workers				
TOTAL				

PRIMARY MINORITY AND FEMALE RECRUITMENT SOURCES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

BILLING CODE 6712-01-C

Proposed Instructions for Completing FCC Form 395–A Annual Employment Report—Cable Television

198– *198–*

1. *When and where to file:* Send an original and a copy of each annual employment report required under these instructions to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, no later than May 1 of each year.

2. If the employment unit has more than five (5) full-time employees, complete the statistics page on the reverse side of the form, using any one payroll period in January, February, or March of 198— as the basis for counting and reporting your employees. The same payroll period should be used in each year's employment report. If the employment unit has five (5) or less full-time employees, you must initial the box on page 1 of the form certifying that fact. Do not complete the statistics page.

Note.—The FCC 395A is filed on an "employment unit" basis. An employment unit may be a single cable system *or* it may be a group of two or more systems. If you own or control more than one system, then you must decide whether each system is a separate employment unit or whether some or all of the systems should be combined into a single employment unit for reporting purposes. The basis for this decision is whether any of the systems are "interrelated in their local management, operation and utilization of employees." Any systems which are so interrelated must be combined into a single employment unit. If you have received separate forms for systems which should be combined into a single employment unit, then return all forms, but indicate clearly on each form the consolidation action you are proposing.

Please be careful to ensure that each *community* which is served by the cable system or systems comprising the employment unit is listed properly on the form.

Proposed Instructions for Completing FCC Form 395A Annual Employment Report—Headquarters Office Unit—Cable Television

1. *When and where to file:* Send an original and a copy of each annual employment report required under these instructions to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554, no later than May 1 of each year.

2. If the headquarters office unit has more than five (5) full-time employees, complete the statistics page on the reverse side of the form, using any one payroll period in January, February or March of 198— as the basis for counting and reporting your employees. The same payroll period should be used in each year's employment report. If the headquarters has five (5) or less full-time employees, you must initial the box on page 1 of the form certifying that fact. Do not complete the statistics page.

Note.—A multiple cable operator should treat as a separate unit each headquarters office (and file a separate FCC Form 395A) if the work of that office is primarily related to the operation of more than one system under common ownership or control and are interrelated in their local management, operation and utilization of employees.

Definitions

Job Categories

Officials and Managers—Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: Officials, executives and middle management. This category would include system managers and assistant managers, program directors and assistant directors; office managers, budget officers, promotion managers, public affairs directors, chief engineers and those holding equivalent positions.

Professional—Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: Accountants and auditors, editors, engineers, lawyers, and labor relations workers. This category would include persons engaged in the writing, preparation and reproduction of programming; writers or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

Technicians—Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, engineering aides, junior engineers, and electronic technicians. This category would include strand mappers, audio and video engineers, camera persons (live of film), film processors, lightpersons, stage hands.

Sales—Occupations engaging wholly or primarily in direct selling. This category would include advertising agents and cable service sales personnel (sales representatives).

Office and Clerical—Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators and kindred workers.

Craftsperson (skilled)—Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the process involved in their work. Exercise considerable independent judgment and usually received an extensive period of training. Includes: Hourly paid supervisors who are not members of management, mechanics and repair persons, electricians and motion picture projectionists.

Operatives (semiskilled—Workers who operate machine or processing equipment or perform other factory-type duties or intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices, [1] operatives, truck and tractor drivers, weavers (textile), welders, installers, linepersons, splicers and trenching machine operators.

Laborers (unskilled)—Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the applications of little of no independent judgment. Includes gardeners and groundkeepers, laborers performing lifting or digging, and kindred workers.

Service Workers—Workers in both protective and nonprotective service occupations. Includes: Charpersons and cleaners, elevator operators, guards and watchpersons, janitors, and kindred workers.

Note.—A person who does more than one job is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilitiies.

On-the-Job Trainees

Production—Persons engaged in formal training for Craftpersons (skilled)—when not trained under apprenticeship programs; Operatives (semiskilled), Laborers (Unskilled); Service Workers; Apprentices.

White Collar—Persons engaged in formal training for Officials and

[1] Apprentices—Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

Managers; Professionals; Technicians; Sales Office; and Clerical.

Minority Group Identification

(a) Minority group information necessary for this section may be obtained either by visual surveys of the workforce, or from post-employment records as to the identify of employees. An employee may be included in the minority group to which he or she appears to belong, or is regarded in the community as belonging.

(b) Since visual serveys are permitted, the fact that minority group identifications are not present on company records is not an excuse for failure to provide the data called for.

(c) Conducting a visual survey and keeping post-employment records of the race or ethnic origin of employees is legal in all jurisdictions and under all Federal and State laws. State laws prohibiting inquiries and record-keeping as to race, etc., relate only to applicants for jobs, not to employees.

Race/Ethnic Categories

(a) *Black, not of Hispanic Origin*—A person having origins in any of the black racial groups of Africa.

(b) *Hispanic*—A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(c) Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or in the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(d) *American Indian or Alaska Native*—A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(e) *White, not of Hispanic Origin*—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Appendix C

Federal Communications Commission

Equal Employment Opportunity

Instructions

Cable systems are required to afford equal employment opportunity to all qualified persons pursuant to section 636 of the Communications Act of 1934, as amended. Cable systems with 6 or more full-time employees should complete Parts A, B and C of this form. Cable systems with less than 6 full-time employees should complete Part A only.

Part A

Cable System: _____
Owner: _____
Street Address: _____
Zip Code _____
City and State which Cable System Serves _____

Number of full-time employees _____
Telephone ( )–Q02 _____
Person primarily responsible for administration of Equal Employment Opportunity Program:
Name: _____
Title: _____

The statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed and dated this day of , 19 .

Signature: _____
Title: _____

Willful false statements on this form are punishable by fine and/or imprisonment. U.S. Code, Title 18, Section 1001.

Check yes or no to each of the following questions.
Note: failure to answer yes to each question does not necessarily imply failure to comply with the Commissions EEO requirements.

1. (Yes)	(No)	Do all the cable system's officials, managers and supervisors receive information concerning the EEO program and their responsibilities for implementing it?
2. (Yes)	(No)	Does the cable system's employment application form contain a notice informing prospective employees that discrimination because of race, color, religion, national origin, age or sex is prohibited and that they may notify the appropriate local, State, or Federal agency if they believe they have been the victims of discrimination?
3. (Yes)	(No)	Are appropriate notices posted informing applicants and employees that the cable system is an Equal Opportunity Employer and of their right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination?
4. (Yes)	(No)	Do you maintain systematic communication with a variety of minority and women's organizations to encourage the referral of qualified minority and female applicants?
5. (Yes)	(No)	Do you deal only with employment services, including State employment agencies, which to the best of your knowledge refer job candidates without regard to race, color, religion, national origin, age or sex?
6. (Yes)	(No)	When you recruit prospective employees from educational institutions, do such recruitment efforts include area schools and colleges with significant minority and female enrollments?
7. (Yes)	(No)	When utilizing media for recruitment purposes, do your help-wanted advertisements include a notice that you are an equal opportunity employer?
8. (Yes)	(No)	When you place employment advertisements in print media, do you attempt to place such advertisements in publications which have significant circulation or are of particular interest to minorities and to women?
9. (Yes)	(No)	Do you encourage present employees, particularly minority and female employees, to refer mingrity and female candidates for existing and future job openings?
10. (Yes)	(No)	To the extent possible, do you provide training to upgrade the skills of employees?
11. (Yes)	(No)	To assure that minorities and women are given due consideration for promotional opportunities, is special effort taken to encourage minorities and women to qualify and apply for advancement?
12. (Yes)	(No)	To the extent possible, do you affirmatively seek bids for contracts from minority and female entrepreneurs at all levels of your operation?

BILLING CODE 6712-01-M

Part B

ANNUAL EMPLOYMENT REPORT

EMPLOYMENT UNIT IDENT:

DO NOT ALTER THIS AREA

198 CABLE TELEVISION ANNUAL EMPLOYMENT REPORT AND APPLICATION FOR EEO CERTIFICATION

OPERATOR LEGAL NAME

APPROVED BY OMB, 3060-0095, EXPIRES

If the employment unit is "local," the communities which comprise it have been pre-printed using the most recent information filed with the Commission.

Please correct or complete and return to the Commission

Instructions: Please correct or complete the following list of system communities comprising this local employment unit. Complete the statistics page using any one payroll period in January, February or March of 198_ as the basis for counting and reporting your employees. The same payroll period should be used in each year's employment report.

SYSTEM COMMUNITIES COMPRISING THIS LOCAL EMPLOYMENT UNIT

IDENT	NAME	STATE	TYPE		IDENT	NAME	STATE	TYPE

( ) SMSA
( ) MSA
( ) PMSA
( ) COUNTY

AVAILABLE LABOR FORCE
SOURCE _____
% WOMEN _____ % BLACK _____
% HISPANICS _____ % OTHER _____

PAY PERIOD DATE:

FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		American Indian, Alaskan Native	Asian Pacific Islander	Black (Not Hispanic)	Hispanic	White (Not Hispanic)	American Indian, Alaskan Native	Asian Pacific Islander	Black (Not Hispanic	Hispanic	White (Not Hispanic)
Officials & Managers											
Professionals											
Technicians											
Sales workers											
Office & clerical											
Craftspersons (Skilled)											
Operatives (Semi-skilled)											
Laborers (Unskilled)											
Service workers											
TOTAL											

PART TIME EMPLOYEE DATA

UPPER FOUR											
TOTAL											

EMPLOYEE PROMOTIONS (DATA FOR 12 MONTHS)

UPPER FOUR											
TOTAL											

JOB HIRES (DATA FOR 12 MONTHS)

UPPER FOUR												
TOTAL												

OCCUPATIONAL AVAILABILITY SOURCE:

JOB CATEGORIES	Women	Blacks	Hispanics	Others
Officials & managers				
Professionals				
Technicians				
Sales workers				
Office & clerical				
Craftspersons (Skilled)				
Operatives (Semi-skilled)				
Laborers (Unskilled)				
Service workers				
TOTAL				

BILLING CODE 6712-01-C

PRIMARY MINORITY AND FEMALE RECRUITMENT SOURCES:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Part C

1. Provide a list of employees, their current job titles, job categories and a brief description of each employee's primary duties and responsibilities.

2. Provide a list of all promotions and hires awarded in the last year with names omitted. For each promotion, indicate the date, the FCC Form 395A classifications and job titles of both former and new positions, as well as the sex and the race (or national origin) of the person promoted.

3. Provide a list of all contracts that were open for bid in the last year. For each contract, indicate the total number of bids received, the number of these that were minority and female entrepreneurs, and whether the contract was awarded to a minority or female entrepreneur.

4. Submit any additional information which you feel may be relevant to FCC evaluation of your compliance with EEO standards. You may also provide justifications or explanations for your performance in any particular area of concern, or may propose revisions to your personnel procedures.

Appendix D

Memorandum of Understanding Between the FCC and the EEOC

The EEOC, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e (hereinafter Title VII), has jurisdiction to identify and eliminate discriminatory employment policies and practices at employment units, including broadcasting stations and cable systems. The FCC, under the Communications Act of 1934, as amended, 41 U.S.C. 151 *et seq.* and the Cable Communications Policy Act of 1984, Pub. L. 98–549 *et seq.*, has jurisdiction to regulate interstate and foreign commerce by wire and radio in the public interest, and has found its regulatory jurisdiction also to include authority to identify and eliminate discriminatory employment policies and practices at broadcasting stations and cable systems. It has adopted rules and procedures designed to assure equal employment opportunities to all persons without regard to their race, color, religion, national origin, age or sex. Both the EEOC and FCC share a common goal—the elimination of discriminatory employment policies and practices at broadcasting stations, including both commercial and noncommercial educational (public) broadcasting stations and cable systems. In pursuit of this common goal, and to promote efficiency and eliminate potential conflict and duplication, the EEOC and FCC hereby agree as follows:

I. Exchange of Information

Both the EEOC and FCC shall make available for inspection and copying to appropriate officials from the other agency any information relating to a broadcast employer's or cable system's employment policies and practices which may assist each agency in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, Annual Employment Reports (FCC Form 395 and FCC Form 395A), complaints, investigative files, conciliation or compliance agreements, and compliance review reports and files.

Additionally the EEOC will send to the FCC quarterly reports to keep the FCC informed of all charges against broadcasters and cable system operators. With respect to all information obtained from the EEOC, the FCC agrees to preserve the confidentiality provisions of sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964, as amended.

II. Discrimination Complaints

The EEOC has responsibility to investigate charges of discrimination filed with it. The EEOC hereby designates the FGC as an agent of the EEOC for the sole purpose of receipt of such charges. For the purpose of determining the timeliness of charges under Title VII of the Civil Rights Act of 1964, as amended, the date the matter was received by the FCC shall be deemed to be the date it was received by the EEOC.

III. Processing Discrimination Complaints

If an individual files a charge with either the EEOC or FCC alleging discrimination in employment by a broadcaster or cable system operator, the EEOC and FCC shall proceed as follows:

(a) If the EEOC receives the charge but the broadcast employer or cable system operator does not fall within the jurisdiction of the EEOC pursuant to Title VII, and also not within the jurisdiction of a state or local agency to which the EEOC defers such charges pursuant to section 706 of the Civil Rights Act of 1964 (hereinafter section 706 Agency), the EEOC will forward the charge to the FCC, which will process the complaint in accordance with its own rules, policies and procedures. Upon request, the EEOC shall provide technical advice and guidance to the FCC in their investigation of such complaints. The EEOC shall also notify the charging party that it has forwarded the complaint to the FCC. The EEOC shall furnish to the appropriate office of the FCC a list of section 706 Agencies and their jurisdictional limits.

(b) If the FCC receives a charge which falls both within its own jurisdiction and within the jurisdiction of the EEOC or a section 706 Agency, the FCC shall, in addition to any separate action it may take to investigate such charges within the context of the public interest finding it must make on any broadcast or cable microwave application: (i) Date stamp the charge and refer it to the appropriate EEOC office or the appropriate section 706 Agency; (ii) notify the complainant that it has done so; and (iii) notify the broadcaster or cable system operator that the compaint has been referred to the EEOC, indicating that the FCC has asked the EEOC to inform it of the results of the case processing.

(c) If the EEOC receives a discrimination charge against a broadcaster or cable system operator which is within the jurisdiction of both the EEOC and the FCC, the EEOC will process the charge in accord with it normal procedures. The EEOC shall make a reasonable effort to investigate the charge prior to the broadcast station's license expiration date as established in § 73.34 of the FCC's rules and regulations, or the renewal date of cable system as set by the franchising authority.

IV. Action on Discrimination Complaints

The EEOC will notify the FCC by letter of all reasonable cause determinations on discrimination charges involving a broadcaster or cable system operator, and upon specific request will provide the FCC with any additional information regarding the determination. However, nothing herein is intended to require or force licensees or operators to enter into conciliation agreements or to affect the legal rights of the complainants. Likewise, nothing herein is intended to discourage a licensee or operator from entering into a conciliation agreement if it so desires or to affect the legal rights of the EEOC.

When the EEOC makes a determination on a discrimination complaint involving a broadcaster or cable system operator, and there is a failure of conciliation, the EEOC will so notify the FCC. Thereafter, consistent with its usual practice of compiling a full and complete record prior to reaching any determination on an issue, the FCC will send the licensee or operator a letter inviting the licensee's or operator's comments on specific areas of FCC concern. Based upon a review of the broadcaster's or cable operator's response and any other information on

file relating to its employment policies and practices, the FCC, within its statutory discretion, shall determine what administrative action may be appropriate. Other than a regular grant of pending application for broadcasters, such action may include:

(a) Grant of a renewal for a short-term period;

(b) Grant of a renewal subject to certain conditions (with appropriate monitoring);

(c) Grant of renewal for a short-term period subject to certain conditions (with appropriate monitoring);

(d) Imposition of a monetary forfeiture (see 47 U.S.C. 503(b)); or,

(e) Designation of the license or application for hearing pursuant to either section 312 or 309 of the Communications Act, 47 U.S.C. 312, 309.

For cable system operators, such action may include:

(a) Imposition of a monetary forefeiture (See Cable Communications Policy Act of 1984 section 634(f)(2), Pub. L. 98-549, section 1 *et seq.*; or

(b) Suspending Cable Television Relay Service (microwave) licenses.

Upon disposition of the case, the FCC shall notify the EEOC. Furthermore, should the EEOC or the complainant elect to pursue the matter in the Federal courts, the FCC retains discretion to defer consideration of the case until a determination is reached by the courts. Likewise, in given circumstances the FCC retains its discretion to proceed with appropriate administrative actions prior to a final court determination.

V. Liaison and Monitoring

To provide for more effective exchange of complete information so that both agencies will be utilized to the maximum effectiveness in the public interest, each agency will designate a liaison officer to serve as the primary source of contact. These liaison officers will be responsible for currently informing each other of proposed proceedings and of internal developments in areas of joint concern to the extent that such information is not privileged. Additionally, the parties shall conduct reviews of the implementation of this agreement to assure proper effectuation. In this regard, liaison meetings between appropriate senior officials of both agencies to exchange views on matters of common interest and responsibility shall be held from time to time as determined by such liaison officers to be necessary.

Designated Liaison Officers:

(a) Equal Employment Opportunity Commission—The Executive Director or his designee.

(b) Federal Communications Commission—The General Counsel or his designee.

VI. Amendment and Termination

This agreement, when signed by both parties, covers an indefinite period of time and may be modified by or expanded with the mutual consent of both parties or terminated by either party upon thirty (30) days' advance written notice.

[FR Doc. 85-6122 Filed 3-19-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-04; Notice 1]

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petition for rulemaking; advance notice of proposed rulemaking.

SUMMARY: This notice grants part of a petition for rulemaking submitted by Legris, Inc., and announces that the National Highway Traffic Safety Administration (NHTSA) is considering an amendment to paragraph S7.3.10 of Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*. Legris' petition requests several related changes in the air brake tensile strength test of the standard. The tensile strength test is intended to ensure that an air brake hose assembly does not separate in service. The test specifies minimums of applied tension that an airbrake hose assembly must withstand without separating. Under the current requirements of S7.3.10, air brake hose assemblies with nominal internal diameters ¼ inch or less designated for use in applications other than between frame and axle or between a towed and towing vehicle shall withstand a tensile strength load of 50 pounds. Legris' petition requests that the tensile strength load requirement for nylon tubing with outside diameters of less than ¼ inch be reduced from 50 pounds to 15 pounds. The company argues that there is a growing need in the automotive and trucking industry to use smaller-sized tubing, and that the tensile strength requirement of Standard No. 106 unnecessarily excludes tubing with outside diameters of ⅛ inch from use. The petition also suggests a change in the language of the standard to provide that the tensile strength requirement relates to nominal internal diameter for hose and nominal outside diameter for tubing.

Neither the partial grant of Legris' petition nor the issuance of this request for comments necessarily means that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

DATES: Comment closing date: May 20, 1985.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. Dockets hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Crash Avoidance Division, (NRM-11), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: Legris, Inc., has submitted a petition for rulemaking to amend the tensile strength test for air brake hose which is included in Section 7.3.10 of Federal Vehicle Safety Standard No. 106, *Brake Hoses*. The purpose of the tensile strength test is to ensure that an air brake hose does not separate from its end fitting while in service. In the tensile strength test, an air brake hose assembly is attached to a testing apparatus which applies an even pull on the hose. Tension is applied until the brake hose breaks or separates from its end fitting. The testing machine has a recording device which registers the total pull in pounds applied to the hose assembly, and determines the point at which separation occurs.

Legris' Tubing

Legris is a manufacturing of tube fittings. According to that company, its fittings can be instantly connected to the end of a brake tubing, or "plumbed," by simply pushing the fitting on the tube. The fitting grips the outside diameter of the tube, without the need for tube supports. (A typical tube support fits into the end of a brake hose and prevents deformation of hose I.D. when an end fitting is attached to the hose.) Since tube supports are not required with Legris fittings, a greater flow of compressed air or liquid is allowed through a given hose size. Legris states that this increased flow capacity enables smaller-sized tubing to be used in assemblies for any given application.

According to the petitioner, the increased flow capacity would enable original equipment manufacturers to use the smaller sized tubing in installations under the instrument panel. However, Legris states that assemblies comprising Legris fittings and tubing with outside diameters less than ¼ inch cannot meet the 50-pound load requirement of S7.3.10. Legris petitioned for an amendment to the tensile strength test of S7.3.10 as it applies to tubing of ¼ inch O.D. and smaller, and hoses of ¼ inch I.D. and smaller. No changes were requested for sizes greater than ¼ inch, and no data were submitted by the petitioner relating to those larger sizes.

The Legris petition requests several related changes in the air brake tensile strength requirements of Section 7.3.10. First, the petition requests that the language of S7.3.10 be changed to provide that the diameter sizes to which the tensile strength requirements apply are "nominal diameters" (i.e., nominal internal diameter for hose and nominal outside diameter for tubing), instead of "nominal internal diameters." Second, the petition requests that the tensile load requirement for brake hose assemblies in the "other applications" category with nominal internal diameters of ¼ inch or less be reduced from 50 pounds to 15 pounds.

Nominal Diameter

No specific rationale was provided by the petitioner for the request to change the language of Paragraph S7.3.10 to substitute "nominal diamter" (i.e., I.D. for hose, O.D. for tubing) in place of "nominal internal diameter." Presumably this change was intended to clarify that traditional hose, which is specified by internal diameter and tubing, specified by outside diameter, were both addressed in this section of the standard. This part of Legris' petition is denied by the agency.

NHTSA has announced in past preambles that all brake hose is subject to appropriate tests in Standard No. 106, whether manufactured out of traditional rubber material or the newer plastic tubing. (39 FR 7425, 39 FR 28436.) Therefore the agency reiterates that S7.3.10 applies to both hose and tubing, notwithstanding the use of the term "nominal internal diameter." The term "nominal internal diameter" was added to S7.3.10 of the standard so that hose and tubing having equivalent internal diameters would be tested to the same tensile strength requirement regardless of "nominal size." (39 FR 28436.)

Tensile Strength Test

Section 7.3.10 requires air brake hose assemblies of varying internal diameters to withstand specified minimums of applied tension. The requirements distinguish between an air brake hose assembly designed for use between frame and axle or between a towed and a towing vehicle, and an air brake hose assembly designed for any other application. Since they are exposed to a less stressful environment, air brake hose assemblies in the latter category are subject to less stringent requirements than those in the former group. The standard requires hose assemblies in the latter category with nominal internal diameters of ¼ inch or less to withstand a pull of 50 pounds without separating. Paragraph S7.3.10 of the standard specifies tensile load requirements for various sizes of air brake hose assemblies. The tensile load requirements increase as the internal diameters of the assemblies increase.

Legris' Petition

Legris states in its petition that standard commercially available Type I tubing which is used in applications other than between frame and axle or between a towed and towing vehicle, and which must comply with the 50 pound load requirement, are tubing of sizes ¼, 5/16, 5/32 inch, and ⅛ inch outside diameter. According to Legris, each size has specifications as to nominal wall thickness, varying from .035 to .040 inches on ¼ inch O.D. tubing to /016 to .023 inches on the ⅛ O.D. tubing. The petitioner claims that only the ¼ inch O.D. tubing can meet the requirement of the standard, and that a ⅛ inch O.D. tubing with a wall thickness of .016 to .023 inches O.D. will not withstand a pull of 50 pounds.

Legris submitted test data which indicate that a ⅛ inch O.D. tube will break at a point between 12 to 40 pounds. Legris argues that a ⅛ inch O.D. tubing with a wall thickness sufficiently strong to withstand the 50 pound pull test would have an internal diameter reduced to the point where the flow capacity of the tubing would be too small for the tube to be practical for use in conveying compressed air, gas, or liquid.

Legris argues that there is a growing need in the automotive and trucking industry for smaller diameter tubing. According to the petitioner, tubing with smaller diameters costs and weighs less, requires less working room under the instrument panel, and is more flexible than tubing with larger diameters which results in faster and more efficient plumbing. Significantly, Legris states that the smaller sized tubing provides a "built-in" safety factor because, in the event of a break in the brake line, there is lessened air loss per unit of time. This lessened air loss would allow the operator of a vehicle more time in which to react to the brake failure.

Air Loss

According to the petitioner, most vehicular air compressors generate about 12 to 13 Standard Cubic Feet per Minute (SCFM) of compressed air at 100 pounds per square inch (PSI). In air brake systems on these vehicles, an air compressor fills the air tanks and lines of the brake system with air pressurized to approximately 100 PSI. These pressurized air reservoirs contain the air that is utilized in the braking system to operate the brakes. The air generated by the compressors is not channeled directly to the vehicle's brakes, but is stored in the pressurized air tanks.

Legris states in its petition that these smaller hoses would be used in installations under the instrument panel and in lines connecting the air delivery and pressure gauges to the air reservoirs. Hoses used under the instrument panel, such as those connected to air pressure gauges, are considered brake hoses if they transmit or contain the brake air pressure used to apply force to a vehicle's brakes. This is because a failure of such as hose result in a loss of air pressure in the brake system. Although a failure of air brake hose would result in a loss of air from the vehicle's brake system, Legris argues that hoses with smaller diameters have a "built-in" safety factor because ⅛ inch O.D. tubing section has a flow capacity of only approximately 6 SCFM at 100 PSI. Legris states that in the event of a break in such an air line, the compressor would be able to compensate for, or "keep up" with, any air loss from the leak, thereby avoiding a complete loss of braking capability and allowing more time for the driver of the vehicle to react to the problem.

The agency has determined that Legris' arguments concerning the tensile test requirement for tubing ⅛ inch or less in nominal outside diametrer deserve further consideration. Hence, the agency grants that part of the peition. NHTSA is aware that there is an increasing need in the industry for tubing of smaller sizes and greater flexibility, for installations under the instrument panel. These installations require small flexible lines because of the limited working areas in which they are used. However, the agency is concerned about any potential safety problems which may arise from an amendment to S7.3.10. Therefore, NHTSA has decided to solicit comments on the issues raised by the petition

before deciding whether a notice of proposed rulemaking should be issued.

Legris argues that a compressor operating at 12 SCFM could provide more air than would leak from a failed tube of ⅛ inch or less O.D., at engine speeds above an idle condition. The agency notes that air brake systems are required to have a pressure gauge in the system and also a warning device to indicate low air pressure. If there is a failure of sufficient magnitude to cause the air pressure to fall off, the operator of the vehicle would be given an audible or visual warning when the pressure in the air tanks fell below 60 PSI. The alarm system and the capability of the compressor to compensate for air loss are factors which may be able to alleviate concerns about possible degradation of braking system performance. However, the agency believes that nominal 12 SCFM compressors only deliver 12 SCFM at higher engine speeds. When the operator of a vehicle is applying the brakes to slow the vehicle, the engine is not at rated R.P.M It is difficult to reliably predict the capability of a compressor to compensate for air loss in a braking system in the variety of driving situations that may be encountered (e.g., if the driver is pumping the brakes, full flow capacity of the compressor is not available to supply the leak). Further, NHTSA is aware that data books from each of the three largest domestic large truck manufacturers show that 7 SCFM compressors are offered in many models, and that these units are currently being sold. More information is needed to assess the effect that amending S7.3.10 would have on the operation of the braking system is these vehicles.

Questions about air leakage from ⅛ inch or less O.D. tubing and loss of braking capacity are as yet unanswered. As discussed below, the agency specifically seeks comment on whether the leakage rate is too indeterminate to be predicted.

Tubing Larger Than ⅛ Inch

The agency has determined that it would not be in the interest of safety to lower the tensile strength load requirement for tubing with nominal internal diameters between ⅛ inch and ¼ inch. A tube with a 5/32 inch nominal internal diameter would allow a flow rate of approximately 11 SCFM. A compressor could at best barely keep up at high engine speed, and would not totally compensate for the loss of air at lower speeds. A 3/16 inch tube would allow a flow rate of approximately 18 SCFM. In the event of a failure a compressor could not keep up under any conditions, and there would be enough air loss to almost completely depressurize a brake system. Accordingly, that part of Legris' petition which requests lowering the tensile strength load requirement from 50 pounds to 15 pounds pull-off load for tubing with nominal internal diameters between ⅛ inch and ¼ inch, is denied.

SAE Standard

In support of its petition to lower the tensile strength requirement for ⅛ inch O.D. tubing, Legris argues that Standard 01131 of the Society of Automotive Engineers (SAE) specifies a 15 pound load requirement for tubing with a nominal outside diameter of ⅛ inch. Legris states that the tensile strength requirements of FMVSS No. 106 should be amended in line with the SAE standard. However, the agency notes that the SAE requirements are based on specific preconditioning prior to the tension test. The preconditioning includes soaking the tubing and fitting test specimen in boiling water for five minutes and conducting the tensile test while submerged ("hot pull test"), and a four cycle preconditioning (cold, normal, hot) prior to the "conditioned pull" test. The SAE requirements specify that the ⅛ inch O.D. test specimen satisfy either a 15 pound tensile load requirement *or* a 50 percent elongation requirement. Currently, FMVSS No. 106 specifies the tensile test to be conducted at room temperature. As elaborated below, the agency is interested in comments on whether SAE 01131 should be adopted for ⅛ inch O.D. tubing (or 3/32 inch tubing with a nominal wall thickness of .016 inches).

Issues

The agency solicits comments concerning the issues raised by Legris' petition. To assist in the evaluation of the proposed change, the agency is particularly interested in obtaining comments relating to the following questions:

1. Can the leakage rate from a ruptured air brake hose be reliably predicted? Are factors such as the location of the rupture, nominal system pressure, compressor air delivery at various system pressures and engine speeds, and usage of the brake system prior to rupture, too variable to reliably determine whether a certain level of leakage is "safety significant"?

2. Legris states in its petition that most vehicular air compressors generate about 12 to 13 SCFM of compressed air at 100 PSI. The petitioner argues that since a ⅛ inch O.D. tube has a SCFM capacity of approximately 6 SCFM, the compressor would be able to compensate for any air loss resulting from a break in the air line. Given the fact that a nominal 12 SCFM compressor only delivers 12 SCFM at higher engine speeds, are there any data showing that such a compressor can compensate for air loss from a break in a ⅛ inch O.D. tube when operating at lower engine speeds? NHTSA has also observed that data books from each of the three largest domestic large truck manufacturers indicate that 7 SCFM compressors are offered in many models. Are there many vehicles in use that do not use 12 SCFM air compressors? What capacity compressors do the major truck and bus manufacturers use in new vehicles? Are there any data showing that these compressors are able to compensate for air loss from ⅛ inch O.D. tubing, as the petitioner claims is possible for compressors of 12 SCFM?

3. Legris states in its petition that there is a growing need in the automotive industry to use smaller diameter tubing because these hoses weigh and cost less, provide more working room under the instrument panel, and are more flexible for faster and more efficient plumbing. Is there such a need in the industry for smaller sized hose? To what extent can this need be quantified? To what extent can the potential benefits of the smaller diameter tubing be quantified? How important is increased flow for the purpose of installations under the instrument panel? Can this need be met with smaller sized tubing that have tube support inserts?

4. Data submitted with Legris' petition indicate that the petitioner's tubing assemblies failed the tensile test because the fittings pulled off the tube, rather than from a tensile failure of the tubing itself. The agency requests comments on whether the probability that smaller diameter tubing will either break or separate from their end fittings during normal usage is greater than that for larger diameter tubing.

5. Does the tensile test for ⅛ inch O.D. air brake tubing currently specified in Standard No. 106 preclude the use of ⅛ inch O.D. tubing, i.e., are there air brake assemblies using ⅛ inch O.D. tubing which can meet the 50 pound load requirement of the standard?

6. Data submitted with Legris' petition indicate that specimens of ⅛ inch O.D. tubing withstood 35–40 pound loads when tube supports were inserted. Does the use of tube supports restrict air flow through the tube to the point where the flow capacity of the tubing would be too small to be practicable? Would

amending the tensile test of Standard No. 106 to require a tensile load of 35–40 pounds for ⅛ inch O.D. (or 3/32 inch I.D.) tubing employing tube supports be reasonable, given the current state of technology for smaller sized air brake tubing?

7. Section 7.1 of Standard No. 106 states that "Each air brake hose intended for use with reusable end fittings shall conform to the dimensional requirements specified in Table III." Legris' ⅛ inch O.D. tubing is designed for use with reusable end fittings. Are there air brake hoses intended for use with reusable end fittings. Are there air brake hoses intended for use with reusable end fittings which do not conform to the sizes listed in Table III? What materials do these hoses comprise?

8. SAE Standard J1131 specifies that ⅛ inch O.D. tubing shall satisfy either a 15 pounds load requirement in its tension test, or a 50 percent elongation requirement. The tensile strength test requires both hot and cold preconditioning of the test specimen before the specimen is attached to the testing machine. Is this SAE test preferable to the current tensile test requirement in FMVSS No. 106 which specifies a 50 pound load requirement for ⅛ inch I.D. tubing with no preconditioning of the specimen prior to testing? Is the SAE tensile test more closely addressed to the specific requirements important to air brake hoses than the tensile test in Standard No. 106?

Economic Effects

The agency has tentatively determined that any rulemaking that results from this notice would not be a "major regulation" under Executive Order 12291 or a significant regulation under the Department's Regulatory Policies and Procedures. The expected impacts are too indeterminate at this time to conclude whether a regulatory evaluation would be appropriate. Should the agency decide to proceed with a notice of proposed rulemaking, the decision whether it is necessary to prepare a regulatory evaluation would be made at that time.

The agency has reviewed this notice under the National Environmental Policy Act of 1969 and determined that the changes would not have a significant impact on the quality of the human environment.

Review of this notice under the Regulatory Flexibility Act is not required since the Regulatory Flexibility Act does not apply to advanced notices of proposed rulemaking. Should the agency decide to proceed with a notice of proposed rulemaking, review of that notice under the Regulatory Flexibility Act would be made at that time.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion (49 CFR 553.21).

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter, or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 15, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–6642 Filed 3–19–85; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Mr. Chuck Howard requesting the agency to amend Federal Motor Vehicle Safety Standard No. 108 to permit a motor vehicle to be equipped with two amber lamps on the rear (either separate or operating through the back-up lamps) which would be activated when the vehicle is decelerating from speeds greater than 30 miles an hour. The petition was denied because insufficient safety merit has been shown for deceleration warning systems to be the subject for a national standard. In any event, Standard No. 108 does not prohibit installation of such a system provided, if it operates through existing lamps, that the are those that flash in normal operation.

FOR FURTHER INFORMATION CONTACT: Stanley Scheiner (202) 426–2720.

SUPPLEMENTARY INFORMATION: On April 25, 1983, Mr. Chuck Howard, president of Safety Alert Co. Inc., of Santa Monica, California, petitioned for rulemaking to amend Motor Vehicle Safety Standard No. 108 to "allow the sale of our vehicle deceleration warning system called Safety Alert to be sold in all of the fifty States." This petition was withdrawn on May 6, 1983 and a request for interpretation made. The agency gave these interpretations on June 17 and August 4 but, as they did not provide the answer sought, Mr. Howard re-filed his petition on August 5, 1983.

Specifically, Mr. Howard's system was designed to provide a flashing light through the back-up lamp to indicate when an operator had released the accelerator pedal; however, yellow bulbs would be substituted for the original equipment white ones. He also asked whether the system could be wired to operate through the hazard warning system and through the rear turn signals on vehicles manufactured before hazard warning systems were required. NHTSA informed Mr. Howard that substitution of yellow bulbs in back-up lamps would render a vehicle noncompliant with the requirements of Standard No. 108 that such a lamp be white, but that it would be permissible for his deceleration warning system to operate through any rear lighting system that Standard No. 108 allows to flash for signalling purposes. Thus, operation through the back-up lamps, which Standard No. 108 requires to be steady-burning, would be prohibited even if amber bulbs were not substituted. As for the legality of installation on vehicles manufactured before the hazard warning system was required, he was advised that this was a matter to be determined under local law.

In his re-filed petition Mr. Howard asked for an amendment which would allow any motor vehicle to "be equipped with two amber lamps on the rear of the vehicle which operates simultaneously with not more than four flashes within four seconds after the accelerator pedal is in the deceleration position but which will operate only when the vehicle is moving above 30 miles an hour * * *. The amber lamps may be used either separately or in combination with the back-up lights. When the motor vehicle is in reverse, the lights shall be white or have a light yellowish cast and shall be steady burning."

The NHTSA does not believe that rulemaking should be conducted regarding deceleration warning systems. There are at least five studies which have evaluated deceleration signals. Representative of these are Mortimer and Sturgis, *Evaluation of Automobile Rear Lighting and Signalling Systems in Driver Simulator and Road Tests*, pp. 132–34 (Highway Safety Research Institute, 1976) and Mortimer, *Automotive Rear Lighting and Signalling Research*, pp. 237–38 (Highway Safety Research Institute, 1970). All studies known to NHTSA have shown that the deceleration signal will not have the promised effectiveness because the release of the accelerator cannot be taken as a reliable indication that the brakes will be subsequently applied. In some cases, the deceleration signal improved the response time of the driver of the vehicle following but it was often incorrectly interpreted to mean that braking was imminent. Consequently, unecessary and perhaps sudden braking by the following vehicle has the potential of creating an unintended roadway hazard. Accordingly, the agency has never advocated such signals and has preferred to allow the States to regulate such systems as each sees fit. According to Mr. Howard, his system has been approved for use in 14 States and the agency has informed him that under Standard No. 108 there would be no violation if the system operates through the turn signal system (which serves also as the hazard warning system). But the agency has concluded that insufficient safety merit has been shown for it to amend a national standard in a manner which would preempt a State from either prohibiting Safety Alert and other deceleration warning systems or modifying performance characteristics.

At the conclusion of the technical review, the agency determined that there was not a reasonable possibility that, at the end of the rulemaking proceeding, Standard No. 108 would be amended to permit operation of a deceleration warning system through the back-up lamps and the petition was denied.

The program official and attorney principally responsible for the development of this agency position are Kevin Cavey and Taylor Vinson respectively.

(Secs. 103, 119, and 124, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 15, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–6639 Filed 3–19–85; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids Brake Hoses; Grant of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administraton (NHTSA), DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: The agency grants a petition for rulemaking submitted by the United States Army Tank-Automotive Command (ATAC), Department of the Army, to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*, and FMVSS No. 116, *Motor Vehicle Brake Fluids*. ATAC requests that Standard No. 106 be amended to require brake hose compatibility with a fluid that includes DOT 5 characteristics, and that Standard No. 116 be amended to require compatibility of DOT 3, DOT 4, and DOT 5 brake fluids with elastomeric seals and cups internal to hydraulic brake system master and wheel cylinders. The agency believes that the changes suggested by ATAC warrant further consideration. Therefore, to that extent, the agency grants ATAC's petition. The granting of this petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426–2153.

SUPPLEMENTARY INFORMATION: This notice grants a petition for rulemaking submitted by the United States Army Tank-Automotive Command (ATAC), Department of the Army, to amend FMVSS No. 106, *Brake Hoses*, and FMVSS No. 116, *Motor Vehicle Brake Fluids*. ATAC requests that Standard No. 106 be amended to require brake hose compatibility with a fluid that includes DOT 5 characteristics, and that Standard No. 116 be amended to require compatibility of DOT 3, DOT 4, and DOT 5 brake fluids with elastomeric seals and cups internal to hydraulic brake system master and wheel cylinders.

Referee materials are used in Standards Nos. 106 and 116 to test specimens of brake hose or brake fluid for compliance with the requirements of those safety standards, so as to provide a basis of comparison between the results of the tests and the specifications of the standards. FMVSS No. 106 currently references only RM–1 SAE Compatibility Fluid as the referee material used to test the performance of hydraulic brake hose and brake hose assemblies. Standard No. 116 also references only RM–1 fluid to test brake fluid compatibility.

RM–1 fluid is a polyglycol type fluid used with all brake fluids in the compatibility tests of Standard No. 116. Under Standard No. 116, various tests are conducted to determine the compatibility between test specimens of DOT 3, 4 or 5 brake fluid and RM–1 referee material, and the compatibility between tes' specimens of brake fluid

and SAE referee cups made of styrene butadiene rubber (SBR).

In its petition, ATAC states that the U.S. Army adopted DOT 5 silicone brake fluid as its standard operating fluid for its motor vehicles with hydraulic brake systems. The Army experienced operational problems with aftermarket procured hydraulic brake system components. It traced the problem to excessive swelling of elastomeric seals and cups within the hydraulic brake system master cylinder which was apparently caused by incompatibility problems between the DOT 5 brake fluid and the rubber components. Since FMVSS No. 106 only tests brake hose and brake hose assemblies with RM-1 Compatibility Fluid, ATAC's petition suggested amending Standard No. 106 to require brake hose compatibility with a fluid that includes DOT 4 and DOT 5 brake fluid characteristics.

ATAC also suggested in its petition that Standard No. 116 be amended to include specifications for wheel cylinder and master cylinder cups. The tests in Standard No. 116 that measure the effect of brake fluid with rubber are run with SAE referee material SBR cups only. Standard No. 116 does not contain any performance requirements for rubber brake parts sold to the public. The SAE referee SBR cups only serve in Standard No. 116 as reference materials. The referee SBR cups are immersed in the test fluid, heated, then examined for disintegration, hardness changes and diametrical changes in order to evaluate the performance of the test fluid. The standard does not test the compatibility of any rubber cups with any referee brake fluid. ATAC suggested in its petition that Standard No. 116 be amended to require that master and wheel cylinder cups made of ethylene propylene diene monomer rubber (EPDM) be compatible with a DOT 3, DOT 4 and DOT 5 referee material, and to include specifications for these and other rubber components.

The agency believes that the changes suggested by ATAC warrant further consideration. Therefore, to that extent, the agency grants ATAC's petition. The granting of ATAC's petition does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 15, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-6640 Filed 3-19-85; 8:45 am]

BILLING CODE 4910-59-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records; Amendments

AGENCY: National Transportation Safety Board.

ACTION: Proposed rule.

SUMMARY: This notice proposes to amend the Board's existing rules governing the notification of aircraft accidents or incidents by adding four incidents in which the operator would be required to notify the Board of the occurrence.

COMMENT DATE: Written comments may be submitted until May 20, 1985.

ADDRESS: Comments should be submitted to the Office of General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: On May 3, 1979 (44 FR 25889), the Safety Board published a proposed rule which would have added five additional types of incidents to the list of incidents that require immediate notification to the Board. In a rulemaking published on September 11, 1980 (45 FR 59894), the Board delayed implementing the foregoing proposal until the relationship of the Board's needs to some anticipated changes to the Federal Aviation Administration's (FAA) incident reporting system became clearer. The Board noted at that time that most of the kinds of incidents it proposed to add to Part 830 were then coming to the Board's attention in sufficient time to permit the Board to undertake an investigation when necessary.

The Board now has concluded that continued reliance on the FAA reporting system for the proposed additional incidents listed herein will not serve the public interest because valuable evidence, particularly in the form of flight data and cockpit voice recorders, frequently is not available by the time the report is required to be made to the FAA, and, therefore, the Board may be forever precluded from conducting a complete investigation of those incidents it decides to study.

Three of the additional types of incidents which the Board is proposing to include in the notification requirement are: (1) A complete failure of aircraft electrical or hydraulic systems, (2) sustained loss of the power or thrust produced by two or more engines, and (3) an emergency evacuation of the aircraft. Mandatory notification of these additional types of incidents would serve to insure that the Board is apprised in a timely fashion of these categories of incidents which it has an interest in investigating. In addition, including these occurrences in the list of incidents would trigger the requirement in 49 CFR 830.10 for preservation of evidence including recorders and other relevant records. Thus, if the Board decided to conduct an investigation of one of these incidents, it would be assured that vital evidence would be available for a comprehensive investigation. If the Board decided not to investigate the incident, the operator would be advised pursuant to § 830.10(d) that it would not be required to preserve records or wreckage.

Many commercial operators currently notify the Board of the foregoing incidents although they have not been required to do so, and the additional burden on the remaining operators of requiring them to do so should not be significant. Moreover, to reduce the burden on the aviation community, the Board is confining the required notification of these incidents to occurrences involving large multi-engine aircraft (more than 12,500 pounds maximum certificated takeoff weight).

On occasion there are occurrences in which an aircraft does not incur substantial damage and no person suffers serious injury or death but the aircraft causes damage to other property. For example, in one incident a jumbo jet penetrated a passenger terminal without substaining substantial damage or causing serious injury to any one. The occurrence was not considered to be a reportable accident because of the absence of either substantial damage to the aircraft or of serious or fatal injuries. Since the absence of such damage and personal injuries in such incidents can be purely fortuitous, the Board believes that in order to insure that such occurrences are properly

investigated the Board must be notified when an aircraft causes extensive damage to property. Therefore, the Board is proposing to add to the list of incidents occurrences where damage to property other than the aircraft exceeds $25,000. Because this is the first time that the Board has proposed a dollar threshold for notification of aviation incidents, it is particularly interested in comments on the problems such a requirement may create as well as views on the dollar threshold that should be employed.

The four proposed additional incidents, like the others presently set forth in § 830.5, may or may not be investigated by the Board, and reports will need to be filed only if, as now stated in § 830.15(a), they are requested by the Board. Also, the listing of additional incidents in which notification is required does not mean the Board will not investigate other types of incidents, if deemed necessary.

Under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because the rule will not result in a marked increase in the number of incidents for which notification must be made, the rule has been tailored to lessen its impact on small entities, and the costs of complying with the rule will not be substantial.

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq.), and the Independent Safety Board Act of 1974, Pub. L. 93-633, 88 Stat. 2166 (49 U.S.C. 1901 et seq.).

List of Subjects in 49 CFR Part 830

Administrative practice and procedure, Aviation safety.

PART 830—[AMENDED]

Accordingly, the Board proposes to amend 49 CFR 830.5 by adding paragraphs (a)(6) and (7) as follows:

§ 830.5 Immediate notification.

* * * * *

(6) Damages, based on a preliminary estimate, of more than $25,000 to property other than the aircraft.

(7) For large multi-engine aircraft (more than 12,500 pounds maximum certificated takeoff weight):

(i) Complete failure of aircraft electrical or hydraulic systems;

(ii) Sustained loss of the power or thrust produced by two or more engines; and

(iii) An emergency evacuation of the aircraft.

* * * * *

Signed at Washington, D.C., on this 12th day of March, 1985.

Jim Burnett,

Chairman.

[FR Doc. 85-6574 Filed 3-19-85; 8:45 am]

BILLING CODE 7533-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329-5029]

Atlantic Tuna Fisheries

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule (within the framework of the 1983 recommendations of the International Commission for the Conservation of Atlantic Tunas) to modify buy-boat operating procedures, and requests public comment. The proposed rule would allow NOAA to better maintain the integrity of the catch rate limit system for the General category. The intended effect is to prohibit buy-boat operations when the daily limit for giant Atlantic bluefin tuna in the General category is one fish per day per vessel.

DATES: Comments must be received by April 4, 1985.

ADDRESSES: Send comments on this proposed rulemaking to National Marine Fisheries Service, Nortwest Region, Management Division, State Fish Pier, Gloucester, Massachusetts 01930-3097. Clearly mark "Comments on 1985 Atlantic bluefin tuna proposed rulemaking" on the outside of the envelope. Copies of the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) that were prepared in 1983 are available from National Marine Fisheries Service, Northeast Region, Services Division, P.O. Box 1109, Gloucester, Massachusetts 01930-1109.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 325; or David S. Crestin, 617-281-3600, extension 253.

SUPPLEMENTARY INFORMATION:

Background

The United States is a signatory nation to the International Convention for the Conservation of Atlantic Tunas (the Convention, 20 UST 2887, TIAS 6767). The Convention's provisions entered into force for the United States on March 21, 1969. The United States' obligations under the Convention are prescribed by the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971h) (the Act). This Act directs the Secretary of Commerce (Secretary) to promulgate rules necessary to implement recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to carry out the purposes and objectives of the Convention. The Secretary's authority under the Act has been delegated to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator).

Rules presently governing the U.S. fishery for Atlantic bluefin tuna are at 50 CFR Part 285, Subparts A and B (48 FR 27755, 48 FR 35107, 49 FR 1043, 49 FR 29798). These rules implement the following recommendations of ICCAT: (1) to reduce catch levels of Atlantic bluefin tuna in the western Atlantic Ocean to an amount which would provide a broad range of biological information while keeping catch levels conservative; (2) to limit the catch of Atlantic bluefin tuna smaller than 120 centimeters (cm) (47 inches) fork length to no more than 15 percent by weight of the total catch in the western Atlantic Ocean; and (3) to prohibit directed fisheries for Atlantic bluefin tuna in spawning areas, such as the Gulf of Mexico.

ICCAT held its fourth special meeting in Las Palmas, Gran Canary Island, Spain, November 7-13, 1984. This meeting was preceded by a meeting of the Standing Committee on Research and Statistics (SCRS), November 1-6. ICCAT reviewed the current restrictions on fishing for Atlantic bluefin tuna in the western Atlantic Ocean taking into account the SCRS report which recommended no new management advice. The United States, with support from Canada, emphasized that in the absence of conclusive technical advice and data analyses concerning status of the stocks which would warrant new management measures, the existing conservation program should continue for an additional three years. The majority of member nations, however, emphasized that the inadequate information on the stocks should not warrant a rigid management program for a multiple year period. These nations, therefore, favored only a one year extension. Since a consensus on this issue was not reached, the Commission voted to extend the existing management regime for one year.

As in 1983 and 1984, the total allowable catch of Atlantic bluefin tuna in the western Atlantic Ocean for 1985 will be 2,660 metric tons (mt) (2,932 short

tons [st]), with allocations of 1,387.2 mt (1,529 st), 573.3 mt (632 st) and 699.4 mt (771 st) for the United States, Canada, and Japan, respectively. The percentage share of the total allowable catch for the western Atlantic Ocean remains the same for each nation in 1985 as it has since 1982: United States, 52.15 percent; Canada, 21.55 percent; and Japan, 26.30 percent. ICCAT considers continuation of the 1983 and 1984 management measures into 1985 to be sound environmentally, and within a catch range which will not place undue stress on the Atlantic bluefin tuna stocks.

During 1983 and 1984, the Atlantic bluefin tuna rules were modified by a series of amendments and corrections. NOAA will incorporate those changes into the final rule and republish the complete rule to provide the public with a single reference for the rules currently in effect for the 1985 fishing year.

Proposed Changes

1. Buy-Boat Operations

NOAA first allowed buy-boats to operate in the Atlantic bluefin tuna fishery in 1979. Prior to the 1984 fishing season, they were used primarily after August 1, when vessels permitted in the General category were allowed a multiple daily catch. The fishing season for vessels permitted in the General category began on January 1 prior to 1982 and on June 1 from 1982 to the present. Although giant Atlantic bluefin tuna arrive in Block Island, Rhode Island, waters about June 1 in most years, buy-boats rarely operated in June or July.

Traditionally during June and July and whenever the catch was limited to one giant Atlantic bluefin tuna per day per vessel, successful fishermen would leave the fishing grounds for port where the fish could be sold as soon as possible. Proper handling techniques by the vessel operator and rapid transport to shore assist in preserving product quality which often results in a higher price per pound paid to the fisherman. Significant numbers of vessels leaving the fishing areas for port after taking a fish reduces measurably, over hundreds of square miles, the at-sea enforcement effort necessary to monitor fishing activities to prevent violation of the daily limit of one fish per vessel per day. Section 285.31(p) of the regulations requires that a permitted vessel be able to travel to and from the grounds and fish under its own power and that its operator be able to secure any giant Atlantic bluefin tuna caught without the assistance of another vessel. This provision is intended both to discourage imprudent action on the part of novice fishermen who might misjudge their capabilities or those of their vessel and to the prevent collusion among those few who would overharvest the resource. The practical result of this measure is to slow the harvest and extend the season for the benefit of the entire fishery.

In 1984, the catch limit for the General category established under § 285.24 remained at one giant Atlantic bluefin tuna per day per vessel throughout the entire season. NOAA permitted nine buy-boats to operate in the fishery in 1984; five actively participated in the fishery. Fishermen in the General category voiced many concerns that buy-boats facilitated violations of the daily limit of one giant Atlantic bluefin tuna per day per vessel by allowing vessels to stay on the grounds and to fish illegally after having sold their permitted catch to the buy-boat. Authorized officers were deployed aboard buy-boats on several occasions to observe and monitor vessel activity in the fishery. The presence of an authorized officer served as an effective deterrent for possible violation of the rules.

The rule allowing buy-boats to operate when a multiple catch rate in the General category is in effect is a reasonable one. Permitted vessels in the General category may transfer any Atlantic bluefin tuna legally caught to a buy-boat, stay on the fishing grounds, and continue to fish until the fishing vessel's daily limit is taken. This often results in a better quality product dockside as the buy-boat generally has better capability for handling, storing, and transporting numbers of giant Atlantic bluefin tuna.

NOAA believes, however, that the operation of buy-boats in the Atlantic bluefin tuna fishery when a catch rate of one giant Atlantic bluefin tuna per day is in effect in the General category is inconsistent with the intent of § 285.31(p) and § 285.24. Buy-boat operations during this period do not provide substantial benefits other than a convenience to any fishermen properly equipped to participate in the fishery. At-sea observation is the only truly effective method of monitoring the interactions between permitted vessels in the General category and buy-boats on the fishing grounds. NOAA reviewed the placement of observers aboard each buy-boat and determined that the expenditures of time and money to provide the level of enforcement necessary for monitoring buy-boat activities when the catch rate of one giant Atlantic bluefin tuna per day in the General category is in effect, are not warranted.

NOAA, therefore, proposes to prohibit buy-boat operations when the daily limit for giant Atlantic bluefin tuna is one per day per vessel.

2. Other Proposed Changes to the Rules

NOAA also proposes several minor technical modifications to the existing rules for clarity, ease of understanding, or enforcement. The following discussion explains these proposed changes.

Section 285.2. The definition of *Harpoon Gear* has been added to identify and limit its use to that which traditionally has been used in the fishery (hand propelled). The effective use of any mechanically propelled harpoon device could seriously undermine the management objectives of the quota. The Harpoon Boat quota is established based on historical participation in the fishery by users of the traditional hand propelled harpoons. To allow the use of a mechanically propelled harpoon goes against the intent of the rule to preserve a rather small and unique fishery.

The definition of *Land* has been added to identify its use in relation to the process of offloading fish.

The definition of *Owner* has been added to identify more clearly responsibility for the activities of any vessel permitted in the Atlantic bluefin tuna fishery.

The definition of *Tuna* has been revised to include the term Atlantic bonito. This change is to correct an inadvertent omission which has been carried forward in the rules for several years.

Section 285.22. The title of paragraph (d) has been revised by adding the words *Young School* to describe more accurately the size classes of Atlantic bluefin tuna in which individuals measure up to 120 cm fork length (47 inches).

Section 285.23. Paragraph (f) has been revised to include the phrase "taken and landed". Addition of this phrase clarifies NOAA's intent that vessels must land Atlantic bluefin tuna in the same regulatory area in which the fish were caught. This clarification is considered necessary to eliminate a potential loophole for a vessel desiring to circumvent area-specific trip-limit restrictions.

Section 285.29. The first sentence of paragraph (e) was revised by adding the words "must offload daily" for rule clarification purposes. NOAA always has intended that buy-boats offload daily to facilitate enforcement of the

daily catch rate limits established in § 285.24.

Section 285.31. Paragraph (j) has been revised by adding the words "other than" to the phrase "with the head removed". This clarification more accurately describes the two forms in which tuna may be landed. A new paragraph (o) has been added which prohibits the operation of buy-boats when the catch rate in the General category is set at one giant Atlantic bluefin tuna per day per vessel. Paragraph (bb) has been revised by adding the words "Harpoon Boat". The Harpoon Boat category accidently was omitted from inclusion in this prohibition during previous promulgation of the rules. Existing paragraphs (o) through (dd) have been redesignated (p) through (ee) to accommodate the above addition.

Section 285.32. Paragraphs (a), (b), and (c) have been revised to make them consistent with revisions made in § 285.31.

Classification

The Administrator of NOAA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. Additionally, it was determined that this action is not significant under the Regulatory Flexibility Act, and because these regulations do not change the intent of previously adopted rules, they do not have a significant economic impact on a substantial number of small entities and they are categorically excluded from requirements of NEPA and no EA or EIS has been prepared. Copies of all previously published reports may be obtained from the NMFS Northeast Region, Services Division (See **ADDRESSES**).

The information collection requirements for this Act, previously approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0097, –0031, and –0013, will not be affected by any of the proposed changes.

The purpose of this proposal is to clarify the intent of the rules pertaining to buy-boat operations. There are no expected impacts associated with this proposal which were not discussed in the 1983 EA, or in the 1982 regulatory flexibility analysis/regulatory impact review (RFA/RIR), or in the previous rules.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements.

Dated: March 15, 1985.

Carmen J. Blondin,

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

For the reasons set forth in the preamble, 50 CFR Part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for Part 285 reads as follows:

Authority: 16 U.S.C. 971 *et seq.*

Subpart A—General

2. Section 285.2 of Subpart A is amended by adding the definitions of *"Harpoon Gear"*, *"Land"* and *"Owner"* and revising the definition of *"Tuna"* in alphabetical order as follows:

§ 285.2 Definitions.

* * * * *

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length; the other end of which is attached to a flotation device. Harpoon gear is attached to a pole or stick which is propelled only by hand, and not by mechanical means.

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

* * * * *

Owner means, with respect to any vessel,

(a) Any person who owns that vessel in whole or part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage; or

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function or operation of the vessel.

* * * * *

Tuna means albacore, Atlantic bluefin tuna, Atlantic bonito, bigeye tuna, skipjack tuna, or yellowfin tuna.

* * * * *

Subpart B—Atlantic Bluefin Tuna

3. Section 285.22 is amended by revising the heading for paragraph (d) by adding "Young School" to read as follows:

§ 285.22 Quotas.

* * * * *

(d) *Purse Seine—Young School and School fish.* * * *

* * * * *

4. Section 285.23 is amended by revising paragraph (f) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may land Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna taken and landed may not exceed:

(1) Two fish per vessel per trip taken and landed south of 36°00' N. latitude, and

(2) Two percent by weight of all other fish aboard the vessel at the end of each fishing trip, taken and landed north of 36°00' N. latitude.

* * * * *

5. Section 285.29 is amended by revising paragraph (e) to read as follows:

§ 285.29 [Amended]

* * * * *

(e) Each operator of a buy-boat, in addition to the above, must offload daily, must notify the Regional Director of any offloading, and must request a vessel inspection at least six hours before such offloading by calling 617–281–3600, extension 252, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends, by calling 617–992–7711. In making the request for inspection, the owner or operator of the buy-boat or his/her designated representative must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

[Approved by the Office of Management and Budget under OMB control number 0648–0013]

6. Section 285.31 is amended by revising paragraph (j), redesignating existing paragraphs (o) through (dd) as (p) through (ee), adding a new paragraph (o), and revising the newly redesignated paragraph (cc) as follows:

§ 285.31 Prohibitions.

* * * * *

(j) To land any Atlantic bluefin tuna in forms other than round, or other than with the head removed;

* * * * *

(o) To operate a buy-boat when the daily catch rate for vessels permitted in the General category is set at one giant Atlantic bluefin tuna per day per vessel;

* * * * *

(cc) To fish for or catch Atlantic bluefin tuna with longline gear, or while having longline gear aboard, if the vessel is permitted in the General or Harpoon Boat category under § 285.21;

* * * * *

7. Section 285.32 is revised in its entirety to read as follows:

§ 285.32 Civil penalties.

(a) Any person who violates paragraphs (a) through (v) inclusive, or paragraphs (y) through (dd), inclusive, of § 285.31 will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for a subsequent violation.

(b) Any person who violates paragraphs (w) or (x), of § 285.31 will be assessed a civil penalty of not more than $1,000, and a civil penalty of not more than $5,000 for a subsequent violation.

(c) Any person who violates paragraph (ee) of § 285.31 will be assessed a civil penalty in accordance with the criteria set forth in 16 U.S.C. 971e.

[FR Doc. 85-6618 Filed 3-15-85; 2:47 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 54
Wednesday, March 20, 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

Forms Under Review by Office of Management and Budget

March 15, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. The list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service

ATP Reconciliation Report
FNS 46
Monthly
State or local governments; 5,820 responses; 47,072 hours; not applicable under 3504(h)
Paul Jones, (703) 756-3427

Reinstatement

- Departmental Administration

Solicitation/Award/Administration of Contracts for Procuring Goods and Services
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 638,800 responses; 135,000 hours; not applicable under 3504(h)
Larry Schreier, (202) 447-8924

Revision

- Animal and Plant Health Inspection Service

9 CFR 11—Horse Protection Regulations
VS Form 19-7
Recordkeeping; On occasion; Monthly; Quarterly
Businesses or other for-profit; 2,032 responses; 1,139 hours; not applicable under 3504(h)
W.C. Stewart, (301) 436-7833

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85-6651 Filed 3-19-85; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

Tobacco Inspection; Richard C. Payne and Thomas B. Hall, Jr.; Public Hearing Regarding Application

Notice is hereby given of a public hearing to be held in the Circuit Courtroom of the Louisa County Courthouse, Louisa, Virginia, beginning at 1:00 p.m., e.s.t. on April 1, 1985, upon the application of Mr. Richard C. Payne and Mr. Thomas B. Hall, Jr. of Farmville, Virginia, for tobacco inspection and price support services for Type 37, Virginia sun-cured tobacco to be sold at Farmville, Virginia. Such public hearing will be conducted and evidence received pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR Part 29, Subpart A, §§ 29.1-29.3).

Dated: March 13, 1985.

Karen Darling,
Acting Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 85-6592 Filed 3-19-85; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet at 10:00 a.m. April 17, 1985, in the Austin Courthouse, Austin, Nevada. The purpose of this meeting is to discuss:

1. Allotment Management Planning
2. Utilization of Range Betterment Fund

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431. Telephone: (702) 784-5331. Written statements may be filed with the committee before or after the meeting.

Dated: March 11, 1985.

James A. Lawrence,
Deputy Forest Supervisor.

[FR Doc. 85-6653 Filed 3-19-85; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certification of Review; Application

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 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 April 9, 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 85–00006."

Applicant: AMATEX Export Trade Association, Inc., P.O. Box 6968, Station B, Greenville, SC 29606, Telephone: 803/242–9115.

Application #: 85–00006.

Date Deemed Submitted: March 5, 1985.

Members in Addition to Applicant: AZTEC Machinery Company, Inc. (Ivyland, PA); The Bahnson Company (Winston-Salem, NC); Draper Corporation, (Spartanburg, SC); Gaston County Dyeing Machine Company (Stanley, NC); Gessner Company (Worcester, MA); John D. Hollingsworth on Wheels, Inc. (Greenville, SC); Jenkins Metal Corporation (Gastonia, NC); Marshall & Williams Company (Greenville, SC); Morrison Textile Machinery Company (Fort Lawn, SC); Parks-Cramer Company (Fitchburg, MA); Reed-Chatwood, Inc. (Gastonia, NC); Southern Machinery Company (Greer, SC); Tubular Textile Machinery Corporation (Woodside, NY); and West Point Foundry & Machine Company (West Point, GA).

Summary of the Application

A. Export Trade

AMATEX Export Trade Association, Inc. (AMATEX) is a non-profit Delaware corporation organized in 1972 as a Webb-Pomerene export trade association. As an export marketing and sales agent for its members and other suppliers, AMATEX seeks to oversee the establishment of complete textile mill projects overseas, including complete spinning mills, weaving mills, fully integrated plants with dyeing and finishing operations, and carpet mills including yarn manufacture and tufting. In these export operations, AMATEX intends to sell in the Export Markets textile machinery (both new and used) and related auxiliary equipment and spare parts of its members and other suppliers. These products are classified as Textile Machinery and Parts under SIC No. 3552 and include opening, cleaning, preparatory, fabric forming, dyeing, drying and finishing textile machinery and their related parts and attachments ("Products").

In addition to coordinating the overall textile mill projects, AMATEX intends to also provide the following export trade services ("Services"): (a) Engineering (including plant layout, machinery and manpower requirements, and purchasing services); (b) economic analysis for customers; (c) consulting (including market and product intelligence, export-oriented information services, foreign customer visitation services, and selling trip and trade show participation services); (d) financing (including credit, insurance and collection services); (e) shipping (including consolidation, export documentation, and freight forwarding services); and (f) liaison services (including liaison with U.S. and foreign government agencies, banking institutions, and trade associations).

B. Export Markets

The Export Markets in which AMATEX intends to operate 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).

C. Export Trade Activities and Methods of Operation

In responding to invitations to bid or to sales opportunities in the Export Markets on behalf of its member companies or other suppliers, AMATEX seeks certification to:

(a) Enter into exclusive and non-exclusive agreements with individual U.S. suppliers of textile machinery, parts and related Services to act as their Export Intermediary in response to foreign bid invitations whereby AMATEX may:

(1) Establish prices and quantities at which Products will be acquired, sold or resold in the Export Markets.

(2) Establish the price and other terms of sale at which related Services will be acquired, sold or resold in the Export Markets.

(c) Contact individual suppliers of the Products and Services specified in the invitation to bid or the purchase specifications;

(b) Distribute to each supplier bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser;

(d) Solicit and receive independent quotations for the Products and Services from individual suppliers, provided AMATEX does not reveal to any supplier the quotation of any other supplier, or the identity of the supplier that provided the quotation;

(e) Bring together from time to time small groups of suppliers to satisfy the requirements of a given overseas textile mill project.

Dated: March 15, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85–6589 Filed 3–19–85; 8:45 am]

BILLING CODE 3510-DR-M

[C–433–402]

Preliminary Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Austria

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. The estimated net subsidy is 2.08 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Austria that are entered or withdrawn from warehouse for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on

entries of these products in the amount equal to the estimated net subsidy.

If these investigations proceed normally, we will make our final determinations by May 28, 1985.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products. For purposes of these investigations, the following programs are found to confer subsidies:

- Equity Infusions;
- Grants to the Austrian Steel Industry; and
- Export Financing Under the Kontrollbank Export Credits Program.

We determine the estimated net subsidy to be 2.08 percent *ad valorem.*

Case History

On December 19, 1984, we receive a petition from the United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Austria of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on January 8, 1985, we initiated such investigations (50 FR 2318). We stated that we expected to issue preliminary determinations by March 14, 1985.

Since Austria is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiation. On February 4, 1985, the ITC determined 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 hot-rolled carbon steel sheet and cold-rolled carbon steel plates and sheets from Austria. The ITC also determined 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 galvanized carbon steel sheets from Austria which are alleged to be subsidized (50 FR 6070).

We presented a questionnaire concerning the allegations to the government of Austria in Washington, D.C. on January 28, 1985. A supplemental questionnaire was presented on February 14, 1985. The government of Austria and Voest-Alpine AG provided responses to our questionnaires on February 28, 1985.

Scope of the Investigations

The products covered by these investigations are certain carbon steel products, which comprise:

- Hot-rolled carbon steel sheet; and
- Cold-rolled carbon steel sheet.

These products are more fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products farom Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response in incorrect, we accept the response for purposes of the preliminary determination. All such responses, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

There is only one known producer in Austria of certain carbon steel products, Voest-Alpine AG. We have received information from the company and the government of Austria. For purposes of these preliminary determinations, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Petitioner alleged that Voest-Alpine AG has received massive government equity infusions have been on terms inconsistent with commercial considerations. We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commerical considerations. When there is no market-determined price for equity, it is necessary to determine whether the company was a reasonable commercial investment. Voest-Alpine AG's shares are not publicly traded and there is no market-determined prices for its shares.

Therefore, we must determine whether the equity infusions into Voest-Alpine AG were reasonable commercial investments.

To make this determination, we reviewed and assessed financial statements from 1971 to 1983 (1984 statements were not provided). In analyzing the financial statements, we considered the information from the view point of an investor. Included in this review we analyzed the following data:

- Rate of return on sales;
- Rate of return from operations;
- Rate of return on equity;
- Debt to equity ratio; and
- Current ratio.

Based on our review of the financial statements, and responses of the company and government, we preliminary determine that the government's equity infusions into Voest-Alpine AG between 1978 and 1984 were on terms inconsistent with commerical considerations. In its response, the government of Austria and Voest-Alpine AG provided data for the applicable period, including financial statements and debt information.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of certain carbon steel products under the following programs:

A. Equity Infusions

Petitioner alleged that equity infusions into Voest-Alpine AG by the government of Austria were on terms inconsistent with commercial

considerations. In a submission dated February 22, 1985, petitioner further alleged that the Austrian government has provided a subsidy to Voest-Alpine AG by waiving its claim to a nominal dividend from Osterreichische Industrieverwaltungs-Aktiengesellshaft (OIAG), the government-owned holding company for nationalized enterprises, includling Voest-Alpine AG. Finally, petitioner alleges that Voest-Alpine AG's losses were borne by profitable nationalized firms and industries owned by OIAG.

The responses state that Voest-Alpine AG received equity infusions during the period 1975–1984 from OIAG. Portions of the equity infusions into Voest-Alpine AG have been transferred to an affiliated company, Vereinigte Edelstahlwerke AG (VEW). Under the terms of applicable legislation, Voest-Alpine AG was required to transfer the funds to VEW. VEW does not produce or export any of the merchandise under investigation, and therefore we do not consider equity infusions to VEW to benefit the products under investigation.

As discussed in the "Analysis of Programs" section, we preliminarily determine that Voest-Alpine AG was not a reasonable commercial investment and was unequityworthy from 1978 to 1984, and , thus the government equity infusions between 1978 and 1984 were on terms inconsistent with commercial considerations. Therefore, we preliminarily determine that these equity infusions confer benefits which constitute a subsidy.

Following the methodology contained in the Subsidies Appendix, we have calculated the benefit from these equity infusions by comparing Voest-Alpine AG's rate of return on equity in 1984 to the national average rate of return on equity during the same period. The national average rate of return on equity was taken from *Capital International Perspective*. On this basis we preliminarily determine the net subsidy to be .08 percent *ad valorem*.

B. Grants to the Austrian Steel Industry

Under Law 602/1981, the Austrian government authorized a grant of 2 billion Austrian schillings for the structural improvement of Voest-Alpine AG. These funds were disbursed through OIAG to Voest-Alpine AG in 1981 and 1982.

Law 589/1983 further permitted OIAG to raise new funds beginning in 1983. These funds were to be used for improving the economic structure of nationalized industrial enterprises. Of the funds raised by OIAG pursuant to the 1983 law, a portion went to Voest-Alpine AG in the form of equity infusions. These are discussed above. Another portion was made available to Voest/Alpine AG in the form of Grants, disbursed in 1983 and 1984.

We find these grants to be limited to a specific enterprise or industry or to a specific group of enterprises or industries. Therefore, we preliminarily determine these grants to be countervailable.

To calculate the amount of the benefit we have allocated the grants over 15 years (the average useful life of renewable assets in the steel industry). Discount rates have been developed for the years in which the grants were agreed upon. Therefore, the grants authorized under the 1981 law have been allocated using Voest-Alpine AG's 1981 weighted cost of capital. For the grants authorized by the 1983 law, the date of agreement is not clear. Apparently the amounts and the dates of disbursements are negotiated by OIAG and Voest-Alpine AG. Therefore, for grants received pursuant to the 1983 law we have used Voest/Alpine AG's weighted cost of capital in the year of disbursement as the discount rate. It is also unclear whether the full amount of the grant allotted to 1984 has been disbursed. For purposes of these preliminary determinations, we have treated the entire allocation as having been disbursed, but we intend to seek further clarification during verification.

Based on this methodology we find the net subsidy conferred by grants to be 1.95 percent *ad valorem*.

C. Kontrollbank Export Financing

Petitioners alleged that Voest-Alpine AG has received preferential export financing from the Austrian government in the form of loans at below-market interest rates. The government of Austria's response states that it does not extend export financing credits, but that such credits are extended by commercial banks through various programs. The most important of such programs is the Statutory Export Financing Scheme operated by Osterreichische Kontrollbank Aktiengesellschaft (OKB). The OKB was founded in 1946 to provide services not normally available from commercial banks. It has administered the official Austrian Export Credit and Guarantee Scheme of behalf of the Federal Ministry of Finance since 1950. OKB's twelve shareholders are exclusively Austrian credit institutions of which two are large nationalized banks.

Voest-Alpine AG received export financing through this program at interest rates lower than the National average short-term interest rate in Austria during 1984. For purposes of these preliminary determinations, we have used 9.25 percent as the benchmark for short-term loans. This is the "Commercial Bank Lending Rate to Prime Borrowers," as reported in *World Financial Markets*. Since Kontrollbank export financing is only available for use by exporters and the rates of interest charged are less than commerical interest rates on comparable loans, we preliminarily determine that the provision of such financing constitutes a countervailable benefit.

The benefit provided under this program was determined by applying the interest rate differential between the short-term benchmark and the interest rates paid by Voest-Alpine AG on the principal amount of all loans received by the company for the number of days the loans were outstanding. We then allocated the aggregate benefit over the value of exports of all products produced by Voest/Alpine AG. On this basis, we calculated a subsidy in the amount of 0.05 percent *ad valorem* for the products under investigation.

II. Programs determined not to confer a subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters in Austria of certian carbon steel products under the following programs:

A. Osterreichische Investitionskredit TOP–1 and TOP–2 Loans

Petitioner alleged that Voest-Alpine AG has received preferential export financing from the government of Austria through TOP–1 and TOP–2 loans. The government of Austria's response states that the programs are intended to further investments which are important for structural change by providing federal interest rate supports for credits given by Austrian banks. These credits are refinanced on the Austrian capital market by the Investitionskredit AG.

According to the government's response, the TOP–1 and TOP–2 programs are not limited to export promotion nor are they limited to a specific industry or group of industries. Therefore, we preliminarily determine that the program does not constitute a subsidy.

B. Labor Subsidies

Petitioner alleges that Voest-Alpine AG has received benefits from labor programs provided by the Austrian government.

1. *Government-Funded Labor Training*. The government response

states that under the Labor Market Promotion Act, Law No. 31/1969, companies in Austria may receive funds from the Austrian government for the establishment of in-house training programs to improve worker skills or to teach workers new vocations. In addition, under this law companies in Austria with low levels of capacity utilization may receive funds to be paid to the workers involved for training combined with reduced hours of work. Employees whose working hours are reduced receive support payments compensating them for the loss in earnings sustained. Workers receiving benefits under this program spend the difference between their reduced working hours and their normal working hours in training programs. The government's response states that funding for these labor training programs is available to all sectors of Austrian industry and not just to the iron and steel industry or to export-related industries. Because this program is not related to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that the program does not constitute a subsidy.

2. *Special Assistance Act.* The Special Assistance Act of 1973, Law No. 642/1973, provides enhanced unemployment benefits for former employees of sectors of the economy hit by the downturn which have been let go and are at least 55 years old for men or 50 years old for women. The Federal Minister of Social Affaires is empowered to determine by decree which sectors of the economy warrant application of the provisions of the law. In a decree issued on March 21, 1983, the iron and steel industry was included within the provisions of this law. The government of Austria's response states that payments under this law are made directly to the workers who have been laid off by an employer. The employer itself is not entitled to any support or subsidies under this law and is not relieved from payment of any expenses otherwise the obligation of such employer. Because this program provides assistance to workers and does not relieve Voest-Alpine AG of any expenses or obligations, we preliminarily determine the company does not receive any subsidy under this program.

C. Interest Subsidy Program

Petitioner alleged in a submission dated January 31, 1985, that Voest-Alpine AG has received interest subsidies from the Austrian government. The government of Austria's response states that the European Recovery Program Fund of Austria administered a program from 1978–1981 aimed at encouraging industrial projects in Austria. Under this program, qualifying investments were eligible for interest support reducing the amount of interest payable on commercial loans obtained to finance such investments. Further, the response states that all companies in Austria were eligible for this program and it was not confined to export-related projects. Because this program is not related to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that this program does not constitute a subsidy.

D. Loan Guaranty Program

Petitioner alleged in a submission dated January 31, 1985, that Voest-Alpine AG has received substantial loan guarantees from the Austrian government. The Austrian government's response states that loans issued by insurance companies in Austria must meet certain strict requirements for investment security according to section 77 of the Insurance Supervisory Law of October 18, 1976. Because of these requirements, commercial loans by insurance companies must be guaranteed by the government or secured by a pledge of real estate. The government guarantees insurance company loans to Voest-Alpine AG to enable the insurance companies to find larger-scale legally eligible investments for placement of their investment portfolios, rather than to enable Voest-Alpine AG to raise funds, which it is able to do through other sources. Accordingly, we preliminarily determine that this program does not provide subsidies to Voest-Alpine AG.

III. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Austria of certain carbon steel products did not use the following programs:

A. Local Incentives

Petitioner alleges that Voest-Alpine AG may have received benefits from a number of local investment incentives that are available to industries in Austria. The responses state that for the period 1968–1984, no local incentives were applicable to the production of the merchandise under investigation.

B. Income Tax Deferral on Export Sales

In a submission dated January 31, 1985, petitioner alleged that the Austrian government provides an export subsidy by permitting exporters to deduct from their taxable income fifteen percent of receivables originating from exports. The response of Voest-Alpine AG states that Voest-Alpine AG does not benefit from this program.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Austria which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise at 2.08 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determinations or 45 days after its final affirmative determinations, whichever is latest.

Public Comment

In accordance with § 355.35 of our rgulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on April 17, 1984, at the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by April 10, 1985. Oral presentations will be limited

to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at lest 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: March 14, 1985.

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

Appendix.—Description of Products

Austria

1. The term *"hot-rolled carbon steel flat-rolled products"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width and pickled, as currently provided for in item 607.8320 of the *TSUSA;* and not pickled and in coils; as currently provided in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the TSUSA.

2. The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, nor pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 or more in thickness, as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA.*

[FR Doc. 85-6665 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-401]

Preliminary Affirmative Countervailing Duty Determination; Certain Carbon Steel Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. The estimated net subsidy is 3.38 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded from these preliminary determinations.

We have notified the U.S. International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If these investigations proceed normally, we will make our final determinations by May 28, 1985.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Roy Malmrose, or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1784, 377-8320, or 377-5414.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products. For purposes of these investigations, the following programs are found to confer subsidies:

- National Government Loans and Grants; and
- Regional Development Incentives.
- We determine the estimated net subsidy to be 3.38 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded from these preliminary determinations.

Case History

On December 19, 1984, we received a petition in proper form from the United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing certain carbon steel products. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Sweden of certain carbon steel products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on January 8, 1985, we initiated these investigations (50 FR 2319). We stated that we expected to issue preliminary determinations by March 14, 1985.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, injury determinations are required for these investigations. Therefore, we notified the ITC of our initiations. On February 4, 1985, the ITC determined that there is a reasonable indication that these imports materially injure or threaten material injury to a U.S. industry.

We presented to the government of Sweden in Washington, D.C. a questionnaire concerning the allegations on January 25 and a supplemental questionnaire on February 12, 1985.

On February 25, 1985, we received responses to our questionnaires from the government of Sweden, Svenskt Staal AB (SSAB), and Surahammars Bruks AB (Surahammars), the two Swedish producers and exporters of the products under investigation. We also received information pertaining to our questionnaire from Granges AB and Luossavaara-Kiirunavaara AB (LKAB).

On March 8, petitioner filed supplemental information with the Department in which, for the first time, petitioner alleged that Swedish steel producers may be receiving benefits from labor subsidies, export financing, credit guarantees, and municipal subsidies. Due to the late submission of these allegations, we are unable at this time to reach a decision as to whether or not any of these programs are countervailable. Pursuant to section 775 of the Act, however, we will investigate these and any other programs or practices which appear to confer subsidies on the merchandise under investigation.

Scope of the Investigation

The products covered by these investigations are certain carbon steel products, specifically carbon steel plate, hot-rolled carbon steel flat-rolled products, and cold-rolled carbon steel flat-rolled products as described in the appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determinations. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determinations.

In its response, Surahammars reported that it had exported a small quantity of the products under investigation to the U.S. during the review period, but that the company had not received any benefits under the programs mentioned in our questionnaire. We accept the information in Surahammars' response and are excluding Surahammars from these preliminary determinations. For our final determinations on this case, however, we will verify Surahammars' response.

For purposes of these preliminary determinations, the period for which we are measuring subsidization (the review period) is the calendar year 1984. Based upon our analysis of the petition and the responses submitted by the government of Sweden and SSAB to our questionnaires, we preliminarily determine the following:

I. Programs Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of certain carbon steel products under the following programs:

A. National Government Loans and Grants

Petitioner alleged that the Swedish carbon steel producers have received preferential loans and grants from the government a part of a broad program for restructuring the Swedish steel industry.

In its response, SSAB reported that it had received reconstruction loans and structural loans from the Swedish government. Both types of long-term loans initially were given to SSAB as part of the Swedish government's participation in the establishment of SSAB in 1978. Additional reconstruction and structural loans were awarded to SSAB by the government in later years.

The initial set of reconstruction loans received by SSAB were intended to cover expected operating losses by SSAB during the 1978–1982 reconstruction period. Subsequent reconstruction loans were granted for employment promotion purposes and for investment in plant and equipment. These loans were interest-free for the first three years, after which they carried either a 9.5 percent or 11.5 percent interest rate. Any interest not paid is added to the loan principal at the end of the fiscal year. For some of these loans, up to 50 percent of the funds received may be written off at the end of the second fiscal year after the initial disbursement, and the remainder of the unpaid principal may be forgiven entirely at the end of the ninth calendar year after disbursement. Furthermore, principal and interest payments on these loans are required only if SSAB decides to distribute dividends to its shareholders. In that case, SSAB is obligated to pay back any interest accrued and then any principal in a combined payment amounting to the size of the dividend.

The structural loans received by SSAB were intended to partially finance new investment projects. These loans were interest-free for the first three years, after which they carried an interest rate based on the prevailing state loan interest rate plus a 0.25 percent margin. The interest rate, which is adjusted every fifth year, initially was 5.25 percent and currently is 12.50 percent, including the 0.25 percent margin. The term of these loans is 25 years, with no repayments required during the first five years after disbursement. A portion of the initial set of structural loans was converted by the government in 1981 into new equity in SSAB.

Since all of these loans were authorized under special government legislation and were given to SSAB on preferential terms, we preliminarily determine that the reconstruction and structural loans provide countervailable benefits to SSAB.

Petitioner alleged that SSAB has been uncreditworthy since its formation in 1978. To determine whether SSAB was creditworthy during the 1978–1984 period, we focused on the debt-to-equity rates and the ability of the company through its operations to meet interest obligations and principal payments. To make these decisions, we also reviewed cash flow, debt repayment, and interest expense coverage ratios. Our analysis of these factors leads us to preliminarily determine that SSAB has been and continues to be creditworthy.

We calculated the benefits conferred by these loans in accordance with our long-term loan methodology as contained in the Subsidies Appendix. For the benchmark interest rate on fixed-rate loans, we used the average interest rate on SSAB's own long-term commercial loans and bonds for the year in question as presented in the company response. For the benchmark interest rate on variable-rate loans, we used the average interest rate on 12-month certificates of deposit in 1984. To calculate the *ad valorem* benefit conferred by these loans, we divided the sum of all 1984 loan benefits by the total value of SSAB's 1984 sales.

Based on our discussion of SSAB's equityworthiness in section II.A below, we did not treat those structural loans converted into equity as countervailable grants. We did treat those portions of the reconstruction loans which were written off prior to 1985 as grants. In accordance with the grant methodology in the Subsidies Appendix, we allocated the amount of the loan principal forgiven (the grant amount) over 15 years using the weighted-average cost of capital in the year of the write-off as the discount rate. To calculate the *ad valorem* benefit conferred by these grants, we divided the sum of all 1984 grant benefits by the total value of SSAB's 1984 sales.

The estimated subsidy rate for the loan and grant benefits derived from SSAB's reconstruction and structural loans is 3.21 percent *ad valorem*.

B. Regional Development Incentives

Petitioner alleged that the Swedish carbon steel producers have received various regional development incentives from the Swedish government.

In its response, SSAB reported that it has received regional development loans and grants from the government including loans and grants for location of industry, employment and training, transportation relief, and building and construction.

Based on our analysis, we preliminarily determine that loans and grants for location of industry, loans and grants for various regional investment projects, and grants for regional freight

relief confer counteravailable subsidies. We also preliminarily determine that grants for employment promotion schemes, staff training projects, and health-care centers do not appear to be limited to an industry or group of industries and therefore are not counteravailable.

Using the loan and grant methodologies in the Subsidies Appendix, we estimate the subsidy rate for these regional development incentives to be 0.17 percent *ad valorem*.

II. Programs for Which Additional Information is Needed

A. Government Equity Infusions

Petitioner alleged that since its formation in 1978 SSAB has received masive government equity infusions on terms inconsistent with commercial considerations.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a resonable commercial investment. Since SSAB's shares are not publicly traded, and there is no market-determined price for its shares, we must determine whether SSAB is equityworthy.

To make this determination, we reviewed and assessed SSAB's financial statement from 1978 to 1983. In analyzing these financial statements, we consider the information from the viewpoint of a reasonable investor. The Department, when considering the accounting principles and practices, analyzes the impact of the accounting practices used by the company on its overall financial results. Included in this review, we analyzed the results of the following data: Rate of return on sales, rate of return from operations, rate of return on equity, debt-to-equity ratio, and current ratio.

We have reviewed the annual reports and audited financial statements of SSAB for the 1978–1983 period. Prior to the formation of SSAB in 1978, a five-year corporate earnings forecast was developed and published in SSAB's 1978 annual report, which projected profitability by 1982. The losses experienced by SSAB during 1978–1981 appeared to have resulted from the reorganizing and restructuring of the steel manufacturing facilities acquired by SSAB. The company's cash flow was positive in all years except 1981, and that SSAB reached profitability in 1982 and 1983.

Our preliminary review of the data, however, raised issues concerning certain accounting principles and circumstances of SSAB's operations. Additional data will be required to do a more precise analysis, to clarify the impact of certain accounting principles, and to obtain a further explanation of the results of the operations. Support for the forecasted earnings during the 1978–1983 restructuring period, additional background on the SSAB Formation Agreement, and final results on the 1984 accounting period are also needed before making our final determinations.

B. Government Loan Guarantees

Petitioner alleged that SSAB and one of its shareholders, Granges AB, have benefited from loan guarantees by the Swedish government.

The only loan guarantee program we have found is set forth in an October 1981 agreement between Granges AB and the government of Sweden. Under this agreement, Granges has the right to request that the government assume all or portions of a loan which Granges made to SSAB at the nominal loan amount plus any accrued interest. The government's agreement to assume the loan is subject to various conditions, among which is a provision that Granges must first exercise its right to have its shares in SSAB redeemed by the government.

Loan guarantees are countervailable only if they are on terms inconsistent with commercial considerations. Since the government's agreement to assume Granges' loan is an integral part of the equity infusion and restructuring arrangement which led to the formation of SSAB initially, we are unable to determine whether this agreement was consistent with commercial considerations in isolation, without further information on SSAB's operations. (See discussion regarding government equity infusions in section II.A above).

C. Research and Development Subsidies

Petitioner alleged that the Swedish government helps support steel-oriented research and development organizations in Sweden.

The Swedish Ironmasters' Association, or Jernkontoret, is located in Stockholm. The Association participates in joint research activities with practically all iron and steel companies in Sweden, Finland, Norway, and Denmark. Research activities are financed in three ways: Special research levies from enterprises, government grants from the Swedish Board for Technical Development, and contributions in kind from the industrial companies.

The Swedish Institute for Metals Research, located in Stockholm, is sponsored by nearly all the Scandinavian steel industries. The basis for the activities at the Institute is a triennial agreement between private industry and the Swedish Board for Technical Development. This agreement sets out the details of a general research program. Under the current agreement, the industry contributed 53 percent and the government 47 percent of the cost.

The Foundation for Metallurgical Research (MEFOS) is located in Luleaa, Sweden. The Foundation owns and operates two experimental plants called the Metallurgical and the Metal Working Research Plant. Approximately 60 percent of the Foundation's budget is provided by Foundation members and 40 percent is contributed by the government through the Swedish Board for Technical Development.

To determine if and to what extent government grants to these research and development organizations benefit the Swedish carbon steel industry, we need additional information in three areas: (1) The availability of research and development funds provided by the Swedish Board for Technical Development to other Swedish industries outside the steel sector; (2) the exact scope of research and development done by the three research institutes; and (3) the degree of availability to the public of all research and development project results obtained with the aid of government financing.

D. Inputs at Preferential Prices

Petitioner alleges that SSAB has an arrangement with LKAB, a state-owned mining company in Sweden, under which SSAB obtains iron ore at preferential prices.

We found that SSAB receives all of its external supplies of iron ore from LKAB. In 1983 and 1984, SSAB reported that it received rebates and price discounts from LKAB to promote the utilization of iron ore pellets and trial grades of iron ore. Although LKAB has supplied general price list information, and SSA has submitted aggregate quantity and price data on its iron ore purchases from LKAB, we need additional pricing information to ascertain the availability of such discounts and rebates to other LKAB customers of similar iron ore grades.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Sweden which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* subsidy rate. The estimated net subsidy is 3.38 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden of certain carbon steel products, except for Surahammars Bruks AB which is excluded from these preliminary determinations. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided in ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent to the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determinations or 45 days after its final affirmative determinations, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on April 16, 1985, at the U.S. Department of Commerce, room 1414, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by April 11, 1985. Oral presentaions will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 14, 1985.

Appendix.—Description of Products

Sweden

1. The term *"carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currenty provided for in item 607.6620, and 607.6625 of the *TSUSA*. Semi-finished products of solid rectangular cross-section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

2. The term *"hot-rolled carbon steel flat-rolled products"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in term 607.8320 of the *TSUSA;* and not pickled and in coils; as currently provided in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA*.

3. The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width, and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA*; or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA*.

[FR Doc. 85-6664 Filed 3-19-85; 8:45 am]

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[C-307-403]

Preliminary Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Venezuela of certain carbon steel products. The estimated net subsidy for each product subject to these investigations is 76.26 *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Venezuela that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If these investigations proceed normally, we will make our final determinations by May 28, 1985.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Tom Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0189 or (202) 377-3174.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Venuzuela of certain carbon steel products. For purposes of these investigations, the following programs are found to confer subsidies:

- Preferential Government Credit;
- Export Certificates for Credit Against Income Taxes;

- Sales Tax Exemption;
- Multiple Exchange Rates;
- Government Equity Infusions.

We preliminarily determine the estimated net subsidy for each product subject to these investigations to be 72.26 percent *ad valorem*.

Case History

On December 19, 1984, we received a petition in proper form from the United States Steel Corporation filed on behalf of the U.S. industries producing hot-rolled carbon steel flat-rolled products (hot-rolled sheet), cold-rolled carbon steel flat-rolled products (cold-rolled sheet), carbon steel plate, and galvanized carbon steel sheet. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Venezuela of these products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to unitiate countervailing duty investigations, and on January 8, 1985, we initiated such investigations (50 FR 1905). We stated that we expected to issue preliminary determinations by March 14, 1985.

On January 23, 1985, the Bethlehem Steel Corporation of Bethlehem, Pennsylvania entered an appearance to become a party to the proceeding in these investigations.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b)(3) of the Act, an injury determination is required for these investigations. Therefore, we notified the ITC of our initiations. On February 4, 1985, the ITC determined that there is a reasonable indication that imports of hot-rolled sheet, cold-rolled sheet, and carbon steel plate (hereinafter referred to as certain carbon steel products) materially injure or threaten material injury to a U.S. industry. The ITC also determined that there is no reasonable indication that imports of galvanized carbon steel sheet materially injure or threaten material injury to a U.S. industry. Consequently, we have terminated our investigation with respect to galvanized carbon steel sheet.

We presented a questionnaire concerning the allegations to the government of Venezuela in Washington, D.C. on January 25, 1985. On February 25, 1985, we received responses to our questionnaire from the government of Venezuela and from C.V.G. Siderurgica Del Orinoco, C.A. (SIDOR), the only known producer and exporter in Venezuela of certain carbon steel products to the United States. On February 13, 1985, we presented a supplemental questionnaire to the government of Venezuela in Washington, D.C. We received a response to this supplemental questionnaire on March 1, 1985.

Scope of the Investigations

The products covered by these investigations are certain carbon steel products, which are fully described in the Appendix to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of these preliminary determinations, the period for which we are measuring subsidization ("the review period") is the calendar year 1984.

Petitioner alleges that SIDOR is both unequityworthy and uncreditworthy. We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity purchases bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations When there is no market-determined price for equity, it is necessary to determine whether equity purchases in the company are reasonable commercial investments. SIDOR's shares are not publicly traded and there are no market-determined prices for its shares. Therefore, we must determine whether SIDOR is "equityworthy" for the period 1980 through 1984.

To make this determination, we reviewed and assessed financial statements from 1977 to 1984. We also examined a World Bank study submitted by the government of Venezuela. In analyzing the financial statements, we considered the information from the viewpoint of an investor. The Department, when considering accounting principles and practices, analyzes the impact of the accounting practices used by the company on its overall financial results. In this review, we analyzed the results of the following ratios:

- Rate of return on sales;
- Rate of return from operations;
- Rate of return on equity;
- Debt to equity; and
- Current ratio.

Based on our review of the financial statements and the company and government responses, we determine that the government's equity infusions into SIDOR were on terms inconsistent with commercial considerations for 1980 through 1984. Although, for these preliminary determinations, we did not evaluate whether SIDOR was equityworthy from 1976 through 1979, we will make such an evaluation for our final determinations.

To determine whether SIDOR is creditworthy when it received government loans, we examined the debt to equity ratio and the ability of the company, through its operations, to meet its interest obligations and principal payments. In addition to the above mentioned ratios, we also reviewed SIDOR's cash flow, debt repayment performance, and interest expense coverage ratio. Our analysis of these factors leads us to conclude that SIDOR was creditworthy for the period 1972 through 1976.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Venezuela of certain carbon steel products under the following programs:

A. Preferential Government Credit

1. *Ministry of Finance Loan.* Petitioner alleges that SIDOR receives large low-cost loans directly from the government and government agencies at preferential interest rates. Furthermore, it is alleged

that SIDOR is an uncreditworthy borrower.

According to SIDOR's response, it received a bolivares (Bs.) 817 million loan from the Ministry of Finance (MOF) in 1977, which was outstanding during the review period. MOF never established terms for this loan and SIDOR has never made principal or interest payments. In 1981, the MOF indicated to SIDOR that it would convert this loan to equity, but it has not yet done so.

In its responses, the government provided no information on the availability of MOF loans. Because respondents provided no information that MOF loans are not limited to a specific enterprise, or industry or group of enterprises or industries, and because a loan with zero interest is on terms inconsistent with commercial considerations, we preliminarily determine that this loan is countervailable.

Since SIDOR does not know from year to year if this loan will be converted to equity, we treat this loan as a one year loan with a zero percent rate of interest. To calculate the benefit from this loan, we compared the zero percent interest rate to the national average short-term rate for commercial loans (the short-term prime rate published by Morgan Guaranty in *World Financial Markets*) and allocated the benefit over total sales value. On this basis, we calculate an estimated net subsidy of 2.14 percent *ad valorem*.

2. *Loan Through the Venezuelan Investment Fund.* Petitioner alleges that the Venezuelan Investment Fund (FIV), a government-owned agency, provides large, low-cost loans to Venezuelan steel producers.

According to its response, SIDOR had one loan from the FIV outstanding during the period of review. Because the government of Venezuela has provided no information that FIV loans are not limited to a specific enterprise or industry, we preliminarily determine that these loans are limited to a specific enterprise or industry or group of enterprises or industries.

As outlined in the Subsidies Appendix, this appropriate benchmark for long-term loans will be company specific, unless the company lacks adequate commercial loan experience. In its response, SIDOR states that it had no other outstanding bolivares loans during the review period. Therefore, for the purposes of these preliminary determinations, we are using a national average long-term rate for our benchmark, which is the yield on long-term corporate bonds, published by Morgan Guaranty in *World Financial Markets*. Using this rate as our benchmark, we find that the interest rate on the FIV loan is preferential and as such confers a benefit which constitute a domestic subsidy.

To calculate the benefit from this loan, we used the methodology described in the Subsidies Appendix for long-term loans. We then allocated this benefit over total sales. On this basis, we calculate an estimated net sibsidy of 2/02 percent *ad valorem*.

B. Export Certificates for Credit Against Income Taxes

Petitioner alleges that Venezuelan steel exporters receive certificates to encourage exports, which may be sold for cash or used to pay income taxes. The value of the certificate is based on a percentage of the f.o.b. value of the exported merchandise.

According to the responses of the government of Venezuela and SIDOR, under this program a certain percentage of an export shipment's value is returned to the exporter. The percentage of the return depends on the proportion of domestic content of the merchandise and certain policy objectives of the government, such as maintaining a high rate of employment. Upon export, a shipper receives an export certificate specifying the amount to be returned to the exporter. This amount is determined by multiplying the exporter's allowable rebate percentage by the f.o.b. value of the export in dollars. This dollar value is then converted to bolivares at a rate of Bs. 7.5 to the dollar. The certificate, along with accompanying shipping and sales documents, must be sent to the Central Bank, which then issues the export bond. This bond may be sold for cash or used to pay taxes. Because this program is limited to exporters and does not operate to rebate any indirect taxes, we preliminarily determine that this program confers an export subsidy on the products under investigation.

To calculate the benefit, we multiplied the percentage rebate for which SIDOR is eligible by the f.o.b. value of SIDOR's exports in dollars. We then multiplied this amount by 7.5 to determine the value of the benefit in bolivares. Allocating this benefit over total export sales, we calculate an estimated net subsidy of 9.91 percent *ad valorem*.

C. Sales Tax Exemption

According to the response of the government of Venezuela, SIDOR has negotiated with the municipal authorities in the Province of Guayana, where SIDOR's steel making facilities are located, for an exemption from the payment of municipal sales taxes. We have no evidence that the municipal authorities have negotiated such an exemption with any other enterprises or industries. Because this tax exemption appears to be limited to a specific enterprise, we preliminarily determine that this exemption constitutes a domestic subsidy.

To calculate the benefit from this tax exemption, we allocated the total amount of sales taxes exempted during the review period over total sales. On this basis, we calculate an estimated net subsidy of 0.16 percent *ad valorem*.

D. Multiple Exchange Rates

On February 22, 1983, the government of Venezuela authorized the establishment of a multiple exchange rate system after more than 19 years at a fixed rate system of 4.30 bolivares (Bs.) to the dollar. In its response the government of Venezuela stated that this change in the exchange rate was made in an attempt to gradually devalue the bolivare while avoiding the inflationary impact of a sudden devaluation.

The Central Bank of Venezuela (CBV) and the Ministry of Finance (MOF) signed an Exchange Agreement on February 28, 1983, establishing a four-tiered exchange rate system. The first exchange rate is a fixed rate of Bs. 4.30 to the dollar. This rate is applied to the sale of foreign exchange by the CBV for payments on foreign-source private and public debt, the importation of essential goods and services, and the sale of foreign exchange from the state-owned oil industries (PDVSA), iron ore industry (FERROMINERA), and the Venezuelan Investment Fund. The second rate is also a fixed rate, but at Bs. 6.00 to the dollar. This rate is applied to the sale of foreign exchange by the CBV for the importation of less essential goods, foreign exchange obtained from the export of goods and services from state-owned enterprises (other than PDVSA and FERROMINERA), and foreign exchange on exports by the private sector when offered to the CBV.

The other tow rates established are a foreign exchange free market rate (an average Bs. 13.03 to the dollar during 1984) established for all exchange operations not specifically provided for elsewhere, and a "free-but-official" rate for the purchase and sale of dollars by the CBV in the free market. According to the response from the government of Venezuela, the private sector used the free market exclusively, and did not offer its foreign exchange to the CBV, under the second rate described above.

Under this Exchange Agreement, the government also established the Office of Preferential Exchange Regime

(RECADI) to administer the multiple exchange rate system. RECADI is responsible for handling applications from importers for merchandise categorized as essential or less essential. To receive the more preferential exchange rate for imports, an importer must submit an application to RECADI identifying the value, quantity and payment terms of the intended purchase. After RECADI reviews the application, it may authorize the use of the more preferential exchange rate to cover the particular purchase.

In May 1983, the government began gradually to allow the public sector companies (other than PDVSA and FERROMINERA) to use the free market rate. Until this time only private companies had access to the free market. In its response, the government stated that it excluded PDVSA and FERROMINERA from the free market during 1983 and 1984, because it recognized that their substantial earnings would have an inflationary impact on the overall economy.

On February 24, 1984, the government of Venezuela signed an Exchange Control Agreement between the MOF and the CBV which increased the exchange rate for importation of less essential goods from Bs. 6.00 to Bs. 7.50 to the dollar. In addition, this Agreement created the "quota share" policy, which required all exporters to sell back to the Central Bank the dollars earned on the imported component of the finished product at the same exchange rate used for the importation. Until the 1984 Agreement was signed, exporters could buy imports at the Bs. 4.30 or the Bs. 7.50 to the dollar rate and upon exportation sell the dollars earned on the imported component at the free market exchange rate. The difference in the exchange rate between the lower rate used to purchase imports and the free market rate for selling dollars provided a benefit to exporters.

To implement the quota share policy, the government published Resolution No. 84–05–01 in May 1984. This resolution required that the value of 50 percent of the import content of the exported product, as calculated in the ICE certificate used for granting export bonds, be sold to the CBV at the lower (the same rate at which they buy foreign exchange for imports exchange rate of Bs. 7.50 to the dollar. To enforce the quota share program, the CBV requires exporters to sign a contract upon exportation stating that the specified proportion of export earnings will be sold to the CBV at the same rate used for importation of the material inputs.

For SIDOR, the ICE certificate calculation of imported raw material content is 50 percent. SIDOR imports only slab and scrap which are classified as less essential items. During the review period, less essential items were eligible for the Bs. 7.50 exchange rate. Therefore, under this program, SIDOR was required to sell at least 25 percent of its dollars earned from exports to the CBV at the Bs. 7.50 rate.

Under the multiple exchange rate system, one dollar received for export sales yields more bolivares than SIDOR pays to purchase one dollar for imports. Because receipt of the higher exchange rate is contingent upon selling dollars earned from export sales, we consider the multiple exchange rate to confer an export subsidy. Nevertheless, since our experience in examining multiple exchange rate systems is limited, we welcome comments on the calculation of benefits received through multiple exchange rate systems.

To calculate the benefit from this program, we subtracted the exchange rate applicable to SIDOR's purchase of imports from the weighted average exchange rate received by SIDOR when selling dollars from export sales. We multiplied this difference by the total 1984 export value for SIDOR in dollars and allocated the product over SIDOR's total 1984 export sales in bolivares. On this basis, we calculate an estimate net subsidy of 34.29 percent *ad valorem*.

E. Government Equity Infusions

Petitioner alleges that equity infusions into SIDOR by the government of Venezuela were on terms inconsistent with commercial considerations.

As discussed in the "Analysis of Programs" section, we preliminarily determine that SIDOR was not a reasonable commercial investment from 1980 through 1984, and, thus the government equity infusions in 1981, 1982 and 1983 were on terms inconsistent with commercial considerations. Therefore, we preliminarily determine that these equity infusions confer benefits which constitutes a subsidy.

To calculate the benefit, we followed the rate of return shortfall methodology outlined in the Subsidies Appendix. We used the commercial bank prime rate (published by Morgan Guaranty in *World Financial Markets*) as the rate from which we subtracted SIDOR's rate of return on equity during the review period, because we were unable to obtain the national average rate of return on equity for 1984. On the basis, the estimated net subsidy is 23.74 percent *ad valorem*.

II. Programs Determined Not To Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters in Venezuela of certain steel products under the following programs:

A. Government Loan Guarantees

Petitioner alleges that the government of Venezuela provides loan guarantees to state-owned companies, reducing lender risk and thus lowering interest costs to SIDOR.

According to the response, it is common commercial practice in Venezuela for shareholders to guarantee a company's loans. A 1976 law authorizes the government to guarantee the loans of state-owned enterprises involved in the basis sectors of production. Consequently, we preliminarily determine that government loan guarantees to state-owned companies are not inconsistent with commercial considerations and, therefore, are not countervailable.

B. Import Duty Reductions

Petitioner alleges that the government of Venezuela provides import duty reductions on capital equipment to selected industries. Title IV of the Venezuela Organic Custom's law authorizes total or partial import duty exemptions for diverse sectors of the economy. Article 89 of this law specifically allows duty exemptions for "effects destined to industry, agriculture, stock-raising, transportation, mining, fishing, and manufacturing." Duty exemptions are granted whenever national production or supply is inadequate to meet the demand for a particular item. Since import duty reductions or exemptions are not limited to a specific enterprise or industry, or group of enterprises or industries, nor are they contingent upon export performance, we preliminarily determine that this program does not provide benefits which constitute subsidies.

C. Preferential Pricing of Inputs

Petitioner alleges that FERROMINERA, a government-owned mining company, may sell iron ore at preferential prices to SIDOR. In its response, the government of Venezuela stated that FERROMINERA negotiates arms-length contracts with each customer. The only government restriction placed upon FERROMINERA is that it cannot export iron ore at prices below the prevailing world market price. The government of Venezuela provided, in its response, iron ore prices charged

by FERROMINERA to all of its customers during 1984. SIDOR paid the same or a higher price for iron ore than all of FERROMINERA's other customers. Consequently, we preliminarily determine that SIDOR receives no countervailable benefit through its purchases of iron ore from FERROMINERA.

D. Assumption of SIDOR's Hard Currency Debt

Petitioner alleges that the Central Bank of Venezuela assumed SIDOR's foreign currency debt on terms favorable to SIDOR. SIDOR may have benefitted from this one-time transfer of its liabilities to the government in exchange for its foreign currency assets.

In its response, the government of Venezuela states that it did not assume either public or private debt nor were any of its actions limited to the public sector, or SIDOR, in particular. The government explained that under the multiple exchange rate system, the MOF and the CBV established a rate of Bs. 4.3 to the dollar for payment of both public and private foreign debt. In February 1984, the MOF and the CBV established that foreign exchange acquired for payments of principal and interest on foreign public debt would be purchased at Bs. 7.50 to the dollar rate, unless the debt was contracted before February 18, 1983, and due by December 31, 1983. With respect to foreign private debt, interest payments on debt contracted after December 31, 1983, are eligible for the Bs. 7.50 to the dollar rate. In addition, any private debt registered with RECADI by May 24, 1984, is eligible for the Bs. 4.3 to the dollar rate for principal payments on private foreign debt.

Because public companies pay the same exchange rate on financial transactions or a higher rate than private companies, we preliminarily determine that SIDOR does not benefit from the multiple exchange rate system on financial transactions.

III. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in Venezuela of certain carbon steel products did not use the following programs, which were listed in our notice of initiation.

A. Preferential Tax Incentives

National Executive Decree No. 1477, dated March 23, 1976, provides for total or partical exemption from income taxes and various tax credits to companies locating in underdeveloped areas. These benefits are provided to companies which relocated or commenced an expansion after March 23, 1976.

In its response, SIDOR stated that it began its expansion project in 1975, which is prior to the effective date of this decree. Consequently, it cannot qualify for, nor has it used, the incentives offered in Decree No. 1477. On this basis, we preliminarily determine that SIDOR has not used this program.

B. Preferential Export Financing

Petitioner alleges that preferential export financing is provided to steel exporters under the Export Financing Fund (FINEXPO). FINEXPO loans are generally for a term of one year with a 5 percent interest rate, which is alleged to be below the estimated prime rate in Venezuela.

The government response states that because all FINEXPO financing is controlled by the Central Bank of Venezuela, it was able to ascertain that SIDOR has not used any of the forms of FINEXPO financing on sales of the merchandise subject to these investigations to the United States. Therefore, we preliminarily determine that SIDOR has not used FINEXPO financing.

C. Preferential Pricing of Inputs Used To Produce Exports

Petitioner alleges that SIDOR charges a preferential price to domestic customers who purchase steel (e.g., cold-rolled sheet) to process further and then export products subject to these investigations (e.g., galvanized sheet).

When these investigations were initiated, one of the products subject to these investigations was galvanized sheet. Galvanized sheet is produced by the only exporter which was alleged to have received a government-directed discount from SIDOR. On February 4, 1985, the ITC determined that there is no reasonable indication that imports of galvanized sheet materially injure or threaten material injury to a U.S. industry. Consequently, we terminated our investigation with respect to galvanized sheet. Since the company which is allegedly receiving a discount on its purchase of inputs from SIDOR is no longer subject to this investigation, we will no longer investigate this allegation.

IV. Programs for Which Additional Information Is Needed

A. Tax Contributions To Cover Debt Service Costs

On February 25, 1985, petitioner submitted an allegation that SIDOR received "tax contributions" authorized by the Ministry of the Treasury, to meet its interest obligations from 1980 through 1983. We have insufficient information on the record to determine whether SIDOR did in fact receive any such assistance in meeting its interest obligations. Therefore, we are seeking additional information on this issue.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain carbon steel products from Venezuela which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise as follows:

Product	Ad valorem rate (percent)
Hot-rolled carbon steel flat-rolled products	72.26
Cold-rolled carbon steel flat-rolled products	72.26
Carbon steel plate	72.26

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry within 120 days after the Department makes its preliminary affirmative determinations or 45 days after its final affirmative determinations, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on April 16, 1985, the U.S. Department of Commerce, room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in

the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by April 10, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

March 14, 1985.

Appendix—Description of Products

Venezuela

1. The term *"hot-rolled carbon steel flat-rolled products"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; pickled, as currently provided for in term 607.8320 of the *TSUSA;* and not pickled and in coils; as currently provided in item 607.6610, or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently provided for in items 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the *TSUSA.*

2. The term *"cold-rolled carbon steel flat-rolled products"* covers cold-rolled carbon steel products, whether or not corrugated or crimped; whether or not painted or varnished and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and 0.1875 inch or more in thickness, as currently provided for in item 607.8320 of the *TSUSA;* or over 12 inches in width and under 0.1875 inch in thickness, whether or not in coils; as currently provided for in items 607.8350, 607.8355, or 607.8360 of the *TSUSA.*

3. The term *"carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated, or crimped; not pickled; not cold-rolled; not in coils, not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in item 607.6620, and 607.6625 of the *TSUSA.* Semi-finished products of solid rectangular cross-section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included.

[FR Doc. 85-6666 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Oregon, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applicants may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-122R. Applicant: University of Oregon, Institute of Molecular Biology, Eugene, OR 97403. Instrument: Superconducting Solenoid. Manufacturer: Oxford Instruments, United Kingdom. Intended use: The instrument is intended to be used to study organic, inorganic and biochemical molecular structure. Application received by Commissioner of Customs: March 8, 1984.

Docket No. 84-224R. Applicant: University of California, San Diego, Scripps Institution of Oceanography, Mail Code A-033c, La Jolla, CA 92093. Instrument: Cryogenic Magnetometer, Model DRM-430C. Original notice of this resubmitted application was published in the **Federal Register** of July 11, 1984.

Docket No. 85-093. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: ICP Mass Spectrometer, Model Plasma Quad with Accessories. Manufacturer: VG Isotopes Limited, United Kingdom. Intended use: Isotopic composition and elemental concentration measurements within materials of interest to the nuclear weapons test program, geological samples, nuclear chemistry research samples and environmental monitoring samples. The types of experiments to be conducted include the following:

(a) Isotopic composition measurements of elements not accessible by conventional isotope ratio mass spectrometry.

(b) Determinations of impurities in samples prepared for other methods of analysis.

(c) Elemental concentration determinations.

Application received by Commissioner of Customs: February 7, 1985.

Docket No. 85-095. Applicant: The Johns Hopkins University School of Medicine, Charles and 34th Streets, Baltimore, MD 21205. Instrument: Gas Chromatograph/Mass Spectrometer System, Model MS 80. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: Identification of components of mixtures prepared in biochemical and pharmacological research. The compounds to be identified will include carbohydrates and glycopeptides isolated from cell membrane glycoproteins, gangliosides from cell surfaces, and human metabolites of cyclophosphamide and phosphonoformate. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-096. Applicant: University of Washington, Seattle, WA 98195. Instrument: Digital Pressure Controllers and Triaxial Cell. Manufacturer: GDS Instruments Ltd., United Kingdom. Intended use: Training of approximately 50 students per year in the following courses: (1) CESM 467: Geotechnical Engineering, (2) CESM 562: Geothechnical Engineering, and (3) CIVE 366: Civil Engineering. In addition, the instrument will be used for graduate research in stress-deformation characteristics of various types of soils. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-097. Applicant: National Institute on Aging, Gerontology Research, 4940 Easter Avenue, Baltimore, MD 21224. Instrument: NMR Spectrometer, Model TMR-32A with Accessories. Manufacturer: Oxford Research Systems, United Kingdom. Intended use: Investigations to determine age changes in animals, and their susceptibility to the action of environmental substances and drugs. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-101. Applicant: The University of Rochester, School of Medicine and Dentistry, 601 Elmwood

Avenue, Rochester, NY 14642. Instrument: Micromanipulators, Model MO-103-L/MO-11 and Accessories. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use: Research on the properties and function of cells from the nervous system of an animal model. The experiments to be conducted include an electrophysiological examination of how nerve cells communicate with one another and how this process of communication may be influenced by certain chemical agents. The major objective of this research is to understand the basic features of information processing between nerve cells in the brain. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-102. Applicant: Atlanta University, 223 Brawley Drive, SW., Atlanta, GA 30314. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: Study of the detailed structural features of biological specimens and nonbiological materials of interest to both chemists and physicists. A wide variety of bioglogical materials including tissue sections, isolated cell organelles and macromolecules will be studied. The nonbiological samples will include crystals, metals and amorphous substances. The objectives pursued in the course of investigations will be to:

(a) Study the general ultrastructural morphology of a wide range of prokaryotic and eucaryotic cells.

(b) Determine the localization of biochemical entities at the subcellular level.

(c) Study the surface and structural details of nonliving materials.

Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-103. Applicant: Michigan State University, Department of Chemistry, East Lansing, MI 48824. Instrument: Nanosecond Fluorometer System, Model 2000 with Accessories. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Investigation of the extent of competing direct hydrogen abstraction and whether or not any intrinsic difference in reactivity exists for singlet and triplet or n, π^{xx} or π,π^{xx} excited states. Another general area of interest involves the study of simple intramolecular processes such as energy, electron, or hydrogen transfer in bifunctional molecules. Application received by Commissioner of Customs: February 13, 1985.

Docket No. 85-105. Applicant: DHHS/PHS/CDC/NIOSH, Division of Physical Sciences and Engineering, Measurements Research Support Branch, 4676 Columbia Parkway, Cincinnati, OH 45226. Instrument: Electron Microscope, Model EM 420 and Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Development of methods for quantitative fiber and particulate analysis on airborne asbestos fibers and other particulates found in the workplace as well as ambient atmospheres. The experiments to be conducted will range from method development to quantitative mineral and particulate identification using computerized energy dispersive X-ray analysis and new technology available with the STEM such as conical scanning, rocking beam, and a variety of hybrid diffraction techniques. Application received by Commissioner of Customs: February 15, 1985.

Docket No. 85-106. Applicant: The Fox Chase Cancer Center, 7701 Burholme Avenue, Philadelphia, PA 19111. Instrument: NMR Spectrometer System, Model BIOSPEC 2.3/300. Manufacturer: Bruker Medical Instruments, Inc., United Kingdom. Intended use: Study of physiological responses in small animals in order to increase the understanding of the metabolic controls on tumors and organs in animals and to develop new drug therapies for possible later use in human patients. In addition, the instrument will be used in studies which will be used to develop new methods of magnetic resonance imaging involving special pulse sequences and other techniques. A contrast agent program will also be carried out to test the efficacy of newly developed agents. Application received by Commissioner of Customs: February 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 6644 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marineland Amusements Corp; Modification No. 1 to Permit No. 395; National Marine Fisheries Service

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) Public Display Permit No. 395 issued to Marineland Amusements Corporation, 6610 Palos Verdes Drive South, Rancho Palos Verdes, California 90274, on October 29, 1982 (47 FR 49065), is modified to extend the period of authorized take one (1) year.

Accordingly, Section B-5 is deleted and replaced by:

"5. This permit is valid with respect to the taking authorized herein until December 31, 1986.

This modification became effective February 26, 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, DC; Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Roger Boulevard, St. Petersburg, Florida 33702.

Dated: February 26, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-6625 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; E. I. du Pont de Nemours & Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to E. I. du Pont de Nemours and Company, having an office in Wilmington, Delaware an exclusive right to practice the invention embodied in U.S. Patent Application No. 6-481,934, "Cell Matrix Receptor System and Use in Cancer Diagnosis and Management." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other material relating to the proposed license must be submitted to the Office of

Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-6601 Filed 3-19-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

Correction

In FR Doc. 85-5686 beginning on page 9704 in the issue of Monday, March 11, 1985, make the following correction: On page 9704, in the third column, in the seventh line, "630" should read "639".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acquisition of Aircraft Wheels and Brakes; Opportunity To Comment

The Air Force has recently completed a joint Logistics/Systems Command study, the objective of which was to recommend Air Force policy for acquisition of aircraft wheel and brake assemblies and spares.

The study resulted in a recommendation consisting of seven points. Points one through five of the recommendation primarily address acquisition of wheel and brake systems of production aircraft. Points six and seven address primarily support of existing aircraft. The recommendation includes such features as reduction of the incentive to buy-in, a high confidence warranty provision, protection of the existing research and development base, lowest Air Force cost of system ownership, high quality competition, continuation of opportunity for new small business market entrants, and Air Force acquisition of warranted unlimited rights reprocurement data with deferred delivery.

The seven points are as follows:

(1) Wheel and brake system selection for all production aircraft should be competitive.

(2) At the time of production competition, wheel and brake system spares should be prepriced to the Air Force for a perid of 7 to 15 years after anticipated initial operational capability.

(3) The Air Force should acquire at time of the production system competition a fixed price option to acquire with deferred delivery a complete warranted reprocurement data package with unlimited rights for the wheel and brake system.

(4) The Air Force should acquire a performance warranty at the time of competition for the production system.

(5) The Air Force must assure that the competitive proposals for production wheel and brake systems are evaluated relative to total cost of system ownership.

(6) The Air Force should continue to allow and the encourage qualification of new contractors to produce critical and noncritical wheel and brake components for existing fielded aircraft.

(7) The Air Force should consider competing wheel and brake systems on existing fielded aircraft.

Interested persons are invited to submit written comments on the study and its recommendation to HQ AFLC/pmp, Wright-Patterson AFB OH, 45433, ATTN: Major Albert L. Jordan. Written comments not received on or before 4:00 PM on April 19, 1985, will not be considered for review. Only Volume I of the two-volume study report is releasable. Copies are available upon written request to the above HQ AFLC address.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-6655 Filed 3-19-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high costs gas incremental pricing threshold which are to be effective April 1, 1985. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, D.C. 20585, Telephone: (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on March 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceilng is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	4.28
Arizona [1]	4.29
Arkansas [1]	4.13
California	4.20
Colorado [2]	4.10
Connecticut [1]	4.55
Delaware [1]	4.53
Florida	4.25
Georgia [1]	4.49
Idaho [2]	4.10
Illinois [1]	4.17
Indiana [1]	4.17
Iowa [1]	3.74
Kansas [1]	3.74
Kentucky [1]	4.17
Louisiana	4.12
Maine	4.53
Maryland [1]	4.53
Massachusetts	4.51
Michigan	3.99
Minnesota	3.68
Mississippi [1]	4.49
Missouri [1]	3.74
Montana [2]	4.10
Nebraska [1]	3.74
Nevada [1]	4.29
New Hampshire [1]	4.55
New Jersey [1]	4.53
New Mexico [1]	4.13
New York	4.50
North Carolina [1]	4.49
North Dakota [1]	3.74
Ohio	3.90
Oklahoma [1]	4.13
Oregon [1]	4.29
Pennsylvania [1]	4.53
Rhode Island [1]	4.55

State	Dollars per million BTU's
South Carolina [1]	4.49
South Dakota [1]	3.74
Tennessee	4.10
Texas	3.81
Utah [2]	4.10
Vermont [1]	4.55
Virginia [1]	4.49
Washington [1]	4.29
West Virginia [1]	4.17
Wisconsin [1]	4.17
Wyoming [2]	4.10

[1] Region based price as required by FERC Interim Rule, issued on March 2, 1981, in Docket No. RM-79-21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during January 1985 was $30.86 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective April 1, 1985, is $6.92 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of November 1984, December 1984, and January 1985.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective April 1, 1985, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, November 1984, December 1984, and January 1985. Reported prices for sales in November 1984 were adjusted by the percent change in the nationwide volume-weighted average price from November 1984 to January 1985. Prices for December 1984 were similarly adjusted by the percent change in the nationwide volume-weighted average price from December 1984 to January 1985. The volume-weighted 3-month average of the adjusted November 1984 and December 1984, and the reported January 1985 prices were then computed for each State.

(2) *Adjustment for Price Variation.* State were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of November 1984, December 1984, and January 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending March 14, 1985, and dividing that price by the coresponding weighted average price computed from prices published by Platt's for the month of January 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: One for FERC Regiona A and B combined; one for FERC Region C; one for FERC Regions, D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each state in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Region A	*Region B*
Connecticut	Delaware
Maine	Maryland
Massachusetts	New Jersey
New Hampshire	New York
Rhode Island	Pennsylvania
Vermont	
Region C	*Region D*
Alabama	Illinois
Florida	Indiana
Georgia	Kentucky
Mississippi	Michigan
North Carolina	Ohio
South Carolina	West Virginia
Tennessee	Wisconsin
Virginia	
Region E	*Region F*
Iowa	Arkansas
Kansas	Louisiana
Missouri	New Mexico
Minnesota	Oklahoma
Nebraska	Texas
North Dakota	
South Dakota	
Region G	*Region H*
Colorado	Arizona
Idaho	California
Montana	Nevada
Utah	Oregon
Wyoming	Washington

Issued in Washington, D.C., March 18, 1985.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

[FR Doc. 85-6762 Filed 3-18-85; 5:06 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-01-NG]

J.R. Simplot Co.; Order Granting Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on February 26, 1985, the ERA Administrator issued an Opinion and Order granting J.R. Simplot Company (Simplot) authority to import natural gas for industrial process use at its food processing plant located in Grand Forks, North Dakota. The approval authorizes Simplot to import up to 3,000 Mcf of natural gas per day from Tricentrol Oil Limited of Calgary, Alberta, Canada, for a two-year period beginning on the date of first delivery at a price of $2.98 per MMBtu.

The text of the Opinion and Order follows.

FOR FURTHER INFORMATION CONTACT:

R. T. Gehring (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9475

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667

Issued in Washington, D.C. on March 7, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

J.R. Simplot Company; Order Granting Authorization To Import Natural Gas From Canada

[ERA Docket No. 85-01-NG; DOE/ERA Opinion and Order No. 74]

February 26, 1985.

I. Background

On January 8, 1985, the J.R. Simplot Company (Simplot), a food processing plant operator, filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to import natural gas from Canada. Simplot requested authorization to purchase up to 3,000 Mcf per day from Tricentrol Oil Limited (Tricentrol) of Calgary, Alberta, Canada, for a period of two years beginning on the date of first delivery. The purchase contract contains a provision allowing the parties to extend the term of their agreement. The cost of the imported gas will be U.S. $2.98 per MMBtu; however, that price only applies to the first contract year and may be adjusted by mutual agreement in subsequent years. The contract entitles Simplot to specify the amount of gas it wants Tricentrol to provide each month, up to the maximum volumes contemplated by the agreement. There is no minimum purchase obligation, but Simplot is required to take and pay for those volumes it nominates for delivery.

Simplot intends to substitute gas for the No. 6 fuel oil it currently uses to supply most of the hydrocarbon energy needs of its potato products food processing plant located in Grand Forks, North Dakota. The gas will come from fields in Canada in which Tricentrol has a working interest and may or may not be the operator. Simplot states that Tricentrol has approximately 20 Bcf of undedicated reserves available for sale and has pledged up to 1.5 Bcf from this base for this proposed sale. If Tricentrol requires additional volumes to meet its contractual obligations, the firm will secure the necessary additonal supplies from other Canadian producers. The imported volumes will be delivered at Emerson, Manitoba, to Midwestern Gas Transmission Company (Midwestern), transported by Midwestern through Minnesota into North Dakota, and delivered to Northern States Power Company (NSP) at the city gate of Grand Forks. NSP will deliver the gas to Simplot's plant in Grand Forks.

In support of the application, Simplot asserts that use of competitively priced natural gas is a cost-effective, efficient means of improving the economics of production at its facility which has had a history of being a marginal operation. Simplot also asserts that the proposed import, transportation and delivery of natural gas can be accomplished at a significant savings over its present costs for fuel oil. Furthermore, no additional pipeline construction is needed to implement the proposed import.

According to the applicant, the import is in the public interest because it will (1) eliminate the company's requirement for No. 6 fuel oil, thus freeing that oil for use by other purchasers, (2) increase revenues for the transporting pipelines, and (3) reduce the food processing plant's operating costs.

Simplot maintains that the arrangement is market responsive because the $2.98 per MMBtu purchase price for the gas is competitive with the lowest-priced natural gas available to it and is considerably lower in price than No. 6 oil which is its primary fuel. In addition, the purchase agreement allows for adjustments in the price to respond to the changing prices of competing energy sources.

II. Interventions and Comments

A notice of Simplot's application was issued on January 16, 1985.[1] The notice invited protests and petitions to intervene, which were to be filed by February 25, 1985. The ERA received one motion to intervene from Northern States Power Company (NSP) who expressed no opposition to the application and did not request a hearing. This order grants intervention to NSP.

NSP, who intervened as the local distribution company serving Simplot's plant in Grand Forks, North Dakota, stated that under governing North Dakota tariffs, ". . . NSP may not transport gas for an end user that would displace a sale of gas that NSP would otherwise expect to make under retail gas sales tariffs." NSP asserts that it has offered gas service to Simplot effective March 1, 1985, that would provide for a

[1] 50 FR 3381, January 24, 1985.

price of gas that would be competitive with the price of No. 6 fuel oil. NSP further asserts that as of February 22, 1985, Simplot had not executed a contract for transportation service with NSP.

III. Decision

Simplot's application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[2] The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.[3] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

Simplot's arrangement fully comports with this public interest test. The terms and conditions of the contract between Simplot and its supplier, Tricentrol, are flexible and provide assurance that the imported gas will remain competitive over the contract period. The volumes will be imported on a short-term basis and at a proposed rate competitive with the lowest-priced natural gas available to Simplot and less expensive than the No. 6 fuel oil it currently uses. Deliveries will be on a best efforts basis as requested by Simplot in monthly volume nominations; Simplot is obliged to purchase only such nominated volumes. Furthermore, after the first contract year, the agreement permits the parties to adjust the initial purchase price of the gas to reflect market conditions at the time. These and the other contract terms and conditions, taken together, demonstrate that the arrangement is competitive.

Furthermore, it is recognized that NSP has offered gas to Simplot effective March 1, 1985, at a price competitive with No. 6 fuel oil. This affords Simplot another source of gas in addition to this import. The best efforts nature of the import will enable Simplot to take the most price-competitive gas available to it.

As set forth in the gas import policy statement, the question of the need for an import is answered by its competitiveness. The security of this import supply is not a major issue as the gas is to be purchased on a short-term basis. Simplot has also demonstrated that its supply of natural gas would be reliable inasmuch as its annual requirement is not large and will be supplied by Tricentrol from its own available reserves, or by Tricentrol's securing from other Canadian producers Simplot's needs in excess of what Tricentrol can provide. Finally, the proposed import involves only existing facilities.[4]

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Simplot is not inconsistent with the public interest and thus should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Simplot is authorized to import up to 3,000 Mcf of Canadian natural gas per day for a two-year period beginning on the date of first delivery in accordance with the pricing and other provisions established in the contract submitted as part of its application.

B. Simplot shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Simplot shall file with the ERA the terms of any renegotiated prices that may become effective after the initial 12-month period within two weeks after the effective date of the renegotiated term.

D. The motion for leave to intervene, as set forth in this Opinion and Order, is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenor shall be limited to matters affecting asserted rights and interests specifically set forth in its motion for leave to intervene and not herein specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, DC, February 26, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-6555 Filed 3-19-85; 8:45 am]

BILLING CODE 6450-01-M

[2] 15 U.S.C. 717b.

[3] 49 FR 6684, February 22, 1984.

[4] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application is not a Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

CPI Crude, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to CPI Crude, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $7,558,156.72 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period February 1976 through December 1978.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James F. Murphy, Economic Regulatory Administration, Department of Energy, 1403 Slocum Street, Second Floor, Dallas, Texas 75207 or by calling (214) 767-4646. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, Department of Energy, Forrestal Building, 100 Independence Avenue, SW., Room 6F-078, Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 28th day of February 1985.

Ben Lemos,

Director, Dallas Field Office, Economic Regulatory Administration.

[FR Doc. 85-6607 Filed 3-19-85; 8:45 am]

BILLING CODE 6450-01-M

Fields Energy Resources, Inc. and V. W. Fields; Proposed Remedial Order

AGENCY: U.S. Department of Energy, Economic Regulatory Administration.

ACTION: Notice of proposed remedial order to Fields Energy Resources, Inc. and V. W. Fields, II.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notices of a Proposed Remedial Order which was issued to Fields Energy Resources, Inc. and V. W. Fields, II (Fields), formerly doing business at 7500 San Felipe, Suite 350, Houston, Texas 77063. This Proposed Remedial Order alleges that Fields charged prices in excess of its maximum lawful selling price in violation of 10 CFR 212.186 and 210.62 during the period May 1980 through December 1980 in the amount of $561,669.80. In addition, the Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.183

during the months of August and November of 1980 in the amount of $163,351.48.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 18th day of February 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-6608 Filed 3-19-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-336-000, et al.]

American Electric Power Service Company, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Company

[Docket No. ER85-336-000]

March 13, 1985.

Take notice that on March 4, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliates Appalachian Power Company (Appalachian), Ohio Power Company (Ohio Power), and Wheeling Electric Company (Wheeling) sometimes collectively referred to as the AEP Parties. Modification No. 16 dated January 30, 1985 to the Operating Agreement dated June 1, 1971 among Ohio Power, Wheeling, Appalachian, Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn). Monongahela and West Penn are members of the Allegheny Power System (APS) and are sometimes collectively referred to as the APS Parties. The Commission has previously designated the 1971 Agreement as Appalachian's Rate Schedule FERC No. 55, Ohio Power Rate Schedule FERC No. 73, Wheeling's Rate Schedule FERC No. 5, Monongahela's Rate Schedule FERC No. 31, and West Penn's Rate Schedule FERC No. 28.

Section 1 of Modification No. 16 provides for an increase in the transmission demand charge for Short Term Power when the AEP Parties are the supplying party to $0.46 per kilowatt per week. Section 2 increases the Limited Term Power transmission demand charge when the AEP Parties are the supplying party to $20.00 per kilowatt per month. The proposed rates included in this Modification No. 16 for Short Term and Limited Term Power are similar to the rates for Transmission Service provided by the AEP System which have been filed and accepted for filing by the Commission and are the same as the rates for Short Term and Limited Term Power transmission demand rates which have been filed with the Commission on behalf of the AEP parties. AEP requests an effective date of April 15, 1985, which will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries as established in previous AEP filings, and therefore requests waiver of the Commission's notice requirements.

Section 3 of this modification also revises the Short Term Power Service Schedule to make provision for the sale of Third Party Daily Short Term Power from AEP parties to the APS parties. The terms and conditions of this provision for Third Party Daily Short Term Power is substantially the same as the provisions contained in several of the AEP parties interconnection and operating agreements presently on file with the Commission.

According to AEP copies of this filing were served upon the Pennsylvania Public Utility Commission, the Public Service Commission of West Virginia, the Virginia State Corporation Commission, and the Public Utilities Commission of Ohio.

Comment date: March 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Mississippi Power Company

[Docket No. ER85-339-000]

March 14, 1985.

Take notice that on March 4, 1985, Mississippi Power Company (Mississippi) tendered for filing a contract executed between it and the Administrator of the Southeastern Power Administration ("SEPA") acting on behalf of the United States Government, Department of Energy. Mississippi states that the contract has been filed because certain of its provisions provide for the payment of a transmission charge by the Government for transmission of capacity and energy to certain preference customers designated by the Government.

Mississippi requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER85-338-000]

March 14, 1985.

Take notice that on March 4, 1985, South Carolina Electric & Gas Company (SCE&G) tendered for filing proposed cancellation of FPC Schedule No. 27, dated March 27, 1968, agreement between SCE&G and South Carolina Public Service Authority.

SCE&G proposes an effective date on May 1, 1985.

According to SCE&G copies of this filing were served upon the South Carolina Public Service Authority.

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Otter Tail Power Company

[Docket No. ER85-333-000]

March 13, 1985.

Take notice that on March 1, 1985, Otter Tail Power Company (Otter Tail) tendered for filing rate schedules covering scheduling and dispatching service provided to Cooperative Power Association (Association) and Central Power Electric Cooperative (Central). An effective date of April 1, 1985 is requested for the increase, estimated at approximately $10,731 per year, in rates to be charged the Association per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 154. An effective date of March 20, 1985 is requested for the increase estimated at approximately $6,519 per year, in rates to be charged Central per Supplement No. 3 to Otter Tail's Rate Schedule FERC No. 171.

Otter Tail requests waiver of the Commission's notice requirements to allow these two schedules to become effective on April 1, 1985 and March 20, 1985, respectively.

Comment date: March 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER85-334-000]

March 13, 1985.

Take notice that on March 1, 1985, Pacific Gas and Electric Company

(PGandE), tendered for filing as an initial rate schedule the Camp Far West Interconnection and Transmission Service Agreement (Agreement) between PGandE and the Sacremento Municipal Utility District (SMUD), dated December 21, 1984.

PGand E states that under the terms of the Agreement PGandE will transmit power, adjusted for losses, purchased by SMUD at Camp Far West Hydroelectric Project to SMUD's point of delivery at Rancho Seco Substation. PGandE proposes to charge SMUD a system average functionalized transmission and distribution rate of $1.25/kW-month for this service.

PGandE will own, operate, and maintain the special facilities that must be constructed in order to accommodate SMUD's delivery of power from the Camp Far West Hydroelectric Project. The charge for this service is based on PGandE's average ownership costs and will be equal to 8.21 percent of the installed costs for SMUD financed facilities and 26.84 percent of the installed costs for PGandE financed facilities.

PG&E requests an effective date of April 29, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SMUC and the California Public Utilities Commission.

Comment date: March 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. 342-000]

March 14, 1985.

Take notice that on March 5, 1985, Pacific Gas and Electric Company (PG&E) tendered for filing a proposed change under its electric service Rate Schedule FERC No. 37. This change is an amendment to the contract for extra high voltage transmission and exchange service between PG&E, Southern California Edison and San Diego Gas and Electric Company, and Sacramento Municpal Utility District (SMUD). This contract amendment deletes Article 10(d) from the contract, a provision which does not permit SMUD to increase the amount of transmission service to be supplied under the contract above the ceiling set by any previous decrease requested by SMUD in the amount of service, with certain exceptions.

According to PG&E all parties to this contract, including SMUD, have approved the proposed change. Copies of this filing served upon the parties to the contract and the California Public Utilities Commission.

Comment date: March 27, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER85-340-000]

March 14, 1985.

Take notice that on March 4, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during January of 1985, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: March 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 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 Practices and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before the comment date. Protects 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. 85-6609 Filed 3-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-256-000; et al]

Bliss Petroleum, Inc., et al.; Applications for Abandonment of Service

March 14, 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 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 April 1, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with 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 advvised, 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 Mcf	Pressure base
CI85-256-000, B, Feb. 25, 1985	Bliss Petroleum, Inc., c/o George McClure, 2401 Seaboard Avenue Midland, Texas 79705-8516.	Texaco, Inc. (formerly: Getty Oil Company), Lea County, New Mexico.	(1)	
CI85-257-000, B, Feb. 26, 1985	Benedum-Trees Oil Company, Kerr-McGee Center, Oklahoma City, Okla. 73125.	Southern Natural Gas Company, Sec. 39-20S-29E, Bastian Bay Field, Plaquemines Parish, Louisiana.	(2)	
CI85-267-000, B, Mar. 1, 1985	Platte Valley Oil Co., Inc., P.O. Box 3288, Tulsa, Okla. 74101.	Northwest Central Pipeline Corp., Morton Field, Reno County, Kansas.	(3)	
CI85-268-000, B, Mar. 1, 1985	Paleo, Inc., Suite 205 May-Ex Bldg., 3022 NW Expressway, Oklahoma City, Okla. 73112.	Equitable Gas Company, Cedar Creek Otter District, Braxton County, West Virginia.	(4)	
CI85-271-000, B, Mar. 4, 1985	Phillips Oil Company (Succ.-in-Interest to Aminoil, Inc.), 336 Home Savings & Loan Bldg., Bartlesville, Okla. 74004.	Montana-Dakota Utilities Company, Tioga Gasoline Plant, Williams County, North Dakota.	(5)	
CI85-277-000, B, Mar. 5, 1985	Partnership Properties Co., P.O. Box 2250, Denver, Colorado 80210.	Northwest Central Pipeline Corp., S.W. Loyal Field, Kingfisher County, Oklahoma.	(6)	
CI85-266-000 (CI79-93), B, Mar. 1, 1985.	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kansas 67201.	Northern Natural Gas Company, Spraberry Trend Field, Irion County, Texas.	(7)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI85-273-000 (CI78-1055), B, Mar. 4, 1985.	do	Colorado Interstate Gas Company, Hay Reservoir Field, Sweetwater County, Wyoming.	([1])	
CI85-274-000 (C178-1113), B, Mar. 4, 1985.	do	Panhandle Eastern Pipe Line Company Hay Reservoir Field, Sweetwater County, Wyoming.	([1])	
CI85-264-000 (CI79-542), B, Feb. 28, 1985.	Diamond Shamrock Exploration Company, P.O. Box 631, Amarillo, Texas 79173.	Texas Gas Transmission Coroporation, Edwin L. Cox-Intercoastal Shipyard, Well No. 1 "C" Sand Unit A, St, Mary Parish, Louisiana.	([2])	
CI85-265-000 (CI83-133-000), B, Mar. 1, 1985.	do	Texas Gas Transmission Corporation, Edwin L. Cox-Intercoastal Shipyard, Well No. 1 "C" Sand Unit A, St. Mary Parish, Louisiana.	([2])	
CI85-275-000 (CI83-380-000), B, Mar. 4, 1985.	do	Texas Gas Transmission Corporation, Edwin L. Cox-Intercoastal Shipyard, Well No. 1 "C" Sand Unit A, St. Mary Parish, Louisiana.	([2])	
CI85-272-000 (G-11613), B, Mar. 4, 1985.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Texas Eastern Transmission Corp. Mission Valley Field, DeWitt and Victoria Counties, Texas.	([2])	
CI85-258-000 (G-13003), B, Feb. 28, 1985.	Union Oil Company of California, Union Oil Center—Box 7600, Los Angeles, Calif. 90051.	United Gas Pipe Line Company, Lake Hatch Field, Terrebonne Parish, Louisiana.	([2])	
CI85-269-000 (CI61-770), B, Mar. 6, 1985.	do	Natural Gas Pipeline Company of America, S.E. Woodward Field, Woodward County, Oklahoma.	([2])	
CI85-248-000 (G-14355), B, Feb. 15, 1985.	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Transcontinental Gas Pipe Line Corporation, Willow Woods Field, Terrebonne Parish, Louisiana.	([10])	
CI85-249-000 (CI66-737), B, Feb. 15, 1985.	do	Northern Natural Gas Company Six Mile Field, Beaver County, Oklahoma.	([11])	
G-12235-001 D, Feb. 28, 1985	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Southern Natural Gas Company, N/2 of the S/2 of Block 20, S.L. 1997, Breton Sound Area, Offshore Louisiana.	([12])	
CI85-251-000 (G-15779), B, Feb. 22, 1985.	do	Tennessee Gas Pipeline Corporation Bully Camp Field LaFourche Parish, Louisana.	([13])	
G-7645-006, D, Feb. 25, 1985	Mobil Oil Corporation, Nine Greenway Plaze—Suite 2700, Houston, Texas 77046.	Northwest Central Pipeline Corp. Texas County, Oklahoma.	([14])	
G-11742-014, D, Feb. 25, 1985	do	Northwest Central Pipeline Corp. Hugoton Field, Stevens County, Kansas.	([14])	
G-11742-015, D, Feb. 25, 1985	do	Northwest Central Pipeline Corp. Hugoton Field, Stevens County, Kansas.	([14])	
G-12086-000, D, Mar. 4, 1985	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaze—Suite 2700, Houston, Texas 77046.	Tennessee Gas Pipeline Company Heyser Field, Victoria County, Texas.	([15])	
G-10164-002, D, Feb. 21, 1985	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Tennessee Gas Pipeline Company, Timbalier Bay Field, LaFourche Parish, Louisana.	([16])	
G-17019-001, D, Feb. 22, 1985	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	El Paso Natural Gas Company, Bisti Field, San Juan County, New Mexico.	([17])	
CI64-464-000, D, Feb. 25, 1985	do	Tennessee Gas Pipeline Company, Patterson Field, St. Mary Parish, Louisana.	([18])	
CI85-250-000 (CI72-764), B, Feb. 22, 1985.	do	Transwestern Pipeline Company, Rock Tank Field, Eddy County, New Mexico.	([19])	
G-4946-000, D, Feb. 25, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, Texas 75221-2880.	United Gas Pipe Line Company, Burrell Field, Karnes County, Texas.	([20])	
G-11762-003 and G-16010-000, D, Feb. 25, 1985.	do	Northern Natural Gas Company, Harper Ranch Field, Clark County, Kansas.	([21])	
G-18239-000 and G-18250-000, D, Feb. 25, 1985.	Forest Oil Corporation, 1500 Colorado Natl. Bldg., 950—17th Street, Denver, Colorado 80202.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Oklahoma.	([22])	
G-20141-000, D, Feb. 25, 1985	do	Tanscontinental Gas Pipe Line, Corporation, San Miguel Creek Field, McMullen County, Texas.	([23])	
CI61-392-000, D, Feb. 25, 1985	do	El Paso Natural Gas Company, Clear Lake (Mocane) Field, Beaver County, Oklahoma.	([23])	
CI63-265-000, D, Feb. 25, 1985	do	Michigan Wisconsin Pipe Line Co., Woodward Area, Major and Woodward Counties, Oklahoma.	([22])	
CI63-1398-000, D, Feb. 25, 1985	do	Panhandle Eastern Pipe Line Company, Binkley Gas Unit, Woods County, Oklahoma.	([22])	
CI67-481-000, D, Feb. 25, 1985	do	Transwestern Pipeline Company, West Rojo Caballos Field, Pecos and Reeves Counties, Texas.	([23])	
CI69-1219-000, D, Feb. 25, 1985	do	Transwestern Pipeline Company, Barstow Field, Ward County, Texas.	([23])	
CI79-225-000, D, Feb. 25, 1985	do	Colorado Interstate Gas Company, Shiprock Field, Sweetwater County, Wyoming	([23])	

[1] The primary terms of the Casinghead Gas Contracts ended 3-3-83 and 9-1-83 but the contracts would continue on a year to year basis and could by terminated any anniversary bi written notice. Bliss served notice to Texaco, Inc.

[2] All production under the contract has ceased and the lease has expired for lack of production. Benedum-Trees Oil Company therefore no longer has the right to explore or develop the acreage involved.

[3] Uneconomical.

[4] Noncommercial.

[5] The 7-19-55 contract expired by its own term on or about 4-30-62. All available records indicate that no sales were made nor was there or is there any apparent availability of gas for sale beyond that expiration date.

[6] Depleted.

[7] Energy Reserves Group has no gas production under their rate schedule which is subject to the Commission's Natural Gas Act jurisdiction as provided in section 601(a)(1)(B) of the Natural Gas Policy Act of 1978.

[8] No. 1 well ceased production in August, 1984, and has been plugged; all of Seller's leases included within the unit expired by their terms.

[9] Production has ceased and the contract has been cancelled.

[10] The Discorbis 10(00) Sand Units 3 and 4 have terminated and the primary term of the gas contract expired on 4-17-84.

[11] Letter Agreement dated 10-24-66 filed with the Commission 2-10-67 as Supplement No. 3 to Rate Schedule No. 140 changed the commitment of the Benjegerdes "B" No. 1 well to Cities' Rate Schedule No. 140 after it was reclassified as a gas well in 1966. No subsequent sales have been made under Rate Schedule 208.

[12] Said acreage has been released in lieu of development.

[13] All wells have been plugged and abandoned.

[14] To release gas for irrigation fuel.

[15] By assignment and Bill of Sale dated 4-19-84, to be effective 5-6-83, Mobil Producing Texas & New Mexico Inc. assigned to BHP Petroleum (USA) Inc., San Patricio Corporation, Robert W. Thacker, and Andrews Exploration, Inc., a certain lease.

[16] Acreage has been released to the State of Louisiana.

[17] The lease covering the NW/4 of the NE/4 Section 24-25N-11W, San Juan County, New Mexico, which was covered by the original contract but was not covered by the rollover contract, expired on 11-30-76.

[18] By a Partial Release agreement executed on 8-28-84, Gulf released certain portions of lands.

[19] The leases expired in 1978. The unit W.G. Smith Federal Gas Com. Well No. 1 expired on 8-30-79 and the well was plugged and abandoned on 11-20-80. Gulf no longer owns an interest in the acrage that was covered by contract 4-25-72, as amended, and Gulf terminated the contract.

[20] Partial Assignment and Bill of Sale executed on 1-21-85, effective 11-1-84, wherein Sun Exploration and Production Company assigned its interest in said property.

[21] Partial Assignment and Bill of Sale executed on 12-5-84, effective 11-1-84, wherein Sun Exploration and Production Company assigned its interest in said property.

[22] Forest Oil Corporation assigned a portion of its interest in the leases covered by their contract with the purchaser to Templeton Energy Income Corporation.

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. 85-6611 Filed 3-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-8-000]

Colorado Interstate Gas Co.; Tariff Sheet Filing

March 13, 1985.

Take notice that of March 1, 1985, Colorado Intersate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing, pursuant to section 4 of the Natural Gas Act, the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 44A;
Fifth Revised Sheet No. 45; and
Sixth Revised Sheet No. 61H.

CIG states that the purpose of this filing is to comply with the conditions of the Commission's order issued in Docket No. SA84-22-000 on December 24, 1984. It is indicated that the order conditionally granted CIG an exemption from the essential agricultural use filing requirements set forth in § 281.204(b) of the Commission's Regulations.

CIG states that its proposed tariff revisions insure that the full requirements of essential agricultural users dependent upon CIG's system supply would be given an appropriate priority in the event of sudden, unexpected curtailment on CIG's system. Further, CIG has revised its index of entitlements to indicate that the existing requirements would remain unchanged until such time as an actual supply deficiency exists or is anticipated by CIG in its Form 16 projections. An effective date of March 29, 1985 is requested for the revised tariff sheets.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before March 22, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kennth F. Plumb,
Secretary.

FR Doc. 85-6610 Filed 3-19-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP83-68-007]

Natural Gas Pipeline Company of America; Supplemental Tariff Filing

March 14, 1985.

Take notice that on February 26, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing Third Revised Sheet No. 13 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. Natural states that due to a oversight, it failed to submit this sheet with its February 21, 1985, filing of revised tariff sheets to implement the provisions of its approved Stipulation and Agreement.

Natural requests that the Commission's regulations be waived to the extent necessary to permit the tariff sheet to become effective February 1, 1985, the same date as the revised sheets filed on February 21, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 20, 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. 85-6612 Filed 3-19-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. PR85-111-000]

Southwest Gas Corp.; Request to Defer Tariff Filing

March 14, 1985.

Take notice that on March 4, 1985, Southwest Gas Corporation (Southwest) tendered a letter to the Commission requesting authorization to continue its current purchased gas cost adjustment (pga) contained in its FERC Gas Tariff, Original Volume No. 1 for one additional month and to file and place into effect its next pga currently with Nothwest Pipeline Corporation's (Northwest) pga filing. The proposed effective date is May 1, 1985.

Southwest states it has discussed this matter with its jurisdictional customers and they support Southwest's requests. Southwest indicates that it has served copies of this letter to all parties on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 20, 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. 85-6613 Filed 3-19-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF85-247-000, et al.]

Riverbend Electric, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission:

1. Riverbend Electric Company

[Docket No. QF85-247-000]

March 12, 1985.

On February 14, 1985, Riverbend Electric (Applicant), of 1723 East 3rd St., Delta, Colorado 81416, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 100 kilowatt hydroelectric facility is located approximately 8 miles south of Montrose, Colorado.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

2. Roy E. McGhee.

[Docket No. QF85-274-000]

March 14, 1985.

On March 4, 1985, Roy E. McGhee, (Applicant), of 39 Bishop Avenue, NW., Fort Walton Beach, Florida 32548 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the applicant's address in Fort Walton Beach, Florida. The facility will be a wind powered induction generator. The power production capacity of the facility will be 2.1 kW.

C & H Waste Energy, Inc. (West Market Street)

[Docket No. QF85-256-000]

March 14, 1985.

On February 22, 1985, C & H Waste Energy, Inc., (Applicant) of Rt. 6, Box 464, Mooresville, North Carolina 28115 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on West Market Street in Greensboro, North Carolina. The facility will use more than 75% municipal solid waste to generate electric power. The facility will use oil or natural gas as start-up fuel only, and to maintain proper flame temperature during wet conditions. The electric power production of the facility will be 5.12 MW which will be sold to Duke Power Company.

4. United Cogen Incorporated

[Docket No. QF85-267-000]

March 14, 1985.

On February 28, 1985, United Cogen Incorporated, (Applicant) of 1200 E. Algonquin Road, Elk Grove Village, Chicago, Illinois 60007 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the United Airlines Maintenance Center, San Francisco International Airport, San Francisco, California 94128. The facility will contain one combustion turbine generator, a supplementary fired heat recovery boiler and an extraction steam turbine-generator. The extracted steam will be used in existing plant processes. The net electric power production capacity of the facility will be 26,578 kW. The primary energy source will be natural gas. Operation of the facility is expected to begin in the summer of 1985. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

5. C & H Waste Energy, Inc. (Patten Avenue)

[Docket No. QF85-257-000]

March 14, 1985.

On February 22, 1985, C & H Waste Energy, Inc. (Applicant) of Rt. 6, Box 464, Mooresville, North Carolina 28115 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Patten Avenue in Greensboro, North Carolina. The facility will use more than 75% municipal solid waste to generate electric power. The facility will use oil or natural gas as start-up fuel only, and to maintain proper flame temperature during wet conditions. The electric power production of the facility will be 3.375 MW which will be sold to Duke Power Company.

6. North Hartland Hydro Associates

[Docket No. QF85-248-000]

March 12, 1985.

On February 14, 1985, North Hartland Hydro Associate (Applicant), c/o Russell, Rea and Zappala, Inc., Two Northshore Center, Pittsburgh, PA 15212, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4,000 kilowatt hydroelectric facility is located at the existing U.S. Army Corps of Engineers North Hartland Dam on the Ottauguechee River in Windsor County, Vermont.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6614 Filed 3-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-291-000, et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Company, et al.

March 13, 1985.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-291-000]

Take notice that on February 15, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-291-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the maximum daily quantity (MDQ) of natural gas for St. James Parish, Louisiana (St. James), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

United states that St. James requires an additional volume of gas because of phenomenal population growth due to industrial expansions and commercial and residential development. United

further states that the aggregate peak day MDQ increase requested for St. James is 1,765 Mcf per day. Further, United states that it has surplus supplies available to serve the proposed requirements and that the requested MDQ increase would not result in a net increase in demand on its system but rather would replace a small portion of the substantial attrition of market that United has experienced. Thus, United asserts that granting its request is in the public convenience and necessity.

Comment date: April 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Penn-York Energy Corporation; National Fuel Gas Supply Corporation

[Docket No. CP85–282–000]

Take notice that on February 13, 1985, Penn-York Energy Corporation (Penn-York), 10 Lafayette Square, Buffalo, New York 14203, and National Fuel Gas Supply Corporation (National), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP85–282–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Penn-York to increase the level of base gas and to construct and operate certain additional facilities at Penn-York's existing underground gas storage facilities in Allegancy County, New York, and authorizing National to transport gas sold to Penn-York as base gas and to provide a summer storage service to Penn-York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Penn-York proposes to construct and operate the following facilities:

(a) 6 additional wells at the Beech Hill storage field including 5 injection/withdrawal wells and one observation well with necessary gathering lines;

(b) 4 existing wells at Beech Hill to be converted from observation wells to injection/withdrawal wells with necessary gathering lines;

(c) 1 additional 2,750 horsepower compressor unit at the Beech Hill compressor station; and

(d) 10,000 feet of 12-inch pipeline to tie together the Independence and Beech Hill gathering systems.

Penn-York states that the 5 new wells and the conversion of 4 wells is required in order to achieve optimum capacity and deliverability at the Beech Hill field. It is further stated that the new 2,750 horsepower compressor unit would be added to the existing Beech Hill compressor station in order to afford greater flexibility and security in operations, and the new pipeline connection between the Independence and Beech Hill facilities would extend such flexibility and security to the Independence operations.

Penn-York also proposes to increase by 4,000,000 Mcf the level of base gas in its storage fields. Penn-York indicates that 1,000,000 Mcf additional base gas is required at its East Independence facility because of the inability to turn more than 2,200,000 Mcf of top gas during each storage year. It is further stated that the capacity of the West Independence facility is less than previously determined while the capacity of the Beech Hill facility is greater than previously determined so that a net additional 3,000,000 Mcf of base gas is required at Beech Hill. Penn-York indicates that it would purchase the 4,000,000 Mcf of base gas from National at National's effective rate under Rate Schedule I–1.

It is indicated that the cost for the construction and operation of facilities would be approximately $4,931,160. It is further indicated that the cost of acquiring the 4,000,000 Mcf of gas from National would be $17,802,000. It is indicated that the cost of construction would be financed through internally generated funds of Penn-York and drawings under Penn-York's existing line of credit.

National proposes to transport and/or exchange 4,000,000 Mcf of gas to be sold by National of Penn-York and to provide 2,000,000 Mcf of summer storage service to Penn-York. It is stated that National's proposed 2 Bcf of summer storage service is required by Penn-York in order to accommodate unevenly scheduled deliveries of injection volumes from Penn-York's customers. It is further stated that National would accept summer storage volumes for injection during the period April 1 through September 30 in each storage year and return the full amount of such volumes to Penn-York by October 31 of each respective storage year. National proposes to charge Penn-York a rate of 15.42 cents per Mcf annually for the summer storage service.

Comment date: April 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Washington 28 Gas Storage Company

[Docket No. CP84–14–002]

Take notice that on February 15, 1985, Washington 28 Gas Storage Company (Washington 28), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP84–14–002, a second amendment to its pending application in Docket CP84–14–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Washington 28 to increase to 15,700,000 Mcf the gas storage service being provided to ANR Storage Company (ANR) for the account of Transcontinental Gas Pipe Line Corporation (Transco) by developing and operating the Washington 28 gas field and appurtenant facilities, drilling and operating certain wells, and constructing and operating certain other facilities, all as more fully described in the amendment which is on file with the Commission and open to public inspection.

In the application filed in Docket No. CP84–14–001 Washington 28 requested authority to provide 10,000,000 Mcf of natural gas storage service to ANR pursuant to a gas storage agreement dated June 20, 1984, so that ANR could provide storage service to Transco. It is explained that ANR has now advised Washington 28 that its seasonal natural gas storage requirements have increased by 5,700,000 Mcf to 15,700,000 Mcf due to a corresponding increase in Transco's requirements. It is stated that as a result, Washington 28 and ANR have entered into an amendment to gas storage agreement dated February 11, 1985 (storage amendment), which storage amendment provides for an increase in the maximum storage volume to 15,700,000 Mcf, as well as related changes in maximum daily injection and withdrawal quantities, compressor fuel requirements, and storage service rates.

It is explained that among other things, the storage amendment provides that in the 1987 and subsequent summer periods (April 1–October 31), ANR would deliver to Washington 28 for storage up to 15,700,000 Mcf of natural gas, at daily volumes up to 118,000 Mcf, at the proposed interconnection of Washington 28's facilities in Macomb County, Michigan, together with a volume of gas for compressor fuel usage equal to 1.2 percent of the volumes so delivered. Washington 28 states that the storage amendment further provides that during the 1987–88 and subsequent winter periods (November 1–March 31), Washington 28 would redeliver to ANR at such interconnection such volumes of the previously stored natural gas as ANR at such interconnection such volumes of the previously stored natural gas as ANR would request, at daily rates up to 250,000 Mcf, less a volume of gas for compressor fuel usage equal to 0.3 percent of the volumes so redelivered.

To provide the increase in storage service from 10,000,000 Mcf to 15,700,000 Mcf, Washington 28 proposes the construction of an additional 4,000 horsepower of compression and reduction of 0.549 Bcf of total base gas

requirement from that described in Docket No. CP84-14-001. With the exception of the foregoing modifications, Washington 28 proposes to acquire, develop and operate the Washington 28 gas field as a gas storage field and to construct and operate the other facilities as described in Docket No. CP84-14-001. The cost of facilities associated with the 15,700,000 Mcf development proposed in this amendment is estimated to be $33,439,000.

Washington 28 states that as consideration for providing this natural gas storage service, ANR would pay Washington 28 a monthly charge of $751,114.

Washington 28 submits that the storage service proposed herein is and would be required by the present and future public convenience and necessity in that Transco requires additional storage service to meet the peak day and winter period requirements of its customers during the 1987-88 and subsequent heating seasons.

By virtue of the Commission orders of July 5, 1983, 24 FERC ¶ 61,003 and February 3, 1984, 26 FERC ¶ 61,117, this amended application is consolidated in the ongoing hearing proceedings in Docket No. CP81-107, *et al.*

Comment date: April 3, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP85-318-000]

Take notice that on February 27, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-318-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new sales delivery point to Mississippi Valley Gas Company (Mississippi), an existing customer, under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would be located in Rankin County, Mississippi. United further states that it would supply up to 3.1 Mcf of natural gas per day and 486 Mcf of natural gas annually to Mississippi for resale to one residential customer and that such sale would not increase Mississippi's aggregate base requirements or contractual maximum daily quantity under United's curtailment plan. United asserts that it would be reimbursed by Mississippi for all costs resulting from the installation of the proposed tap.

Comment date: April 29, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6663 Filed 3-19-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00199; FRL-2799-7]

Administrator's Pesticide Advisory Committee; Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC), Subcommittee on Labeling will hold a meeting to discuss appropriate content of pesticide labels and labeling, and the effectiveness of existing communication networks used to disseminate information regarding the safe use and handling of pesticides. The meeting will be open to the public.

DATE: The meeting will take place on Friday, April 12, 1985, at 9:00 a.m. and adjourn by 3:00 p.m.

ADDRESS: The Subcommittee meeting will be held in:

Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E636, 401 M St., SW., Washington, D.C. 20460 (202-382-7801).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and time will be set aside for public comments concerning the agenda items. Any member of the public wishing to present an oral or written statement relative to the Subcommittee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above. A complete agenda will be available at the meeting.

Dated: March 8, 1985.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-6620 Filed 3-19-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2797-5 (EPA Project Number NC 84-03)]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Fairhaven Power Company

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on February 12, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 15-megawatt biomass-fired electrical generating facility to be located 1.5 miles west of Eureka, Humboldt County, California. The permit is subject to certain conditions, including all allowable emisson rate as follows: participate matter 10.2 lbs/hr, NO_x at 45.1 lbs/hr, CO at 79.0 lbs/hr, and hydrocarbons at 15.8 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request: address request to:

Rhonda Rothschild (P-8-2), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8153.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include an electrostatic precipitator and a boiler design with 40% excess combustion air.

Date

The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed within 60 days of the date of this notice.

Dated: March 1, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85-6616 Filed 3-19-85; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place

Friday, April 5, 1985 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1141, 811 Vermont Avenue, NW., Washington, D.C. 20571.

Agenda

The meeting agenda will include discussion of Eximbank's recent highlights including an update on the OECD negotiations, FY 1986 budget proposal including a description of the I-MATCH Program, a presentation on Eximbank's Marketing and Small Business Programs and the status of the Questionnaire for the Competitiveness Survey.

Public Participation

The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, D.C. 20571, (202) 566-8871, not later than April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, D.C. 20571, (202) 566-8871.

Joseph H. Gainer,

Acting General Counsel.

[FR Doc. 85-6657 Filed 3-19-85; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Stockton Mobilphone, Inc., and Rocky Top Enterprises; Order Designating Applications for Hearing

In the matter of applications of Stockton Mobilphone, Inc., for a construction permit to establish additional one-way facilities to operate on frequency 152.24 MHz for Station KRM984 in the Public Land Mobile Service near Twain Harte, California (CC Docket No. 85-63, File No. 23781-CD-P-83) and Rocky Top Enterprises, for a construction permit to establish a new one-way facility to operate on frequency 152.24 MHz in the Public Land Mobile Service at Jamestown, California (File No. 24677-CD-P-83).

Adopted February 28, 1985.

Released March 13, 1985.

By the Chief, Mobile Services Division.

1. On February 28, 1983, Stockton Mobilphone, Inc. (Stockton) filed an application for a construction permit to establish an additional one-way facility to operate on frequency 152.24 MHz near Twain Harte, California. The application was accepted for filing by Public Notice of March 16, 1983. Rocky Top Enterprises (Rocky Top) timely filed an application for a new one-way station to operate on frequency 152.24 MHz at Jamestown, California. The applications have not been protested.

2. After careful examination of the applications, we find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of Stockton and Rocky Top to use the same frequency, 152.24 MHz, in the same geographical area are electrically mutually exclusive. Since Stockton Mobilphone, Inc., has applied for an additional facility on the same frequency these applications will not be subject to selection by lottery. *Random Selection Lotteries,* Gen. Docket No. 81-768, 93 FCC 2d 952 (1983), recon. granted in part FCC 84-596, released December 4, 1985. Therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

3. Accordingly, it is ordered that the applications of Stockton Mobilphone, Inc. (File No. 23761-CD-P-83) and Rocky Top Enterprises (File No. 24677-CD-P-83), are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This Order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-6584 Filed 3-19-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-8]

Independent Action Provisions of the Atlantic and Gulf/West Coast of South America Conference Agreement; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by the Atlantic and Gulf/West Coast of South America Conference [1] (Commission Agreement No. 202-002744), seeking that the Commission determine that Petitioner's basic agreement precludes a member from taking independent action with respect to either freight brokerage or freight forwarder compensation. Certain members of the Conference have taken independent action with respect to freight forwarder compensation, and an uncertainty allegedly exists as to whether the authority for such action is contained in the basic agreement or mandated by the Shipping Act of 1984.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Interested persons may submit replies to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before April 15, 1985. An original and fifteen copies of such replies shall be submitted and a copy thereof served on the filing party, Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-6622 Filed 3-19-85; 8:45 am]

BILLING CODE 6730-01-M

[1] Lykes Bros. Steamship Co., Inc., a member of the Conference, disassociates itself from the petition.

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002647-004.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Long Beach

C. Brewer Terminals, Inc. (Formerly Nomal Co., Inc.)

Synopsis: This agreement amends the basic agreement between the parties which provided for the lease of an area of land for liquid bulk tanks, and further granted two licenses for pipelines from the tanks; one right of way so licensed was to Berths 5 and 6, and the second right of way to Berth 210, all within the Port of Long Beach. Due to modification of the facilities in the Berths 5-6 area, the pipeline right of way from the tank farm to that area has been terminated. This is the sole effect covered in Agreement No. 224-002647-004.

Agreement No.: 202-010485-003.

Title: United States Atlantic Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Transatlantica Espanola, S.A.

Costa Line

Farrell Lines, Inc.

"Italia" Societa' Per Azioni di Navigazione

Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the agreement to add A.P. Moller-Maersk as a member of the conference. The parties have requested a shortened review period.

Agreement No.: 202-010717-001.

Title: United States Atlantic and Gulf/Central America Conference.

Parties:

Concorde Line Central America Services

Coordinated Caribbean Transport, Inc.

Seaboard Marine Line, Ltd.

Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the scope of the agreement to include North Atlantic ports and intermodal service via such ports and change the name of the conference to reflect this change. It would authorize the parties to charter space on each others vessels, except to and from Panama, on an as-needed-as-available basis. It would also modify the independent action provisions to provide that if a member who has taken independent action decides to withdraw its independent action before it becomes effective, the conference chairman shall continue to file independent action taken by any member who succeeded the first member unless the succeeding member instructs the conference chairman to the contrary. The parties have requested a shortened review period.

Dated: March 15, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-6654 Filed 3-19-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Jersey Bancorp, 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 be 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 April 11, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Central Jersey Bancorp,* Freehold Township, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of the Central Jersey Bank and Trust Company, Freehold Township, New Jersey.

2. *Great Neck Bancorp,* Great Neck, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Great Neck, Great Neck, New York (organizing bank).

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Penn Central Bancorp, Inc.,* Huntingdon, Pennsylvania; to acquire 100 percent of the voting shares of Hollidaysburg Trust Company, Hollidaysburg, Pennsylvania.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia and *Bank South Macon, Inc.,* Macon, Georgia; to acquire 100 percent of the voting shares of First Citizens Bank, Forsyth, Georgia.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First National Bancshares Corporation II,* Lexington, Tennessee; to become a bank holding company by acquiring 95.0 percent of the First National Bancshares Corporation, Lexington, Tennessee, thereby indirectly acquiring First National Bank of Lexington, Lexington, Tennessee.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Community Bancshares of Alva, Inc.,* Alva, Oklahoma; to become a bank holding Company by acquring 80 percent of the voting shares of Community National Bank, Alva, Oklahoma.

2. *Sooner Southwest Bankshares, Inc.,* Bristow, Oklahoma; to become a bank holding company by acquiring 80.9 percent of the voting shares of Anadarko Bancshares, Inc., Anadarko, Oklahoma, thereby indirectly acquiring Anadarko Bank and Trust Co., Anadarko, Oklahoma and 91.6 percent of the voting shares of Community Bancorp., Inc., Bristow, Oklahoma, thereby indirectly acquiring Community Bank, Bristow, Oklahoma.

Board of Governors of the Federal Reserve System, March 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6626 Filed 3-19-85; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-5667), published at page 9715 of the issue for Monday, March 11, 1985, specifying a period for public comments.

Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to expand the activities of its subsidiary, Marshall & Ilsley Trust Company of Florida, N.A., Naples, Florida, to include the making of loans to individuals for personal family, household, or charitable purposes and the acceptance of checking and time deposits. These activities would be conducted in Collier County, Florida, and surrounding area.

Board of Governors of the Federal Reserve System, March 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6627 Filed 3-19-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Epidemiologic Studies of Workers Exposed to Nitroglycerin; Open Meeting—Change in Time

The notice of a meeting on Epidemiologic Studies of Workers Exposed to Nitroglycerin,to be held March 29, 1985, was published in the **Federal Register** (50 FR 7836) on Tuesday, February 26, 1985.

The time of the meeting has been changed to 10:30 a.m.–4:00 p.m. All other information concerning this meeting, as published on February 26, 1985, is unchanged.

Dated: March 14, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-6593 Filed 3-19-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 83V-0163]

Availability of Approved Variance for Xenon Laser Cutter; Florod Corp.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for xenon laser cutters manufactured by the Florod Corp. The laser product is used in circuit failure analysis. The model designation for the product is Model LFA-11, although the variance applies to similar models that have essentially the same radiation characteristics.

DATES: The variance became effective December 28, 1984, and ends December 28, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food

and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted the Florod Corp., 3341 West El Segundo Blvd., Hawthorne, CA 90250, a variance from § 1040.10(é)(3)(i) (21 CFR 1040.10(e)(3)(i)) of the performance standard for laser products for the xenon laser cutter.

The specific requirements of the standard for which a variance has been granted pertain to the provisions of § 1040.10(e)(3)(i) that otherwise would require the use of an aperture stop having a diameter of 80 millimeters when measuring unscanned laser radiation. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that: (1) The requirement of § 1040.10(e)(3)(i) is not appopriate for the product, (2) the product utilizes alternate means of providing radiation safety equal to or greater than that provided by products meeting all requirements of the applicable standard; and (3) suitable means of radiation safety will be provided by the use of constraints on the physical and optical design and by warnings required by § 1040.10(h). Therefore, on December 28, 1984, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the xenon laser cutter shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (section 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: March 11, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–6587 Filed 3–19–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0039]

Optical Plastic Research; Premarket Approval of O.P.R.–55 (Ocufilcon C) Hydrophilic Contact Lens (Spherical and Toric); Optical Plastic Research, Orinda, CA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Optical Plastic Research, Orinda, CA., for premarket approval, under the Medical Device Amendments of 1976, of the O.P.R.–55 (ocufilcon C) Hydrophilic Contact Lens (Spherical and Toric). 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's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 19, 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: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On January 14, 1983, Optical Plastic Research, Orinda, CA 94563, submitted to CDRH an application for premarket approval of the O.P.R.–55 (ocufilcon C) Hydrophilic Contact Lens (Spherical and Toric). The spherical lens ranges in powers from −20.00 diopters (D) to +10.00 D and is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and may exhibit astigmatism of 1.25 D or less that does not interfere with visual acuity. The toric lens ranges in spherical powers from −20.00 D to +10.00 D and cylindrical powers from 0.50 D to 4.00 D and is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that have astigmatism of 4.00 D or less. On April 17, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 14, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the record and reports provisions of Subpart D of Part 30 (21 CFR Part 310) until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH 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 inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the approved contact lens states that the lens is to be disinfected using only the recommended chemical (not heat) disinfection system.

The restictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of 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 CDRH'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 of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration 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 place where the review will occur, and other details.

Petitioners may, at any time on or before April 19, 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.

This notice is issued under the Federal Food, Drug, and Comestic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 11, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–6588 Filed 3–19–85; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

National Advisory Committee on Migrant Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1985:

Name: National Advisory Council on Migrant Health

Date and Time: April 10–13, 1985, 8:30 a.m.

Place: Ballroom, Westin-Seattle Hotel, 1900 Fifth Avenue, Seattle, Washington 98101

The entire meeting is open.

Purpose: The Council is charged with advising, consulting with, and making recommendations to to the Secretary and the Administrator, Health Resources and Services Administration concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda items include: (1) Review the Council's recommendations from the October 1984 meeting and the Secretary's response; (2) Present program update of administration management perspectives; (3) Delineate resource allocations to Migrant Health Centers and program; (4) Describe clinical strategy and current focus and (5) Summarize Council's major concerns and recommendations.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Billy Sandlin, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda items are subject to change as priorities dictate.

Dated: March 14, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85–6586 Filed 3–19–85; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Determination of the Status of Kuwait Under the Mineral Leasing Act of 1920

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of decision on the status of Kuwait under the Mineral Leasing Act of 1920.

SUMMARY: Section 1 of the Mineral Leasing Act of 1920 (30 U.S.C. 181) provides in part: "Citizens of another country, the laws and customs and regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding or stock control own any interest in any lease acquired under the provisions of the Act." In response to the decision in *Santa Fe International* v. *Watt*, 519 F. Supp. 929 (D. Del. 1984), the Department of the Interior in the **Federal Register** of December 27, 1984 (49 FR 50310), requested written comments from any member of the public to assist the Department in determining whether the Government of Kuwait intended to discriminate against the citizens or corporations of the United States when it nationalized its petroleum industry in the 1970's. The Secretary of the Interior has concluded that based on the record, the laws, customs and regulations of Kuwait do not deny similar or like privileges to citizens or corporations of the United States. Therefore, the citizens and corporations of Kuwait may through stock ownership, stock holding or stock control, own interests in leases issued under the Mineral Leasing Act of 1920.

EFFECTIVE DATE: The decision concerning the status of Kuwait was issued on and was effective on February 7, 1985.

ADDRESS: Any suggestions or inquiries should be sent to:

Director (130), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mark Guidry, (202) 343–4820.

SUPPLEMENTARY INFORMATION: On March 10, 1983, the Secretary of the Interior found that the laws, customs and regulations of Kuwait deny similar or like privileges to citizens and corporations of the United States. A notice of this decision was published in the **Federal Register** of April 15, 1983 (48 FR 16384). The Secretary based this determination on his conclusion that Kuwait's nationalization process constituted *de facto* discrimination against United States citizens and corporations. In the *Santa Fe International Corp.* decision, the U.S. District Court for the District of Delaware held that *de facto* discrimination is not a proper standard under section 1 of the Mineral Leasing Act. The Court ruled that discrimination constitutes a denial of similar or like privileges under section 1 of the Act only if it is based on nationality. The Court comented: "The record in this case, however, does not support such an inference (of discrimination on the basis of U.S. citizenship) and shows only objective reasons behind the (difference in treatment)." 591 F. Supp. at 941 (footnotes omitted).

In the determination of February 7, 1985, the Secretary of the Interior found that, based on the record, Kuwait had allowed the concession with private, non-U.S. interests to remain because it was located in an offshore area disputed between Kuwait and Saudi Arabia where Kuwait did not have a free hand to act unilaterally. The Secretary concluded that was a legitimate and objective business reason and did not constitute intentional discrimination against U.S. interests. The Secretary also concluded that the offshore practices of Kuwait were relevant to a determination under section 1 of the onshore Mineral Leasing Act of 1920. As a result of the Secretary's determination, Kuwait is no longer on the list of countries which do not provide "similar or like privileges" referred to in 43 CFR 3102.2.

J. Steven Griles,

Deputy Assistant, Secretary of the Interior.

March 14, 1985.

[FR Doc. 85-6629 Filed 3-19-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Mescalero Apache, NM; Addition of Land to Indian Reservation

Correction

In FR Doc. 85-2150 appearing on page 3979 in the issue of Tuesday, January 29, 1985, make the following correction: In the third column, beneath **Cienegita Property** in the eighth line, "SW½" should read "SW¼".

BILLING CODE 1505-01-M

Bureau of Land Management

Las Vegas District Advisory Council; Meeting.

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579, (FLPMA), that a meeting of the Las Vegas District Advisory Council will be held on Friday, April 19, 1985 at 9:00 a.m. to 4:00 p.m. in the Conference Room of the BLM, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada, 89108.

The agenda will be as follows:

1. Welcome.
2. Review of the following programs.
   - A. Lands.
   - B. Minerals.
   - C. Wild Horse and Burro.
   - D. Recreation.
   - E. Wilderness.
3. Discussion of the Forest Service & BLM interchange proposal.
4. Election of officers.
5. New business.
6. Public comments or written statements to be read into record.
7. Establishing next meeting date and agenda.
8. Adjournment.

Anyone wishing to make an oral statement must notify the District Manager, BLM Las Vegas District Office, P.O. Box 26560, Las Vegas, NV 89126, by the close of business, April 5, 1985. Depending on the number of persons requesting to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours, 7:30 a.m.—4:15 p.m.), within 30 days following the meeting.

Kemp Conn,

District Manager.

[FR Doc. 85-6605 Filed 3-19-85; 8:45 am]

BILLING CODE 4310-84-M

[W-88887]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 180 acres of public land for an administrative site and protection of resource values on the Wyoming portion of the Pryor Mountain Horse Range. This notice closes the land for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received on or before June 18, 1985.

ADDRESS: Comments and meeting requests should be sent to: Montana State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, Montana State Office 406-657-6090.

On *December 14, 1984,* a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

Britton Springs Cabin and Corrals

T. 58 N., R. 95 W.,
Sec. 20, N½SW¼NW¼.

Crooked Creek Natural Area

Sec. 28,NW¼.

The area described contains 180 acres in Big Horn County.

The purpose of the proposed withdrawal is to protect the land for an administrative site and resource value.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied, cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregation period are limited to archeological exploration and any approved surface uses.

James Binando,

Chief, Branch of Land Resources.

March 11, 1985.

[FR Doc. 85-6603 Filed 3-19-85; 8:45 am]

BILLING CODE 4310-DN-M

Susanville District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-597 (FLPMA) that a meeting of the Susanville District Advisory Council will be held on April 17, 1985.

The meeting will begin at 10:00 a.m. on April 17, in the Conference Room of the Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, California.

The Council will provide the District Manager with input regarding the District Organization as a result of the BLM/U.S. Forest Service Interchange program.

The Council will also receive a report on the status of the proposed Fort Sage Motorcycle Use Area from the Technical Review Team.

The meeting is open to the public and time will be provided for public input.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

Ben F. Collins,

Acting District Manager.

[FR Doc. 6602 Filed 3-19-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Scientific Committee of the Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. I and the Office of Management and Budget's Circular A-63 Revised.

The Scientific Committee of the Outer Continental Shelf Advisory Board will meet on April 9 and 10, 1985, in the Penthouse Suite at the Bay View Plaza Holiday Inn, 530 Pico Boulevard, Santa Monica, California 90405. The Scientific Committee will meet during the period 8:00 a.m. to 5:00 p.m. on both days.

Agenda for the meeting will include the following subjects:

- Reports of Subcommittee Meetings
- Review of Charge and Organization of Subcommittees
- Environmental Studies Program Budget
- Status of FY 1985 National Studies List and FY 1986 Regional Studies Plans
- Progess on the Scientific Committee's Review of the Environmental Studies Program
- Minerals Management Service Elements of the Interagency Committee on Ocean Pollution Research, Development and Monitoring Long-Term Effects Program
- Physical Oceanographic Programs in the Pacific OCS Region

The meeting of this committee is open to the public. Approximately 30 visitors can be accommodated on a first/come.first-served basis. All inquiries concerning this meeting should be addressed to:

Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service (MS 644), U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; telephone: (202) 343-7744.

Dated: March 15, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-6600 Filed 3-19-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Proposed Development and Production Plan; Availability of Draft Environmental Impact Statement and Intent to Hold Public Hearings

AGENCY: Office of Leasing and Environment; Minerals Management Service (MMS), Department of the Interior.

ACTION: Notice of availability and public hearing for environmental impact statement/environmental impact report.

SUMMARY: Pursuant to section 102(2)(c) of the National Enviornmental Policy Act of 1969, the Minerals Management Service, Santa Barbara County, and California State Lands Commission have jointly prepared a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for proposed development in the Central Santa Maria Basin, offshore Santa Barbara County, California. The Draft EIS/EIR includes an evaluation of the potential effects of proposed developments by Union Oil Company and Exxon Company, USA, as well as anticipated future development of oil and gas resources in the Central Santa Maria Basin area. Single copies of the Draft EIS/EIR can be obtained from Santa Barbara County, Resource Mangaement Department, Energy Division, 123 East Anapamu Street, Santa Barbara, California 93101. Technical appendices may be obtained individually or as a unit by forwarding a written request to the above address. When requesting an individual appendix, refer to the following titles:

A. Geology;
B. Air Quality;
C. Onshore Water Resources;
D. Marine Water Resources;
E. Marine Biology;
F. Terrestrial and Freshwater Biology;
G. Cultural Resources;
H. Visual Resources;
I. Onshore Noise/Vibration;
J. Commercial Fishing, Kelp Harvest, and Mariculture;
K. Socioeconomics;
L. Traffic; and
M. Systems Safety and Reliability.

Copies of the Draft EIS/EIR will also be available for review in the following public libraries:

County of Los Angeles, Public Library, Govt. Pub. Unit, 330 W. Temple, Los Angeles, CA 90012
State Library, Govt. Pub. Sec., Attn: Beverly Pettijohn, P.O. Box 2037, Sacramento, CA 95814
San Luis Obispo, City/County Library, 1354 Bishop Street, San Luis Obispo, CA 93406
Main Library, Vandenberg Air Force Base, CA 93437
County of Ventura Library, Documents Section, P.O. Box 771, Ventura, CA 93001
Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, CA 93101
University of California Library, Santa Barbara Campus, Main Library, Santa Barbara, CA 93106
U.S. DOI Natural Resource Library, 18th and "C" Streets NW., Washington, DC 20240

Joint Federal/State/County public hearings are scheduled from 6 p.m. to 9 p.m. on April 17, 1985, at the City Hall, Council Chambers, 100 Civic Center Plaza, Lompoc, California. The purpose of the hearings is to receive oral and written testimony regarding the Draft EIS/EIR. The hearing will provide the Minerals Management Service (MMS) with additional information to help evaluate the potential effects associated

with those aspects of the project subject to their approval.

Written comments on this EIS/EIR will be accepted at the Santa Barbara County address listed above until May 6, 1985. These comments will be addressed by the MMS, Santa Barbara County, and California State Lands Commission in the Final EIS/EIR. Agencies, interested groups, or individuals needing further information should contact Donna Cooksey Brewer at 213–688–4480.

After testimony and comments have been reviewed and analyzed, a final EIS/EIR will be prepared.

Dated: March 15, 1985.

William E. Grant,

Regional Director, Pacific OCS Region.

[FR Doc. 85–6591 Filed 3–19–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–209]

Certain Aluminum Frame Fabric Covered Luggage & Components Thereof; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Baltimore Luggage Co. and Nan Zong Leather Products Co, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on March 12, 1985.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: March 12, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–6681 Filed 3–19–85; 8:45 am]

BILLING CODE 7020–02–M

[332–209]

Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts To Adjust and Modernize

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the competitive conditions in the steel industry and the industry's efforts to adjust and modernize.

EFFECTIVE DATE: March 8, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Rapkins or Mr. Peter Avery, Minerals and Metals Division, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436 (telephone: 202–523–0438, 202–523–0342, respectively).

SUPPLEMENTARY INFORMATION:

Background and Scope of Investigation

The Commission instituted the investigation, No. 332–209, following receipt on February 12, 1985, of a request from the United States Trade Representative (USTR), at the direction of the President. In accordance with the request, the Commission will monitor competitive conditions in the steel industry and the industry's efforts to adjust and modernize, and prepare annual reports on those efforts during the 5 year period beginning October 1, 1984. In addition to collecting the information listed in the appendix, the Commission will compile the best information it can for the preceding 12-month period ending September 30 of each year on the following matters:

(1) The extent to which the major companies of the steel industry have, or will have committed their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of workers;

(2) Actions taken by the major companies to maintain their international competitiveness, including action to produce price-competitive and quality-competitive products, to control costs of production, including employment costs, and to improve productivity; and

(3) Whether each of the major companies committed, or will have committed, not less than one percent of net cash flow to the retraining of workers. If any major company did not commit at least one percent of its net cash flow to the retraining of workers, the Commission will report any unusual economic circumstances which contributed to the company's failure to do so.

For the purposes of this investigation, the term "steel industry" is defined as producers in the United States of steel products; "major company" is an enterprise whose raw steel production in the United States during 1983 exceeded 1,500,000 net tons; and "net cash flow" is annual net (after-tax) income plus depreciation, depletion allowances, amortization, and changes in reserves minus dividends and payments on short-term and long-term debts and liabilities.

In addition to reporting on the progress of the steel industry as a whole, reports will be prepared in such a manner that, to the extent possible, the progress of carbon steel producers in their efforts to adjust and modernize can be distinguished from that of producers of specialty steel.

The Commission will submit its initial annual report to the President and USTR by August 1, 1985. Subsequent reports will be submitted by August 1 of each successive year through 1989. A public

version of the report will be available 2 weeks later.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedures* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received at the earliest possible date, but no later than July 1, 1985 and by July 1 of each successive year through 1989. All submissions should be addressed to the Secretary at the Commissions's Office in Washington, D.C.

Issued: March 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Appendix

Annual data specified in section B below are requested to be reported to the maximum extent possible for each of the 21 product categories listed in section A below:

A. Product Categories

Sheet and Strip

1. Hot rolled carbon and certain alloy.[1]
2. Cold rolled carbon and certain alloy.[1]
3. Galvanized carbon and certain alloy.[1]
4. Other carbon and certain alloy.[1]
5. Stainless.

Plate

1. Carbon and certain alloy.[1]
2. Stainless.

Pipe and Tube

1. Oil country tubular goods.
2. Line pipe.
3. Other carbon and alloy pipes and tubes.
4. Stainless.

Bars

1. Hot finished carbon bar and certain alloy.[1]
2. Cold finished carbon bar and certain alloy.[1]
3. Reinforcing carbon bar and certain alloy.[1]

Structurals

1. Structural shapes (including fabricated structurals).

Rails and Related Railway Products

1. Rails and related railway products.

Wire Rods

1. Carbon and certain alloy wire rod.[1]

Wire and Wire Products

1. Carbon and certain alloy wire.[1]
2. Stainless wire.
3. Carbon and certain alloy [1] wire products (including wire rope and strand).

Semifinished

1. Semifinished (carbon and certain alloy [1]; and stainless and tool steel).

B. Data Requested

Domestic Producers

Production
Shipments
Net sales
Net profits
Orders
Inventories
Prices
Employment
Man-hours
Capital expenditures:
  For modern production techniques or facilities
  For older production techniques or facilities
  For pollution control or occupational safety and health
  Other
Capacity and net change in capacity
Research and development expenditures
Other actions to adjust and modernize
Investments in activities other than steel

Importers

Total imports
Prices
Orders
Inventories

[FR Doc. 85-6684 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

[1] Certain alloy refers to alloy steel other than stainless and alloy tool steel.

[Investigation No. 337-TA-199]

Certain Anodes for Cathodic Protection and Components Thereof; Decision Not To Review Initial Determination Granting Motion To Terminate Two Respondents; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) granting motion for the termination of two respondents; issuance of consent order.

SUMMARY: The Commission has determined not to review the ID of a Commission administrative law judge granting a motion for termination of the investigation as to two respondents and the entry of a consent order prohibiting those respondents from engaging in certain unfair acts. By virtue of the Commission's decision not to conduct a review, the ID has become the Commission's determination. The consent order requested by the parties has been isued.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-199 is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain anodes for the cathodic protection of metallic structures. The proceedings were instituted on the basis of a complaint filed by Duriron Co., Inc., alleging numerous unfair acts and practices by British and U.S. companies. (See 49 FR 30023 (July 25, 1984), as amended at 49 FR 45273 November 15, 1984).)

On January 31, 1985, complainant Duriron, the Commission investigative attorney, British respondent, Tecnometal (NE) Limited, and U.S. respondent Wilson Walson International, Inc. filed a joint motion requesting termination of the investigation with respect to Tecnometal and Wilson Walton and the entry of a consent order directed to those respondents (Motion No. 199-11). The motion explained that Tecnometal, and Wilson Walton had entered into memorandum, patent and trademark licensing, and consent order agreements with Duriron, which settled the parties' dispute. The motion was unopposed.

On February 1, 1985, the presiding administrative law judge issued an ID

granting the motion. Copies of the ID were served on other Federal agencies, in accordance with 19 CFR 211.21(b). The Commission also sought public comment on the proposed termination of Tecnometal and Wilson Walton. (See 49 FR 50317 (December 27, 1984) and 50 FR (2754) (January 18, 1985).) No agency or public comments were received. The parties did not petition for review of the ID, and the Commission determined that a review on the Commission's own motion was not warranted. The ID thus became the Commission's determination. (See 19 CFR 210.55 and 210.53(h), as amended at 49 FR 46123 (November 23, 1984).)

Termination of the investigation as to respondents Tecnometal and Wilson Walton furthers the public interest by conserving the resources of the Commission and the parties.

Public inspection

The ID, the consent order, the parties' agreements, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission 701 E Street NW., Washington, DC 20436, telephone 202-523-0471.

Issued: March 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6677 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

Request for Comments on the Form of the Conversion of Schedule B—Statistical Classification of Domestic and Foreign Commodities Exported From the United States Into the Nomenclature of the Harmonized System

AGENCY: International Trade Commission (ITC).

ACTION: Request for comments on the form of the conversion of Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*, into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System).

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald F. Kotwas, Assistant Division Chief, Foreign Trade Division, Bureau of the Census, Washinghton, DC 20233; telephone: (301) 763-5333.

SUMMARY: Pursuant to the authority under section 484(e) of the Tariff Act of 1930, the U.S. International Trade Commission, on behalf of the Committee for Statistical Annotation of Tariff Schedules, hereby gives notice of a request for comments on the form of the conversion of Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States*, into the nomenclature structure of the Harmonized System.

The export and import schedules will be identical through the first 6 digits of the code. However, differences of opinion have been expressed as to how the systems should relate beyond that level—in particular, the extent of identical product detail needed and the number of digits used to designate subheadings in the codes. In order to determine which from the export system—and to a lesser extent the import system—should take, the views of a broad spectrum of the business community (particularly those of exporters and data users) are requested on the subject, in general, and on the alternative proposal outlined in this notice, in particular.

Written submissions: Interested persons are invited to submit written statements concerning this matter. Written statemens should be received by the close of business on April 12, 1985. All written submissions, except for business informations, will be made available for inspection by interested persons. All submissions should be addressed to: Foreign Trade Division, Classification Systems Branch, Bureau of the Census, Washington, D.C. 20233.

SUPPLEMENTARY INFORMATION: Schedule B is the official commodity classification schedule used by shippers in reporting export shipments from the United States and by Census in compiling the official statistics on exports of merchandise from the United States. The current Schedule B was developed pursuant to section 484(e) of the Tariff Act of 1930, as amended by section 608(a) of the Trade Act of 1974. It is based on the organizational framework of the *Tariff Schedules of the United States Annotated (TSUSA)*, and contains approximately 5,800 7-digit classifications.

The U.S. Government is anticipating adoption of the Harmonized System schedules as the basis for its export and import tariff and statistical classification systems. The Harmonized System, developed under the auspices of the Customs Cooperation Council in Brussels, is a 6-digit system of headings coded with 4 digits divided into subheadings with 2 digit suffixes. The System contains approximately 5,000 classifications and it intented for multinational use as a basis for classifying goods for tariff, statistical, and transportation purposes. Under the Harmonized System Convention contracting parties are permitted to subdivide further the 6-digit codes to provide additional product detail for tariff, statistical, quota or other natural purposes.

Draft U.S. Import Schedule

In response to a request by the President, the ITC instituted an investigation in order to prepare a draft conversion of the *Tariff Schedules of the United States Annotated* into the nomenclature structure of the Harmonized System. The draft import schedule consists of 10-digit codes made up of the 6-digit Harmonized System code plus two additional digits for tariff classification and two final digits for statistical classification. In June 1983 the Commission submitted a draft conversion of the import schedule in the format of the Harmonized System to the President taking into consideration the written comments and oral testimony of the public and government agencies. The Office of the U.S. Trade Representative (USTR) released the June draft for public comment and held hearings in the fall of 1984. As a result of further comments and testimony, and a careful review by the Trade Policy Staff Committee (TPSC), a revised draft import schedule was released in August 1984.

In early 1985 the TPSC task force is expected to conduct a second review and revision of the proposed import schedule. At this point, the draft Harmonized System-based TSUSA contains approximately 12,000 product classes.

Draft U.S. Export Schedule

Pursuant to its reponsibilities under Title 13 United States Code and section 484(e) of the Tariff Act of 1930, Census developed a draft Harmonized System-based export classification system. The draft export codes contained 8 digits and consisted of the 6-digit Harmonized System code plus an additional 2 digits for statistical detail to satisfy United States needs. The proposed product detail beyond 6-digit level was not identical in all cases with the import schedule. The draft Schedule B contained approximately (7,300) product classes. The draft export schedule was circulated for comment in May 1984.

In preparing the draft export system, Census considered the following:

(1) The draft conversions of the Harmonized System-based import schedules and comments received by the ITC and USTR;

(2) The existing commodity detail of Schedule B;

(3) The commodity detail used in compiling data on domestic production.

The "One Book" Approach

Some interested parties are of the view that there should be a single system to be used for both exports and imports, whether at the 6-, 8-, or 10-digit level. Such a unified system would have to comprise the 10-digit system that has been deemed necessary to meet all of the import requirements; reflect all of the complex and detailed legal, tariff and statistical distinctions and requirements of imports; and incorporate such further export statistical needs as are necessary and, at the same time acceptable under the more restrictive requirements of a legal tariff system.

The principal advantages claimed for a single system are that its use would simplify and expedite the preparation and automation of documentation; would decrease the costs to both government and those who export and import; and would provide a greater range of comparable data for use in trade analysis and negotations and in marketing.

The principal disadvantages claimed are that it would more than double the detail needed for exports and thus increase costs and complexity for the many exporters who do not import and for the government; would impose significant additional reporting burdens owing to the frequent and numerous changes made to the import system; would result in decreased data accuracy because of the differences in the administrative procedures for collecting statistics under the two systems; and would produce data for many categories of products for which there is no demonstrated need and for which trade data would be small.

An Alternative Proposal

The alternative approach outlined below for Schedule B is submitted for public comment. The intention of the proposal is to (a) avoid the implementation of an overly complex system, particularly for exporters who do not also import, (b) achieve a high degree of useful statistical comparability, (c) provide a basis whereby exporters/importers would be able to avoid having to apply two separate systems to code their international transactions and (d) insure the accuracy of the information provided on documentation for statistical processing.

1. The Harmonized System based Schedule B and the Harmonized System based TSUSA would be available and maintained as separate publications and would be formatted with 10-digit statistical codes followed by a check digit.

2. Where there is no need to identify product detail for exports beyond the 6-digit level, the last four digits of the reporting code will be zeros.

3. Where product detail for exports beyond the 6-digit level is warranted, every reasonable effort will be made to adopt identical product detail and reporting codes for both systems.

4. In the event adoption of identical product detail and reporting codes is not practical, product detail for the two separate sets of subdivision will be maintained on a compatible and fully concordable basis.

5. Exporters/importers who wish to do so may report their export transactions on the basis of the TSUSA system.

6. In order to assure accuracy, import and export documentation would require the additional reporting of a preprinted check digit.

Issued: March 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6678 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

[332-208]

Flat Goods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning flat goods of manmade fibers, luggage of manmade fibers, and handbags of manmade fibers.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Carl Seastrum (202-724-1733), William Hanlon (202-724-1745), or Walter S. Trezevant (202-724-1719), General Manufactures Division, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background and Scope of Investigation

The Commission instituted investigation No. 332-208, Flatgoods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers, following receipt on February 21, 1985, of a request therefor from the United States Trade Representative at the direction of the President. The data collected will be used by the Committee for the Implementation of Textile Agreements in assessing the effect of imports of flatgoods of manmade fibers, luggage of manmade fibers, and handbags of manmade fibers on the U.S. domestic industry.

In accordance with the Trade Representative's request, the objective of the study will be to gather and present the following information with respect to flatgoods of manmade fibers, luggage of manmade fibers, and handbags of manmade fibers: U.S. production, imports, exports, capacity utilization, productivity, unfilled orders, shipments, inventories, employment, and prices. The Commission expects to complete its study by July 22, 1985.

Issued: March 13, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6680 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-189]

Certain Optical Waveguide Fibers; Decision To Review Initial Determination and Schedule for Filing of Written Submissions on Violation and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review a portion of the administrative law judge's initial determination that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984); to be codified at 19 CFR 210.53-210.56).

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq. Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: On January 22, 1985, the presiding administrative law judge issued an initial determination that there is no violation of section 337 in the

importation and sale of certain optical waveguide fibers. Complainant and respondents petitioned for review of various parts of the initial determination pursuant to § 210.54(a) of the Commission's rules.

After examining the petitions for review and the responses thereto, the Commission has concluded that there is one issue that warrants review. Specifically, the Commission will review the following question:

Whether the importation or sale of respondents' optical waveguide fiber has the tendency to substantially injure an "industry . . . in the United states.

The Commission's review will be limited to the above issue. No other issues will be considered.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the public interest.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are encouraged to file written submissions on the legal issue under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Written submissions on the issue under review and submissions on remedy, the public interest, and bonding must be filed not later than the close of business on March 22, 1985. Reply briefs on all issues must be filed not later than the close of business on March 29, 1985.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of April 18, 1984 (49 FR 15287).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: March 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6685 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-187 (Final)]

Potassium Chloride From the U.S.S.R.

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reasons of imports from the U.S.S.R. of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States, which the Department of Commerce has found are being or are likely to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 12, 1984, following a preliminary determination by the Department of Commerce that imports of potassium chloride from the U.S.S.R. were being sold in the United States at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the Institution of the Commission's investigation and of a public hearing 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 October 3, 1984 (49 FR 39115). On November 8, 1984, the Commission was notified by Commerce that it was extending the date for making its final LTFV determination with respect to imports from the U.S.S.R. Accordingly, the Commission revised its schedule for conducting the investigation (49 FR 46818). The hearing was held in Washington, DC, on February 5, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 11,

[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 did not participate in the investigation.

1985. The views of the Commission are contained in USITC Publication 1656 (March 1985), entitled "Potassium Chloride From the U.S.S.R.: Determination of the Commission in Investigation No. 731-TA-187 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: March 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6682 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-239 (Preliminary)]

Rock Salt From Canada

Determination

On the basis of the record [1] developed in the subject investigation, 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 from Canada of rock salt, provided for in items 420.94 and 420.96 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).[2]

Background

On January 28, 1985, counsel for the International Salt Co., filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that imports of rock salt from Canada are being sold in the United States at LTFV and that such imports are causing material injury, or threatening to cause material injury, to the domestic industry producing such merchandise. Accordingly, effective January 28, 1985, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 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 of such merchandise.

Notice of the institution of the Commission's investigation and of a public 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 February 6, 1985 (50 FR 5138). The conference was held in Washington, DC, on February 19, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigation to the Secretary of Commerce on March 14, 1985. A public version of the Commission's report, *Rock Salt from Canada* (investigation No. 731-TA-239 (Preliminary), USITC Publication 1658, 1985), contains the views of the Commission and information developed during the investigation.

Issued: March 14, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6679 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of rock salt, provided for in items 420.94 and 420.96 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

[332-201]

Conditions of Competition Affecting the U.S. Gulf and South Atlantic Shrimp Industry

AGENCY: International Trade Commission.

ACTION: Amendment of scope of investigation and scheduling of date for reporting results of investigation.

EFFECTIVE DATE: March 7, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Newman, Mr. Roger Corey, or Ms. Rose Steller, Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-724-0087, 202-724-1759, or 202-724-2862, respectively.

SUPPLEMENTARY INFORMATION:

Background

The USTR requested on October 5, 1984, that the Commission investigate the competitive conditions affecting the performance of the U.S. Gulf and South Atlantic shrimp industry and report on conditions during the past 5 years. Notice of that investigation was published in the **Federal Register** of November 21, 1984 (49 FR 45936). On February 15, 1985, the USTR requested that certain changes be made in the scope of the investigation and timing of its completion in views of difficulties which members of the industry are having in providing certain information. In accord with that request, the Commission has made the following changes in the scope and timing of the investigation:

1. Reduction of the period of time examined from the last 5 years to the last 3 years;

2. Deletion of all references to the development of surimi-based imitation-shrimp products in the United States and foreign countries;

3. Elimination of the requirement for reporting data by species and size count;

4. Transmittal of the Commission's report on the results of the investigation to the President as soon as possible, but no later than August 1, 1985, rather than by June 5, 1985, as originally requested.

Issued: March 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6683 Filed 3-19-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30632]

Baltimore and Ohio Railroad Co.; Trackage Rights; Exemption

On March 1, 1985, The Baltimore and Ohio Railroad Company (B&O) filed a notice of exemption for trackage rights over a line of track of Consolidated Rail Corporation (Conrail) between East Gravel (milepost 1.7) and Wooster, OH (milepost 136.4), a distance of 134.7 miles.

B&O presently operates over Conrail's line between Warwick and Wooster, OH, however, Conrail now proposes to abandon and salvage that portion of its line of railroad between Warwick and Orrville, OH which would prevent B&O from continuing to serve its shippers at Wooster unless over the substitute trackage rights route shown above. The proposed trackage rights will enable B&O to continue serving its shippers in Wooster, OH and at the same time enable Conrail to further rationalize its system. The trackage rights are restricted to bridge traffic only.

This joint project involves the relocation of a line or railroad which does not disrupt service to shippers and falls within the class of transactions indentified at 49 CFR 1180.2(d)(5) which the Commission has found to be exempt

under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed herein. See *D.T.&I.R.-Trackage Rights*, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreements shall be protected pursuant to *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978) as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 14, 1985.

By the Commission, Heber P. Hardy, Director of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-6737 Filed 3-19-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. John Barth, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures & Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the Eastern District of Washington in C–84–505–JLQ, *United States* v. *John Barth, Inc., et al.* The Complaint in this case alleges that the defendants, five hop merchants, conspired to restrain competition in the sale of hops, hop products, and hop services to United States brewers in violations of Section 1 of the Sherman Act (15 U.S.C. 1).

The proposed Final Judgment prohibits each of the defendants from entering into, furthering, or continuing any agreement, understanding, or concert of action with any other hop merchant which has the purpose or effect of fixing, maintaining, or establishing any price, price range, or other term or condition for the sale of hops, hop products, or hop services to any United States brewer. The proposed judgment also prohibits each of the defendants from communicating with any other hop merchant about current or future prices, offers, or counteroffers for the sale of hops, hop products, and hop services. To ensure compliance with the judgment, each defendant is required to serve those persons responsible for making its pricing decisions with a copy of the Final Judgment, and the Department of Justice is given access to the files and records of each defendant.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the U.S. District Court for the Eastern District of Washington

United States of America, Plaintiff, v. *John Barth, Inc.; John I. Haas, Inc.; Lupofresh, Inc.; S.S. Steiner, Inc.; and Von Horst Company—Yakima*, Defendants.

[C–84–505–JLQ]

STIPULATION

Filed: March 4, 1985.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court.

2. In the event Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

For the Plaintiff:

Mark Leddy,

Acting Assistant Attorney General

Joseph H. Widmar,

Attorneys, U.S. Department of Justice, Antitrust Division, Washington, D.C. 20530.

Gary R. Spratling,

Bernard H. Meyers,

James E. Figenshaw,

Joel S. Sanders,

Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Ave.—Box 36046, San Francisco, CA 94102, Telephone: (415) 556–6300.

For the Defendant—John Barth, Inc., 489 Fifth Avenue, New York, New York 10017, Telephone: (212) 986–5616.

For the Defendant—John I. Haas, Inc., 815 Connecticut Avenue, NW., Washington, D.C. 20006, Telephone: (202) 828–4700, (by) H. Laddie Montague, Jr., Berger & Montague, P.C., 1622 Locust Street, Philadelphia, Pennsylvania 19103, Telephone: (215) 875–3000.

For the Defendant—Lupofresh, Inc., 1860 Broadway, Room 815, New York, N.Y. 10023, Telephone: (212) 245–0580, (by) Donald H. Mullins, Schweppe, Krug & Tausend, P.S., 1600 Peoples National Bank Bldg., 1415 Fifth Avenue, Seattle, Washington 98171, Telephone: (206) 223–1600.

For the Defendant—S. S. Steiner, Inc., 655 Madison Avenue, New York, N.Y. 10021, Telephone: (212) 838–8900, (by) Peter D. Byrnes, Byrnes & Keller, 31st Floor, First Interstate Center, Seattle, Washington 98104, Telephone: (206) 622–2000.

For the Defendant—Von Horst Company—Yakima, 203 Division Street, P.O. Box 2519, Yakima, Washington 98907, Telephone: (509) 453–4792, (by) Ted A. Roy, Roy and Pell, 201 East "D" Street, P. O. Box 2566, Yakima, Washington 98907, Telephone: (509) 248–1919.

Final Judgment

Filed: March 4, 1985.

Plaintiff, the United States of America, having filed its Complaint herein on July 23, 1984, and plaintiff and defendants, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against or admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity;

(B) "Hops" means the agricultural product derived from the hop plant, the end use of which is almost exclusively for flavoring and aroma in beer, ale, and similar alcoholic beverages;

(C) "Hop products" means any product including, but not limited to, pelletes, extract, or powder, made from hops and used for or in the production of beer, ale, or similar alcoholic beverages;

(D) "Hop services" means the pelletization and extraction of hops and the storage of both hops and hop products;

(E) "Hop merchant," also known as hop dealer or handler, means any person who purchases hops and subsequently sells hops, hop products, or hop services to any person for utilization in the production of beer, ale, or similar alcoholic beverages; and

(F) "United States brewer" means any person located in the United States who is engaged in the production of beer, ale, or similar alcoholic beverages.

III

This Final Judgment applies to defendants, their successors and assigns, and to their respective subsidiaries, officers, directors, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, carrying out, initiating, maintaining, furthering, adopting, ratifying, or continuing any agreement, arrangement, understanding, combination, conspiracy, or concert of action with any other hop merchant which has the purpose or effect of fixing, maintaining, or establishing any price, price range, or other term or condition for the sale of hops, hop products, or hop services to any United States brewer;

(B) Communicating with any other hop merchant or group of hop merchants to exchange information or opinions concerning: (i) current or future prices for the sale of hops, hop products, or hop services to any United States brewer, (ii) current or future price offers or counteroffers received or made, or to be made, or under consideration, for the sale of hops, hop products, or hop services to any United States brewer, (iii) strategy, timing, or conduct of negotiations for the current or future sale of hops, hop products, or hop services to any United States brewer, or (iv) the quantity of hops or hop products, or the amount or extent of hop services, being offered or sold or to be offered or sold to any United States brewer; and

(C) Attending or participating in any meeting or discussion with any other hop merchant or group of hop merchants during which such defendant knows or has been advised that any hop merchant will discuss any subject listed in paragraph IV(A) or IV(B) hereof.

V

Except to the extent undertaken for the purpose of circumventing the prohibitions of Section IV hereof, nothing contained in this Final Judgement shall prohibit:

(A) Any necessary communication or negotiation between a hop merchant and any other person in connection with a contemplated or actual bona fide sale of hops, hop products, or hop services between such persons;

(B) Transactions or communications between a defendant and its parent or subsidiary, or any other person the ownership of whom is at least fifty (50) percent in common with the ownership of that defendant, or between the officers, directors, agents, or employees thereof;

(C) Joint activity requested by a United States brewer regarding sales to that brewer, or joint ventures for purposes of storing, processing, including pelletization and/or extraction, or shipping hops or hop products, and such transactions or communications as are necessary to the bona fide operation, management, or business thereof;

(D) Any negotiations or communications between a defendant and any other person concerning growing processes, the definition of grading and quality standards, on-site inspection, environmental matters, manufacturing processes, shipping, packaging, or any technical matters relating thereto;

(E) Communication of information concerning executed contracts for the sale of hops, hop products, or hop services by a defendant, but a defendant may communicate such information only to the extent it has already been publicly disseminated by other than that defendant through regularly published newspapers, trade journals, trade periodicals, or government publications;

(F) Participation in any meeting called by or held under the auspices of the United States Department of Agriculture, the Hops Administrative Committee, or the Hops Advisory Board at which participants discuss information as required or made necessary by the Hops Marketing Order, or participation in any meeting called by or held under the auspices of any state, state agency or federal agency, provided that such meetings do not include discussions prohibited in paragraph IV(B), (i), (ii), or (iii) hereof; or

(G) Provision by a defendant, in good faith, to the government of the United States or the government of any state or to any agency of either, of any information concerning the sale of hops, hop products, or hop services, provided that such information is not divulged to any other hop merchant by that defendant.

VI

For a period of ten years from the date of entry of this Final Judgment, each defendant is ordered to file annually with plaintiff an affidavit, prepared without direct or indirect communication with any other defendant, identifying, separately, each meeting that defendant attended with any other hop merchant or group of hop merchants during which any subject listed in paragraph IV(A) or IV(B) was discussed. Such affidavit shall contain a detailed account of all discussions at such meetings relating to the sale of hops, hop products, or hop services, the date of such meetings, and, to the extent known, the name, address, and company affiliation of each person in attendance. If the defendant attended no such meetings, the affidavit shall so state. Nothing in this Section VI shall require reports of discussions permitted by Section V hereof.

VII

Unless otherwise provided, each defendant is ordered and directed to:

(A) Within thirty (30) days after the date of entry of this Final Judgment, furnish a copy of this Final Judgment to its president or chief executive officer, and to each of its officers, directors, agents and employees then responsible, in whole or in part, for making pricing decisions for the sale of hops, hop products, or hop services to any United States brewer;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in paragraph VII(A) hereof, within thirty (30) days after such successor assumes responsibility for pricing decisions for the sale of hops, hop products, or hop services; and

(C) File with this Court and serve upon the plaintiff, within sixty (60) days from the date of entry of this Final

Judgment, a statement as to the fact and manner of its compliance with paragraphs VII (A), (B) and (C) hereof and the measures it has taken to assure compliance with paragraph VII(B) hereof.

VIII

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its business of selling hops, hop products, or hop services to U.S. brewers, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve on the plaintiff its consent to be bound by this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Upon receipt of a written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall, within sixty (60) days after receiving the request, subject to any legally recognized privilege:

(a) Provide to the Department of Justice in Washington, D.C., copies of any books, ledgers, accounts, correspondence, memoranda, and other documents or records in the possession or under the control of such defendant relating to any subjects covered by this Final Judgment;

(b) Submit written reports, under oath if required, with respect to its compliance with this Final Judgment as may, from time to time, be requested; and

(c) Permit any duly authorized representative of the Department of Justice, subject to the reasonable convenience of each defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any subject covered by this Final Judgment. This paragraph shall not require international travel by the person to be interviewed. Such request and notice may be made by delivery to the person appointed pursuant to Sections XI of this Final Judgment to receive service of process on behalf of each defendant.

(B) No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. The defendant from which such documents or information was obtained shall be given twenty (20) days written notice prior to the disclosure of such documents or information in any legal proceeding (other than a Grand Jury proceeding) to which such defendant is not a party, or pursuant to a request under the Freedom of Information Act.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such orders or directions as may be necesssary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of its provisions, for the enforcement of its terms, and for punishment for violations of its terms.

XI

Each defendant shall appoint a person located in the United States as its agent for service of process in connection with any proceedings relating to the construction, implementation, modification, enforcement, or punishment for any violation of this Final Judgment. Each defendant shall maintain such agent for the effective period of this Final Judgment and, within ten (10) days from the date of entry of this Final Judgment, shall file with this Court and serve on plaintiff a statement identifying such agent. In the event a successor agent is appointed, defendant shall immediately file with this Court and serve on plaintiff a statement identifying the successor agent.

XII

The Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

It is So Ordered.

Dated this ——— day of ————, 1985.

United States District Judge.

Gary R. Spratling,

Bernard H. Meyers,

Attorneys for the United States, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16216C, San Francisco, California 94102, Telephone: (415) 556-6300.

Competitive Impact Statement

Filed: March 4, 1985.

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.—Nature and Purpose of the Proceeding

On July 23, 1984, the United States filed a civil antitrust Complaint alleging that five hop merchants conspired to restrain competition in the sale of hops, hop products, and hop services to United States brewers in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleged that, beginning in 1976 or earlier, and continuing up to and including the date when the Complaint was filed, the defendants fixed prices and price ranges at which hops, hop products, and hop services were quoted and sold to United States brewers. The effects of the conspiracy were alleged to include the fixing, raising, and stabilizing of prices for hops, hop products, and hop services, and the denial to United States brewers of free and open competition in the purchase of these products and services. The Complaint asks the Court to find that the defendants have violated Section 1 of the Sherman Act and requests the Court to enjoin the continuance of the conspiracy.

II.—Practices Giving Rise to the Alleged Violation

The Government contends and was prepared to show at trial:

1. Hops are agricultural products used almost exclusively to impart a flavor and aroma to beer, ale, and similar beverages. In the United States, hops are grown commercially principally in the Yakima Valley region of the State of Washington and to a lesser extent in other parts of the Pacific Northwest and Northern California.

2. Hop products are hops that have been converted into pellets or extract, both of which are concentrated forms of hops used for the same purposes as hops. Hop services include the pelletization and extraction of hops and the storage of hops and hop products.

3. Each of the defendants is known in the industry as a hop merchant, dealer, or handler and is engaged in the business of purchasing hops from hop growers and selling hops, hop products, and hop services to brewers.

4. John Barth, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with its

principal place of business located in New York, New York.

5. John I. Haas, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Washington, D.C.

6. Lupofresh, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal place of business located in New York, New York.

7. S.S. Steiner, Inc. is a corporation organized and existing under the laws of the State of New York, with its principal place of business located in New York, New York.

8. Von Horst Company—Yakima is a limited partnership organized and existing under the laws of the State of Washington, with its principal place of business located in Yakima, Washington.

9. The defendants collectively account for almost all of the hops, hop products, and hop services sold by American hop dealers. In 1981, their combined annual gross revenues were approximately $200 million.

10. Beginning in 1976 or earlier, the defendants and co-conspirators agreed among themselves upon prices or price ranges to be utilized in many of their quotations; proposed and submitted bids at prices or within price ranges agreed upon among themselves; agreed among themselves upon the terms and conditions of sales to brewers; and sold to brewers hops, hop products, and hop services at prices or within price ranges agreed upon among themselves. Not all of the bids or sales by the defendants were involved in the conspiracy, nor was each defendant a party to every fixed bid or sale.

11. The conspiracy deprived United States brewers of the benefits of free and open competition in many of their purchases of hops, hop products, and hop services, and stabilized prices for hops, hop products, and hop services at non-competitive levels.

III.—Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section XIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that each of the defendants do not enter into any agreement or engage in any concert of action with any other hop merchant which has the purpose or effect of fixing, maintaining, or establishing any price, price range, or other term or condition for the sale of hops, hop products, or hop services to any United States brewer.

A. Prohibitions and Obligations

Section IV of the proposed Final Judgment enjoins the defendants from (1) entering into, furthering, or continuing any agreement, understanding, or concert of action with any other hop merchant which has the purpose or effect of fixing, maintaining, or establishing any price, price range, or other term or condition for the sale of hops, hop products, or hop services to any United States brewer; (2) communicating with any other hop merchant or group of hop merchants to exchange information concerning (a) current or future prices, offers, or counteroffers for the sale of hops, hop products, or hop services, (b) strategy, timing or the conduct of negotiations for current or future sales of hops, hop products, or hop services, or (c) the quantity of hops or hop products, or the amount or extent of hop services, sold to United States brewers; and (3) attending or participating in any meeting or discussion with any other hop merchant or group of hop merchants where the defendant knows or has been advised that any hop merchant will discuss any subject listed in (1) or (2) above.

Section V of the proposed Final Judgment recognizes the legality, and in some cases necessity, of certain kinds of communications, transactions, and other activities that are characteristic of the hop industry, that do not impede competition, that are in the public interest, and that do not detract from the Final Judgment's overall objective of restoring price competition in the sale of hops, hop products, and hop services to United States brewers. Accordingly, those communications, transactions, and activities are not prohibited by the Final Judgment, except to the extent they are undertaken for the purpose of circumventing the prohibitions of Section IV of the proposed Final Judgment described above.

Section VI of the proposed Final Judgment requires each defendant to file annually with the plaintiff for a period of ten years an affidavit that identifies each meeting that the defendant attended at which any subject listed in Section IV of the proposed Final Judgment was discussed.

Section VII of the proposed Final Judgment requires each defendant to serve a copy of the Final Judgment upon each of its current and future officers, directors, agents, and employees responsible for making pricing decisions for the sale of hops, hop products, or hop services to United States brewers.

B. Scope of the Proposed Final Judgment

Section XII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to the defendants, their successors and assigns, and to their respective subsidiaries, officers, directors, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment.

Section VIII of the proposed Final Judgment requires that each defendant shall require any purchaser of all, or substantially all, of its business, to agree to be bound by the provisions of the Final Judgment.

Section XI of the proposed Final Judgment requires each defendant to maintain for the effective period of the Final Judgment an agent for service of process in connection with any proceedings relating to the construction, modification, or enforcement of the Final Judgment.

C. Effect of the Proposed Judgment on Competition

The relief in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint and to ensure that United States brewers obtain the benefits of free and open competition in the purchase of hops, hop products, and hop services.

In order to determine compliance with the terms of the Final Judgment, Section IX provides that, upon sixty days' notice, the Department of Justice shall be given access to the records of each defendant relating to matters contained in the Final Judgment and permitted to interview any officers, employees, and agents of each defendant. Section IX also provides that, upon written request, the Department of Justice may require each defendant to submit written reports about any matters relating to the Final Judgment.

IV.—Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

V.—Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against any defendant.

VI.—Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification of the Final Judgment is necessary to uphold the public interest.

Section X of the Final Judgment provides that the Court will retain jurisdiction over the action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Final Judgment.

VII.—Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Respectfully submitted,

Gary R. Spratling,
Bernard H. Meyers,
James E. Figenshaw,
Attorneys, U.S. Department of Justice.

[FR Doc. 85-6661 Filed 3-19-85; 8:45 am]
BILLING CODE 4410-01-M

Office of Justice Programs

Crime Victim Assistance Grants

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Program Guideline.

SUMMARY: The Office of Justice Programs is publishing for public comment a guideline to implement a grant program providing Federal financial aid to States for support of crime victim assistance programs. The guideline describes program eligibility, application procedures, and requirements.

DATE: Comments are due on or before May 20, 1985.

ADDRESS: Send comments to Charles M. Hollis, Office for Victims of Crime, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Charles M. Hollis, (202) 724-5947. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On October 12, 1984, the President signed into law the Victims of Crime Act of 1984, Pub. L. 98-473, Title II, Chap. XIV. The Act establishes a Crime Victims Fund in the Treasury that can receive up to $100 million annually from four sources: criminal fines collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited appearance bonds, bail bonds, and collateral security posted by Federal criminal defendants; and literary profits due certain convicted Federal defendants. The Act authorizes deposits in the Fund through September 30, 1988.

The Act authorizes the Attorney General to make annual grants from the Fund. Fifty percent of the amount in the Fund is allocated for grants to State crime victim compensation programs. Funds permitting, compensation programs will receive 35% of their prior year's victim compensation awards. The remaining 50% of the Fund is allocated for grants to the States for crime victim assistance programs. The Attorney General may take up to 5% of the Fund from the portion allocated for victim assistance grants and expand it for the purpose of providing services to victims of Federal crimes.

This guideline is intended to implement the crime victim assistance grants. Proposed guidelines for the compensation grants were published in the **Federal Register** on March 13, 1985, (50 FR 10119).

Comment is specifically invited on the provisions of the guideline that implement the requirement of the Act that the chief executive of a state "certify that priority shall be given to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse." Section 1404(a)(2)(A). The Office of Justice Programs has attempted to reflect the broad Congressional themes underlying this provision specifically and the legislation as a whole by drafting guidelines that afford States maximum flexibility in making funding decisions while assuring that these programs receive significant assistance. The proposed guidelines permit States to choose one of three suggested options for meeting the priority requirement. OJP is interested in the views of the States, victim service providers, and other interested parties on the proposed approach as well as their recommendations on what other options may be appropriate ways of meeting the priority requirement.

The fundamental approach to the guidelines is to maximize State authority and to eliminate red tape. Requirements are kept to the minimum required by law or regulation necessary to maintain proper Federal stewardship for the funds and to report to the Congress on the results achieved.

This guideline does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because the guideline will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The collection of information requirements contained in section VI of the guideline have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on these requirements should be directed to OJP and the Office of Information and

Regulatory Affairs of OMB, attention: Desk Officer for Justice.

I. General Provisions

Eligible Applicants

All States, (including the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions), are eligible to apply for and receive grants. Section 1404(d)(1).

State Office

The chief executive of each participating State shall designate or establish a State office for the purpose of preparing an application for funds and administering the funds received including fund accounting and disbursement, monitoring, reporting, and audit.

II. Allocation of Funds

Fund Availability

Section 1404(1) of the Victims of Crime Act provides that subject to the availability of money in the Crime Victims Fund, grants for crime victim assistance may be made from any portion of the Fund not used for crime compensation grants or reserved by the Attorney General to provide services to victims of Federal crimes. Funds are available for expenditure in the fiscal year of award and in the next succeeding fiscal year.

Allocation to States

Each State, the District of Columbia and Puerto Rico, shall receive a base amount of $100,000. Each State, the District of Columbia, Puerto Rico, and all territories and possessions shall receive a portion of the available remaining monies based on its share of total population using the most recent data of the U.S. Bureau of the Census.

Allocation of Funds Within the States

Funds granted to the States are further subgranted by the State to eligible crime victim services programs. The State has sole discretion as to which programs providing services to victims receive funds, so long as the eligibility requirements set out in the Act and enumerated in this guideline, are met.

III. Program Requirements

(a) Under the Act, the chief executive of the State must certify that the State will give priority to eligible crime victim assistance programs providing assistance to victims of sexual assault, spousal abuse, or child abuse. Section 1404(a)(2)(A) To meet this requirement, the State must adopt one of the following practices with respect to the subgranting of crime victim assistance funds and must inform the Office of Justice Programs in its application of the practice adopted. Regardless of the option selected, the State must include in its annual performance report submitted to the Office of Justice Programs a statement describing how the State has assured that priority has been given to programs that serve victims of sexual assault, spousal abuse or child abuse. The three options are:

(1) Allocate at least ten percent of the total crime victim assistance funds granted to the State to each of the three priority categories, unless the State convincingly demonstrates that (A) a particular category is receiving significant amounts of financial assistance from the State or other fund sources and (B) a smaller amount of financial assistance or no assistance for that category is needed from the crime victim assistance grant funds. A program should be included in a priority category only if a principal mission of the program is to serve that particular category of priority victims.

(2) Develop criteria for allocating funds that assure that programs serving each priority category of victims receive a share of crime victim assistance funds commensurate with: The special needs of the crime victims in question; the level, quality, and availability of existing services to them; and the overall distribution of victim services funding from all sources within the State. In addition, describe in the annual performance report submitted to OJP the amount of funds awarded to priority programs; changes in the level, quality or availability of services; and any continuing unmet needs.

(3) Require every program receiving crime victim assistance to include and describe services to at least one category of priority victims unless and to the extent a program can convincingly demonstrate to the State that inclusion of such services would be impractical, or not necessary in the community in question.

(b) The chief executive of the State must certify that crime victim assistance grant funds will not be used to supplant State and local funds that would otherwise be available for crime victim assistance services. Section 1404(a)(2)(B). Grant funds are intended to enhance or expand services, not substitute for other sources of support.

(c) States must use crime victim assistance grant funds to support programs that provide services to crime victims. An eligible crime victim assistance program must meet the following requirements:

(1) Be operated by a public agency or non-profit organization, or a combination thereof, that provides services to crime victims.

(2) If it is an existing program, have a record of providing effective services to victims of crime and financial support from other sources. In determining whether or not a program has a "record of providing effective services," the State shall consider how long the program has been in operation, and whether or not an analysis of its activities shows that it achieves its intended results in a cost-effective manner. A program shall be considered to have "financial support from other sources" if at least one-fourth of its budget (including in-kind contributions) is from sources other than the State's crime victim assistance grant. Section 1404(b)(1)(B)(i).

(3) If it is a new program that has not yet demonstrated a record of effective services as required under (2) above, it may become eligible for funding if it demonstrates substantial financial support from other sources. "Substantial financial support" means that at least two-thirds of its budget (including in-kind contributions) is from sources other than the State's crime victim assistance grant. Section 1404(b)(1)(B)(ii).

(4) Utilize volunteers unless and to the extent the State chief executive determines compelling reasons exist to waive this requirement. A "compelling reason" may include statutory or contractual provisions that bar the use of volunteers for certain positions or a lack of persons volunteering after a sustained and aggressive recruitment effort has been conducted.

(5) Promote within the community served coordinated public and private efforts to aid crime victims. Section 1404(b)(1)(D). Because of the various kinds of services needed by victims of crime, services are usually provided by a variety of agencies. Therefore, it is essential that these services be coordinated to insure continuity of support to the victim. In determining whether or not a program meets this requirement, the State shall consider the extent to which the program demonstrates that it will coordinate its activities with other service providers in the community so that the best interests of the crime victim are served and interagency communication enhanced.

(6) Assist victims in seeking available crime victim compensation benefits. Section 1404(b)(1)(E). Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. An eligible program must demonstrate that it will coordinate its

activities with the State compensation program, where one exists.

(d) Crime victim assistance funds shall be used only to provide services to victims of crime. Section 1401(b)(2). "Services to victims of crime" means those activities that directly benefit individual crime victims. Activities unrelated or only tangentially related to the provision of direct services to victims are not eligible for support; examples of such ineligible activites include crime prevention efforts (other than those aimed at providing specific emergency help after a victimization incident), general public relations programs, advocacy for particular legislation or administrative reforms, general criminal justice agency improvements, or programs where victims are not the primary beneficiaries. "Services to victims" of crime includes the following:

(1) Crisis intervention services that meet urgent emotional or physical needs of crime victims. Crisis intervention services may include the operation of a 24-hour hotline that provides round-the-clock counseling or referral for crime victims.

(2) Emergency services that provide temporary shelter for crime victims who cannot safely remain in their current lodgings; offer measures such as repair of locks or boarding up of windows to prevent the immediate reburglarization of a home or an apartment; or provide crime victims petty cash for meeting immediate needs related to transportation, food, shelter, and other necessities.

(3) Support services that include follow-up counseling (for other than crisis reactions), reassurance and empathetic listening, and guidance for resolving practical problems created by the victimization experience; acting on the crime victim's behalf vis a vis other social service and criminal justice agencies; assistance in obtaining the swift return of property being kept by police as evidence; intervention, as appropriate, with landlords or employers; and referral to other sources of assistance, as needed.

(4) Court-related services that assist crime victims in participating in criminal justice proceedings including transportation to court, child care, and escort services.

(5) Payment of all reasonable costs for a forensic medical examination of a crime victim, to the extent that such costs are not otherwise reimbursed or paid. Funds may only be used to pay for those forensic medical examinations that conform to standards adopted by the State or meet the evidentiary requirements of the local prosecutor.

(e) As stated in section (d) above, crime victim assistance funds shall be used only to provide services to victims of crime. Section 1404(b)(2). A State may not use assistance funds to pay for costs it incurs in applying for, administering or auditing grant funds. The State must establish procedures to assure that funds subgranted to an eligible crime victim assistance program are expended only for providing services to victims of crime. These procedures shall require a program to demonstrate to the State that the assistance funds it requests are directly related to the delivery of services to crime victims. Any costs not directly related to service delivery for victims must not be charged to the subgrant. Programs that serve both victims and non-victims must reasonable prorate their costs to assure that crime victim funds are used only for victims services.

IV. Application Requirements

(a) Applications from the State for crime victim assistance grants must be submitted on Standard Form 424, Application for Federal Assistance, at a time specified by the Office of Justice Programs. The Office of Justice Programs will provide an "Application Kit" to the States that includes SF 424, a list of assurances, a table of fund allocations, and additional guidance on how to prepare and submit an application for crime victim assistance grants.

(b) Applications from the State need not specify the subgrants the State intends to make with the Federal crime victim assistance funds it receives. However, the application must contain the following certifications and assurances:

(1) A certification that funds will be awarded only to eligible crime victim assistance programs and will not be used to supplant State and local funds that would otherwise be available for crime victim assistance;

(2) An assurance that the State will provide for accounting, auditing, and monitoring procedures, and keep such records as prescribed in these guidelines so as to assure fiscal control, proper management, and efficient disbursement of Federal funds;

(3) A certification that the State shall give priority to programs aiding victims of sexual assault, spousal abuse, or child abuse and a statement of the practice the State will adopt in allocating funds to assure that this requirement is met;

(4) An assurance that the State will comply with all applicable non-discrimination requirements and that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex or handicap against the State, it will forward a copy of the finding to the Office of Justice Programs, Office of Civil Rights Compliance (OCRC);

(5) An assurance that the State will comply with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 11, Applicability of Office of Management and Budget Circulars.

(6) An assurance that the State will comply, and its subgrantees will comply, with the applicable provisions of the Victims of Crime Act; the guidelines for crime victim assistance grants; and the requirements of the "Financial and Administrative Guide for Grants," Guideline Manual M7100.1, Office of Justice Programs.

(c) Applications from the State must include the name of a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the Office of Civil Rights Compliance.

(d) Applications from the State must include the date of the last audit of the State agency and the anticipated date of the next audit.

V. Reporting Requirements

(a) *Performance Report.* The Victims of Crime Act requires that a report be submitted to the President and the Congress by December 31, 1987, on the effectiveness of the activities carried out under the Act. In order to help prepare this report, States receiving funds under the Act for victim assistance are required to submit an annual performance report to OJP on the effect the Federal funds had on service to crime victims in their State. OJP will prepare a form for the annual report for the purpose of soliciting the information required in the most convenient manner possible. The report will be due in OJP by December 1 each year beginning in 1986, and must report on activities for the prior Federal fiscal year (October 1–September 30). Each State shall include in its report the following information:

(1) The number of victims served by service category.

(2) The number of volunteers participating by service category.

(3) A short description of how the programs funded have coordinated their activities with other service providers in the community.

(4) A short description of how the programs funded have assisted crime victims in seeking available crime victim compensation benefits.

(5) A brief narrative assessment of victim satisfaction with service provided including illustrative case histories, as appropriate.

(6) A statement describing how the State has given priority to programs that serve victims of sexual assault, spousal abuse, or child abuse and indicating the amount of crime victim assistance funds subgranted to programs that serve a category of priority victim as a principal component or mission.

(b) *Financial Status Report.* A financial status report (H–1) is required for all grants. This report shall be submitted by the State within 45 days after the end date of the calendar quarter. Final reports are due 90 days after the end date of the grant. The failure to comply with the requirement may result in administrative action such as withholding payments, canceling Letter-of-Credit, or non-certification of new grant awards. In lieu of using the Standard H–1 Report, the State may satisfy the financial reporting requirements by completing an H–1 Turnaround Document. This document is a facsimile of the H–1 Financial Status Report created with information extracted from the grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number, and the previously submitted financial information (if any) is printed on the form by the computer.

(c) *Subgrant Award.* The State is required to notify the Office of Justice Programs immediately upon the award of a subgrant and provide the following information: The name of the subgrantee and the address; the title of the program; the amount of Federal crime victim assistance funds awarded; the amount of financial support from other sources; the subgrant period; classification of the program by service category; and a summary description of the subgrant objectives and services.

VI. Additional Requirements

(a) *General Financial Requirements.* Grants funded under the crime victim assistance program are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. These Circulars along with additional information and guidance are contained in "Financial and Administrative Guide for Grants," Guideline Manual 7100.1, available from the Office of Justice Programs. This Guideline Manual provides information on cost allowability, methods of payment, audit, accounting systems and financial records.

(b) *Audit.* Pursuant to Office of Management and Budget Circular A–102 "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments," all grantees and subgrantees must provide for an independent audit of their activities on a periodic basis. For additional information on audit requirements, applicants should refer to the "Financial and Administrative Guide for Grants," Guideline Manual 7100.1, Office of Justice Programs.

(c) *Non-Discrimination.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under the Act on the basis of race, color, religion, national origin, handicap, or sex. Section 1407(e). Applicants must also assure compliance with the following statutes and regulations:

(1) Title VI of the Civil Rights Act of 1964;

(2) Section 504 of the Rehabilitation Act of 1973, as amended;

(3) Title IX of the Education Amendments of 1972;

(4) The Age Discrimination Act of 1975; and,

(5) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, subparts C, D, E, and G.

(d) *Privacy.* No recipient of monies under the Victims of Crime Act shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such informaiton was obtained in accordance with this program and Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. Section 1407(d).

(e) *Suspension or Termination of Funding.* The Office of Justice Programs will, after reasonable notice and opportunity for a hearing on the record, terminate or suspend payment to a State that has failed to substantially comply with the Victims of Crime Act, these guidelines or the terms and conditions of its grant award. Hearing and appeal procedures are set forth in Department of Justice regulations 28 CFR Part 18.

Lois Haight Herrington,

Assistant Attorney General.

[FR Doc. 85–6621 Filed 3–19–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; AT&T Technologies, Inc, et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 4, 1985–March 8, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–WA–15, 638; AT&T Technologies, Inc., Baltimore Works, Baltimore, MD

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–15,606; Craddock-Terry Shoe Corp., Lynchburg, VA

In the following cases the investigation revealed that criterion (3)

has not been met for the reasons specified.

TA-W-15,626; Anamax Mining Co., Sahuarita, AR

Aggregate U.S. imports of refined copper did not increase as required for certification.

Affirmative Determinations

TA-W-15,614; Airco Carbon, Niagara Falls, NY

A certification was issued covering all workers separated on or after November 11, 1983.

TA-W-15,558; Euclid, Inc., Parts Warehouse, Division of Clark Michigan Co., Solon, OH

A certification was issued covering all workers separated on or after January 1, 1984 and before August 1, 1984.

TA-W-15,559; Euclid, Inc., Division of Clark Michigan Co., Euclid, OH

A certification was issued covering all workers separated on or after October 31, 1983.

TA-W-15,603; Allied Materials Corp., Allied Refinery, Stroud, OK

A certification was issued covering all workers separated on or after November 1, 1984 and before February 28, 1985.

TA-W-15,627; Encore Shoe Corp., Sanford, ME

A certification was issued covering all workers separated on or after October 1, 1984

TA-W-15,657; Tensor Lamp Corp., Brooklyn, NY

A certification was issued covering all workers separated on or after December 13, 1983 and before January 31, 1985.

I hereby certify that the aforementioned determinations were issued during the period March 4, 1985–March 8, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 12, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-6561 Filed 3-19-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; United Technologies Diesel Systems (IUE)

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 1, 1985.

The petitions filed in this case are available for inspection at the office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 11th day of March 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
United Technologies, Diesel Systems (IUE)	Springfield, MA	2/21/85	2/7/85	TA-W-15,772	Diesel fuel injection systems for trucks, farm machinery, etc.
Bendix Corp., Bendix Chassis & Brake Component (UAW)	South Bend, IN	2/28/85	2/26/85	TA-W-15,773	All component parts for rotary brakes.
Airco Carbon (IUE)	St. Marys, PA	2/11/85	2/5/85	TA-W-15,774	Graphite electrodes.
Brown Shoe Co. (USWA)	Piggott, AR	2/13/85	1/31/85	TA-W-15,775	Footwear and footwear parts (men's and childrens').
Calvin Klein Jeans (workers)	El Paso, TX	2/15/85	2/11/85	TA-W-15,776	Distribution of Calvin Klein jeans.
Copeland Corp. (IUE)	Fostoria OH	2/14/85	2/6/85	TA-W-15,777	Refrigeration units.
Edward Manufacturing Co. (ACTWU)	Augusta, ME	2/13/85	1/31/85	TA-W-15,778	Various textile fabrics.
General Electric Co. Mobile Communication Division (workers).	Lynchburg, VA	2/15/85	2/15/85	TA-W-15,779	Radios, Delta, Phoenix, Thick Film Hybrid, cellular.
Jenkins Bros. (USWA)	Bridgeport, CT	2/15/85	2/12/85	TA-W-15,780	Bronze valves.
Nannette Mfg. Co. (United Garment Wkrs)	Philadelphia, PA	2/11/85	2/5/85	TA-W-15,781	Childrens clothings.
Smith Corona (workers)	Cortland, New York	2/14/85	2/11/85	TA-W-15,782	Portable electronic typewriters.
Tommies, Inc. (ILGWU)	Staunton, VA	2/11/85	2/4/85	TA-W-15,783	Sleepwear, loungewear, sundresses, and dusters.
U.S. Steel Corp., Minnesota Oreg Operations (USWA)	Mt. Iron, Minn	2/11/85	2/4/85	TA-W-15,784	Raw materials, taconite pellets.
Riegel Textile Corp. (company)	Johnston, SC	3/8/85	2/25/85	TA-W-15,785	Diapers, terry towels, and terry washcloths.
Riegel Textile Corp. (company)	Whitmire, SC	3/8/85	2/25/85	TA-W-15,786	Kitchen terry towels.
Wallace International Silversmith's (USWA)	Wallingford, CT	2/21/85	2/15/85	TA-W-15,787	Stainless steel flatware and silver plate flatware.
World Tableware (USWA)	Wallingford, CT	2/21/85	2/15/85	TA-W-15,788	Hotel nickel holloware.

[FR Doc. 85-6562 Filed 3-19-85; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-3225 et al.]

Employee Benefit Plans; Proposed Exemptions; Home Savings & Loan Association, et al.

AGENCY: Office of Pensions and Welfare Benefits Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Home Savings & Loan Association (HS) Located in Anchorage, Alaska

[Application No. D-3225]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) as follows:

(I) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the past and proposed sale, exchange or transfer between HS and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by HS provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of HS who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and HS involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to HS with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with knowledge of HS, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. HS shall maintain for the duration of any Mortgage or Participation Interest which is sold to a plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: Any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

(II) Effective January 1, 1975, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) or the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

Summary of Facts and Representations

1. HS is a state chartered state savings and loan association owned by its stockholders and chartered by the State of Alaska. The range of HS's investments is limited by statute and consists largely of first mortgages on real estate. HS is regulated and audited by the Division of Banking of the Alaska Department of Commerce and Economic Development. HS is a member of the Federal Deposit Insurance Corporation and is subject to the regulations and audits for member banks. As of November 13, 1984 HS had assets totalling $31,000,000.

Since January 1, 1975, HS has sold Participation Interests and Mortgages to the Plans and other investors. All past sales of Participation Interests and Mortgages involving employee benefit plans were to the Alaska Electrical

Pension Fund (the Electrical Fund). Kennedy/Boston Associates, Inc. acted as investment manager for the Electrical Fund with respect to the acquisition of the investments. With respect to prospective transactions, sales between HS and the Plans include the above mentioned multiemployer pension fund and other interested plan investors. The Mortgages consist of multi-family residential or commercial permanent first mortgage loans originated by HS in the ordinary course of its business.

HS has also requested an exemption for transactions involving the past and proposed sale of single family residential first mortgage loans and participation interests therein by HS to the Plans. On May 18, 1982, the Department issued a class exemption involving residential mortgage financing arrangements (Prohibited Transaction Exemption (PTE) 82-87, 47 FR 21331). PTE 82-87 provides retroactive and prospective relief for the acquisition of residential mortgages and participation interests therein by employee benefit plans. Accordingly, no relief is provided by this exemption for the past or proposed sale of single family first mortgage loans or participation interests therein by HS to the Plans.

2. HS sells either the entire Mortgage or a Participation Interest therein. Typically, HS retains a 10% to 25% interest in a mortgage and sells Participation Interests in the balance of the amount outstanding. HS has no pre-existing relationships with any of the Plans to which it initially sells a Participation Interest or Mortgage. However, by virtue of HS servicing the Mortgages and Participation Interests it becomes a party in interest with respect to the Plans so that any subsequent sale of Mortgages or Participation Interests becomes a prohibited transaction under section 406(a) of the Act. The applicant represents that the transactions do not involve a conflict of interest or present a situation where advantage could be taken of the Plans or the trustees of the Plans because all decisions regarding investment in the Mortgages or Participation Interests are made by Plan fiduciaries who are independent of HS.[1]

3. HS initiates a Mortgage by reviewing a loan application from a potential mortgagor which includes a mortgage proposal consisting of a summary of facts relating to the loan, setting forth such matters as the term of the Mortgage, a description of the property securing the Mortgage and an appraisal of the property from a qualified appraiser. HS has imposed strict underwriting guidelines concerning the applicant's credit worthiness and the value of the collateral which must be satisfied before any decision is made to fund a Mortgage. Once assembled and verified a mortgage package is presented to the HS loan committee consisting of four members of its board of directors and the Chairman of HS who determine whether such Mortgage is a good risk and should be approved. Thereafter, the mortgage package is presented to investors, typically savings and loan institutions, pension plans, [2] or other financial institutions or federal agencies such as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

4. Generally, the average loan to value ratio does not exceed 75% for the Mortgages. In the event a greater loan to value ratio is warranted, commercial loan insurance would be required. The yield provided to the Plans by the Mortgages or Participation Interests has been and will continue to be the prevailing rate on comparable mortgages at the time of sale. The Mortgages or Participation Interests previously sold the Plans have had excellent payment histories with no Plan experiencing any known losses.

5. The Plans pay no investment management, investment advisory, sales commission or similar fee to HS with respect to the acquisition or sale of the Mortgages or Participation Interests. The applicant represents that the Plans have paid and will pay no more for the Mortgages or Participation Interests than have been or would be paid by an unrelated party in an arm's length transaction.

6. All transactions relating to the Mortgages or the Participation Interests are controlled by a servicing agreement (the Servicing Agreement) which HS represents is typical of bank servicing agreements.[3] The Servicing Agreement, which is submitted to Plan fiduciaries for their review prior to a Plan's purchase of a Mortgage or Participation Interest, requires HS to represent and warrant the following for each Mortgage or Participation Interest: (a) That the Mortgage is a valid first lien on fee simple absolute title to the mortgaged property; (b) that an American Land Title Association form of mortgagee's title insurance policy for the benefit of the Plan to the extent of the Plan's interest has been obtained; (c) that all relevant security agreements are valid, enforceable and perfected; (d) that HS has inspected the mortgaged property and all representations as to its value and quality are true; (e) that insurance policies providing coverage for fire and other hazards are maintained on the mortgaged property to the extent of the Plan's Participation Interest; and (f) that with respect to those Mortgages which are insured in part by commercial mortgage insurance, HS agrees to keep such insurance in effect until mutually terminated by the Plan and HS.

7. HS's duties under the Servicing Agreement include the following: (a) To collect all payments under the Mortgages or Participation Interests as they become due; (b) to deposit all funds received on behalf of each Mortgage or Participation Interest in a separate account on behalf of the relevant Plan and to apply all sums collected by it on account of each such Mortgage or Participation Interest for principal and interest, taxes, assessments, other public charges, repairs and maintenance and hazard, fire and mortgage insurance premiums; (c) to submit to the relevant Plan at least annually an audit of the balances in each Plan's account together with a certificate that all disbursements were made for proper purposes as well as to make available for inspection by the Plan any records maintained with respect to the Mortgage or Participation Interest; (d) to retain physical possession of the mortgage instruments and policies of insurance; and (e) upon default on a Mortgage to give prompt notice of default to the Plan, to foreclose

[1] While stating affirmatively that HS would not make investment decisions regarding the Mortgages or Participation Interests, the applicant was silent about who would make such decisions. (However, as indicated above, with respect to past sales to the Electrical Plan, Kennedy/Boston Associates, Inc. acted as investment manager for the plan.) In some situations it is possible that investment decisions will be made by trustees of the Plans. The Department notes that where the construction on the property which secures the Mortgage was by a contributing employer to the Plan and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the Mortgage, a separate prohibited transaction under section 406(b) of the Act may occur, which transaction would not be covered by this exemption. See also condition D of Part I of this exemption which has the effect of precluding relief under section 406(a) of the Act for certain transactions undertaken for the benefit of parties in interest.

[2] The Department notes that the application does not address the separate prohibited transactions under section 406(a)(1)(B) of the Act which would exist should any of the Mortgages originated by HS and subsequently purchased by the Plans involve loans to any party in interest with respect to the purchasing Plan. Accordingly, no relief is afforded by this proposed exemption for such transactions. However, HS will request from the date of the grant of this exemption potential purchasing plan in determining whether the borrower may be a party in interest.

[3] No exemption from section 406 of the Act is being granted for transactions pursuant to the Servicing Agreement beyond that which is provided by the statutory exemption pursuant to section 406(b)(2) of the Act.

upon the Property, or purchase the mortgaged property at a foreclosure or trustee's sale and, if necessary, manage, maintain or dispose of the property so acquired.[4] Under certain circumstances HS may be entitled to a fee of 5% of all rentals collected during its management of the mortgaged property. However, decisions regarding foreclosure options and determinations as to property management are made on behalf of the Plans by persone independent of HS.

8. HS's compensation for servicing the Mortgages and Participation Interests is agreed to at the time each Mortgage or Participation Interest is accepted by the Plan. The applicant represents that HS's servicing fee is determined on the same basis as are the fees charged investors other than the Plans who similarly invest in the Mortgages and Participation Interests. Also, HS's fee is consistent with servicing fees charged throughout the United States for similar services.

9. It is understood by the parties to the Servicing Agreement that the sale of a Mortgage or Participation Interest shall be without recourse. However, the Servicing Agreement states that in the event of a default on any Mortgage, HS may repurchase from the Plan a Mortgage or Participation Interest upon payment of the unpaid balance of the Mortgage or Participation Interest plus interest to the date of such repurchase.

10. HS represents that as a result of being a party in interest with respect to a Plan by virtue of servicing the Mortgages it would be prohibited from engaging in other commercial transactions with a Plan, such as the making of loans, which have nothing to do with the Mortgages or Participation Interests held by the Plan. The Department has considered HS's request for relief for such transaction and has decided that because the servicing relationship is established as a necessary result of the purchase of a Mortgage or Participation Interest by a Plan subsequent transactions between the parties otherwise prohibited by section 406(a) are not likely to present an inherent abuse potential. Accordingly, the Department has determined it would be appropriate to propose the relief from section 406(a) contained in Part II of the proposed exemption.

11. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The transactions were and will be between the Plans and HS (a federally regulated institution) and are transactions made in the regular course of HS's business; (b) all Plan decisions to invest in Mortgages and Participation Interests were and will be made by Plan fiduciaries who are independent of HS; (c) the Plans have paid and will pay no more for the Mortgages or Participation Interests than would be paid by an unrelated party in an arm's length transaction; (d) HS's servicing fee has been and will continue to be similar to fees charged other investors in the Mortgages of Participation Interests and have been and will be consistent with that charged in the open market; (e) the Mortgages were and will be all first liens on commercial and multi-family residential property; (f) the warranties and representations made by HS regarding the Mortgages and Participation Interests are standard for these type transactions; and (g) the Mortgages and Participation Interests which have been sold by HS to the Plans have had a long-term history of successful repayment.

Notice to Interested Persons

In addition to the notice requirement outlined in the general provisions of this notice, HS agrees to provide a copy of the notice of proposed exemption and any subsequent grant of such exemption to all employee benefit plans with whom HS may contract in the future to provide services as described herein. Such notification will be provided prior to HS entering into a contract to provide such services.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Peoples Bank and Trust (Peoples) Located in Anchorage, Alaska

[Application No. D-3509]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective March 19, 1976, to the commitment and subsequent acquisition by the Alaska Electrical Pension Fund (the Electrical Fund) of a participation interest (the NOWESCO Participation) in a commercial loan from Peoples provided that: (1) The sale or exchange of the NOWESCO Participation was expressly approved by a fiduciary independent of Peoples who had authority to manage or control the Electrical Fund assets committed to and invested in the NOWESCO Participation; (2) the terms of the NOWESCO Participation were no less favorable to the Electrical Fund than the terms generally available in arms length transactions between unrelated parties; (3) no investment management, advisory, underwriting fee or sales commission or similar compensation was paid to Peoples with regard to such sale or exchange; (4) the decision to invest in the NOWESCO Participation was not part of an arrangement under which a fiduciary of the Electrical Fund, acting with the knowledge of Peoples, caused the transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Electrical Fund; and (5) Peoples will maintain for the duration of the NOWESCO Participation records necessary to determine whether the conditions of this exemption have been met. The records referred to must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Electrical Fund, during normal business hours by: Any trustee, investment manager, employer of plan participants, employee organization whose employees are covered by such plan, participant or beneficiary of the Electrical Fund.

Effective Date: This proposed exemption, if granted, will be effective March 19, 1976.

Summary of Facts and Representations

1. Peoples has been a state chartered trust company doing business in the State of Alaska since 1971. In 1976 Peoples had total assets of approximately $36 million. Peoples has been regulated and audited by the Federal Deposit Insurance Corporation and the State of Alaska. On May 2, 1983, Peoples was purchased by the Rainier Bancorporation and now operates as a majority controlled subsidiary. Peoples was reorganized on December 30, 1983 as a national bank and has adopted a new name—Rainier Bank Alaska, N.A.

[4] The Department notes that the application does not address the separate prohibited transaction under section 406(a)(1)(A) of the Act which would exist where upon foreclosure the Plan acquires title to real property and such property or a portion thereof is leased to a party in interest with respect to a Plan. Moreover, if the party in interest under such lease is an employer of employees covered by the Plan, the acquisition of real property by the Plan would result in the acquisition of employer real property which may violate the provisions of section 406(a)(2) and 407 of the Act. Accordingly, no relief is afforded by this proposed exemption for such transactions.

The Electrical Fund is a defined benefit multi-employer pension plan having approximately 3,100 participants as of December 31, 1980. The fund is operated by a Taft-Hartley Board of Trustees which sets policy and makes decisions regarding the use of trust assets. The Electrical Fund has retained private investment management consultants to handle that portion of its assets involved in the subject transaction.

2. In December 1973 (prior to the passage of the Act) Peoples and the Electrical Fund participated in the funding of two loans. In both instances the Electrical Fund advanced 90 percent of the total monies loaned with Peoples providing the remaining 10 percent of the financing. After the loans were made, Peoples serviced the loans on behalf of the Electrical Fund. Accordingly, on January 1, 1975, Peoples became a party in interest service provider under section 3(14)(B) of the Act.

On or about September 10, 1975, Peoples authorized a construction loan to Northland Welding Supply Company, Inc. (NOWESCO) a newly formed corporation which was engaged in retailing and wholesaling welding equipment. The construction loan was initially funded by Peoples in the amount of $135,000 to run for a period from October 13, 1975 to April 13, 1976. The note was collateralized by a first deed of trust on a parcel of real estate. At about the same time as the construction loan was authorized, Peoples contacted Loomis & Kennedy, Inc. (now Kennedy/Boston Associates, Inc., referred to hereafter as Kennedy/Boston) an investment advisor and broker which advised several employee benefit plans in Alaska, including both the Electrical Fund and the Alaska Carpenters Retirement Plan (the Carpenters Plan). By letter dated December 10, 1975, Kennedy/Boston sent Peoples a commitment on behalf of the Carpenters Plan to participate in the funding of the permanent loan to NOWESCO (the NOWESCO Loan). The commitment provided that: (a) NOWESCO must accept the commitment of the Carpenters Plan; (b) NOWESCO must pay a commitment fee of 1.5% of the total loan on a pro-rata basis to the Carpenters Plan and to Peoples; (c) The loan would be secured by a first deed of trust in favor of Peoples and the Carpenters Plan; (d) The property must be protected against fire with an extended coverage endorsement including liability protection through an insurance company satisfactory to the Carpenters Plan. A copy of the policy must be deposited with Peoples and include a lender's loss payable endorsement in favor of Peoples and the Carpenters Plan; (e) Title insurance was to be issued in favor of Peoples and the Carpenters Plan; (f) The Carpenters Plan was to approve plans and specifications, including changes therein, and retained the right to inspect construction prior to final funding; (g) The Carpenters Plan has the right to request documents from NOWESCO pertaining to the loan and NOWESCO agreed to furnish documents to the Carpenters Plan; (h) NOWESCO was to reimburse the Carpenters Plan for attorneys' fees in processing the loan; and (i) The Carpenters Plan has the right to release individual guarantors of NOWESCO. It was agreed that the Carpenters Plan would fund 90 percent of the total amount to be borrowed by NOWESCO and that Peoples would fund the remaining 10 percent. In a subsequent exchange of correspondence, the amount of the NOWESCO Loan was increased from $175,000 to $260,000 based on higher than anticipated construction costs. On February 6, 1976, the NOWESCO Loan was closed by Peoples based on the commitment from the Carpenters Plan with respect to which Peoples had no existing party in interest relationship. By letter dated March 19, 1976, Kennedy/Boston informed Peoples that the participating lender was no longer the Carpenters Plan rather it would be the Electrical Fund. On May 17, 1976, the Electrical Fund issued a check for approximately $234,000 in exchange for a mortgage participation certificate in the amount of 90 percent of the NOWESCO Loan.[5] At the time the NOWESCO Participation was executed, its terms were at least as favorable as those of a similar transaction involving an unrelated third party.

Peoples believed that the NOWESCO Participation was to be funded by the Carpenters Plan, and had a binding commitment to that effect. Peoples was not a party in interest with respect to the Carpenters Plan. Peoples did not know until after the NOWESCO Loan was closed that the NOWESCO Participation was to be funded by the Electrical Fund. Because the change in the loan participant was beyond People's control, the violation of the prohibited transaction rules in dealing with the Electrical Fund as a co-participant was inadvertent.[6]

3. On the same day the NOWESCO Participation closed, Peoples was retained to service mortgages and participation interests under a master sales and participation agreement (the Agreement).[7] The Agreement is represented as being similiar in its terms to other standard agreements used in the banking industry.[8] Peoples represents that but for the servicing of the pre-Act participation acquisitions it had no existing relationship with the Electrical Fund. The acquisition of the NOWESCO Participation did not involve a conflict of interest or present a situation where advantage could be taken of the Electrical Fund because all decisions regarding the investment in the NOWESCO Participation were solely and affirmatively made by Kennedy/Boston who was independent of Peoples.[9]

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[5] The applicant acknowledges that the unilateral change in employee benefit plans involved in the participation transaction has created some confusion regarding how the NOWESCO Participation should be characterized (either there was a joint funding of the NOWESCO Loan by Peoples and an employee benefit plan or there was a purchase of a participation interest in such loan). The December 10, 1975 commitment letter appears to contemplate a joint funding between the Carpenters Plan and Peoples; however, the documentation submitted with the application suggests that Peoples funded the entire amount of the NOWESCO Loan on the closing date. Subsequently, the March 19, 1976 letter between Kennedy/Boston and Peoples notes the substitution of the Electrical Fund and states "In exchange for this participation certificate, (a representative of the Electrical Fund) will issue a check . . . to Peoples Bank & Trust." Because of the delayed acquisition of the NOWESCO Participation by the Electrical Fund, the Department is herein proposing to grant retroactive relief characterizing the transaction as a sale or exchange between the Electrical Fund and Peoples.

[6] The Department notes that the application does not address the separate prohibited transaction under 406(a)(1)(B) of the Act which would have existed had the NOWESCO Loan involved a loan to any party in interest with respect to the Electrical Fund. Accordingly, no relief is affored by this proposed exemption for such transaction.

[7] In a letter to Kennedy/Boston dated July 6, 1976, a representative of Peoples discussed the need for a servicing agreement for the NOWESCO Participation because the current servicing arrangement for such participation was with the Carpenters' Plan and was inapplicable. The application contains representations elaborating on the Agreement which now appears to be the controlling servicing document for the NOWESCO Participation.

[8] No exemption from section 406 of the Act is being granted for transactions pursuant to the Agreement beyond that which is provided by the statutory exemption pursuant to section 408(b)(2) and implementing regulations (29 CFR 2550.408b-2, 42 FR 32389, June 24, 1977).

[9] Kennedy/Boston is represented as having no ongoing relationship with Peoples, either as a service provider, contractor, supplier or otherwise. Peoples was a publicly traded company and Kennedy/Boston may have owned a deminimus number of shares in Peoples.

The agreement required Peoples to represent and warrant with respect to any mortgage or participation interest in a mortgage to be acquired by the Electrical Fund that: The note and mortgage would be legal, valid and binding obligations enforceable in accordance with their terms; the loan was not in default and Peoples had no knowledge of any state of facts which would entitle it to declare a default; the loan had been insured by an acceptable title insurance company in an amount equal to the full face amount of the loan; a hazard insurance policy was in place which was otherwise in compliance with the agreement between the parties; the loan was secured by a first deed of trust of real property; improvements to real estate had been inspected by Peoples who correctly represented their condition of the Electrical Fund; the report of a qualified appraiser had been filed with Peoples and such appraisal had been used in determining the loan to value ratio; and Peoples would agree to repurchase any mortgage or participation interest in a mortgage covered by the Agreement in the event there was a violation of any representation or warranty for the then unpaid principal plus accrued interest for that pro-rata portion of the mortgage owned by the Electrical Fund.

4. Peoples' duties under the Agreement provided for: The collection of all payment due under the terms of each mortgage as they become due; the retention of complete and accurate records of all payments received; the provision of monthly reports to the holders of outstanding participation certificates; the notification of any mortgage that was more than two months delinquent including an indication of what collection activities had been undertaken to cure the delinquency and any recommendations as to future courses of action; the deposit of funds received in a segregated or custodial trust account and recording the respective interests of each individual mortgagor in the account; the payment from the account to the proper parties when and if due of all insurance premimums, taxes, special assessments or ground rents and the forwarding to the respective participation holders of all remaining principal and interest sums collected and due to it under the mortgage participation interest, retaining only that portion agreed to as a servicing fee; and the scheduling of an annual audit of the trust account together with a certificate that all disbursements were made for proper purposes. With respect to future decisions regarding foreclosure of the NOWESCO Loan, Peoples will obtain consent of the Electrical Fund before selecting the appropriate remedy. This request for advice shall supercede any contrary language contained in the Agreement.

5. Peoples compensation for servicing mortgages or participation interests under the Agreement were to be agreed upon at the time each mortgage investment was made or commitment to fund such investment was issued. People's compensation under the Agreement was to be earned at the time periodic payments on each individual mortgage was paid by the mortgagor. The applicant represents that People's servicing fee was determined on the same basis as fees charged to unrelated third parties for similar investments.

6. On June 6, 1978, NOWESCO, by quit claim deed, transferred title to the real estate which collateralized the NOWESCO Loan to P.R. & S., Inc., an Alaska Corporation. On October 23, 1978, the principals of NOWESCO executed a personal general guarantee of the obligations of NOWESCO for the benefit of Peoples. Subsequently, on November 20, 1979, NOWESCO and P.R. & S., Inc. executed an assumption agreement involving the original 1976 deed of trust and deed of trust note. This assumption agreement was approved by Peoples who notified the Electrical Fund. Kennedy/Boston requested and obtained a statement from an officer of P.R. & S., Inc. that neither the corporation nor any of its principals was a party in interest with respect to the Electrical Fund.

7. Peoples represents that to the best of its knowledge the NOWESCO Participation is the only transaction with the Electrical Fund or any other employee benefit plan in which Peoples sold either mortgages or participation interests therein at a time in which a party in interest relationship existed with respect to such plan. Peoples does not seek prospective relief for similar transactions.

8. In summary, the applicant represents that the acquisition of the NOWESCO Participation by the Electrical Fund satisfied the statutory criteria of section 408(a) of the Act because: (a) The transaction was between the Electrical Fund and Peoples (a federally regulated institution) in the normal course of Peoples' business; (b) the decision to invest in the NOWESCO Participation was made by Kennedy/Boston, a plan fiduciary independent of and unrelated to Peoples; (c) the Electrical Fund paid no more for the NOWESCO Participation then would have been paid by an unrelated party in an arms length transaction; (d) Peoples' servicing fees have been and will continue to be similar to fees charged other investors and are consistent with those charged in the open market; (e) the NOWESCO Loan was collateralized by a first lien on commercial property; (f) the warranties and representations made by Peoples regarding the NOWESCO Loan were standard for this type of transaction at the time it occurred; and (g) the pass through repayment history on the NOWESCO Participation, including that period subsequent to the assumption, has been without incident.

Notice to Interested Parties

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department within 30 days of the date of publication in the **Federal Register.** Such notice shall include a copy of a notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment. Comments are due within 60 days from the date of publication in the **Federal Register.**

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its

participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-6556 Filed 3-19-85; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-2470 and L-2524]

Withdrawal of the Notice of Proposed Exemption Involving the Hudson Valley District Council of Carpenters Annuity Fund (the Annuity Plan) and Hudson Valley District Council of Carpenters Training Fund (Welfare Plan; Collectively the Plans), Located in Oneonta, NY

In the **Federal Register** dated July 6, 1981 (46 FR 34867), the Department of Labor (the Department) published a notice of pendency (the Notice) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The Notice concerned an application filed on behalf of the Plans and involved the proposed transfer of unclaimed account balances in the terminated Annuity Plan to the Welfare Plan subject to an agreement by the Welfare Plan to idemnify the Annuity Plan should subsequent claims be made.

Subsequent to the publication of the Notice the Department has been informed by the Internal Revenue Service that if the transaction were to occur the Annuity Plan could suffer adverse tax consequences which would impact both on such plan and its participants. Accordingly, the Department has reconsidered its earlier action and is hereby withdrawing its previously published notice of proposed exemption.

Signed at Washington, D.C. this 13th day of March 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-6559 Filed 3-19-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-58; Exemption Application No. D-4880 et al.]

Employee Benefit Plans; Grant of Individual Exemptions; Northwestern Ohio Building, et al.

AGENCY: Office Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a pubic hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Northwestern Ohio Building and Construction Trades and Employer Construction Industry Investment Plan (the Program), Located in Toledo, Ohio

[Prohibited Transaction Exemption 85-58; Exemption Application Nos. D-4880 and D-4881]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48818.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Retirement Pension of J.P. Stevens & Co., Inc. and Subsidaries; Hourly Employees' Pension Plan of J.P. Stevens & Co., Inc.; and Foote & Davis, Inc. Retirement Plan (Collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 85–59; Exemption Application Nos. D–5276, D–5277; and D–5278]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase by the Plans of an interest in certain real property from the National Life Insurance Company (National) in connection with the formation of a partnership between the Plans and National, provided that the transaction is on terms at least as favorable to the Plans as the Plans could obtain in arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 15, 1985 at 50 FR 2103.

Scope of exemption: This exemption covers only the purchase transaction specifically described in the Notice of Proposed Exemption published on January 15, 1985 at 50 FR 2103. The applicants are proceeding with the formation and operation of the partnership without an exemption from section 406(b) of the Act. The applicants are assuming the responsibility of any violation of section 406(b) resulting from any transactions with respect to the subject partnership.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Ellerbe, Inc. and Affiliated Companies Profit Sharing Plan (the Plan) Located in Saint Paul, Minnesota

[Prohibited Transaction Exemption 85–60; Exemption Application No. D–5572]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to (1) the ground lease (the Lease) of certain unimproved real property (the Property) by the Plan to Ellerbe, Inc. (the Employer), a party in interest with respect to the Plan; and (2) the possible cash sale of the Property by the Plan to the Employer pursuant to a purchase option in the Lease, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 15, 1985, at 50 FR 2107.

Effective Date: This exemption is effective November 20, 1984.

For further information contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–6557 Filed 3–19–85; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4632]

Employee Benefit Plans, Public Hearing on the Application by Texas International Airlines, Inc.; Employee Retirement Trust (the Plan), Located in Houston, TX, Exemption

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of hearing.

SUMMARY: This document contains a notice of public hearing with respect to an application filed on behalf of the Plan. The application is for an exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the International Revenue Code of 1954 (the Code). The public hearing will allow persons who would be affected by the proposed exemption to present oral comments to the Department of Labor (the Department).

DATES: The hearing will be held on Wednesday, April 24, 1985, at 10:00 a.m. Persons who wish to present oral comments at the hearing shall submit a statement to that effect, which must be received by the Department on or before April 12, 1985.

ADDRESS: The hearing will be held in Room C–2318 of the Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210.

Statements and any written comments on the proposed exemption should be sent to: Office of Regulations and Interpretations, Office of Pension Welfare Benefit Programs, Room C–4526, 200 Constitution Avenue NW., Washington, D.C. 20210. Attention: Hearing for Application D–4632. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. David Lurie of the Department, (202) 523–8884. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held before the Department with respect to a proposed exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

The proposed exemption, if granted, would permit, effective July 1, 1984, the leasing beyond June 30, 1984 of certain real property (the Property) by the Plan to Texas International Airlines, Inc. (Texas International) the sponsor of the Plan, provided that the terms and conditions of such leasing were and continue to be at least as favorable to the Plan as those which the Plan could have received in a similar transaction with an unrelated party.

A Notice of Pendency of the proposed exemption was published in the **Federal Register** on Tuesday, April 24, 1984 (49 FR 17611). By means of the Notice of Pendency, interested persons were invited to submit written comments and requests for a public hearing with respect to the proposed exemption.

Based on the eight comments and fourteen requests for a public hearing received by the Department, the Department pursuant to the provisions of section 408(a) of the Act, has determined that a public hearing regarding the proposed exemption will be held on Wednesday, April 24, 1985 beginning at 10:00 a.m. in Room C–2318 of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

The issues to be addressed at the hearing are whether the proposed exemption, if granted, would be:

(1) Administratively feasible,

(2) In the interests of the Plan and of its participants and beneficiaries, and

(3) Protective of the rights of participants and beneficiaries of the Plan.

Any person who desires to present oral comments at the hearing and who wishes to be assured of being heard, shall submit a statement to that effect, indicating the amount of time he wishes to devote to his oral comments. Such statement and any written comments that such person wishes to be considered in conjunction with his presentation should be submitted to the address specified in **"ADDRESS"** above, within the time period set forth in **"DATES"** above.

An agenda will be prepared by the Department, containing the order of presentation of oral comments. Copies of the agenda will be available at the hearing. Information concerning contents of the agenda may be obtained on or after April 17, 1985 by telephoning the person whose name and number is shown above.

Ordinarily, ten minutes will be allowed each person for making an oral presentation. In addition, persons presenting such oral comments should be prepared to answer questions relating to the proposed exemption. At the conclusion of the presentation of comments by persons listed on the agenda, other comments will be received to the extent time permits. The public hearing will be transcribed.

Notice to Interested Persons

Texas International has agreed that within ten days after the notice of hearing is published in the **Federal Register**, it will give notice to all Plan participants and beneficiaries by mail, personal delivery, or posting such notices at locations where participants work which are customarily used for providing information to employees. The notice will include a copy of the notice of hearing as it appears in the **Federal Register.**

Signed at Washington, D.C. this 14th day of March 1985.

Elliot I. Daniel,

Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–6558 Filed 3–19–85; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Change in Hours of Board Library

AGENCY: Merit Systems Protection Board.

ACTION: Notice that the Board is changing the hours its library is open to the public.

SUMMARY: The Board announces that its library will be open to the public between 1 P.M. and 5 P.M., rather than 8:30 A.M. and 5 P.M., Monday through Friday.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, Merit Systems Protection Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: Due to reduction in staffing, the Board finds it necessary to change the hours the library will be open to the public. Response to telephone queries from the public will be limited to the new hours, as well.

Dated March 15, 1985.

For the Board.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 85–6648 Filed 3–19–85; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Rochester Gas and Electric Corporation (the licensee), for the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

Environmental Assessment

Identification of Proposed Action

The exemptions would relax the requirement for a complete area-wide fixed fire suppression system in the Auxiliary Building, Control Complex, Control Building, Screen House Building, Intermediate Building (North Section), and Diesel Generator Vault. The exemptions would also allow for the absence of 3-hour fire-rated walls between the cable tunnel and adjoining fire areas, and the absence of a 3-hour fire-rated barrier between redundant shutdown divisions in the Emergency Diesel Generator 1B Vault. In addition, the exemptions would allow for the absence of a continuous fire-rated barrier at the common boundary between adjacent fire areas at the Refueling Water Storage Tank, unprotected structural steel in Battery Rooms 1A and 1B, and the lack of 20 feet of separation, free intervening combustible materials, between redundant shutdown divisions in the Intermediate Building, North Section.

The exemptions are responsive to the licensee's application for exemptions dated October 4, 1984, as supplemented by a letter dated January 16, 1985.

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at its plant for these items are the most practical method for

meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is equivalent to that required by Appendix R for other areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impacts of the integrity of safety systems and would result in the licensee being in violation of the Commission's regulations.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement for the R.E. Ginna Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and 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 exemptions. Based upon the foregoing 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 application for the exemption dated October 4, 1984, and the supplement dated January 16, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Local Public Document Room at the Rochester Public Library, 155 South Avenue, Rochester, New York 14604.

Dated at Bethesda, Maryland, this 12th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-6633 Filed 3-19-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14415; 812-5867]

Merrill Lynch Corporate Dividend Fund, Inc., et al.; Application for an Order Exempting Applicants

March 13, 1985.

Notice is hereby given that Merrill Lynch Corporate Dividend Fund, Inc. ("Corporate Dividend Fund"), Merrill Lynch Corporate Bond Fund, Inc. ("Corporate Bond Fund"), Merrill Lynch Municipal Bond Fund, Inc. ("Municipal Bond Fund"), Merrill Lynch Federal Securities Trust ("Federal Securities Trust"), Merrill Lynch Asset Management, Inc. ("MLAM"), Fund Asset Management, Inc. ("FAMI") and any other registered investment companies now advised, or which in the future may be advised, by MLAM or FAMI, and which may engage in the trading activities described herein ("Funds") (collectively, "Applicants"), 633 Third Avenue, New York, New York 10017, filed an application on June 6, 1984, and amendments thereto on December 21, 1984, and March 1, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 17(f) and 18(f)(1) of the Act to the extent necessary to permit Applicants to trade interest rate futures contracts, stock index futures contracts, municipal bond index futures contracts and related options. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the relevant provisions.

According to the application, the Corporate Dividend Fund, the Corporate Bond Fund, the Municipal Bond Fund and the Federal Securities Trust are all registered open-end, diversified, management investment companies; with the exception of the Federal Securities Trust, a Massachusetts business trust, the above-named Funds are all organized as Maryland corporations. The application indicates that the Corporate Dividend Fund's investment objective is to provide corporate investors with a high level of income from dividends, interest and net short-term capital gains through investments primarily in dividend-paying common stocks and preferred, convertible preferred and adjustable rate preferred stocks; in addition, the Corporate Dividend Fund may invest up to 25% of its assets in money market securities. Applicants state that the Corporate Dividend Fund, which is advised by MLAM, may hedge all or a portion of those investments through the use of stock options, stock index options, stock index futures contracts, interest rate futures contracts, options on stock index futures contracts and options on interest rate futures contracts.

Applicants state that the Corporate Bond Fund's investment objective is to provide shareholders with as high a level of current income as is consistent with the investment policies of its three separate portfolios and with prudent investment management; the portfolios of the Corporate Bond Fund invest in fixed-income securities, such as corporate bonds and notes, convertible securities and preferred stocks, and employ slightly different investment policies with respect thereto. Applicants further state that the Corporate Bond Fund, which is advised by FAMI, received shareholder approval, on February 22, 1985, to change its fundamental policies to permit the hedging of all or a portion of its investments through transactions in interest rate futures contracts and related options.

The application states that the Federal Securities Trust's investment objective is to seek a high current return through investments in United States government and government agency securities, including Government National Mortgage Association mortgage-backed certificates and other mortgage-backed government securities; the portfolio securities in which the Federal Securities Trust may invest are

marketable securites issued or guaranteed by the United States government, by its various agencies, and by various instrumentalities which have been established or sponsored by the United States government ("U.S. Government Securities"). Applicants state that the Federal Securities Trust, which is advised by FAMI, will seek to enhance its return through the use of options on its portfolio securities and to hedge its portfolio securities through the use of these options, interest rate futures and options on interest rate futures.

The application also indicates that the Municipal Bond Fund's investment objective is to provide shareholders with as high a level of income exempt from Federal income taxes as is consistent with the investment policies of its three separate portfolios and with prudent investment management; the Municipal Bond Fund invests in a diversified portfolio of obligations issued by or on behalf of states, territories and possessions of the United States and the District of Columbia and their political subdivisions, agencies and instrumentalities, the interest from which is exempt from federal income tax. Applicants represent that the Municipal Bond Fund, which is advised by FAMI, has obtained shareholder approval, at an annual meeting of shareholders held on December 18, 1984, of amendments to its fundamental policies which permit the High Yield Portfolio and the Limited Maturity Portfolio to hedge all or a portion of their investments through transactions in furtures contracts on an index of municipal securities.

Applicants state that the Corporate Dividual Fund may, depending on certain circumstances, sell or purchase stock index futures; moreover, it may purchase and sell options on stock index futures contracts in connection with or as a substitute for transactions in stock index futures. Applicants further state that the Corporate Dividend Fund may sell futures contracts on U.S. Government securities and domestic bank certificates of deposit, or write call options or purchase put options on such futures contracts, in order to hedge portfolio securities, primarily preferred and convertible preferred stocks, whose price may be sensitive to changing interest rates.

According to the application, the Corporate Bond Fund will engage in the purchase and sale of futures contracts on U.S. Government securities and put and call options on such futures contracts. The application indicates that the Municipal Bond Fund will engage only in the purchase and sale of futures contracts on an index of municipal securities, subject to approval of such instruments for trading by the Commodity Futures Trading Commission ("CFTC").

Applicants state that the Federal Securities Trust may purchase and sell interest rate futures contracts as a hedge against adverse changes in interest rates; it may also purchase and write call and put options on interest rate futures contracts in connection with its hedging strategies and enter into closing transactions with respect to such options to terminate an existing position. The application state that each of the other Funds presently advised by MLAM or FAMI, or which may in the future be advised by MLAM or FAMI, will engage in hedging strategies substantially identical to one or more those described above, in the event that such Funds determine to hedge their portfolios through the use of futures contracts and options thereon.

According to the application, the Corporate Dividend Fund, the Corporate Bond Fund, the Federal Securities Trust, and the Municipal Bond Fund, have received interpretive letters from the staff of the CFTC to the effect that that they will not be deemed to be commodity pools, as defined under the Commodity Exchange Act ("CFA"), if they engage in the trading of futures contracts and related options as proposed. In connection with their request for interpretive letters, those Funds have represented that all of their transactions in futures contracts and related options will be for hedging, and not for speculative purposes, within the meaning of the CEA and regulations of the CFTC. Applicants represent that each of the remaining Funds, advised by MLAM or FAMI, in order to assure that the similarly will not be deemed to be commodity pools if the engage in futures trading activities, expect to adhere, on a portfolio basis for those Funds trading through separate portfolios, to the same types of restrictions described in the application in connection with such activities, and to such more restrictive CFTC regulations as may be imposed with respect thereto.

Applicants state that futures contracts are traded only on commodity exchanges, known as "contract markets", approved for such trading by the commission merchant ("FCM") which is a member of the relevant contract market. Applicants future state that a long or short futures position is established not by payment of the purchase price but through payment to the FCM of a percentage of the face value of the contract; this "initial margin" represents a "good faith" deposit assuring the performance of both parties to the contract and typically equals between 5% and 15% of the value of the futures contract purchased or sold. Both the purchaser and seller of the futures contract are required to deposit initial margin at the time the contract is entered into and, if the market moves adversely to their positions, to make "variation" or "maintenance" margin payments in order to restore the equity in the account to a certain level; conversely, if the market moves in a direction favorable to the trader's position, variation margin payments will be due to the trader. The application indicates that the required amount of variation margin payments, established by "marking to the market", is determined daily, and additional margin is required, or excess margin is released, as the value of the underlying contract fluctuates.

The application indicates that initial margin payments in connection with a Fund's transactions in futures contracts and related options will be made into special segregated accounts with the Fund's custodian, in the name and for the benefit of the Fund's FCMs. The application also states that subsequent margin payments due to an FCM by a Fund, if any, will be made directly to such FCM by the Fund. Applicants represent that amounts due to a Fund from any FCM with which that Fund maintains an account will be retained by such FCM, until the total amount due reaches $50,000, at which time the Fund will demand that excess variation margin be paid over to the Fund. Applicants further represent that, in no event, will the total amount due from all FCMs with which that Fund maintains accounts exceed ⅛ of one percent of the Fund's net assets. Applicants state that this arrangement, including the $50,000 and percentage of net assets variation margin limits, will be established with each FCM of each Fund, and will be adhered to on a portfolio basis for those funds trading through separate portfolios.

Applicants state that the Funds' entering into futures contracts and related options could be deemed prohibited by section 18(f) of the Act. Applicants further state that, to the extent that excess variation margin due to a Fund in connection with the trading of futures contracts or related options is held by the FCM in accordance with the rules of various contract markets and clearing houses, and to the extent that initial margin deposited in connection with their futures trading activities will be held in segregated custodial accounts

in the name of the Funds' FCMs, the Funds may not be in compliance with section 17(f) of the Act. For this reason, Applicants request an order, pursuant to section 6(c) of the Act, exempting them from sections 17(f) and 18(f)(1) of the Act.

Applicants state that they will engage in commodity futures and options trading solely for hedging purposes, and not for speculation, so that the purpose and intent of section 18(f)(1) will be satisfied. In this connection, Applicants have made the following undertakings: (1) The Fund will trade only in stock index futures contracts, municipal bond index futures contracts, interest rate futures contracts, and related options and not in other types of commodities, futures contracts or options thereon; (2) the Funds will only engage in the trading of such instruments in order to hedge against changes in market conditions which could adversely affect the value of their portfolio securities; (3) the amount of initial margin deposits on a Fund's futures positions, and premiums and initial margin deposits on its options positions, will not exceed 5% of its total net assets (on a portfolio basis for those of the Funds trading through separate portfolios); and (4) an amount of cash or cash equivalents equal to the market value of all long futures positions or written put options established by a Fund will be deposited in a segregated account with its custodian, such that the trading of these instruments by the Fund will be unleveraged.

In support of their requested relief from section 17(f) of the Act, Applicants state that initial margin in connection with their trading of futures contracts and related options will be maintained in a segregated account with their respective custodian banks, subject to immediate disposition by the Funds' FCMs, upon certain representations described below. Applicants represent that each custodial agreement entered into by one of the Funds will provide that (1) the custodian will take instructions with respect to disposition of assets in that account only from the FCM for that Fund and (2) in directing any disposition of assets, the FCM must state that the Fund is in default, that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of its agreement with the Fund.

Applicants state that each Fund will enter into an agreement with each FCM which would provide (1) that Fund assets that would otherwise be held by the FCM will be in the possession of the custodian until released or sold or otherwise disposed of in accordance with or under the terms of the agreement, (2) that those assets will not otherwise be pledged or encumbered by the FCM, (3) that when requested by the Fund, the FCM will cause the custodian to release to the Fund's general custodial account any assets to which the Fund is entitled under the terms of such agreement, and (4) that assets in the segregated account will otherwise be used only to satisfy the Fund's obligations to the FCM under the terms of that agreement. Applicants further state that the Fund will promptly cause to be transferred to the general custodial account any amounts no longer required as initial margin to support its futures contracts. Applicants represent that each of the Funds will disclose in its prospectus the risk of loss of margin deposits due to the bankruptcy of an FCM, although the foregoing arrangements are designed to reduce this risk.

Applicants state that any variation margin payable to a Fund by an FCM will be reflected as net gains, will immediately be shown as increased equity in the Fund's account with that FCM and will immediately be credited to the Fund's net asset value. Applicants represent that each Fund on a daily basis, will monitor amounts of variation margin due to it and promptly demand payment and transfer of those amounts from each FCM to the Fund's custodian (for the general or segregated custodial account, as appropriate) whenever the amount of variation margin owed to the Fund by a given FCM reaches $50,000, in order to minimize any risk of loss of any variation margin to which the Fund is entitled.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 8, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6597 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Bowater, Inc.
Common Stock, $1.00 Par Value, File No. 7-8349
Imperial Group PLC
American Depository Receipts, File No. 7-8350
Iowa Resources, Inc.
Common Stock, No Par Value, File No. 7-8351
Systems Engineering & Manufacturing Corp.
Common Stock, $.01 Par Value, File No. 7-8352
Timeplex, Inc.
Common Stock, $.01 Par Value, File No. 7-8353
Tricentrol PLC
American Depository Receipts, File No. 7-8354
University Patents, Inc.
Common Stock, No Par Value, File No. 7-8355
Camco, Inc.
Common Stock, $1.00 Par Value, File No. 7-8356

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 4, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6595 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange

March 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Core Industries, Inc.
Common Stock; $1.00 Par Value, File No. 7-8357
First Bank System, Inc.
Common Stock, $2.50 Par Value, File No. 7-8358
Johnson Controls, Inc.
Common Stock, $.50 Par Value, File No. 7-8359
Quanex Corp.
Common Stock, $5.00 Par Value, File No. 7-8360
Shell Transport & Trading Co., plc
25 Pounds Ordinary Capital, File No. 7-8361
Tricentrol plc
American Depository Receipts, 25 Pounds Ordinary Capital File No. 7-8362
ERC International, Inc.
Common Stock, $.05 Par Value, File No. 7-8363

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 4, 1985, written data, views and arguments concerning the above-reference applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6599 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21837; File No. SR-MSR-85-10]

Self-Regulatory Organizations; Proposed Rule Change by Municipal Securities Rulemaking Board; Relating to Uniform Practice

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1985, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to rule G-12 on uniform practice. The text of the proposed rule change is as follows:*

Rule G-12. Uniform Practice.

(a) through (d) No change.

(e) Delivery of Securities. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) through (xiii) No change.

(xiv) Delivery of Registered Securities

(A) through (F) No change.

(G) Payment of Interest. If a registered security is traded "and interest" [and transfer of record ownership cannot be accomplished on or before] *a delivery of such security made on a date after* the record date for the determination of registered holders for the payment of interest[, delivery] shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the interest.

(H) Registered Securities in Default. If a registered security is in default (i.e., is in default in the payment of principal or interest) and [transfer of record ownership cannot be accomplished on or before] *a date for payment of interest due has been established, a delivery of such security made on a date after the date established as* the record date for the determination of registered holders for the payment of interest[, an interest payment date having been established on or after the trade date, delivery] shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the payment to be made by the issuer, unless the security is traded "ex-interest."

(xv) and (xvi) No change.

(f) through (l) No change.

II. Self-Regulatory Organization's Statement on Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, Proposed Rule Change

Board rule G-12(e)(xiv)(G) provides that inter-dealer deliveries of registered securities which are made too late to accomplish a change in record ownership for purposes of the next interest payment, unless otherwise agreed by the parties, must be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the interest payment. Board rule G-12(e)(xiv)(H) contains similar provisions with respect to deliveries of defaulted registered securities on which an interest payment is to be made. It has come to the Board's attention that different dealers often make different assessments whether a particular delivery of securities is made in time for the receiving dealer to accomplish transfer of record ownership for purposes of the next interest payment. These varying assessments have caused frequent disputes among dealers as to whether interest payment checks should be attached to deliveries made just prior to the record date of the securities. In view of these disputes the Board believes that further standardization in this area would be appropriate and has, accordingly, adopted the proposed rule change to provide such standardization.

The proposed rule change would require that, unless a contrary agreement is reached among the parties, an interest payment check must be attached to any delivery of registered sucurities made after the record date of the securities. Interest payment checks would not be required on deliveries

* Italics indicate new language; [brackets] indicate deletions.

made on or prior to record date. The Board believes that the proposed rule change provides the most satisfactory solution to the difficulties caused by the lack of clarity and specificity in the present rules. The Board recognizes that there will be cases in which securities delivered without an accompanying interest payment check (in accordance with the standard proposed in the proposed rule change) cannot be transferred by the record date. However, the Board believes that, in the majority of instances, deliveries made on or prior to the record date can be submitted to the transfer agent in time to accomplish transfer prior to the determination of registered holders made on the record date.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules

designed to . . . promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in . . . clearing, settling, . . . and facilitating transactions in municipal securities, [and] to remove impediments to and perfect the mechanism of a free and open market in municipal securities . . . .

The Board believes that the proposed rule change will facilitate these goals by providing a clear standard for the attachment of interest payment checks to deliveries of registered securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In November of 1984, the Board released for comment an exposed draft of an amendment to rule G–12 regarding the attachment of interest payment checks to deliveries of registered securities. The draft amendment would have required that interest payment checks be attached to deliveries of registered securities made on or after the record date.

Nine letters of comment on the exposure draft were received. With respect to the exact date in relation to the record date after which checks should be required to be attached to deliveries, the comments were mixed; however, the majority of commentators supported the adoption of an industry standard in this area. The Board recognizes the point, made by two of the commentators, that inconsistent performance of transfer agents in transferring record ownership in a timely manner causes problems in the municipal securities industry and notes that the setting of any single standard for the attachment of interest payment checks may result in duplicative interest payments and the need for interest payment claims to be made in some cases. Nevertheless, the Board is of the view expressed by most of the commentators that an industry standard is necessary in order to minimize the confusion that currently exists in the industry over whether, in a particular case, an interest payment check should be attached to a delivery.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–6596 Filed 3–19–85; 8:45 am]

BILLING CODE 8010–10–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Wickes Companies, Inc.
Common Stock Purchase Warrants
Expiring January 26, 1992 File No. 7–8367

This security is listed and registered on one or more other national securities exchange. While this security is not included in the consolidated transaction and quotation reporting system, the Philadelphia Stock Exchange ("Phlx") has indicated in its application that last sale and quotation information for the security will be provided by the Phlx to vendors of securities information and will be available on the Phlx floor.

Interested persons are invited to submit on or before April 4, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–6598 Filed 3–19–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 14, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Analog Devices, Inc.
Common Stock, $.16-2/3 Par Value, File No. 7-8364
E-Systems, Inc.
Common Stock, $1.00 Par Value, File No. 7-8365
Logicon, Inc.
Common Stock, $.10 Par Value, File No. 7-8386

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 4, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6594 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14412; (File No. 811-2758)]

Application and Opportunity for a Hearing; Eli Securities Co.

March 12, 1985.

Notice is hereby given that Eli Securities Co. (the "Applicant"), 3901 Riga Boulevard, Tampa, Florida 33619, registered under the Investment Company Act of 1940 (the "Act"), as a closed-end, diversified management investment company, filed an application on July 31, 1984, and an amendment thereto on October 31, 1984, for an order of the Commission, pursuant to section 8(f) of the Act declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application, as amended, on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant filed a notification of registration on July 29, 1977, as amended on October 19, 1977, and a registration statement on October 31, 1977, as amended on January 27, 1978. Applicant states that it filed three registration statements under the Securities Act of 1933 prior to registering under the Act. Applicant was formerly named the "Havatampa Cigar Corporation", a corporation engaged in the business of manufacturing and distributing tobacco and other products.

Applicant states that Eli Witt Company (the "Company"), a Delaware Corporation, acquired substantially all of the assets and assumed substantially all of the liabilities of Applicant in July, 1977. The liabilities primarily consist of certain real estate leases, capitalized equipment leases, unsecured promissory notes, term loans, real estate mortgages and other unsecured obligations. In June, 1979, the Company commenced proceedings for reorganization pursuant to Chapter XI of the Federal Bankruptcy Act. Applicant contends that it is unable to ascertain accurately the extent to which it may be liable to third parties for the assumed liabilities.

According to the Application, Applicant filed a proof of claim in the reorganization proceedings and initiated an adversarial proceeding requesting the court to determine the Company's obligations for the assumed liabilities. The court confirmed the Company Plan of Arrangement (the "Plan") that allowed the Company to pay approximately 50 percent of its claims in periodic installments through 1990 after an initial $500 payment. Applicant assigned all of its rights against the Company to its Subsidiary in February, 1982, and the Subsidiary agreed to pay all claims asserted against the Company. Applicant represents that the bankruptcy court entered judgment upon stipulation between Applicant and the Company providing for reimbursement of payments in the amount of $700,000 made by Applicant and its Subsidiary. Pursuant to the Plan, the Subsidiary will receive approximately $163,900, (50 percent of $700,000 minus $186,100, which was previously paid to the Subsidiary) over the next seven years.

Applicant states that pursuant to Applicant's Plan of Liquidation and Dissolution, contributing shareholders transferred funds in the amount of $200,000 to the Eli Securities Liquidating Trust, a Florida Trust (the "Trust"), in order to ensure payment of the potential liability. The contributing shareholders (either directors of Applicant, their family members or affiliates) beneficially own in the aggregate, 88.3% of Applicant's common stock. The assets of the Subsidiary, which are represented by the Subsidiary shares, will also be transferred to the Trust. As of July 5, 1983, the assets of the Subsidiary consisted of $200 principal amounts of tax-exempt securities bearing 6.15% interest per annum, $32,890 cash and the right to receive approximately $163,900 over the next seven years from the Company.

Applicant represents the Trust will be in existence for approximately three years. Also, the contributing shareholders will be deemed to be the owners of the Trust and have a beneficial interest in assets; however, no certificates will be issued verifying such interest. Furthermore, the beneficial interest will not be transferable except by will, interstate succession or operation of law. Applicant submits the trustee of the trust will be reasonably compensated and will be responsible for the administration of the Trust assets, the collection of all amounts payable to the Trust, the investment in certain securities and the disposition of any claim against Applicant that might arise after dissolution.

In the event the Trust assets are unable to satisfy the aggregate claims asserted against the Company, Applicant states that certain shareholders will provide the funds necessary to pay the claims. Applicant also states that those shareholders have entered into an indemnity agreement with the contributing shareholders, which allows for the indemnification of those shareholders who advance funds for claims asserted against the Company.

Applicant represents that as of October 15, 1984, all but $21,654.77 of its assets had been liquidated. Applicant's remaining assets are being held by NCNB National Bank of Florida, the Applicant's disbursing agent, for the 98 shareholders of the Applicant who failed to deliver necessary certificates and documentation in exchange for payment.

Finally, the Applicant is not presently a party to any litigation or administrative proceedings. The Applicant is not now engaged, nor does

it propose to engage, in any business activities, other than those necessary for the winding-up of its affairs.

Notice is Further Given that any interested person wishing to request a hearing on the application may, not later than April 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, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6669 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14413; (File No. 812-6013)]

Application and Opportunity for Hearing; National Home Finance Co.

March 12, 1985.

Notice is hereby given that National Home Finance Company (the "Applicant"), 530 Lumber Exchange Bldg., Minneapolis, MN, 55402, filed an application on December 27, 1984, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a more detailed statement of the information and representations summarized below and to the Act for the text of all applicable provisions thereof.

The Applicant states that it is a wholly-owned limited purpose financing subsidiary of National Home Finance Corporation ("NHFC"), a Minnesota corporation engaged in the business of facilitating the financing of mortgage loans primarily on residences constructed by various home builders (the "Builders"). Applicant also states that wholly-owned, limited purpose financing subsidiaries (the "Finance Subsidiaries") of such Builders will enter into a Home Finance Services Agreement (collectively, the "Agreement") with NHFC and the Applicant through which, among other things, the Applicant will issue in series its collateralized bonds (the "Bonds"). Each series will consist of one or more classes of Bonds, one or more of which may be compound interest bonds.

According to the application, the Bonds will be issued under an indenture (the "Indenture") between the Applicant and an independent trustee (the "Trustee") and a separate supplemental indenture relating only to each series of Bonds. Also, the Bonds will be registered under the Securities Act of 1933 and the Indenture will be qualified under the Trust Indenture Act of 1939. The Bonds of each series will be sold to institutional or retail investors through one or more underwriters and rated in one of the two highest rating categories of at least one nationally recognized statistical rating organization.

Applicant represents that it will lend the proceeds from the sale of the Bonds to the Finance Subsidiaries owned by participating Builders pursuant to the Agreement. In some cases, however, proceeds may also be lent to a finance subsidiary owned by NHFC. Each such loan will be evidenced by a permanent loan note of the Finance Subsidiaries that will be assigned, togehter with the collateral securing such permanent loan note as described below, by the Applicant to the Trustee as security for the Bonds of each series. Further, each permanent loan note will be secured, pursuant to a related collateral pledge agreement between the Finance Subsidiaries and the Applicant (a "Collateral Pledge Agreement"), by the pledge of (1) first mortgage notes insured by the Federal Housing Administration of the United States Department of Housing and Urban Development or partially guaranteed by the United States Veterans Administration, and/or conventional first mortgage notes not so insured or partially guaranteed (collectively, "Mortgage Loans"), which Mortgage Loans are beneficially owned by a Finance Subsidiary and secured by mortgages primarily on residences constructed by the Builder owning such Finance Subsidiary (or in the case of the finance subsidiary owned by NHFC, by third parties), and/or (2) "fully-modified, pass-through" mortgage-backed certificates guaranteed by the Government National Mortgage Association, Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation, Guaranteed Mortgage Pass-Through Securities issued by the Federal National Mortgage Association and/or mortgage-backed securities issued by private entities (collectively, "Mortgage Loan Certificates"), which Mortgage Loan Certificates are beneficially owned by such Finance Subsidiary and either evidence an undivided whole or partial beneficial interest in a pool, or are secured by a pool of first mortgage notes secured primarily by mortgages on residences constructed by the Builder owning such Finance Subsidiary (or, in the case of the Finance Subsidiary owned by NHFC, by third parties).

Applicant further represents that the Finance Subsidiaries will use the proceeds of the loan from Applicant to repay indebtedness incurred in connection with the funding of the Mortgage Loans, the Mortgage Loans backing the Mortgage Loan Certificates, the acquisition through open market purchases of the Mortgage Loans or the Mortgage Loan Certificates beneficially owned by the respective Finance Subsidiary and pledged to secure the Bonds. Also, scheduled payments on the Mortgage Loans or Mortgage Loan Certificates pledged to secure each series, (together with any required payments from any cash account relating thereto) and income thereon will be sufficient to make timely payments of interest on the Bonds of such series, to begin making payments of installment of principal of the Bonds of such series when due and to retire the Bonds of such series not later than their respective stated maturities. In addition, if principal is not payable in installments, the Bonds will be redeemable subject to certain conditions and availability of funds.

Applicant submits that the permanent loan notes, related Collateral Pledge Agreement, Mortgage Loans and Mortgage Loan Certificates pledged to secure any series of Bonds will be held by the trustee as collateral for that series of Bonds only. In addition to being secured by the collateral, each series of Bonds will also be secured by certain clearing and collection accounts, reserve funds cash accounts, redemption funds and insurance policies.

Applicant asserts that the relief requested is necessary and appropriate in the public interest because it is not the type of entity to which the provisions of the Act were intended to be applied. Applicant's business consists of facilitating the financing of residential mortgage loans and its assets will consist principally of security interests in the Mortgage Loans and Mortgage Loan Certificates; its proposed business is intended to serve a recognized and important public need by expanding the availability of funding for residential mortgage loans from the private capital markets.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 5, 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 Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6670 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14410; (File No. 812-6025)]

Franklin Denver Limited Partnership; Application and Opportunity for Hearing

March 12, 1985.

Notice is hereby given that Franklin Denver Limited Partnership (the "Partnership"), One Post Office Square, Suite 1400, Boston, Massachusetts 02109, a Massachusetts limited partnership formed to invest in Grant Street Housing Partners Limited Partnership ("Operating Partnership"), a Wisconsin limited partnership which will own and operate an apartment project in Denver, Colorado (the "Project"), and Milk Street Residential Limited Partnership II, the Partnership's general partner (the "General Partner") (together with the Partnership, "Applicants"), filed an application on January 14, 1985, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), to exempt the Partnership from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of which is set forth below, and to the Act and rules thereunder for the provisions thereof which are relevant to a consideration of the application.

Applicants state that the Partnership was formed as a vehicle for private investment in government-assisted rental housing in accordance with the express determination of Title IX of the Housing and Urban Development Act of 1968. Applicants further state that the Partnership will operate as a "two-tier" entity, i.e., the Partnership, as limited partner, will hold a 99% interest in the Operating Partnership which, in turn, will acquire, develop, construct, own and operate the Project, a residential and commercial project consisting of 411 units of rental housing for low and moderate income persons as well as approximately 11,024 square feet of commercial space, and 690 parking spaces, all of which, Applicants contend, will be in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974). According to the application, the Operating Partnership is being assisted by mortgage financing provided by the Colorado Housing Finance Authority.

Applicants represent that the Partnership will offer 100 units of limited partnership interest in the Partnership (the "Units"), pursuant to section 4(2) of the Securities Act of 1933 ("1933 Act") and Regulation D thereunder, to investors meeting certain suitability standards. According to the application, the Units are being offered only to "Accredited Investigators" as defined in Regulation D and to a limited number of "Non-Accredited Investors". Applicants represent that the Units will not be sold to any person unless such person or his duly authorized representative shall have signed certain representations to the Partnership that (a) the prospective purchaser has (i) a net worth (i.e., total assets in excess of total liabilities) of at least $300,000 exclusive of home, furnishings and automobiles or (ii) a net worth of at least $200,000 per Unit purchased, exclusive of home, furnishings and automobiles, and an annual income, of at least $125,000 per Unit purchased; (b) the prospective purchaser's overall commitment to investments which are not readily marketable is not disproportionate to his net worth, and his investment in the Units will not cause such overall commitment to become excessive; (c) the prospective purchaser has adequate means of providing for his current needs and personal contingencies and has no need for liquidity in his investment in the Units; (d) the prospective purchaser is an "Accredited Investor" or, if not an Accredited Investor, either alone or with his Purchaser Representative(s), as defined in Regulation D, has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Units and has consulted his own tax or other professional advisor in making his investment decision; (e) the marginal Federal income tax bracket of the prospective purchaser, after taking into account losses, if any, likely to be incurred as a result of his investment in the Units, is not less than 42%, and he expects to remain in that bracket, or higher, for several years; and (f) he is purchasing Units for his own account, for investment, and not with a view to resale.

The application summarizes the form and recipients of compensation to be paid to the General Partner and its affiliates. It states that all such compensation is believed to be fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. It further states that the Partnership believes that such compensation meets all applicable guidelines to the extent necessary to permit the Units to be offered and sold in various states which prescribe such guidelines, including the statement of policy adopted by the North American Securities Administrators Association, Inc.

Without conceding that the Partnership is an investment company as defined in the Act, Applicants request that the Partnership be exempted from all of the provisions of the Act. In support of this request, Applicants assert that such exemption in both necessary and appropriate in the public interest and would be consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert that investment in low and moderate income housing in accordance with the national policy expressed in Title IX is not economically suitable for private investors without the tax and organizational advantages of the limited partnership structure. Applicants state that a limited partnership would be unable to function in a manner contemplated by the Partnership if it is deemed to be an investment company under the Act. In addition, it is maintained that application of the Act would discourage two-tier limited partnership arrangements and thus eliminate the best available means of attracting private equity capital into government-assisted housing and frustrate national policy.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 5, 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 requst. After said date an order disposing of the applicatioin 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. 85-6671 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7777]

Issuer Delisting; Application To Withdraw From Listing and Registration; Logicon, Inc.

March 13, 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 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration 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) In making the decision to withdraw its common stock ($.10 par value) from listing on the Amex, Logicon, Inc. ("Company") considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange ("NYSE") and the Amex. The Company does not see any particular advantage to the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

(2) The Amex has informed the Company that it has no objection to the withdrawal of the Company's common stock from listing on the Amex. The application for delisting relates solely to the withdrawal from listing of the Company's common stock from the Amex and shall have no effect upon the continued listing of such common stock on the NYSE.

Any interested person may, on or before April 3, 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 determine 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. 85-6672 Filed 3-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23626; 70-7090]

System Fuels, Inc., et, al.; Proposal To Enter Into Revolving Credit Agreement for System Nuclear Fuel Financing

March 13, 1985.

Systems Fuels, Inc. ("SFI"), One Poydras Plaza, 639 Loyola Avenue, New Orleans, Louisiana 70113, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, Arkansas Power & Light Company ("AP&L"), First Commercial Building, Little Rock, Arkansas 72201, and Middle South Energy, Inc. ("MSE"), 225 Barrone Street, New Orleans, Louisiana 70112, subsidiaries of Middle South Utilities, Inc., a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

SFI proposes to enter into a Revolving Credit Agreement ("Credit Agreement") for system nuclear fuel financing with Prudential Interfunding Corp. ("Prudential") in the principal amount of $50,000,000 for two years. The Credit Agreement may be extended for additional one-year periods. SFI requests authorization for additional extensions of the Credit Agreement without seeking further Commission authorization. The borrowings by SFI will be evidenced by a note, will bear interest at a rate of 2.00% plus the yield-adjusted rate (the nominal rate increased by the cost of any discount) charged on 30-day dealer commercial paper issued by Prudential, and will be prepayable without penalty or premium.

SFI will pay an origination fee to Prudential of not to exceed ⅛ of 1% of the Commitment. Proceeds from the sale of nuclear fuel financed under the Credit Agreement must be used as a mandatory prepayment of borrowings outstanding. As security for SFI's obligations to Prudential, SFI will enter into a Security Agreement with Prudential giving Prudential a security interest in (a) SFI's nuclear fuel inventory financed under the Credit Agreement and the proceeds thereof, (b) SFI's accounts receivable for such nuclear fuel, and (c) certain other rights and instruments incident to SFI's nuclear fuel inventory financed under the Credit Agreement.

AP&L, LP&L, MSE, SFI, and Prudential propose to enter into a Consent and Agreement whereby AP&L, LP&L, and MSE will agree to pay amounts due to SFI under the Purchase Agreement for the nuclear fuel financed by Prudential directly to Prudential and will agree that, within 15 days after the borrowings become due and payable under the Credit Agreement if SFI has not paid the Revolving Loans when due, SFI will sell, and AP&L, LP&L, and MSE will purchase, the nuclear fuel financed by Prudential.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 8, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6668 Filed 3-19-85; 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 30, 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 St., 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: Secondary Participation Guaranty and Certification Agreement and Request for Certification of SBA Form 1084
Form Nos: SBA 1085, 1086
Frequency: On occasion
Description of Respondents: Participating lenders used these forms to apply for initial issuance of an SBA Guarantee Interest Certificate
Annual Responses: 3200
Annual Burden Hours: 12000
Type of Request: Extension

Title: Application for Surety Bond Guarantee Assistance
Form Nos. SBA 990, 994, 994B, 994F, 994H, 994I
Frequency: On occasion
Description of Respondents: These forms are completed by sureties to evaluate the capabilities and potential success under the Surety Bond Guarantee Program. Forms constitute request for Government assistance by applicants
Annual Responses: 88,232
Annual Burden Hours: 31,346
Type of Request: Revision

Title: License Application, Personal History and Qualification of Management
Form Nos. SBA 415, 415A
Frequency: One time only
Description of Respondents: These form are completed by license applicants to provide the necessary facts to make a judgment as to whether the applicant will conduct itself and provide the financings to small businesses as intended by the Act
Annual Responses: 80
Annual Burden Hours: 6400
Type of Request: Revision

Dated: March 15, 1985.

Elizabeth M. Zaic,

Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85–6638 Filed 3–19–85; 8:45 am]

BILLING CODE 8025–01–M

Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on April 8, 1985, at the Small Business Administration, located at 301 E. Stewart, Downtown Station, Post Office, 3rd. Floor, Las Vegas, Nevada, from 10:00 a.m. to 12:00 noon, to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for Advisory Council, U.S. Small Business Administration, 301 E. Stewart, Las Vegas, Nevada 89101, or call (702) 388–6009.

Jean M. Nowak,

Director, Office of Advisory Council.

March 13, 1985.

[FR Doc. 85–6634 Filed 3–19–85; 8:45 am]

BILLING CODE 8025–10–M

New York; Region II Advisory Council Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Syracuse, will hold a public meeting at 9:00 a.m., Thursday, April 11th, 1985, at Marine Midland Bank—corner of Jefferson and Warren Streets, 8th floor Boardroom Syracuse, New York, to discuss matters as may be presented by members, staff of the The U.S. Small Business Administration, or others present.

For further information, write, or call J. Wilson Harrison, District Director, The U.S. Small Business Administration, 100 South Clinton Street, Room 1071, Syracuse, New York 13260, (315) 423–5371.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 13, 1985.

[FR Doc. 85–6637 Filed 3–19–85; 8:45 am]

BILLING CODE 8025–01–M

South Carolina; Region IV Advisory Council Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, South Carolina, will hold a public meeting at 10:00 a.m., Wednesday, April 17, 1985, at the Town House, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John S. Patrick, District Director, U.S. Small Business Administration, P.O. Box 2786, Columbia, South Carolina—(803) 765–5339.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 13, 1985.

[FR Doc. 85–6635 Filed 3–19–85; 8:45 am]

BILLING CODE 8025–01–M

Virginia; Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting at Noon, Wednesday, May 1, 1985 through Noon, on Thursday, May 2, 1985, at the Holiday Inn, Norfolk, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Catherine S. Marschall, District Director, U.S. Small Business Administration, P.O. Box 10126, Richmond, Virginia 23240, (804) 771–2741.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 13, 1985.

[FR Doc. 85–6636 Filed 3–19–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Corporate Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-3-35, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Corporate Air, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in attachment A to the order. Responses shall be filed no later than April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

Dated: March 13, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-6656 Filed 3-19-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on April 9 and 10, 1985, in Washington, DC. All sessions will be held at the DOT Headquarters Building. On April 9 from 9:00 a.m. to 1:00 p.m. the two subcommittees will be meeting. The Driver Related Issues Subcommittee will meet in Room 4234 to discuss inclusion of all moving violations of record in the NDR Act and multiple licensing. The Program/Technical Issues Subcommittee will meet in Room 6248 to discuss: the Rapid Response System; standardization of D-20 data base; reinstatement fees; relationship of the driver license compact to NDR activities. The full Committee will meet on April 9 from 2:00 p.m. to 5:00 p.m. in room 4234, and on April 10 from 9:00 a.m. to 3:00 p.m. in room 4234. The agenda will consist of the following:

(1) Approval of November meeting minutes;
(2) status reports from NDR technical staff;
(3) reports from the Subcommittee meetings and
(4) old/new business.

All meetings are open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-426-2870.

Issued in Washington, DC on: March 14, 1985.

Robert E. Doherty,

Executive Secretary.

[FR Doc. 85-6590 Filed 3-19-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 7-85]

Treasury Notes of March 31, 1987; Series T-1987

March 14, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of March 31, 1987, Series T-1987 (CUSIP No. 912827 RZ 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 1, 1985, and will accrue interest from that date, payable on a semiannual basis on September 30, 1985, and each subsequent 6 months on March 31 and September 30 through the date that the principal becomes payable. They will mature March 31, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, March 20, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 19, 1985, and received no later than Monday, April 1, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an

annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who made primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5, must be made or completed on or before Monday, April 1, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the Settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tenders was submitted, which must be received from institutional investors no later than Thursday, March 28, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, April 1, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (names and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the exchange and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to

maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-6643 Filed 3-19-85; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Pittsburgh, PA; University Drive, Aspinwall Division, Modernization/Replacement Hospital; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed project "Modernization/Replacement Hospital" and has determined that the potential environmental impacts will be minimal from the development of this project.

This project is the replacement of the main hospital building at the Aspinwall facility. This will be accomplished through construction of a new intermediate care hospital building and an adjoining Nursing Home Care Unit (NHCU). These will be separate structures because the hospital will incorporate the VA building system and the NHCU will be a prototypical VA design. This is done for the cost effectiveness and efficiency of construction and the VA building system also allows for inexpensive future modifications of the internal functions, if it should become necessary. The two new structures will be connected by an enclosed corridor. The NHCU will be two levels; the intermediate care building will be four levels plus a basement. However, because of the interstitial space, the intermediate care building will appear as a seven-story structure. A new boiler plant will be constructed to support the new medical buildings and the rest of the medical center. The boiler will be completed prior to construction of the medical buildings.

The site of the new hospital building and NHCU is encumbered by existing building nos. 6, 22, and 27 which are vacant and in poor physical condition. Building nos. 2, 3, 4, 5, and 48 are existing engineering shops, garages, emergency generators, and the existing boiler plant which is in need of replacement and does not have the capacity to serve the new buildings planned. These buildings will be demolished after completion of the new boiler plant. Subsequent to completion of the new hospital and NHCU buildings, buildings nos. 1 and 17 will be demolished as their functions will be replaced in the new construction. A heating, ventilation and air conditioning (HVAC) system will be installed in building no. 32 as part of this project. New construction is planned for 310,294 gross square feet; the estimated total project cost is $51,700,000. The resultant bed change will be an increase of 12 nursing home beds.

Short-term impacts will result from construction and are temporary. They include impacts to air quality from construction equipment exhaust and particulates from demolition, and to water quality from erosion and sedimentation, and to the patients, staff and local community from construction noise, equipment and traffic. Long-term impacts are from demolition of buildings that are eligible for the National Register of Historic Places. This is an irreversible impact.

Short-term impacts will be mitigated by inclusion in the contract of the VA standard specifications, Environmental Protection Section, and by monitoring and enforcement during construction.

Long-term impacts will be mitigated to the greatest extent achievable by compliance with the Regulations of the Advisory Council on Historic Preservation, Title 36 CFR Part 800.

Short-term impacts to the local community will be controlled and mitigated by regulation of hours of construction and travel routes for construction equipment.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the office of the Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 11, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-6624 Filed 3-19-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 54
Wednesday, March 20, 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).

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1

UNITED STATES INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: At 2:00 p.m., Tuesday, March 19, 1985.

CHANGES IN THE MEETING:

4. Petitions and Complaints:
(b) Certain retainers for garage door hardware (Docket Number 1166).

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-6675 Filed 3-18-85; 9:07 am]
BILLING CODE 7020-02-M

2

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 10:00 am., Thursday, March 28, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation 701-TA-237-238 [Preliminary] and 731-TA-325/247 [Preliminary] (Low-fuming brazing rod wire from France, New Zealand and South Africa)—briefing and vote.
6. Investigation 731-TA-244 [Preliminary] (Natural bristle paint brushes from the Peoples Republic of China)—briefing and vote.
7. Investigation 731-TA-243 [Preliminary] (Certain expansion tanks from The Netherlands)—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-6676 Filed 3-18-85; 9:07 am]
BILLING CODE 7020-02-M

3

LEGAL SERVICES CORPORATION SPECIAL COMMITTEE ON PRESIDENTIAL SEARCH

TIME AND DATE: Meeting will commence at 2:00 p.m. and continue until all official business is completed, Friday, March 29, 1985.

PLACE: Hilton LBJ, 4801 LBJ Freeway, Lone Star Room, Dallas, Texas 75234.

STATUS OF MEETING: Closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6) and (9)(B) and (d)(1) and 45 CFR 1622.5 (a), (e), and (g) and 1622.6(b)).

MATTERS TO BE CONSIDERED:

1. Review of Resumes
2. Review of Procedures

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

DATE ISSUED: March 18, 1985.

Dennis Daugherty,
Acting Secretary.
[FR Doc. 85-6697 Filed 3-18-85; 12:43 pm]
BILLING CODE 6820-35-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-5]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 9941, March 12, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, March 19, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following items were added to the agenda and discussed in open session.

4. *Marine Accident Report:* Fire Onboard the Bahamian Passenger Vessel SCANDINAVIAN SEA, Port Canaveral, Florida, March 9, 1984.

5. *Recommendations* from Marine Accident Report: Ramming of the Poplar Street Bridge by the Towboat M/V ERIN MARIE and its 12-Barge Tow, St. Louis, Missouri, April 26, 1984.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

Ray Smith,
Federal Register Liaison Officer.
March 14, 1985.

[FR Doc. 85-6660 Filed 3-15-85; 4:31 pm]
BILLING CODE 7533-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 9358 3/7/85).

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, March 1, 1985.

CHANGE IN THE MEETING: Additional/deletion items.

The following additional item was considered at a closed meeting scheduled for Tuesday, March 12, 1985, at 2:30 p.m.

Trading suspension.

The following open item scheduled for Thursday, March 14, 1985, at 4:00 p.m., has been rescheduled for Monday, March 18, 1985, at 2:30 p.m.

Consideration of whether to declare the Americus Trust for Exxon Shares effective. On June 7, 1984, the Commission published for public comment a release soliciting written comments on issues raised by the Americus Trust. These offerings relate to units of a unit investment trust series whose portfolios would consist of common stock of major industrial issuers, and two separable components of such units. In addition, the Commission will consider whether to approve a proposed rule change of the American Stock Exchange establishing listing

standards for Americus Trust type securities. For further information, please contact Joseph V. Del Raso at (202) 272-7317.

Chairman Shad and Commissioners Treadway, Cox and Marinaccio determined that Commission business required the above changes 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: Alan Dye at (202) 272-2014.

John Wheeler,

Secretary.

March 13, 1985.

[FR Doc. 85-6673 Filed 3-15-85; 4:57 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
March 20, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
14 CFR Ch. I
Revision of General Operating and Flight Rules; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

14 CFR Ch. I

[Docket No. 18334; Notice No. 79-2C]

Revision of General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Additionally, this notice proposes substantive regulatory changes needed to clarify current regulations. These proposals result from comments received from the general public and aviation industry in response to a request for specific comments to help identify substantive areas needing review.

The FAA is currently conducting a National Airspace Review (NAR) which may result in future additional revisions to Part 91. However, this notice does not reflect any recommendations resulting from the NAR.

Additionally, this proposal is part of the President's regulatory reform program to simplify regulations.

DATE: Comments must be received on or before July 19, 1985.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 18334, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments must be marked: Docket No. 18334. Comments may be inspected at Room 915 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: James R. Kelln, Project Development Branch, General Aviation and Commercial Division (AFO-800), Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8150 or Burton Chandler, Air Traffic Rules Branch, Airspace and Air Traffic Rules Division (ATT-200), Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 18334." The postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 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 docket 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 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration (FAA) to revise Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to make the regulations simpler and more comprehensible. In response to this petition, on January 11, 1979, the FAA issued an Advanced Notice of Proposed Rulemaking (ANPRM) No. 79-2 (44 FR 4572; January 22, 1979) consisting of a verbatim publication of AOPA's proposal.

The FAA received 106 comments in response to the ANPRM. An overwhelming majority of the commenters supports the intent of the proposal to reorganize Part 91. However, there were numerous problem areas identified by the commenters relating to proposed changes which were considered substantive.

On November 18, 1980, the FAA formed a Part 91 Working Group to analyze the AOPA proposals and comments received on the ANPRM. It was determined that certain technical and administrative problems existed and it was not feasible to undertake a substantive revision of Part 91 at that time. Subsequently, AOPA withdrew its petition. However, review of AOPA's proposal to reorganize and renumber Part 91 revealed that many of the changes had merit and could be implemented. The FAA Working Group concluded that the reorganization and renumbering of Part 91 would be the first step to improve the regulation and make it more understandable and easier to use. Consequently, on September 10, 1981, the FAA published NPRM No. 79-2A (46 FR 45256) which proposed to reorganize and realign the general operating and flight rules to make them more understandable and easier to use. Other proposals were made to delete redundancies and obsolete compliance dates and to make other minor changes.

Notice No. 79-2A did not contain any substantive changes. However, it did inform the public that the FAA considered that Notice the first step in a regulatory review of Part 91 consistent with the objective of Executive Order 12291. With the in mind, the FAA invited additional specific comments to help identify substantive areas to be reviewed and possibly included in subsequent proposals concerning Part 91. The notice further stated the FAA would not take final action concerning the reorganization until substantive changes were proposed and the public had been given an opportunity to comment on those proposals.

On December 10, 1981, the FAA published Notice No. 79-2B in the Federal Register (46 FR 60461). That notice extended the comment period for Notice No. 79-1A by 120 days and was issued in response to a petition from the National Business Aircraft Association to allow additional time for commenters to prepare substantive comments.

This notice responds to the comments received in response to Notice No. 79-2A and proposes certain substantive changes. Sixty-nine commenters

responded to Notice No. 79-2A, with none opposed, 41 in favor, and 24 commenters who suggest various changes but do not establish a position for or against the proposal. The remaining comments are duplicates, comments to a different docket, or comments otherwise inappropriate for consideration in this notice.

Discussion

Amendment No. 91-181 (47 FR 41076; September 16, 1982), which consolidates in inspection requirements of present Part 91, is reflected in this notice. Accordingly, the inspection program requirements of Subpart F, as proposed in Notice No. 79-2A, are now being proposed in Subpart E—Maintenance, Preventive Maintenance, and Alterations.

In order to consolidate the equipment and operating rules for large and turbojet-powered multiengine airplanes into one subpart, proposed §§ 91.503 through 91.535 are now proposed in Subpart G as §§ 91.615 through 91.645.

In addition, this notice proposes certain minor editorial changes. One of these is the deletion of references to Part 123, which was deleted effective January 1, 1983, under the provisions of § 125.1(d) of the FAR.

The FAA also proposes to change the references to General Aviation District Offices, Air Carrier District Offices, and Flight Standards District Offices to read "Flight Standards district offices." The proposed term includes all three types of offices and would pose no problems to the public because, with respect to the requirements of Part 91, each has the capability to fulfill FAA responsibilities.

Public Comments

Several commenters provide recommendations of a general nature regarding the format and content of Part 91. These include suggestions such as rewriting the rule in simpler language which would be more understandable, using more (or fewer) abbreviations, eliminating the sole use of the male gender, consolidating all sections that pertain to the operation of specific categories of aircraft (such as helicopters, balloons, etc.) into separate publications or parts, placing the exceptions to specific sections at the end of a section instead of at the head of the section, and so on. These suggestions have been carefully evaluated and implemented when considered appropriate, particularly regarding the use of simpler language. Soon additional sections have been consolidated or removed to eliminate redundancies, and other sections have been moved to different subparts in a further effort to consolidate the rules according to their subject matter. Some commenters recommend separating the rules into aircraft category or user-interest groupings. However, this would result in a voluminous rule filled with many redundancies. The suggestion to put exceptions to a rule at the end of a section has not been proposed because it does not add clarity to the affected rules and, in fact, would cause extra workload for persons working with the rules since they must then read the complete rule before finding out that it does not apply to them. Finally, the FAA agrees that the recommendations to eliminate the sole use of the male gender have merit and the FAA proposes to amend Part 91 accordingly. Several commenters propose changes to sections that are the subject of other rulemaking action. The FAA has determined that it is inappropriate to propose further changes to these sections, or in some cases paragraphs, in this notice because this action would cause undue confusion regarding the status of the affected regulations. However, the pertinent comments have been distributed to the appropriate regulatory groups for their consideration. If any changes are made as a result of other rulemaking actions before final action on this notice, they will be incorporated into any final rule resulting from this notice.

Deletion of Sections

Sections 91.50, 91.53, and 91.177 of present Part 91 consist of rules that have been deleted and marked reserved in previous amendments and have been deleted in this notice as unnecessary.

The FAA proposes further deletions of sections as part of its ongoing review of Part 91. Each section is identified and the public comments in response to Notice No. 79-2A are discussed.

No public comments were received on proposed §§ 91.527, 91.539, and 91.607. Section 91.607 (present § 91.50) was deleted by Amendment 91-176, effective September 30, 1981. The FAA proposes to delete § 91.527 (current § 91.205) because the requirements are redundant with those contained in § 91.605. Section 91.605 prescribes the operating limitations that must be met in considerable detail and contains the same operational prohibitions found in § 91.527.

Sections 91.537 and 91.539 were incorporated into proposed § 91.409 by Amendment No. 91-181, effective October 15, 1982. Comments on § 91.537 are addressed in the discussion of proposed §§ 91.401, 91.403, and 91.409.

Regulatory Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. The FAA determined that this NPRM is consistent with the objective of Executive Order 12291 as part of the President's Regulatory Reform Program to reduce regulatory burdens on the public. This NPRM imposes no additional costs on the Federal Government.

Benefits

The amendments proposed in the NPRM provide benefits in the aggregate to the aviation public, including: commonality and a more logical progression of the rules, reduced complexity, simplification through reorganization, renumbering to provide easier inclusion of future changes, and deletion of redundancies and obsolete compliance dates. These changes will provide a regulation that is easier to read and understand. Additionally, it will reduce the amount of study time for persons who are responsible for knowing and complying with the regulation.

Additionally, the following proposals provide benefits that are expected to yield specific minimal-to-minor benefits in the aggregate:

1. *Section 91.117*—would allow operators of reciprocating-powered aircraft, when operating in an airport traffic area, to increase indicated airspeed from the currently allowed 156 knots to 200 knots. The FAA is unable to determine operator time and fuel cost savings which largely depend on the type of aircraft involved, desired speed, and weather and traffic conditions. The FAA has determined that the aggregate annualized cost savings to these operators will not be significant because the normal cruise speed for most single-engine, reciprocating-powered aircraft does not exceed speeds of 156 knots and pilots of most multiengine reciprocating-powered aircraft will not exceed (and most will operate below) the aircraft normal cruising speed when operating in a traffic pattern in limited airspace. The aircraft normal cruising speed is not significantly greater than 156 knots in many of these multiengine reciprocating-powered aircraft.

2. *Section 91.135*—operators who request authorizations to deviate from positive control area and route segment requirements must currently submit written requests at least 4 days in advance of the proposed operation to ATC. The proposed regulation will permit a 48-hour oral notification. Because a request for an authorization

to deviate from these requirements is an infrequent occurrence, the FAA believes that this proposed rule, in terms of cost savings, is only marginally beneficial.

3. *Section 91.409*—would allow operators of turbine-powered rotorcraft to use alternate inspection programs (other than 100-hour or annual) such as an FAA-approved inspection program. This relaxes the current rules and provides benefits to operators that elect to follow alternate inspection programs. These operators would be able to schedule inspections in a manner that exploits the highest possible level of rotorcraft utilization.

It is impossible to quantify precisely the value of the benefits of this proposal. Using assumptions based on analysis of the latest *FAA Census of U.S. Civil Aircraft* and an estimate of the 1984 turbine rotorcraft fleet, the FAA estimates that in 1984 there will be approximately 2,500 active turbine-powered rotorcraft in non-air taxi use. These aircraft constitute the rotorcraft fleet which follows Part 91 maintenance rules. The FAA assumes that operators of one-half of these aircraft would use the newly proposed inspection option.

The value of using these options is difficult to estimate. The FAA assumes, at a minimum, that the major effect of this proposed rule would be one additional day per year of rotorcraft utility. The usefulness of this can be set at least at the cost of capital for one day. Using an average aircraft value of $300,000 and use of 250 days per year, the cost of capital can be estimated at $180 per day ($300,000 at 15% interest divided by 250 days). Thus, the minimum benefit is approximately $0.23 million per year (half the fleet, 1,250 turbine-powered rotorcraft, times $180) based on analysis of 1984. As the fleet grows, the value of this benefit also increases.

Costs

The types of costs incurred by the Federal Government that are associated with revising Part 91 were discussed in the NPRM to reorganize Part 91. These costs (revising agency orders and handbooks, material and printing, etc.) are considered within the scope of FAA's ongoing regulatory reform process. Therefore, this proposed rule imposes no additional costs on the Federal Government. Furthermore, industry and individual commenters overwhelmingly supported the intent of a reorganized Part 91 and felt that it would have a negligible cost impact on their programs and operations. One specific amendment, as follows, would impose negligible costs to the aviation public in the aggregate.

One change has been made to § 91.205 by way of clarification and definition of "shore" in the context of Part 91. It has always been the FAA's intent that "shore," from a safety standpoint, refers to the high water line. However, several judicial decisions have defined the "shore" as including tidal flats, which are areas intermittently covered with water, depending on tidal flow. The only parties potentially affected are small, for-hire operators who do not comply with the intent of this rule.

Such operators are likely to be traversing tidal flats in areas like Alaska, and the FAA estimates that these operators are very few (probably less than 20 operators) in number. The amortized cost of compliance for these operators is a maximum $105 per year per aircraft. This assumes a $50 cost for an approved flotation device per seat and a flotation device useful life of 5 years ($10 per passenger seat per year), 10 seats per aircraft for these specific operators, plus $5 per year per aircraft for a pyrotechnic signaling device.

While specific benefits are not quantifiable due to incomplete accident records, the FAA believes that the benefits will balance the negligible costs of compliance associated with this rule clarification. The main benefit is to improve survivability of accidents in areas where for-hire operators may not be complying with the present rule. There is insufficient information in accident records to be able to estimate how many deaths could have been avoided because of flotation devices and pyrotechnic signaling devices in these instances.

Conclusion

Accordingly, the benefits of this regulation substantially outweigh any costs that may be incurred.

The FAA invites comments on the regulatory evaluation which is included in the docket.

International Trade Impact Analysis

The FAA cannot discern what impact if any, this regulation would have on international trade.

FAA invites comments on what impacts this regulation might have on the sale of foreign aviation products or services in the U.S. and impacts of the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

As detailed in the evaluation, all but four of the proposed changes to Part 91 are editorial or clarifying changes. Three of the four other changes result only in minimal benefits being applied. The other proposal is a change to § 91.205 which may involve some negligible cost and minimal benefit. Any economic impact would be minor (approximately $100 per aircraft per year) and would affect only a few for-hire operators in Alaska who do not comply with the intent of the rule as presently worded. Thus the change could not be construed to cause a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act.

Therefore, the FAA has determined that the proposal, will not, if enacted, have significant economic impact on a substantial number of small entities.

Cross Reference

To identify where present regulations are proposed to be relocated, the following cross-reference list is provided:

Old	New
91.1	91.1 and 91.703.
91.2	91.193.
91.3	91.3
91.4	91.5.
91.5	91.1093.
91.6	91.189.
91.7	91.105.
91.8	91.11.
91.9	91.13.
91.10	91.13.
91.11	91.17.
91.12	91.19.
91.13	91.15.
91.14	91.107.
91.15	91.307.
91.17	91.309.
91.18	91.311.
91.19	91.21.
91.20	91.705.
91.21	91.109.
91.22	91.151.
91.23	91.167.
91.24	91.215.
91.25	91.171.
91.27	91.203.
91.28	91.715.
91.29	91.7.
91.30	91.213.
91.31	91.9
91.32	91.211.
91.33	91.205.
91.34	91.191.
91.35	91.609.
91.36	91.217.
91.37	91.605.
91.38	91.323.
91.39	91.313.
91.40	91.315.
91.41	91.317.
91.42	91.319.
91.43	91.711.
91.45	91.611.
91.47	91.607.
91.49	91.603.
91.50	Deleted.
91.51	91.219.
91.52	91.207.
91.53	Deleted.
91.54	91.23.
91.55	91.817.
91.56	91.615.
91.57	91.25.
91.58	91.613.
91.59	91.321.
91.61	91.101.
91.63	91.903.
91.65	91.111.
91.67	91.113.
91.69	91.115.
91.70	91.117.
91.71	91.303.
91.73	91.209.

Old	New
91.75	91.123.
91.77	91.125.
91.79	91.119.
91.81	91.121.
91.83	91.153 and 91.169.
91.84	91.707.
91.85	91.127.
91.87	91.129.
91.89	91.127.
91.90	91.131.
91.91	91.137.
91.93	91.305.
91.95	91.133.
91.97	91.135.
91.99	Deleted.
91.100	91.139.
91.101	91.709.
91.102	91.143.
91.103	91.713.
91.104	91.141.
91.105	91.155.
91.107	91.157.
91.109	91.159.
91.115	91.173.
91.116	91.175.
91.117	Deleted.
91.119	91.177.
91.121	91.179.
91.123	91.181.
91.125	91.183.
91.127	91.185.
91.129	91.187.
91.161	91.401.
91.163	91.403.
91.165	91.405.
91.167	91.407.
91.169	91.409.
91.170	91.415.
91.171	91.411.
91.172	91.413.
91.173	91.417.
91.174	91.419.
91.175	91.421.
91.181	91.501.
91.183	91.615.
91.185	91.617.
91.187	91.619.
91.189	91.621.
91.191	91.623.
91.193	91.625.
91.197	91.627.
91.197	91.629.
91.199	91.631.
91.200	91.633.
91.201	91.635.
91.203	91.637.
91.205	Deleted.
91.207	Deleted.
91.209	91.639.
91.211	91.641.
91.213	91.643.
91.215	91.645.
91.217	Deleted.
91.219	Deleted.
91.301	91.801.
91.302	91.803.
91.303	91.805.
91.305	91.807.
91.306	91.809.
91.307	91.811.
91.308	91.813.
91.309	91.819.
91.311	91.821.

The following list shows where the proposals contained in this document can be found in current Part 91:

New	Old
91.1	91.1
91.3	91.3
91.5	91.4
91.7	91.29
91.9	91.31
91.11	91.8
91.13	91.10
91.13	91.9
91.15	91.43
91.17	91.11
91.19	91.12
91.21	91.19
91.23	91.54
91.25	91.57
91.101	91.61
91.103	91.5
91.105	91.7
91.107	91.14
91.109	91.21
91.111	91.65
91.113	91.67
91.115	91.69
91.117	91.70
91.119	91.79
91.123	91.75
91.125	91.77
91.127	91.85
91.127	91.89
91.129	91.87
91.131	91.90
91.133	91.95
91.135	91.97
91.137	91.91
91.139	91.100
91.141	91.104
91.143	91.102
91.151	91.22
91.153 and 91.169	91.83
91.155	91.105
91.157	91.107
91.159	91.109
91.167	91.23
91.171	91.25
91.173	91.115
91.175	91.116
91.177	91.119
91.177	91.81
91.179	91.121
91.181	91.123
91.183	91.125
91.185	91.127
91.187	91.129
91.189	91.6
91.191	91.34
91.193	91.2
91.203	91.27
91.205	91.33
91.207	91.52
91.209	91.73
91.211	91.32
91.213	91.30
91.215	91.24
91.217	91.36
91.219	91.51
91.303	91.71
91.305	91.93
91.307	91.15
91.309	91.17
91.311	91.18
91.313	91.39
91.315	91.40
91.317	91.41
91.319	91.42
91.321	91.59
91.323	91.38
91.401	91.161
91.403	91.163
91.405	91.165
91.407	91.167
91.409	91.169
91.411	91.171
91.413	91.172
91.415	91.170
91.417	91.173
91.419	91.174
91.421	91.175
91.501	91.181
91.603	91.49
91.605	91.37
91.607	91.47
91.609	91.35
91.611	91.45
91.613	91.55
91.615	91.183
91.617	91.185
91.619	91.187
91.621	91.189
91.623	91.191
91.625	91.193
91.627	91.195
91.629	91.197
91.631	91.199
91.633	91.200
91.635	91.201
91.637	91.203

New	Old
91.639	91.209
91.641	91.211
91.643	91.213
91.645	91.215
91.703	91.1
91.705	91.20
91.707	91.84
91.709	91.101
91.711	91.43
91.713	91.103
91.715	91.28
91.801	91.301
91.803	91.302
91.805	91.303
91.807	91.305
91.809	91.306
91.811	91.307
91.813	91.308
91.815	91.56
91.817	91.55
91.819	91.309
91.821	91.311
91.903	91.63

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air Transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR Chapter I as follows:

1. In Part 91 by revising Subparts A–E and Appendices A, B, and C to the part and by adding Subparts F–J to read as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

Special Federal Aviation Regulations

* * * * *

Subpart A—General

Sec.

91.1 Applicability.
91.3 Responsibility and authority of the pilot in command.
91.5 Pilot in command of aircraft requiring more than one required pilot.
91.7 Civil aircraft airworthiness.
91.9 Civil aircraft operating limitations and marking requirements.
91.11 Prohibition against interference with crewmembers.
91.13 Careless or reckless operation.
91.15 Dropping objects.
91.17 Liquor and drugs.
91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.
91.21 Portable electronic devices.
91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.
91.25 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.
91.27–91.99 [Reserved]

Subpart B—Flight Rules

General

Sec.
91.101 Applicability.
91.103 Preflight action.
91.105 Flight crewmembers at stations.
91.107 Use of safety belts.
91.109 Flight instruction: Simulated instrument flight and certain flight tests.
91.111 Operating near other aircraft.
91.113 Right-of-way rules: Except water operations.
91.115 Right-of-way rules: Water operations.
91.117 Aircraft speed.
91.119 Minimum safe altitudes: General.
91.121 Altimeter settings.
91.123 Compliance with ATC clearances and instructions.
91.125 ATC light signals.
91.127 Operating on or in the vicinity of an airport: General rules.
91.129 Operating at airports with operating control towers.
91.131 Terminal control areas.
91.133 Restricted and prohibited areas.
91.135 Positive control areas and route segments.
91.137 Temporary flight restrictions.
91.139 Emergency air traffic rules.
91.141 Flight restrictions in the proximity of the Presidential and other parties.
91.143 Flight limitation in the proximity of space flight recovery operations.
91.145–91.149 [Reserved]

Visual Flight Rules

91.151 Fuel requirements for flight under VFR.
91.153 VFR flight plan: Information required.
91.155 Basic VFR weather minimums.
91.157 Special VFR weather minimums.
91.159 VFR cruising altitude or flight level.
91.161–91.165 [Reserved]

Instrument Flight Rules

91.167 Fuel requirements for flight in IFR conditions.
91.169 IFR flight plan: Information required.
91.171 VOR equipment check for IFR operations.
91.173 ATC clearance and flight plan required.
91.175 Takeoff and landing under IFR.
91.177 Minimum altitudes for IFR operations.
91.179 IFR cruising altitude or flight level.
91.181 Course to be flown.
91.183 IFR radio communications.
91.185 IFR operations: Two-way radio communications failure.
91.187 Operation under IFR in controlled airspace: Malfunction reports.
91.189 Category II and III operations: General operating rules.
91.191 Category II manual.
91.193 Certificate of authorization for certain Category II operations.
91.195–91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

91.201 Applicability.
91.203 Civil aircraft: Certifications required.
91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.
91.207 Emergency locator transmitters.

Sec.
91.209 Aircraft lights.
91.211 Supplemental oxygen.
91.213 Inoperable instruments and equipment for multiengine aircraft.
91.215 ATC transponder and altitude reporting equipment and use.
91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.
91.219 Altitude alerting system or device: Turboject-powered civil airplanes.
91.221–91.299 [Reserved]

Subpart D—Special Flight Operations

91.301 Applicability.
91.303 Aerobatic flight.
91.305 Flight test areas.
91.307 Parachutes and parachuting.
91.309 Towing: Gliders.
91.311 Towing: Other than under § 91.309.
91.313 Restricted category civil aircraft: Operating limitations.
91.315 Limited category civil aircraft: Operating limitations.
91.317 Provisionally certificated civil aircraft: Operating limitations.
91.319 Aircraft having experimental certificates: Operating limitations.
91.321 Carriage of candidates in Federal elections.
91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.
91.325–91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

91.401 Applicability.
91.403 General.
91.405 Maintenance required.
91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.
91.409 Inspections.
91.411 Altimeter system and altitude reporting equipment tests and inspections.
91.413 ATC transponder tests and inspections.
91.415 Changes to aircraft inspection programs.
91.417 Maintenance records.
91.419 Transfer of maintenance records.
91.421 Rebuilt engine maintenance records.
91.432–91.499 [Reserved]

Subpart F—Recoverable Expenses for Certain Operations

91.501 Applicability.
91.503–91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

91.601 Applicability.
91.603 Aural speed warning device.
91.605 Transport category civil airplane weight limitations.
91.607 Emergency exits for airplanes carrying passengers for hire.
91.609 Flight recorders and cockpit voice recorders.
91.611 Authorization for ferry flight with one engine inoperative.
91.613 Materials for compartment interiors.
91.615 Flying equipment and operating information.

Sec.
91.617 Familiarity with operating limitations and emergency equipment.
91.619 Equipment requirements: Over-the-top or night VFR operations.
91.621 Survival equipment for overwater operations.
91.623 Radio equipment for overwater operations.
91.625 Emergency equipment.
91.627 Flight altitude rules.
91.629 Smoking and safety belt signs.
91.631 Passenger briefing.
91.633 Shoulder harness.
91.635 Carry-on baggage.
91.637 Carriage of cargo.
91.639 Operating in icing conditions.
91.641 Flight engineer requirements.
91.643 Second-in-command requirements.
91.645 Flight attendant requirements.
91.647–91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft to Areas Outside of the United States

91.701 Applicability.
91.703 Operations of civil aircraft of U.S. registry outside of the United States.
91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
91.707 Flights between Mexico or Canada and the United States.
91.709 Operations to Cuba.
91.711 Special rules for foreign civil aircraft.
91.713 Operation of civil aircraft of Cuban registry.
91.715 Special flight authorizations for foreign civil aircraft.
91.717–91.799 [Reserved]

Subpart I—Operating Noise Limits

91.801 Applicability: Relation to Part 36.
91.803 Part 125 operators: Designation of applicable regulations.
91.805 Final compliance: Subsonic airplanes.
91.807 Phased compliance under Parts 121, 125, and 135: Subsonic airplanes.
91.809 Replacement airplanes.
91.811 Service to small communities exemption: Two-engine, subsonic airplanes.
91.813 Compliance plans and status: U.S. operators of subsonic airplanes.
91.815 Agricultural and fire-fighting airplanes: Noise operating limitations.
91.817 Civil aircraft sonic boom.
91.819 Civil supersonic airplanes that do not comply with Part 36.
91.821 Civil supersonic airplanes: Noise limits.
91.823–91.899 [Reserved]

Subpart J—Waivers

91.901 Applicability.
91.903 Policy and procedures.
91.905 List of rules subject to waiver.
91.907–91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance
Appendix B—Authorizations to Exceed Mach 1 (§ 91.817)
Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation

Performance Specifications (MNPS) Airspace

Authority: Secs. 307, 313(a), 402, 601, 602, 603, 902, 1110, and 1202, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348, 1354(a), 1372, 1421, 1422, 1443, 1472, 1510, and 1522); 49 U.S.C. 106(g)(Revised Pub. L. 97-449, January 21, 1983); and 14 CFR 11.45).

Subpart A—General

§ 91.1 Applicability.

Except as provided in § 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, unmanned free balloons, and ultralight vehicles operated in accordance with Part 103 of this chapter) within the United States.

Discussion. One commenter states that radio-controlled model aircraft, hang gliders, and ultralights should be excluded from § 91.1 because one might assume they are included if they are not specifically excluded. Another commenter states that ultralights and hang gliders should be included in the applicability of § 91.1 pending the change to Part 105. On July 30, 1982, the FAA issued new Part 103 (47 FR 38770; September 2, 1982) titled "Ultralight Vehicles; Operating Requirements" (not Part 105 as the commenter incorrectly states). The new part applies to both powered and unpowered ultralight vehicles; therefore, it is not appropriate to include them in this notice. The FAA does not consider it necessary to specifically exclude model aircraft from the provisions of § 91.1. Past operating history has not shown a need to regulate model aircraft. Therefore, there is no reference to them in any FAR. Conversely, the exclusions (moored balloons, kites, etc.) are subject to other parts of the FAR and are specifically excluded from Part 91 for clarity. In view of this, the comment to specifically exclude ultralight vehicles from the applicability of Part 91 has merit and proposed § 91.1 is revised accordingly.

Another commenter states that the rule should provide that a person not engaged in common carriage may carry persons or property and be reimbursed for the operation provided that no extra charge, fee, or assessment in excess of the cost of owning, operating, and maintaining the aircraft is made. In lieu of this recommendation, the commenter proposes adding a phrase that would exclude aircraft that are not engaged in air transportation from the applicability of Part 91. In connection with these recommendations, the commenter offers a definition of business aircraft, or aircraft used for business purposes, to be included in Part 1 and suggests that Part 125 be amended to allow business aircraft operators to hold operating certificates issued under Part 125 while operating under Part 91.

However, the issue of reimbursement for operations conducted under Part 91 is the subject of other rulemaking action, Docket No. 22470, and these comments will be considered during that rulemaking.

One commenter suggests dropping the exclusions from present § 91.1 and rewording the section to state that the applicability extends outside the United States (U.S.) to operations of U.S.-registered aircraft anywhere, so long as the rules are not inconsistent with Annex 2 to the Convention on International Civil Aviation or applicable foreign rules. No justification for the recommendation was submitted. The FAA considers the language proposed in this recommendation to be redundant with the rules contained in proposed Subpart H which provides for operations outside of the U.S.

Accordingly, § 91.1 is proposed as discussed.

§ 91.3 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an emergency requiring immediate action, the pilot in command may deviate from any rule of this part to the extent required to meet that emergency.

(c) Each pilot in command who deviates from a rule under paragraph (b) of this section shall, upon the request of the Administrator, send a written report of that deviation to the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. One commenter proposes to add a paragraph to § 91.3 stating that the pilot in command (PIC) is responsible for operating the aircraft in such a manner that positive control of the aircraft is maintained at all times. The FAA does not agree with the proposal. Section 91.3 currently serves three distinct purposes: (1) To establish the responsibility and authority for the operation of an aircraft; (2) to provide authority for the pilot to deviate from any rule in this part to the extent required to meet an emergency; and, (3) to establish a provision for the Administrator to require a written report from the pilot in command if a deviation occurs. The FAA considers that this, along with compliance with the present regulatory requirements concerning a PIC's operation of an aircraft, provides an appropriate level of safety. Therefore, further rulemaking in this area is unnecessary.

Another commenter suggests deleting paragraph (c) or adding a safeguard against self-incrimination by prohibiting use of reports submitted in accordance with paragraph (c) in any enforcement action. Paragraph (c) provides a valuable method of improving safety by identifying areas where safety problems occur and providing data upon which safety may be improved by regulatory or other means. In any event, privileges against self-incrimination do not apply to FAA's civil enforcement proceedings.

Accordingly, § 91.3 is proposed without change.

§ 91.5 Pilot in command of aircraft requiring more than one required pilot.

No person may operate an aircraft that is type certificated for more than one required pilot flight crewmember unless the pilot in command meets the requirements of § 61.58 of this chapter.

Discussion. One commenter on § 91.5 recommends expanding the applicability of this section to include all turbojet-powered aircraft. This would require pilots turbojet airplanes certificated for single-pilot operation to complete the annual proficiency check described in § 61.58. Another commenter states that the section should be deleted and the requirement placed in Part 61. Part 61 contains, among other provisions, the privileges and limitations of pilot certificates and ratings. Section 61.58 does not require the PIC to have an annual proficiency check before operation airplanes that are type certificated for operation by one pilot. Since Part 91 spells out the general operating and flight rules, it is not appropriate to include requirements regarding pilot certification privileges and limitations as they pertain to who must obtain the pilot proficiency check required by § 61.58. The requirement in proposed § 91.5 provides that no person may operate an aircraft unless the PIC meets the requirements of § 61.58. This is an operational rule which places certain regulatory responsibilities on the operator of the aircraft who may, or may not, be the pilot.

The FAA proposes to reword § 91.5 for clarity by deleting the words "pilot flightcrew consists of a" and the word "who" after the phrase "pilot in command."

Accordingly, except for the editorial change noted above, § 91.5 is proposed without change.

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. He or she shall discontnue the flight when unairworthy mechanical or structural conditions occur.

Discussion. Two commenters recommend allowing PIC's to rely on the judgment of a person authorized by Part 43 to return an aircraft to service. The FAA considers it to be necessary that the PIC retain the final responsibility for determining if an aircraft is airworthy for a particular flight. This is particularly important when an extended period of time elapses between a mechanic's return of an aircraft to service after performing maintenance and the actual operation of the aircraft in flight. Additionally, if there is no maintenance performed since a previous flight, there would be no need for a person authorized in § 43.7 to approve the aircraft for return to service.

One commenter suggests adding a new paragraph (c) which reads substantially the same as the second sentence of proposed § 91.7(b) (current § 91.29(b)), but does not offer justification for the proposed separate paragraph. Therefore, the commenter's proposal is not adopted.

Another commenter notes that proposed § 91.7 specifically holds a PIC responsible for aircraft airworthiness determinations. The commenter states that in the case of Part 91 operations, it is unrealistic to hold a PIC responsible for researching such items as compliance with airworthiness directives unless the PIC is also the owner/operator. The commenter believes that this section should recognize that, in these circumstances, the PIC must rely on documentation provided by an operator or a maintenance facility. The FAA notes that the current language in the rule does not prohibit a PIC, in determining airworthiness compliance, from utilizing written documentation such as maintenance logbooks indicating an airworthy condition or a commercial operator's daily release form. Therefore, it is not necessary to attempt to list in the rule the various ways that a PIC could reasonably expect to determine an aircraft's airworthiness.

One commenter suggests including a provision for use of a minimum equipment list (MEL) in determining whether an aircraft is in a safe condition for flight. At the present time, there are no provisions for the use of an MEL in Part 91 operations. Therefore, it is not appropriate to authorize the use of an MEL in determining if an aircraft is airworthy.

Accordingly, § 91.7 is proposed without substantive change from existing § 91.29.

§ 91.9 Civil aircraft operating limitations and marking requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without compliance with the operating limitations for that aircraft prescribed by the certificating authority of the country of registry.

(b) No person may operate a U.S.-registered civil aircraft—

(1) For which an airplane or rotorcraft flight manual is required by § 21.5 unless there is available in the aircraft a current, approved airplane or rotorcraft flight manual or the manual provided for in § 121.141(b); and

(2) For which an airplane or rotorcraft flight manual is not required by § 21.5, unless there is available in the aircraft a current approved airplane or rotorcraft flight manual, approved manual material, markings, and placards, or any combination thereof.

(c) No person may operate a U.S.-register civil aircraft unless that aircraft is identified in accordance with Part 45 of this chapter.

(d) Any person taking off or landing a helicopter certificated under Part 29 of this chapter at a heliport constructed over water may make such momentary flight as is necessary for takeoff or landing through the prohibited range of the limiting height-speed evelope established for the helicopter if that flight through the prohibited range takes place over water on which a safe ditching can be accomplished and if the helicopter is amphibious or is equipped with floats or other emergency flotation gear adequate to accomplish a safe emergency ditching on open water.

(e) The airplane or rotorcraft flight manual, or manual material, markings, and placards required by paragraph (b) of this section, must contain each operating limitation prescribed for that aircraft by the Administrator, incuding the following:

(1) Powerplant (e.g., r.p.m., manifold pressure, gas temperature, etc.).

(2) Airspeeds (e.g., normal operating speed, flaps extended speed, etc.).

(3) Aircraft weight, center of gravity and weight distribution, including the composition of the useful load in those combinations and ranges intended to ensure that the weight and center of gravity position will remain within approved limits (e.g., combinations and ranges of crew, oil, fuel, and baggage).

(4) Minimum flightcrew.

(5) Kinds of operations.

(6) Maximum operating altitude.

(7) Maneuvering flight load factors.

(8) Rotor speed (for rotorcraft).

(9) Limiting height-speed envelope (for rotorcraft).

Discussion. Three commenters on § 91.9 suggest realigning paragraphs and some revisions for clarity. These comments have been considered and a determination made that the recommended changes do not add to the clarity of the rule.

One commenter proposes deleting paragraph (c) because marking requirements are covered in Part 45. Part 45 describes what aircraft and related products must be identified and the manner in which this is to be carried out. It does not, however, prevent a person from operating an aircraft that is not properly marked. Therefore, it is appropriate to keep paragraph (c) in § 91.9 to maintain continuity between the identification requirements of Part 45 and the operating requirements of Part 91.

Another commenter states that the exception to paragraph (d) contained in paragraph (a) and the words "certificated under Part 29 of this chapter" in paragraph (d) should be deleted. The commenter contends that this would put the exception in paragraph (e) while clarifying that Part 27 helicopters are not prohibited from operating in the manner described in paragraph (d). The exception contained in paragraph (a) is necessary for clarity and, therefore, is retained in the proposed rule. The proposal to delete the reference to Part 29 helicopters in paragraph (d) does not clarify the question as it applies to Part 27 helicopters. The certification limitations of Part 27 helicopters do not prohibit the type of operation described in paragraph (d). However, certain Part 29 helicopters, because they are transport category helicopters, are restricted from operating outside the height-speed envelop because it appears in the "Limitations" section of the approved rotorcraft flight manuals. This paragraph gives operators of Part 29 helicopters the regulatory authority to operate outside the envelope during offshore operations.

Accordingly, § 91.9 is proposed without change.

§ 91.11 Prohibition against interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember the performance of the

crewmember's duties aboard an aircraft being operated.

Discussion. No public comments were received for § 91.11. Accordingly, § 91.11 is proposed without charge.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

Discussion. Several commenters recommend deleting paragraph (b) or combining it into paragraph (a). Some commenters also object to the terminology pertaining to air navigation and air commerce. Paragraph (b) states regulatory requirements which are dictated by safety needs on the surface of airports used by aircraft for air commerce. As such, it currently applies to virtually all airports in the U.S.

Section 91.13, as proposed in Notice No. 79–2A, combines two sections in present Part 91 into one section. This was done to simplify the rule since both sections concern careless or reckless operation of aircraft. The distinction between aircraft operations for the purpose of air navigation and aircraft operations other than for the purpose of air navigation is retained because it differentiates between two entirely different kinds of operations with different intended outcomes.

One commenter recommends adding "or cause to be operated" after "operate" in paragraph (a). The commenter states that this would allow the FAA to have recourse against both line persons who direct aircraft into other objects while signaling the aircraft and controllers who vector two aircraft together. The FAA disagrees. The PIC is responsible for operating the aircraft, including maneuvering it on the ground. The question of possible recourse against line personnel or controllers in the event of a mishap is one to be decided on an individual basis and cannot be specifically provided for in an operating rule.

One commenter recommends deleting "reckless" from § 91.13 but offered no compelling justification. This term has been used in enforcement proceedings for some time and the FAA considers its concept important to the enforcement program.

Another commenter states that there is no authority in the FAA Act for the FAA to regulate aircraft operations that are not for the purpose of air navigation. These regulations were made under the authority of §§ 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Accordingly, § 91.13 is proposed without change from its presentation in Notice No. 79–2A.

§ 91.15 Dropping objects.

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

Discussion. One commenter on § 91.15 states that the last sentence should be deleted because the term "reasonable precautions" is too ambiguous. The last sentence is required for clarity and to define under what conditions objects may be dropped from an aircraft in flight. Past experience with this requirement has not resulted in significant safety or enforcement problems.

Another commenter suggests relocating § 91.15 to Subpart B although no justification for the move is offered. The prohibition in this section is a general prohibition similar to that contained in § 91.13 and, as such, properly belongs in Subpart A.

Accordingly, § 91.15 is proposed without change.

§ 91.17 Liquor and drugs.

(a) No person may act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol; or

(3) While using any drug that affects his or her faculties in any way contrary to safety.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft.

Discussion. There were no public comments on § 91.17. Accordingly, the section is proposed without change.

§ 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

Discussion. There were no public comments on § 91.19. Accordingly, the section is proposed without change.

§ 91.21 Portable electronic devices.

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft:

(1) Aircraft operated by an air carrier or commercial operator; or

(2) Any other aircraft while it is operated under IFR.

(b) Paragraph (a) of this section does not apply to —

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the operator of the aircraft has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) In the case of an aircraft operated by an air carrier or commercial operator, the determination required by paragrah (b)(5) of this section shall by made by the air carrier or commercial operator of the aircraft on which the particular device is to used. In the case of other aircraft, the determination may be made by the pilot in command or other operator of the aircraft.

Discussion. One commenter on § 91.21 recommends deleting references to air carrier or commercial operators from the section and placing the information in Parts 121 and 135. Since Part 91 applies to all aircraft operations, retaining § 91.21 in its present form simplifies the FAR because common requirements are not repeated in other parts.

Accordingly, § 91.21 is proposed without change.

§ 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.

(a) Except as provided as provided in paragraph (b) of this section, the parties to a lease or contract of conditional sale involving a U.S.-registered large civil aircraft and entered into after January 2, 1973, shall execute a written lease or contract and include therein a written truth-in-leasing clause as a concluding paragraph in large print, immediately preceding the space for the signature of the parties, which contains the following with respect to each such aircraft:

(1) Identification of the Federal Aviation Regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale, and certification by the parties thereto regarding the aircraft's status of compliance with applicable maintenance and inspection requirements in this part for the operation to be conducted under the lease or contract of conditional sale.

(2) The name and address (printed or typed) and the signature of the person responsible for operational control of the aircraft under the lease or contract of conditional sale, and certification that each person understands that person's responsibilities for compliance with applicable Federal Aviation Regulations.

(3) A statement that an explanation of factors bearing on operational control and pertinent Federal Aviation Regulations can be obtained from the nearest FAA Flight Standards district office.

(b) The requirements of paragraph (a) of this section do not apply—

(1) To a lease or contract of conditional sale when—

(i) The party to whom the aircraft is furnished is a foreign air carrier or certificate holder under Part 121, 125, 127, 135, or 141 of this chapter; or

(ii) The party furnishing the aircraft is a foreign air carrier, certificate holder under Part 121, 125, 127, or 141 of this chapter, or a certificate holder under Part 135 of this chapter having appropriate authority to engage in air taxi operations with large aircraft.

(2) To a contract of conditional sale, when the aircraft involved has not been registered anywhere prior to the execution of the contract, except as a new aircraft under a dealer's aircraft registration certificate issued in accordance with § 47.61 of this chapter.

(c) No person may operate a large civil aircraft of U.S. registry that is subject to a lease or contract of conditional sale to which paragraph (a) of this section applies, unless—

(1) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has mailed a copy of the lease or contract that complies with the requirements of paragraph (a) of this section, within 24 hours of its execution, to the FAA Airman and Aircraft Registry, P.O. Box 25082, Oklahoma City, Oklahoma 73125;

(2) A copy of the lease or contract that complies with the requirements of paragraph (a) of this section is carried in the aircraft. The copy of the lease or contract shall be made available for review upon request by the Administrator; and

(3) The lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, has notified by telephone or in person, the FAA Flight Standards district office nearest the airport where the flight will originate. Unless otherwise authorized by that office, the notification shall be given at least 48 hours before takeoff in the case of the first flight of that aircraft under that lease or contract and inform the FAA of—

(i) The location of the airport of departure;

(ii) The departure time; and

(iii) The registration number of the aircraft involved.

(d) The copy of the lease or contract furnished to the FAA under paragraph (c) of this section is commercial or financial information obtained from a person. It is, therefore, privileged and confidential and will not be made available by the FAA for public inspection or copying under 5 U.S.C. 552(b)(4) unless recorded with the FAA under Part 49 of this chapter.

(e) For the purpose of this section, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft and a contract of conditional sale under section 101 of the Federal Aviation Act of 1958. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. Two commenters on § 91.23 recommend moving this section to Part 47 or Part 49. Other suggestions include moving the section to Subpart F or G. Part 49 does not provide for confidentiality of information filed in accordance with requirements of that part. The proposed § 91.23 will ensure continued confidentiality of the commercial or financial information filed in accordance with that section as it has in the past. Part 47 contains aircraft registration requirements and, as such, is not an appropriate place for the recording requirements of commercial or financial information contained in the documents in question. As regards moving the section to Subpart F or G, the FAA has determined that this is inappropriate because the requirements contained in this section are administrative and, thus, are incompatible with other proposed subparts.

Another commenter states that the section should remain in Part 91, but recommends requiring that a copy of Advisory Circular (AC) 91-37A, Truth-in-Leasing, be attached to every lease, contract, or conditional sales contract. Additionally, every lessee would be required to attest that he has read and understands the content of the circular. AC 91-37A is intended to be advisory in nature. To incorporate it into the rule negates its value as an AC and unnecessarily clutters the regulation.

One commenter recommends reversing the order of paragraphs (a) and (b), and further recommends making the rule applicable to dry leases and conditional contracts of sale alone. The commenter's proposal to reverse paragraphs (a) and (b) does not add clarity to the rule. The proposal to make the section applicable only to dry leases and conditional contracts of sale is unacceptable since it would eliminate the requirement for writing and filing wet leases. The FAA considers the reasons for instituting the requirements for written leases and contracts of conditional sale (and filing these documents) to be valid. It is in the continued interest of the public and safety in air commerce to maintain the requirements of the rule in its present form.

The FAA proposes to amend paragraph (c)(1) to update the address information for the FAA Aircraft Registry with which documents are filed in accordance with § 91.23. No other changes are proposed.

§ 91.25 Aviation Safety Reporting Program: Prohibition against use of report for enforcement purposes.

The Administrator of the FAA will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action, except information concerning accidents

or criminal offenses which are wholly excluded from the Program.

Discussion. One commenter on § 91.25 recommends putting the section in Part 13, Investigative and Enforcement Procedures. The FAA has determined that this section needs to remain in Part 91 so that potential users of this program are aware of its existence and the built-in protections offered. The program generates a considerable amount of safety-related information.

Another commenter states that the sequence of words "criminal offenses" and "accidents" should be reversed. This will clarify that "criminal" modifies only the word "offenses" and not "accidents." This comment has merit and proposed § 91.25 is revised accordingly.

§ 91.27–91.99 [Reserved]

Subpart B—Flight Rules

General

§ 91.101 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States.

Discussion. No public comments were received for § 91.101. Accordingly, § 91.101 is proposed without change.

§ 91.103 Preflight action.

Each pilot in command shall, before beginning a flight, become familiar with all available information concerning that flight. This information must include—

(a) For a flight under IFR or a flight not in the vicinity of an airport, weather reports and forecasts, fuel requirements, alternatives available if the planned flight cannot be completed, and any known traffic delays of which the pilot in command (PIC) has been advised by ATC;

(b) For any flight, runway lengths at airports of intended use, and the following takeoff and landing distance information:

(1) For civil aircraft for which an approved airplane or rotorcraft flight manual containing takeoff and landing distance data is required, the takeoff and landing distance data contained therein; and

(2) For civil aircraft other than those specified in subparagraph (1) of this paragrph, other reliable information appropriate to the aircraft, relating to aircraft performance under expected values of airport elevation and runway slope, aircraft gross weight, and wind and temperature.

Discussion. Several commenters recommend incorporating more items for the PIC to check during the preflight action. Suggestions range from requiring a preflight check of all maintenance records (to include compliance with airworthiness directives and inspection requirements) to checking Notams, lubricant quantities, and that current charts will be used. The FAA has determined that it would be impractical to cover every exigency and the current items are deemed sufficient. Additionally, as technology and the national airspace requirements change, constant amendment of the rule would be required to update it. The first sentence in § 91.103 specifically requires the PIC to become familiar with all available information concerning a flight. This, in effect, encompasses the items proposed for inclusion by the commenters.

One commenter suggests making one general statement similar to the present first sentence in § 91.103 and deleting the remainder of the section. The items addressed in paragraphs (a) and (b) previously have been incorporated into the rule to enhance the safety of certain types of operations by specifically requiring certain PIC preflight actions. The reasons for requiring that these specific actions remain in the rule are valid; therefore, paragraphs (a) and (b) are retained in the present notice.

One commenter recommended that "and any known traffic delays of which he has been advised" be deleted from § 91.103 because such information is not being made available to Part 91 operators. The requirement remains valid for the reasons previously discussed.

Accordingly, § 91.103 is proposed without change.

§ 91.105 Flight crewmembers at stations.

(a) During takeoff and landing, and while en route, each required flight crewmember shall—

(1) Be at his or her station unless the absence is necessary to perform duties in connection with the operation of the aircraft or in connection with physiological needs; and

(2) Keep his or her safety belt fastened while at his or her station.

(b) Each required flight crewmember of a U.S.-registered civil airplane shall, during takeoff and landing, keep the shoulder harness fastened while at his or her station. This paragraph does not apply if—

(1) The seat at the crewmember's station is not equipped with a shoulder harness; or

(2) The crewmember would be unable to perform required duties with the shoulder harness fastened.

Discussion. One commenter offers a revised version of § 91.105 without any further explanation. An analysis of the proposal indicates that it does not add to the clarity of the rule and operating experience does not indicate a need to clarify the rule.

Another commenter recommends combining the takeoff and landing safety belt and shoulder harness requirements into paragraph (a) and amending paragraph (b) to require that shoulder harnesses be worn, if available, by required flight crewmembers while en route and the shoulder harness doesn't interfere with their duties. The commenter also proposes to amend paragraph (b) to state that required flight crewmembers could leave their station in connection with the performance of duties related to the safety of flight instead of the present requirement that such absence be in connection with the operation of the aircraft. The proposal to require shoulder harnesses to be worn while en-route is not justisfied by the commenter, nor can the FAA justify imposing this additional requirement. With regard to substituting the term "safety in flight" for "operation of the aircraft," the commenter again does not justify the proposal. Required flight crewmembers should be at their station except as provided in the current rule. The PIC is granted deviation authority under § 91.3 should it be necessary for a crewmember to leave a station in connection with the safety of the flight during an emergency. Historically, there has not been a problem with the requirements of the rule or its clarity, and the commenter's proposal does not add to the clarity of the present rule.

Another commenter states that the word "seat" should be changed to "safety" in paragraph (a)(2) to make the terminology consistent with §§ 91.107, 91.205, and 91.905. This comment has merit and proposed paragraph (a)(2) is revised to incorporate the change.

One commenter states that "aircraft" was used instead of "airplane" in the first sentence of § 91.105(b) as it appeared in Notice No. 79–2A. The commenter correctly points out that this is a substantive change which expands the applicability of the rule to other categories of aircraft. The word "aircraft" was used in error and proposed paragraph (b) is changed accordingly.

§ 91.107 Use of safety belts.

(a) No pilot may take off a U.S.-registered civil aircraft (except an airship or free balloon that incorporates a basket or gondola) unless the pilot in

command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt. The pilot in command shall ensure that each person on board has been notified to fasten his or her safety belt before takeoff or landing.

(b) During the takeoff and landing of a U.S.-registered civil aircraft (except an airship or a free balloon that incorporates a basket or gondola) each person on board that aircraft must occupy an approved seat or berth with a safety belt properly secured about that person. However, a person who has not reached his or her second birthday may be held by an adult who is occupying an approved seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(c) This section does not apply to operations conducted under Part 121, 125, or 135 of this chapter. Paragraph (b) of this section does not apply to persons subject to § 91.105.

Discussion. One commenter states that paragraph (b) should be amended to requre the PIC to ensure that each person has fastened his or her safety belt. The PIC is involved with many duties directly related to the safe operation of the aircraft immediately before a takeoff or landing. To ensure that passengers have fastened their safety belts would require continual surveillance by the PIC to determine the status of the safety belts during these periods. This is an operational and, in some aircraft, a physical impossibility. Operating experience has shown that the requirement for the PIC to ensure that each person has been notified to fasten his or her safety belt is adequate.

On commenter states that removal in Notice No. 79-2A of the introductory phrase "Unless otherwise authorized by the Administrator" constitutes a substantive change. The commenter wants the words reinstated in § 91.107 because § 91.905 contains references to other sections which do not contain the same exception. The FAA does not agree The sections listed in § 91.905 are all subject to waiver as provided by the FAR. Many of them appear randomly in Part 91, whereas others are grouped together as in Subpart B of present Part 91.

In the latter case, § 91.63 of present Part 91 contains the waiver authority for all of the sections in that subpart. Deleting the waiver authority from proposed § 91.107 and incorporating it into § 91.905 does not constitute a change of the waiver authority as it pertains to § 91.107.

Another commenter proposes to delete paragraphs (a) and (b) and to add a sentence to paragraph (c) requiring the pilot to ensure that each person is briefed on the operation of his or her safety belt and that notification is given to fasten it. To amend the section in the manner suggested would result in loss of clarity. Paragraphs (a) and (b) describe requirements pertaining to safety belts, whereas paragraph (c) deals with the manner in which each person on board an aircraft must be seated during takeoff and landing.

This commenter is concerned about the redundant words in paragraphs (a) and (b). Since both paragraphs contain the same reference to U.S.-registered civil aircraft (except an airship or a free balloon that incorporates a basket or gondola), the FAA agrees that the regulatory requirements of the paragraphs can be consolidated into one paragraph without compromising the intent of the rule. Accordingly, paragraph (a) is revised to incorporate the provisions of paragraph (b). Paragraphs (c) and (d) are redesignated as (b) and (c) and the reference to paragraph (c) is changed to (b) in the proposed paragraph (c).

The word "approved" has been inserted before the words "seat or berth" where they appear in paragraph (b). This is intended to clarify the rule and prevent the use of nonapproved seats or berths such as suitcases, cargo, etc.

§ 91.109 Flight instruction: Simulated instrument flight and certain flight tests.

(a) No person may operate a civil aircraft (except a manned free balloon) that is being used for flight instruction unless that aircraft has fully functioning dual controls. However, instrument flight instruction may be given in a single-engine airplane equipped with a single, functioning throwover control wheel in place of fixed, dual controls of the elevator and ailerons when—

(1) The instructor has determined that the flight can be conducted safely; and

(2) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(b) No person may operate a civil aircraft in simulated instrument flight unless—

(1) An appropriately rated pilot occupies the other control seat as safety pilot;

(2) The safety pilot has adequate vision forward and to each side of the aircraft, or a competent observer in the aircraft adequately supplements the vision of the safety pilot; and

(3) Except in the case of lighter-than-air aircraft, that aircraft is equipped with fully functioning dual controls. However, simulated instrument flight may be conducted in a single-engine airplane, equipped with a single, functioning, throwover control wheel, in place of fixed, dual controls of the elevator and ailerons, when—

(i) The safety pilot has determined that the flight can be conducted safely; and

(ii) The person manipulating the controls has at least a private pilot certificate with appropriate category and class ratings.

(c) No person may operate a civil aircraft that is being used for a flight test for an airline transport pilot certificate or a class or type rating on that certificate or for a Part 121 proficiency flight test unless the pilot seated at the controls, other than the pilot being checked, is fully qualified to act as pilot in command of the aircraft.

Discussion. One commenter states that full-functioning dual controls should be required for all simulated Instrument Flight Rules (IFR) practice with a safety pilot and IFR instruction. Past operating experience since the use of throwover control wheels has been permitted in single-engine airplanes does not indicate that the proposed change is necessary.

Another commenter recommends consolidating subparagraph (B)(3)(i) and (ii) into subparagraphs (a)(1) and (2). The paragraphs cannot be consolidated because they refer to two different kinds of operations. Paragraph (a) contains certain requirements that pertain to the operation of an aircraft for the purpose of flight instruction. Paragraph (b) refers to operations conducted with a safety pilot on board while another pilot is manipulating the controls under simulated instrument meteorological conditions. The specific requirements are clearly stated for each type of operation and must remain so for clarity and in the interest of safety.

One commenter states that the term "single-engine" in paragraphs (a) and (b)(3) should be deleted so that a throwover control wheel can be used in all airplanes. The commenter's recommendation to permit use of a throwover control wheel in multiengine airplanes while conducting instrument flight instruction or simulated instrument flight with a safety pilot on board would not ensure an acceptable level of safety. This can only be ensured by requiring fully functioning dual controls in multiengine airplanes. The complexity and unique operating characteristics of these airplanes makes

it imperative that the instructor or safety pilot be able to take over full control immediately when the need arises.

The same commenter recommends moving § 91.109 to Subpart D. Subpart B contains flight rules while Subpart D concerns operating rules. Since this section is essentially a flight rule, it is retained in Subpart B.

Several commenters wanted one or more terms defined in the rule. However, past operating experience indicates that the rule is clear as currently drafted and further change is unnecessary.

Accordingly, § 91.109 is proposed without change.

§ 91.111 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.

(c) No person may operate an aircraft, carrying passengers for hire, in formation flight.

Discussion. One commenter states that paragraph (c) should exclude balloon operations in formation flight from not carrying passengers for hire. The commenter contends that collisions between balloons are unlikely and are not dangerous when they do occur. Further, multiple-balloon launchings are more colorful and exciting for passengers and onlookers. The FAA has determined that all aircraft should be covered by this paragraph, including balloons, to provide a high level of safety.

Two commenters suggest that paragraph (d) be moved to § 91.123. The FAA agrees that this paragraph is more appropriate in § 91.123 because its application concerns "clearances and instructions" by ATC. Therefore, § 91.111 is proposed with deletion of paragraph (d), which is moved to § 91.123. No other substantive changes for this section are proposed.

§ 91.113 Right-of-way rules: Except water operations.

(a) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

(b) *General.* When weather conditions permit, regardless of whether an operation is conducted under instrument flight rules or visual flight rules, vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft. When a rule of this section gives another aircraft the right of way, the pilot shall give way to that aircraft and may not pass over, under, or ahead of it unless well clear.

(c) *In distress.* An aircraft in distress has the right-of-way over all other air traffic.

(d) *Coverging.* When aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way. If the aircraft are of different categories—

(1) A balloon has the right of way over any other category of aircraft;

(2) A glider has the right of way over an airship, airplane, or rotorcraft; and

(3) An airship has the right-of-way over an airplane or rotorcraft.

However, an aircraft towing or refueling other aircraft has the right-of-way over all other engine-driven aircraft.

(e) *Approaching head-on.* When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(f) *Overtaking.* Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right of way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land or to overtake that aircraft.

Discussion. One commenter on § 91.113 states that the first sentence in paragraph (f) should be amended so that aircraft on final approach shall not take advantage of the rule to force another aircraft that has landed, and that is attempting to make way for another landing aircraft, off the runway surface. The recommendation has merit and is proposed in this notice. The amendment will clarify who has the right-of-way when it is necessary for an aircraft to taxi back on the runway before exiting the runway. The FAA proposes to relocate paragraph (g) at the beginning of § 91.113 to clarify the applicability of this section without requiring the reader to read the entire section. The paragraphs are re-designated accordingly. No other changes are proposed for this section.

§ 91.115 Right-of-way rules: Water operations.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

Discussion. One commenter suggested that the proposed § 91.115 be changed to limit the applicability to aircraft so as to avoid the impression that boat operators will conform to an unknown regulation. The right-of-way rules contained in this section parallel U.S. Coast Guard regulations on the same subject. Therefore, water right-of-way determinations should be the same regardless of the regulatory reference. Accordingly, the section is proposed without change.

§ 91.117 Aircraft speed.

(a) No person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 m.p.h.).

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area at an indicated airspeed of more than 200 knots (230 m.p.h.).

Paragraph (b) does not apply to any operations within a terminal control area. Such operations shall comply with paragraph (a) of this section.

(c) No person may operate an aircraft in the airspace underlying a terminal control area, or in a VFR corridor designated through a terminal control area, at an indicated airspeed of more that 200 knot (230 m.p.h.).

(d) If the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

Discussion. Several comments were received on this section. One commenter suggests that paragraph (a) exclude Group I TCA airspace from the 250 knot speed limitation. The FAA agrees that the proposal does reflect a benefit for certain users since it would provide a savings of time and fuel. However, the present TCA altitude and size configurations do not allow uniform application of speeds in excess of 250 knots at this time.

One commenter suggests that "10,000 feet MSL" in paragraph (a) be changed to "12,500 feet MSL." The FAA considers that the present altitude of 10,000 feet, along with other regulations in Part 91 (such as the increased visibility and cloud clearance requirements in § 91.155) provides for an appropriate level of safety, and additional regulatory restrictions with their associated economic impacts are not necessary at this time.

One commenter suggests that ATC be given the authority to approve speeds in excess of 250 knots below 10,000 feet MSL. However, much information not always available to ATC is necessary for this authorization, and, therefore, does not consider ATC the appropriate source for authorization. One commenter suggests that authorization by the Administrator to deviate from paragraph (a) be restored in this regulation. Authorization by the Administrator to deviate from this section is covered under Subpart J. Therefore, it is unnecessary to restate the authorization in paragraph (a).

One commenter suggests that the 156 knot speed in paragraph (b) be changed to 155 knots because it would be easier to remember. Two commenters suggest that the speeds in paragraphs (b)(1) and (2) be combined to a common speed of 200 knots for reciprocating and turbine-powered aircraft. The FAA, in the latter instance, finds that different speeds based on type of powerplant are no longer valid. The 200-knot limit was adopted to accommodate the advent of turbine-powered aircraft which could not operate at the then existent 156-knot maximum speed. Inasmuch as turbine-powered aircraft are now as commonplace as reciprocating engine aircraft, a single prescribed maximum speed of 200 knots is appropriate. The FAA concurs with the latter suggestion and paragraph (b) is changed to reflect this proposal for simplification and commonality. Therefore, the suggestion to change 156 knots to 155 knots becomes moot.

Accordingly, this section is proposed with only the change noted in paragraph (b).

§ 91.119 Minimum safe altitudes: General.

Except when neecessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted withoput hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with any routes or altitudes specifically prescribed for helicopters by the Administrator.

Discussion. Two commenters suggest that "congested areas" is too ambiguous and not definitive. The FAA has determined that the present language is adequate in terms of general understanding and enforceability.

One commenter suggests that paragraph (c) deals with "proximity" to areas and, therefore, wording should be changed to reflect this idea. The FAA considers this unnecessary verbiage and inappropriate.

One commenter suggests that paragraph (c) be rewritten to eliminate the 500-foot altitude requirement since the overall 500-foot distance requirement eliminates the need for this restriction. However, the altitude of 500 feet is necessary since the 500-foot distance requirement from "any person, vessel, vehicle, or structure" applies only over sparsely populated areas or open water.

One commenter on § 91.119 suggests that paragraph (d) be deleted. However, since this paragraph allows for the unique operating characteristics of helicopters, it should be retained.

Another commenter suggests that "helicopter" be changed to "rotorcraft" in paragraph (d). The present wording should be retained since all rotorcraft do not have the unique operating characteristics of helicopters necessary to apply this paragraph.

Another commenter on § 91.119 suggested a rewording of subparagraph (d) to make it clear that routes and altitudes are not prescribed for all helicopter operations. The FAA agrees with the suggestion. This can be achieved by simply inserting the word "any" between the existing words "with" and "routes." This change is reflected in the proposed § 91.119(d).

One commenter on § 91.119 suggests that paragraph (d) be deleted because low flying helicopters, having a high sink rate and no appreciable glide angle, are a hazard; and because they are noisy. The FAA does not agree. The rule already requires that any aircraft be operated at an altitude that allows an emergency landing, if a powerplant fails, without undue hazard to persons or property on the surface. This provision applies to helicopters even though they may be operated at altitudes lower than the minimum prescribed for other aircraft. With regard to the matter of noise, the provisions of this section are intended to establish minimum altitudes for safety and were never intended to address noise issues. Establishing minimum altitudes based on noise would require various altitudes based on the amount of noise generated by various types of aircraft and would result in an unacceptably complex regulation.

One commenter proposes to include free balloons in paragraph (d) because balloons typically launch and land at off-airport locations. The commenter contends that if a descent for landing has to be aborted at an altitude of less than 500 feet, the action may appear to be "buzzing." The FAA does not agree because this action is not unlike a rejected landing by an airplane at an airport, which is a legitimate maneuver that may become necessary during an approach to a landing.

Finally, one commenter suggests that a new paragraph (e) be added to require additional altitude restriction around uncontrolled airports. The present regulation, along with others in Part 91, allows for an adequate level of safety in these areas and a new paragraph is unwarranted.

Therefore, § 91.119 is proposed with the change as discussed.

§ 91.121 Altimeter settings.

(a) Each person operating an aircraft shall maintain the cruising altitude or flight level of that aircraft, as the case may be, by reference to an altimeter that is set, when operating—

(1) Below 18,000 feet MSL, to—

(i) The current reported altimeter setting of a station along the route and within 100 nautical miles of the aircraft;

(ii) If there is no station within the area prescribed in subdivision (i) of this subparagraph, the current reported altimeter setting of an appropriate available station; or

(iii) In the case of an aircraft not equipped with a radio, the elevation of the departure airport or an appropriate altimeter setting available before departure; or

(2) At or above 18,000 feet MSL, to 29.92" Hg.

(b) The lowest usable flight level is determined by the atmospheric pressure in the area of operation as shown in the following table:

Current altimeter setting	Lowest usable flight level
29.92 (or higher)	180
29.91 through 29.42	185
29.41 through 28.92	190
28.91 through 28.42	195
28.41 through 27.92	200
27.91 through 27.42	205
27.41 through 26.92	210

(c) To convert minimum altitude prescribed under §§ 91.119 and 91.177 to the minimum flight level, the pilot shall take the flight level equivalent of the minimum altitude in feet and add the appropriate number of feet specified below, according to the current reported altimeter setting:

Current altimeter setting	Adjustment factor
29.92 (or higher)	None
29.91 through 29.42	500
29.41 through 28.92	1,000
28.91 through 28.42	1,500
28.41 through 27.92	2,000
27.91 through 27.42	2,500
27.41 through 26.92	3,000

Discussion. One commenter suggests that the tables in this section be moved out of Part 91 and inserted in appropriate technical manuals. Retaining these tables in Part 91 keeps the material codified and readily available to pilots needing access to it.

The same commenter also suggests that a new paragraph be added to allow a glider on local flights or an aircraft engaged in agricultural operations to be operated with its altimeter set to zero before takeoff. The FAA does not consider the additional paragraph to be necessary because current §91.81 is designed to provide a standard altitude reference for the purpose of maintaining a flight level or cruising altitude. Operations such as local glider flights and agricultural aircraft operations normally do not involve maintenance of a flight level or cruising altitude. The FAA has determined that this is also true for local aerobatic flight and that safety would not be compromised by using other than the altimeter setting referenced in current § 91.81 if the flight is conducted under VFR and the flight departs and lands at the same airport.

Another commenter believes that definitions are necessary for certain terms used in § 91.121(e). The commenter states that, without definition, the terms "station along the route" in paragraph (a)(l)(i) "an appropriate available station" in paragraph (a)(l)(ii), and "appropriate altimeter setting available before departure" in paragraph (a)(l)(ii) frustrate the purpose of written safety regulations, which is to have mutual understanding to establish minimum safety standards. The FAA does not agree that further definition of these terms is needed. The terms in the rule are also commonly used in training and advisory publications and they include all the various official weather reporting stations.

Accordingly, this section is proposed without change.

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance, except in an emergency, unless an amended clearance is obtained. A PIC may cancel an IFR flight plan if he or she is operating in VFR weather conditions outside of positive controlled airspace. If a pilot is uncertain of the meaning of an ATC clearance, the pilot shall immediately request clarification from ATC.

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

(c) Each pilot in command who, in an emergency, deviates from an ATC clearance or instruction shall notify ATC of that deviation as soon as possible.

(d) Each pilot in command who (though not deviating from a rule of this subpart) is given priority by ATC in an emergency, shall submit a detailed report of that emergency within 48 hours to the manager of that ATC facility, if requested by ATC.

(e) Unless otherwise authorized by ATC, no person operating an aircraft may operate that aircraft according to any clearance or instruction that has been issued to the pilot of another aircraft for radar air traffic control purposes.

[Approved by the Office of Management and Budget under OMB control number 2120-0005]

Discussion. One commenter suggests that paragraph (d) is not needed and should be deleted. The information in paragraph (d) is necessary to the FAA for its use in monitoring the air traffic system from a safety standpoint. As discussed in proposed § 91.111, paragraph (d) of that section is incorporated into § 91.123 as new paragraph (e).

No other substantive changes are proposed for this section.

§ 91.125 ATC light signals.

ATC light signals have the meaning shown in the following table:

Color and type of signal	Meaning with respect to aircraft on the surface	Meaning with respect to aircraft in flight
Steady green	Cleared for takeoff	Cleared to land.
Flashing green	Cleared to taxi	Return for landing (to be followed by steady green at proper time).
Steady red	Stop	Give way to other aircraft and continue circling.
Flashing red	Taxi clear of runway in use.	Airport unsafe—do not land.
Flashing white	Return to starting point on airport.	Not applicable.
Alternating red and green.	Exercise extreme caution.	Exercise extreme caution.

Discussion. No public comments were received concerning this section. Accordingly, no changes are proposed.

§ 91.127 Operating on or in the vicinity of an airport: General rules.

(a) Unless otherwise required by Part 93 of this chapter, each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section and, if applicable, of § 91.129.

(b) Each person operating an aircraft to or from an airport without an operating control tower shall—

(1) In the case of an airplane approaching to land, make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot shall make all turns to the right;

(2) In the case of a helicopter approaching to land, avoid the flow of fixed-wing aircraft; and

(3) In the case of an aircraft departing the airport, comply with any traffic patterns established for that airport in Part 93.

(c) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area except for the purpose of

landing at, or taking off from, an airport within that area. ATC authorization may be given as individual approval of specific operations or may be contained in written agreements between airport users and the tower concerned.

(d) Except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final landing flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the airplane flight manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of his or her airplane and may use a different flap setting approved for that airplane if it is necessary in the interest of safety.

Discussion. Several public comments were received on §§ 91.127 and 91.129 as they appeared in Notice No. 79–2A. Since these two sections have been combined into one section, the comments on both sections are discussed below.

One commenter suggests that a 1,000-foot altitude restriction be placed in this section which would require an aircraft to enter the traffic pattern at 1,000 feet AGL. The FAA has determined that other regulations in Part 91, such as § 91.119, Minimum safe altitudes: General, coupled with the recommended practices in AC 90–66, Recommended Standard Traffic Patterns for Airplane Operations at Uncontrolled Airports, are adequate and the suggestion creates an unnecessary burden.

One commenter suggests that additional restrictions be included in this section which would restrict operations in the vicinity of an airport except for the purpose of taking off or landing. However, the present language, along with other regulations in Part 91, provides for an adequate level of safety, and additional regulatory restrictions in this area are not necessary at this time.

One commenter suggests that this section be changed to allow helicopters a choice of avoiding or following the flow of fixed-wing aircraft. The FAA considers that having helicopters remain clear of the flow of fixed-wing traffic is necessary not only for a safer mix of traffic, but also to expedite traffic into and out an airport.

Two commenters suggest that the phrase "traffic pattern" should be clarified in § 91.129 as proposed in Notice No. 79–2A. The FAA concurs with the need to clarify "traffic pattern" as used in this section. Therefore, subparagraph (b)(3) is rewritten to require compliance with those traffic patterns provided for in Part 93.

Two commenters suggest requiring standard, well-defined traffic patterns. One of the commenters suggests requiring airplanes approaching to land to circle the airport and those departing to make at least one 90-degree turn followed by a 45-degree to the other direction to depart the traffic pattern. The FAA has determined that the existing rule, combined with voluntary compliance to be recommended standard traffic pattern, provides the necessary well-defined patterns, turn direction and standardization, and safety. Moreover, the commenters did not provide evidence or rationale that shows that their recommendations, if adopted, would improve safety.

Three commenters suggest that paragraph (D) (formerly paragraph (c) in § 91.127 as proposed in Notice No. 72–2A) be moved out of this section and placed in either Subpart F of Subpart I since it involves civil turbojet-powered airplanes and is intended to reduce noise levels. The FAA considers the paragraph more appropriate within this section since it concerns operational procedures required to be used by a PIC when operating in the vicinity of an airport.

Another commenter proposes to delete paragraph (D) entirely because the provisions incorporated in the rule for not complying with the procedures make the restrictions practically meaningless. The FAA has determined that it is appropriate to retain the provisions of paragraph (d) because it requires noise reduction procedure for normal operations.

Several commenters suggest that §§ 91.127, 91.129, and 91.131 be combined into two sections. The FAA concurs with these suggestions and has combined these sections into two sections in this proposal because of the commonality of the operations. Therefore, § 91.127 is expanded to include the requirements of § 91.129 and that section, as proposed in Notice No. 79–2A, is deleted.

No other changes are proposed for this section.

§ 91.129 Operation at airports with operating control towers.

(a) *General.* Unless otherwise authorized or required by ATC, each person operating an aircraft to, from, or on an airport with an operating control tower shall comply with the applicable provisions of this section.

(b) *Communications with control towers operated by the United States.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower operated by the United States unless two-way radio communications are maintained between that aircraft and the control tower. However, if the aircraft radio fails in flight, the PIC may operate that aircraft and land if weather conditions are at or above basic VFR weather minimums, visual contact with the tower is maintained, and a clearance to land is received. If the aircraft radio fails while in flight under IFR, the pilot must comply with § 91.185.

(c) *Communications with other control towers.* No person may, within an airport traffic area, operate an aircraft to, from, or on an airport having a control tower that is operated by any person other than the United States unless—

(1) If that aircraft's radio equipment so allows, two-way radio communications are maintained between the aircraft and the tower; or

(2) If that aircraft's radio equipment allows only reception from the tower, the pilot has the tower's frequency monitored.

(d) *Minimum altitudes.* When operating to an airport with an operating control tower, each pilot of—

(1) A turbine-powered airplane or a large airplane shall, unless otherwise required by the applicable distance from cloud criteria, enter the airport traffic area at an altitude of at least 1,500 feet above the surface of the airport and maintain an altitude of at least 1,500 feet within the airport traffic area, including the traffic pattern, until further descent is required for a safe landing;

(2) A turbine-powered airplane or a large airplane approaching to land on a runway being served by an ILS, if the airplane is ILS equipped, shall fly that airplane at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance from clouds criteria requires interception closer in) and the middle marker; and

(3) An airplane approaching to land on a runway served by a visual approach slop indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

However, paragraphs (d)(2) and (3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide slope.

(e) *Approaches.* When approaching to land at an airport with an operating control tower, each pilot of—

(1) An airplane shall circle the airport to the left; and

(2) A helicopter shall avoid the flow of fixed-wing aircraft.

(f) *Departures.* No person may operate an aircraft taking off from an airport with an operating control tower except in compliance with the following:

(1) Each pilot shall comply with any departure procedures established for that airport by the FAA.

(2) Unless otherwise required by the departure procedure or the applicable distance from clouds criteria, each pilot of a turbine-powered airplane and each pilot of a large airplane shall climb to an altitude of 1,500 feet above the surface as rapidly as practicable.

(g) *Noise abatement runway system.* When landing or taking off from an airport with an operating control tower and for which a formal runway use program has been established by the FAA, each pilot of a turbine-powered airplane and each pilot of a large airplane assigned a noise abatement runway by ATC shall use that runway. However, consistent with the final authority of the pilot in command concerning the safe operation of the aircraft as prescribed in § 91.3(a), ATC may assign a different runway if requested by the pilot in the interest of safety.

(h) *Clearances required.* No person may, at an airport with an operating control tower, operate an aircraft on a runway or taxiway, or take off or land an aircraft, unless an appropriate clearance is received from ATC. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

Discussion. One commenter suggests that a 1,000-foot altitude requirement be placed on other than large or turbine-powered aircraft when entering the traffic pattern at airports with operating control towers. As stated in the § 91.127 discussion, the present regulatory requirements in Part 91 are adequate as they pertain to operations around airports and that the nonregulatory observance of recommended standard traffic pattern procedures detailed in AC 90-66 are sufficient to ensure an adequate level of safety.

One commenter suggests that paragraph (c) be deleted and the requirements of paragraph (b) be extended to cover all operating control towers. The National Airspace Review Evaluation, also recommended that Part 91 be amended to extend the communications requirements of paragraph (b) to all operating control towers. The FAA is concerned that such an amendment could have a significant impact on certain operators. At airports where non-Federal control towers are operated, the traffic activity may be significantly lower than that required for the establishment of a control tower operated by the United States and therefore additional review is necessary to determine the potential regulatory impact. Accordingly, the recommendations to amend the communications requirements at airports having non-Federal control towers will be processed as a separate action so that the existing Part 91 NPRM will not be delayed.

Two commenters state that subparagraphs (d)(1), (d)(2), (f)(2), and (g) should be moved to Subpart F since their purpose is noise abatement. The FAA considers the subparagraphs to be more appropriate within this section and should be retained since its application concerns operating to an airport with an operating control tower, entering the airport traffic area, approaching to land, and departing from the airport.

One commenter suggests that this section be changed to allow helicopters a choice of avoiding or following the flow of fixed-wing aircraft. While the FAA recognizes that having helicopters remain clear of the fixed-wing flow creates a safer mix of traffic and expedites traffic into and out of airports, paragraph (a) already gives ATC the authority to allow deviations from this section.

One commenter recommended deleting §§ 91.127(b) and 91.131(b) and (c) and incorporating them into a reworded § 91.131(h). The commenter's aim was to simplify the regulations dealing with operations in airport traffic areas and to make those regulations more effective. The FAA finds that the recommended change would permit transient operations which are currently not allowed in airport traffic areas and remove the required radio communication with control towers while in airport traffic areas. Further, the combining of §§ 91.126 and 91.129 (as proposed in Notice 79-2A) into § 91.127 (as proposed herein) would achieve the commenter's objectives.

One commenter notes that the word "operate" is repeated in paragraph (h). This error is corrected.

Finally, this section is moved to a new § 91.129 as a result of combining §§ 91.127, 91.129, and 91.131 into two sections.

§ 91.131 Terminal control areas.

(a) *Group I terminal control areas.*—(1) *Operating rules.* No person may operate an aircraft within a Group I terminal control area designated in Part 71 of this chapter except in compliance with the following rules:

(i) No person may operate an aircraft within a Group I terminal control area unless an appropriate authorization is received from ATC before operating that aircraft in that area.

(ii) Unless otherwise authorized by ATC, each person operating a large turbine-engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(2) *Pilot requirements.* The pilot in command of a civil aircraft may not land or take off that aircraft from an airport within a Group I terminal control area unless he or she holds at least a private pilot certificate.

(3) *Equipment requirements.* Unless otherwise authorized by ATC in the case of in-flight VOR, TACAN, or two-way radio failure or unless otherwise authorized by ATC in the case of a transponder failure occurring at any time, no person may operate an aircraft within a Group I terminal control area unless that aircraft is equipped with—

(i) An operable VOR or TACAN receiver (except in the case of helicopters);

(ii) An operable two-way radio capable of communicating with ATC on appropriate frequencies for that terminal control area; and

(iii) The applicable equipment specified in § 91.215.

(b) *Group II terminal control areas.*

(1) *Operating rules.* No person may operate an aircraft within a Group II terminal control area designated in Part 71 of this chapter except in compliance with the following rules:

(i) No person may operate an aircraft within a Group II terminal control area unless an appropriate authorization from ATC is received before operating that aircraft in that area and unless two-way radio communications are maintained within that area between that aircraft and the ATC facility.

Unless otherwise authorized by ATC, each person operating a large turbine-engine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the terminal control area.

(2) *Equipment requirements.* Unless otherwise authorized by ATC in the case of in-flight VOR, TACAN, or two-way radio failure or unless otherwise authorized by ATC in the case of a transponder failure occuring at any time, no person may operate an aircraft within a Group II terminal control area unless that aircraft is equipped with—

(i) An operable VOR or TACAN receiver (except in the case of helicopters);

(ii) An operable two-way radio capable of communicating with ATC on the appropriate frequencies for that terminal control area; and

(iii) The applicable equipment specified in § 91.215, except that automatic pressure altitude reporting equipment is not required for any operation within the terminal control area and a transponder is not required for IFR flights operating to or from an airport outside of, but in close proximity to, the terminal control area when the commonly used transition, approach, or departure procedures to such airport require flight within the terminal control area.

Discussion. One commenter on § 91.133 suggests that paragraph (a) and (b) be changed with addition of new paragraphs to clarify responsibilities of pilots and controllers in and around TCA's. The FAA considers the language in both paragraphs as presently written adequate, and the changes for clarification which the commenter desires are already accommodated by the present phrase "unless otherwise authorized by ATC."

One commenter suggests deleting references to § 91.215 and restating the requirements in this section. Section 91.215 contains rules concerning transponder and altitude reporting equipment and its use. Included in that rule are equipment technical standards which are inappropriate in Subpart B, Flight Rules. To adopt the commenter's recommendation, it would be necessary to incorporate these technical standards and requirements. This redundancy, along with the amount of information which would be necessary to restate in this section, makes it inappropriate to do so, and the reference is retained.

One commenter suggests that subparagraphs (a)(1)(ii) and (b)(1)(ii) be moved to Subpart F which provides for large and turbine-powered multiengine aircraft. Since these subparagraphs concern operations within TCA airspace, they are more appropriate in this section.

Several commenters noted the typographical error in paragraph (a)(2), which is changed from "Group II" to "Group I" in this notice.

Several commenters suggest that paragraph (c) be deleted since there are no Group III TCA's and none are planned. The FAA concurs with this suggestion. Group III TCA's were proposed to be deleted in 1976 by Notice No. 76-20, Operations Review Program, and Notice 78-19, Controlled Visual Flight Rules. However, the proposals concerning Group III TCA's did not become amendments. Deletion is now proposed in this notice.

Finally, one commenter suggests that the entire section should be deleted or, if kept, at least rewritten. In the commenter's rewrite, Group III TCA's are deleted, cross reference to § 91.215 is deleted, and ATC authorization is expanded. All areas but the expansion of ATC authority were suggested by other commenters and are previously discussed. The FAA considers expanding this authorization inappropriate since additional information not always available to the controller is necessary to assure an adequate level of safety and the least amount of system impact.

Accordingly, § 91.133 is redesignated as § 91.131 to maintain a consistent numbering system and is proposed with the changes discussed.

§ 91.133 Restricted and prohibited areas.

(a) No person may operate an aircraft within a restricted area (designated in Part 73) contrary to the restrictions imposed, or within a prohibited area, unless he or she has the permission of the using or controlling agency, as appropriate.

(b) Each person conducting, within a restricted area, an aircraft operation (approved by the using agency) that creates the same hazards as the operations for which the restricted area was designated may deviate from the rules of this subpart that are not compatible with the operation of the aircraft.

Discussion. One commenter suggests that the parenthetical statement "(designated in Part 73)" is unnecessary and should be deleted. However, this statement is important for clarification purposes, since the terminology of restricted area could be misinterpreted to include other forms of airspace in which other restrictions apply.

Another commenter suggests that paragraph (b) should be deleted or written in clearer language. However, the commenter did not offer any substitute wording. The FAA considers the current paragraph adequate, but invites suggestions for improved language.

Accordingly, except to redesignate § 91.135 as § 91.133, the section is proposed without change.

§ 91.135 Positive control areas and route segments.

(a) Except as provided in paragraph (b) of this section, no person may operate an aircraft within a positive control area or positive control route segment designated in Part 71 of this chapter unless that aircraft is—

(1) Operated under IFR at a specific flight level assigned by ATC;

(2) Equipped with instruments and equipment required for IFR operations;

(3) Flown by a pilot rated for instrument flight; and

(4) Equipped, when in a positive control area, with—

(i) The applicable equipment specified in § 91.215; and

(ii) A radio providing direct pilot/controller communication on the frequency specified by ATC for the area concerned.

(b) ATC may authorize deviations from the requirements of paragraph (a) of this section. In the case of an inoperative transponder, ATC may immediately approve an operation within a positive control area allowing flight to continue, if desired, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made, or both. A request for authorization to deviate from a requirement of paragraph (a) of this section, other than for operation with an inoperative transponder as outlined above, must be submitted at least 48 hours before the proposed operation to the ATC center having jurisdiction over the positive control area concerned. ATC may authorize deviation on a continuing basis or for an individual flight, as appropriate.

(Approved by the Office of Management and Budget under OMB control number 2120-005)

Discussion. One commenter suggests that reference to Part 71 in paragraph (a) be deleted. However, this statement is necessary for clarification, since positive control areas or routes could be misinterpreted to mean other than Part 71.

One commenter suggests that § 91.137(a)(4)(i) be rewritten to include the equipment in § 91.215 instead of referencing that section. The FAA considers the reference to § 91.215 to be more appropriate since including this information in this section would cause it to become long and cumbersome.

One commenter suggests that the 4-day notification requirement in paragraph (b) be shorter and that the written requirement be deleted. The FAA agrees that the 4-day written requirement is no longer needed because of state-of-the-art equipment used by ATC. Therefore, this section is changed to reflect a 48-hour requirement without the written notification.

Section 91.137 is redesignated as § 91.135 to maintain a consistent numbering system.

§ 91.137 Temporary flight restrictions.

(a) Whenever the Administrator determines it to be necessary to prevent an unsafe congestion of sightseeing aircraft above an incident or event which may generate a high degree of public interest, or to provide a safe environment for the operation of disaster-relief aircraft, a Notice to Airmen will be issued designating an area within which temporary flight restrictions apply.

(b) When a Notice to Airmen has been issued under this section, no person may operate an aircraft within the designated area unless—

(1) That aircraft is participating in disaster-relief activities and is being operated under the direction of the agency responsible for relief activities;

(2) That aircraft is being operated to or from an airport within the area and is operated so as not to hamper or endanger relief activities;

(3) That operation is specifically authorized under an IFR ATC clearance;

(4) VFR flight around or above the area is impracticable due to weather, terrain, or other considerations; prior notice is given to the air traffic service facility specified in the Notice to Airmen; and en route operation through the area is conducted so as not to hamper or endanger relief activities; or

(5) That aircraft is carrying properly accredited news representatives or persons on official business concerning the incident or event which generated issuing the Notice to Airmen. The operation shall be conducted in accordance with § 91.119 of this chapter and shall be conducted above the altitudes being used by relief aircraft unless otherwise authorized by the agency responsible for relief activities. In connection with this type of operation, before entering the area, the operator must file a flight plan with the air traffic service facility specified in the Notice to Airmen. The flight plan shall include the following information:

(i) Aircraft identification, type, and color.

(ii) Radio communications frequencies to be used.

(iii) Proposed times of entry and exit of the designated area.

(iv) Name of news medium or purpose of flight.

(v) Any other information deemed necessary by ATC.

Discussion. No public comments were received on § 91.139. Accordingly, except to redesignate § 91.139 as § 91.137, the section is proposed without change.

§ 91.139 Emergency air traffic rules.

(a) This section prescribes a process for utilizing Notices to Airmen (NOTAM's) to advise of the issuance and operations under emergency air traffic rules and regulations and designates the official who is authorized to issue NOTAM's on behalf of the Administrator in certain matters under this section.

(b) Whenever the Administrator determines that an emergency condition exists, or will exist, relating to the FAA's ability to operate the air traffic control system and during which normal flight operations under this chapter cannot be conducted consistent with the required levels of safety and efficiency—

(1) The Administrator issues an immediately effective air traffic rule or regulation in response to that emergency condition; and

(2) The Administrator or the Associate Administrator for Air Traffic Service, may utilize the NOTAM system to provide notification of the issuance of the rule or regulation.

Those NOTAM's communicate information concerning the rules and regulations that govern flight operations, the use of navigation facilities, and designation of that airspace in which the rules and regulations apply.

(c) When a NOTAM has been issued under this section, no person may operate an aircraft, or other device governed by the regulation concerned, within the designated airspace except in accordance with the authorizations, terms, and conditions prescribed in the regulation covered by the NOTAM.

Discussion. One commenter suggests that another paragraph be added to impose a specific termination date for emergency rules. However, this is not feasible in situations to which this rule is applicable. The nature of the emergency, and when it is determined to no longer exist, determines when the specific regulations should be cancelled. Therefore, except to redesignate § 91.141 as § 91.139, and to update a reference to a certain FAA management position, the section is proposed without change.

§ 91.141 Flight restrictions in the proximity of the Presidential and other parties.

No person may operate an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airman (NOTAM).

Discussion. No public comments were received on § 91.143. Accordingly, except to redesignate it as § 91.141, the section is proposed without change.

§ 91.143 Flight limitations in the proximity of space flight recovery operations.

No person may operate any aircraft of U.S. registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration, within areas designated in a NOTAM for space flight operations except when authorized by ATC or operated under the control of the Department of Defense Manager for Manned Space Flight Support Operations.

Discussion. One commenter suggests that this section should be in Subpart H since space recovery operations also take place in international areas. While space recovery operations may take place in international areas, this regulation is more appropriate for this subpart, especially in light of the present and planned space recovery procedures within the United States. On September 25, 1984, the FAA issued Amendment No. 91-184 to delete the word "recovery" from current § 91.102 (proposed § 91.143) to clarify that the regulation applies to space launch *and* recovery operations.

Accordingly, except to redesignate § 91.145 as § 91.143, the section is proposed without change from the current rule.

§ 91.145-91.149 [Reserved]

Visual Flight Rules

§ 91.151 Fuel requirements for flight under VFR.

(a) No person may begin a flight in an airplane under VFR unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first point of intended landing and, assuming normal cruising speed,—

(1) During the day, to fly after that for at least 30 minutes; or

(2) At night, to fly after that for at least 45 minutes.

(b) No person may begin a flight in a rotocraft under VFR unless (considering wind and forecast weather conditions) there is enough fuel to fly to the first

point of intended landing and, assuming normal cruising speed, to fly after that for at least 20 minutes.

Discussion. One commenter states that the entire section should be deleted because it sets forth a good operating practice. Based on past operating and enforcement experience, the FAA concludes that these fuel requirements for flight under VFR are necessary and should be retained. Therefore, safety and the public interest require that § 91.151 remain unchanged.

§ 91.153 VFR flight plan: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing a VFR flight plan shall include in it the following information:

(1) The aircraft identification number and, if necessary, its radio call sign.

(2) The type of the aircraft or, in the case of a formation flight, the type of each aircraft and the number of aircraft in the information.

(3) The full name and address of the pilot in command or, in the case of a formation flight, the formation commander.

(4) The point and proposed time of departure.

(5) The proposed route, cruising altitude (or flight level), and true airspeed at that altitude.

(6) The point of first intended landing and the estimated elaspsed time until over that point.

(7) The amount of fuel on board (in hours).

(8) The number of persons in the aircraft, except where that formation is otherwise readily available to the FAA.

(9) Any other information the pilot in command or ATC believes is necessary for ATC purposes.

(b) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

Discussion. One commenter suggests that subparagraph (a)(7), which requires listing the radio frequencies to be used, be deleted, noting that subparagraph (a)(10) covers this area. One commenter suggests that all required information in this section be deleted except for that requested by ATC. However, the information in this section is necessary for safety reasons. The information required by this section, except for paragraph (a)(7), is fundamental to a systematic search and rescue capability. The information gives that what, who, where, when, etc., to look for in the event an aircraft is unreported. However, the FAA agrees that the requirements in paragraph (a)(7) normally are not needed by ATC. Therefore, this section is proposed without change except for deleting paragraph (a)(7). Paragraphs (a)(8), (a)(9), and (a)(10) are renumbered accordingly.

§ 91.155 Basic VFR weather minimums.

(a) Except as provided in § 91.157, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less, than that prescibed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface (regardless of MSL altitude)—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile except as provided in § 91.155(b).	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL—		
Within controlled airspace	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
Outside controlled airspace	1 statute mile	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL	5 statute miles	1,000 feet below, 1,000 feet above, 1 mile horizontal.

(b) When the visibility is less than 1 mile, a helicopter may be operated outside controlled airspace at 1,200 feet or less above the surface if operated at a speed that allows the pilot adquate opportunity to see any air traffic or other obstruction in time to avoid a collision.

(c) Except as provided in § 91.157, no person may operate an aircraft under VFR within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

(d) Except as provided in § 91.157, no person may take off or land an aircraft or enter the traffic pattern of an airport under VFR within a control zone—

(1) unless ground visibility at that airport is at least 3 statute miles; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or take off or while operating in the traffic pattern is at least 3 statute miles.

(e) For the purposes of this section, an aircraft operating at the base altitude of a transition area or control area is considered to be within the airspace directly below that area.

Discussion. One commenter suggests that paragraph (a) be changed to require 3-miles visibility in uncontrolled airspace. The FAA has determined that the present 1-mile visibility restriction is safe and adequate but stresses that, as in all areas, the pilot must use good judgment in applying these minimum restrictions.

Another commenter suggests that paragraph (b) should include balloons. That commenter reasons that the inclusion of balloons would enhance safety because a balloon could be launched before morning ground fog has fully dissipated and thereby lessen the likelihood of encountering mid-day thermal turbulence. The exclusion is provided for helicopters because their maneuverability allows them to compensate for the reduced visibility. A balloon does not have this maneuverability; therefore, the minimum visibility is necessary for other aircraft, who may be operating under IFR, to see and avoid the balloon.

One commenter suggests that paragraph (c) be changed from a 1,000-foot restriction to a 1,500-foot restriction. However, the present restriction of 1,000 feet, along with other sections of Part 91 (such as proposed § 91.119), allows for an adequate level of safety, and increasing the altitude to 1,500 feet would place an unnecessary restriction on the VFR pilot.

One commenter states that weather is the first prerequisite for VFR operation and, therefore, proposed § 91.155 should be the first paragraph under the heading of "Visual Flight Rules." The FAA does not agree that it would serve any particular purpose to move § 91.155 as the commenter proposes because §§ 91.155 through 91.159 are all considered essential to successful preflight preparation.

Therefore, this section is proposed without change.

§ 91.157 Special VFR weather minimums.

(a) Except as provided in § 93.113, when a person has received an appropriate ATC clearance, the special weather minimums of this section instead of those contained in § 91.155 apply to the operation of an aircraft by that person in a control zone under VFR.

(b) No person may operate an aircraft in a control zone under VFR except clear of clouds.

(c) No person may operate an aircraft (other than a helicopter) in a control zone under VFR unless flight visibility is at least 1 statute mile.

(d) No person may take off or land an aircraft (other than a helicopter) at any airport in a control zone under VFR—

(1) Unless ground visibility at that airport is at least 1 statute mile; or

(2) If ground visibility is not reported at that airport, unless flight visibility during landing or takeoff is at least 1 statute mile.

(e) No person may operate an aircraft (other than a helicopter) in a control zone under the special weather minimums of this section between sunset and sunrise (or in Alaska, when the sun is more than 6 degrees below the horizon) unless—

(1) That person meets the applicable requirements for instrument flight under Part 61 of this chapter; and

(2) The aircraft is equipped as required in § 91.205(d).

Discussion. One commenter suggests that a typographical error was made in paragraph (a) in the proposed reorganization concering the Part 93 reference. The FAA agrees and § 93.111 is changed to § 93.113.

One commenter suggests that reference to Part 93 be deleted entirely and special VFR be allowed at all airports. The FAA is presently looking at Part 93 under other programs, including the National Airspace Review, and defers action on this suggestion until results from these programs are finished.

One commenter suggests an entire rewrite of this section. The language in the commenter's rewrite reflects the same basic content but is rearranged in another format. The FAA considers the current language clear and adequate. Therefore, § 91.157 is proposed without change.

§ 91.159 VFR cruising altitude or flight level.

Except while holding in a holding pattern of 2 minutes or less, or while turning, each person operating an aircraft under VFR in level cruising flight more than 3,000 feet above the surface shall maintain the appropriate altitude or flight level prescribed below, unless otherwise authorized by ATC:

(a) When operating below 18,000 feet MSL and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude +500 feet (such as 3,500, 5,500, or 7,500); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude +500 feet (such as 4,500, 6,500, or 8,500).

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive) and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level +500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level +500 feet (such as 185, 205, or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380); or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360, or 400).

Discussion. Two commenters on § 91.159 suggest that paragraphs (b) and (c) should be deleted because no VFR is allowed above 18,000 feet since this is Positive Control Area (PCA). The FAA disagrees. There is airspace above 18,000 feet that is not positive control area. Section 91.159 recognizes that fact.

One commenter suggests that balloons should be excluded from this section because of their "extreme visibility." Such an exclusion would derogate safety, because any aircraft flying in an opposite direction to other aircraft at the same altitude diminishes the effectiveness of the see and avoid concept. Accordingly, FAA finds that the proposed exclusion would be inappropriate.

Finally, one commenter suggests that the exception while holding in a holding pattern of 2 minutes or less is unnecessary, since it appears to be adequately covered under "unless otherwise authorized by ATC." Because pilots are not required in the present regulation to have ATC authorization for this exception, its deletion would create additional burdens on the flying public and ATC.

Accordingly, this section is proposed without change.

§ 91.161—91.165 [Reserved]

Instrument Flight Rules

§ 91.167 Fuel requirements for flight in IFR conditions.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts and weather conditions) to—

(1) Complete the flight to the first airport of intended landing;

(2) Fly from that airport to the alternate airport; and

(3) Fly after that for 45 minutes at normal cruising speed.

(b) Paragraph (a)(2) of this section does not apply if—

(1) Part 97 of this subchapter prescribes a standard instrument approach procedure for the first airport of intended landing; and

(2) For at least 1 hour before and 1 hour after the estimated time of arrival at the airport, the weather reports or forecasts or any combination of them indicate—

(i) The ceiling will be at least 2,000 feet above the airport elevation; and

(ii) Visibility will be at least 3 miles.

Discussion. One commenter states that the introductory sentence in paragraph (a) should be revised to include weather conditions observed by the PIC in addition to weather reports and forecasts and weather conditions. The commenter does not offer any justification for the revised wording; however, the rule presently provides for considering existing weather conditions in addition to weather reports and forecasts.

Several comments were received concerning subparagraph (a)(3) and paragraph (b). However, these paragraphs are the subject of other rulemaking action (Rotorcraft Regulatory Review Program Notice No. 5) and these comments will be considered during that rulemaking. Therefore, no changes to these paragraphs are proposed in this notice.

§ 91.169 IFR flight plans: Information required.

(a) *Information required.* Unless otherwise authorized by ATC, each person filing an IFR flight plan shall include in it the following information:

(1) Information required under § 91.153(a).

(2) An alternate airport, except as provided in paragraph (b) of this section.

(b) *Exceptions to applicability of paragraph (a)(2) of this section.* Paragraph (a)(2) of this section does not apply if Part 97 of this subchapter

prescribes a standard instrument approach procedure for the first airport of intended landing and, for a least 1 hour before and 1 hour after the estimated time of arrival, the weather reports or forecasts, or any combination of them, indicate—

(1) The ceiling will be at least 2,000 feet above the airport elevations; and

(2) The visibility will be at least 3 statute miles.

(c) *IFR alternate airport weather minimums.* Unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate airport weather minimums:

(1) If a an instrument approach procedure has been published in Part 97 for that airport, the alternate airport minimums specified in that procedure or, if none are so specified, the followng minimums:

(i) Precision approach procedure: Ceiling 600 feet and visibility 2 statute miles.

(ii) Nonprecision approach procedure: Ceiling 800 feet and visibility 2 statute miles.

(2) If no instrument approach procedure has been published in Part 97 for that airport, the ceiling and visibility minimums are those allowing descent from the MEA, approach, and landing under basic VFR.

(d) *Cancellation.* When a flight plan has been activated, the pilot in command, upon canceling or completing the flight under the flight plan, shall notify an FAA Flight Service Station or ATC facility.

Discussion. Two commenters suggest that subparagraphs (b)(1) and (b)(2) be deleted and replaced with a reference statement to § 91.167(b). The FAA does not agree. Whenever possible and appropriate, references should not be made to other sections when the data are not too lengthy and can be included in the rule.

One commenter suggests that subparagraph (b)(2) be clarified by adding the word "statute" before miles. The FAA agrees with this clarification and the word "statute" is added.

One commenter suggests that paragraphs (b) and (c) should reference the specific "weather report or forecast," that is, terminal or area. The FAA has determined that the present language is more appropriate and allows for all information, reports, or forecasts to be considered by the pilot.

One commenter suggests that paragraph (c) be made into an entirely new section. The FAA considers the present location to be more appropriate since its main purpose is to prescribe conditions for designating an alternate airport when filing an IFR flight plan.

One commenter suggested that the alternate airport weather minimums prescribed in paragraph (c)(1) be lowered for helicopters. The FAA does not agree that this is appropriate for all helicopter operators. Section 61.63 (and proposed Subpart J) provides for the issuance of a certificate of waiver authorizing the operation of aircraft in deviation of proposed § 91.167 if the operation can be conducted safely under the terms of the waiver. This allows the FAA to review each operation on a case-by-case basis to ensure that the aircraft are properly equipped and the pilots properly qualified to operate using lower minimums.

Accordingly, § 91.169 is proposed with the change discussed.

§ 91.171 VOR equipment check for IFR operations.

(a) No person may operate a civil aircraft under IFR using the VOR system of radio navigation unless the VOR equipment of that aircraft—

(1) Is maintained, checked, and inspected under an approved procedure; or

(2) Has been operationally checked within the preceding 30 days and was found to be within the limits of the permissible indicated bearing error set forth in paragraph (b) or (c) of this section.

(b) Except as provided in paragraph (c) of this section, each person conducting a VOR check under subparagraph (a)(2) of this section shall—

(1) Use, at the airport of intended departure, an FAA-operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station or, outside the United States, a test signal operated or approved by an appropriate authority to check the VOR equipment (the maximum permissible indicated bearing error is plus or minus 4 degrees); or

(2) Use, at the airport of intended departure, a point on the airport surface designated as a VOR system checkpoint by the Administrator, or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 4 degrees);

(3) If neither a test signal nor a designated checkpoint on the surface is available, use an airborne checkpoint designated by the Administrator or, outside the United States, by an appropriate authority (the maximum permissible bearing error is plus or minus 6 degrees); or

(4) If no check signal or point is available, while in flight—

(i) Select a VOR radial that lies along the centerline of an established VOR airway;

(ii) Select a prominent ground point along the selected radial preferably more than 20 miles from the VOR ground facility and maneuver the aircraft directly over the point at a reasonably low altitude; and

(iii) Note the VOR bearing indicated by the receiver when over the ground point (the maximum permissible variation between the published radial and the indicated bearing is 6 degrees).

(c) If dual system VOR (units independent of each other except for the antenna) is installed in the aircraft, the person checking the equipment may check one system against the other in place of the check procedures specified in paragraph (b) of this section. Both systems shall be tuned to the same VOR ground facility and note the indicated bearings to that station. The maximum permissible variation between the two indicated bearings is 4 degrees.

(d) Each person making the VOR operational check, as specified in paragraph (b) or (c) of this section, shall enter the date, place, bearing error, and sign the aircraft log or other record. In addition, if a test signal radiated by a repair station, as specified in paragraph (b)(1) of this section, is used, an entry must be made in the aircraft log or other record by the repair station certificate holder or the certificate holder's representative certifying to the bearing transmitted by the repair station for the check and the date of transmission.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. Two commenters state that the requirement in paragraph (d) for certifying the accuracy of a repair station's test signal should be deleted. The FAA does not agree. To ensure an equivalent level of safety between the use of an FAA VOR facility for a VOR operational check and the use of an FAA-certificated repair station for the same check, the repair station must ascertain and then certify that its signals are valid through the logbook entry method.

One commenter states that § 91.171 should be moved to Subpart E. VOR operational checks are not of a maintenance or inspection nature; therefore, the requirement for them does

not belong in Subpart E. The periodic checks are normally performed by pilots as part of preparing for IFR flights and, as such, the requirement for them properly belongs with other operationally oriented rules.

One commenter states that the opening qualifying phrases in paragraphs (b)(2), (3), and (4) should be deleted to remove the prioritizing of methods for conducting the VOR equipment check. The qualifying phrases in paragraphs (b)(3) and (4) need to be retained because the methods prescribed in these two paragraphs are alternative checks of absolute accuracy that the methods in (b)(1) and (2) provide. Since the checks in paragraphs (b)(1) and (2) are technically both checks of absolute accuracy and, thus, are equally acceptable, the qualifying introduction in paragraph (b)(2) is deleted.

Another commenter states that the maximum permissible bearing error for a VOR equipment check using a ground-based checkpoint should be changed from plus or minus 4 degrees to plus or minus 6 degrees. The plus-or-minus-6-degrees limitation for airborne checks, which are normally accomplished on an infrequent basis, is necessary because of the uncertainty about the actual position of the aircraft relative to the checkpoint or magnetic bearing in addition to the uncertainty about VOR signal error at random locations. These uncertainties are not present when using ground-based checkpoints. The provision for plus or minus 4 degrees maximum error in the VOR receiver indications, therefore, provides an acceptable level of safety for general use.

Except as noted, the rule is proposed without change.

§ 91.173 ATC clearance and flight plan required.

No person may operte an aircraft in controlled airspace under IFR unless that person has—

(a) Filed an IFR flight plan; and

(b) Received an appropriate ATC clearance.

Discussion. One commenter suggests that it is more appropriate to place this section between §§ 91.167 and 91.169. The FAA considers that §§ 91.167 and 91.169 should remain in the same order for IFR as with §§ 91.151 and § 91.153 for VFR. Therefore, the present location is more appropriate.

Another commenter suggests that "in controlled airspace" be deleted from this section and that "before departure" be added at the end of it. The FAA finds that each of these suggestions would be unduly restrictive. In the first instance, it would compel a pilot planning flight in uncontrolled airspace to file an IFR flight plan from which the pilot would receive no ATC separation services. In the latter instance, a pilot operating under VFR, upon encountering instrument meteorological conditions, could not obtain an ATC clearance to operate under IFR. The present language provides an adequate level of safety and is retained.

Accordingly, § 91.173 is proposed without change.

§ 91.175 Takeoff, and landing under IFR.

(a) *Instrument approaches to civil airports.* Unless otherwise authorized by ATC, when an instrument letdown to a civil airport is necessary, each person operting an aircraft, except a military aircraft of the United States, shall use a standard instrument approach procedure prescribed for the airport in Part 97 of this chapter.

(b) *Authorized DH or MDA.* For the purpose of this section when the approach procedure being used provides for and requires the use of a DH or MDA, the authorized DH or MDA is the highest of the following:

(1) The DH or MDA prescribed by the approach procedure.

(2) The DH or MDA prescribed for the pilot in command.

(3) The DH or MDA for which the aircraft is equipped.

(c) *Operation below DH or MDA.* Where a DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DH unless—

(1) The aircraft is continuously in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and for operations conducted under Part 121 or Part 135 unless that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing;

(2) The flight visibility is not less than the visibility prescribed in the standard instrument approach being used; and

(3) Except for a Category II or Category III approach where any necessary visual reference requirements are specified by the Administrator, at least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.

(iii) The threshold markings.

(iv) The threshold lights.

(v) The runway end identifier lights.

(vi) The visual approach slope indicator.

(vii) The touchdown zone or touchdown zone markings.

(viii) The touchdown zone lights.

(ix) The runway or runway markings.

(x) The runway lights.

(d) *Landing.* No pilot operating an aircraft, except a military aircraft of the United States, may land that aircraft when the flight visibility is less than the visibility prescribed in the standard instrument approach procedure being used.

(e) *Missed approach procedures.* Each pilot operating an aircraft, except a military aircraft of the United States, shall immediately execute an appropriate missed approach procedure when either of the following conditions exist:

(1) Whenever the requirements of paragraph (c) of this section are not met at either of the following times:

(i) When the aircraft is being operated below MDA; or

(ii) Upon arrival at the missed approach point, including a DH where a DH is specified and its use is required, and at any time after that until touchdown.

(2) Whenever an identifiable part of the airport is not distinctly visible to the pilot during maneuver at or above MDA, unless the inability to see an identifiable part of the airport results only from a normal bank of the aircraft during the circling approach.

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the Administrator, no pilot operating an aircraft under Part 121, 125, 129, or 135 of this chapter may take off from a civil airport under IFR unless weather conditions are at or above the weather minimum for IFR takeoff prescribed for that airport under Part 97 of this chapter. If takeoff minimums are not prescribed under Part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under those parts:

(1) For aircraft having two engines or less—1 statute mile visibility.

(2) For aircraft having more than two engines—½ statute mile visibility.

(g) *Military airports.* Unless otherwise prescribed by the Administrator, each person operating a civil aircraft under IFR into or out of a military airport shall comply with the instrument approach procedures and the takeoff and landing

minimum prescribed by the military authority having jurisdiction of that airport.

(h) *Comparable values of RVR and gound visibility.* (1) Except for Catgegory II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum shall be converted to ground visibility in accordance with the table in paragraph (h)(2) of ths section and shall be the visibility minimum for takeoff or landing on that runway.

(2)—

RVR (feet)	Visibility (statute miles)
1,600	¼
2,400	½
3,200	⅝
4,000	¾
4,500	⅞
5,000	1
6,000	1¼

(i) *Operations on unpublished routes and use of radar in instrument approach procedures.* When radar is approved at certain locations for ATC purposes, it may be used not only for surveillance and precision radar approaches, as applicable, but also may be used in conjunction with instrument approach procedures predicated on other types of radio navigational aids. Rada vectors may be authorized to provide course guidance through the segments of an approach to the final course or fix. When operating on an unpublished route or while being radar vectored, the pilot, when an approach clearance is received, shall, in addition to complying with § 91.177, maintain the last altitude assigned to that pilot until the aircraft is established on a segment of a published route or instrument approach procedure unless a different altitude is assigned by ACT. After the aircraft is so established, published altitudes apply to descent within each succeeding route or approach segment unless a different altitude is assigned by ACT. Upon reaching the final approach course or fix, the pilot may either complete the instrument approach in accordance with a procedure approved for the facility or continue a surveillance or precision radar approach to a landing.

(j) *Limitation on procedure turns.* In the case of a radar vector to a final approach course or fix, a timed approach from a holding fix, or an approach for which the procedure specifies "No PT," no pilot may make a procedure turn unless cleared to do so by ATC.

(k) *ILS components.* The basic ground components of an ILS are the localizer, glide slope, outer marker, middle marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. A compass locator or precision radar may be substituted for the outer or middle marker. DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure or surveillance radar may be substituted for the outer marker. Applicability of, and substitution for, the inner marker for Category II or III approaches is determined by the appropriate Part 97 approach procedure, letter of authorization, or operations specification pertinent to the operations.

Discussion. One commenter states that the qualifying phrase "for paragraphs (a) through (k) of this section" in paragraph (a) should be deleted. Even though no justification was given by the commenter, the FAA agrees with the recommendation since this statement is redundant. Proposed § 91.175 contains the provisions of previous §§ 91.116 and 91.117 which were combined by Amendment No. 91-173 (46 FR 2280; January 8, 1981) and numbered § 91.116. Both of these were a part of present Subpart B, all of which is subject to waiver according to present § 91.63. Since proposed § 91.175 is a combination of these earlier rules and is listed in Subpart J of this proposal as being subject to waiver, the phrase "by the Administrator for paragraphs (a) through (k) of this section" is deleted. Also, when §§ 91.116 and 91.117 were combined in Amendment No. 91-173, the phrase "(including ATC)" was dropped in error. A correction is made in this notice by reinstating the ATC authorization.

One commenter proposes to delete "when the approach procedure being used provides for and requires use of a DH or MDA" in paragraph (b). No justification for the proposal is provided. The FAA considers this phrase to be necessary for clarity because it specifies the conditions under which the remainder of the paragraph applies.

One commenter proposes to delete the words "Where a DH or MDA is applicable" from the introductory portion of paragraph (c). No justification is provided for this proposal. The FAA considers the present terminology necessary to clearly relate the use of an MDA or DH to the specific procedure used.

One commenter proposes amending subparagraph (c)(1) to read: "(1) The aircraft is in a position from which a normal approach to the runway of intended landing can be made; and . . . ." The same commenter proposes to amend subparagraph (c)(3) to read: "(3) The approach threshold of that runway, or approach lights or other markings identifiable with the approach end of the runway are clearly visible to the pilot." As regards subparagraph (c)(1), the commenter states that the terms "normal rate of descent" and "normal maneuvers" instead of "normal approach" is confusing. The commenter offers revised language for subparagraphs (c)(1) and (c)(3) identical to the regulation which was in effect before the amendment effective May 8, 1981. The FAA disagrees with the recommendation. Amendment 91-173, effective May 8, 1981, amended present § 91.116 (proposed § 91.175) to provide a higher level of safety and to provide increased clarity than the previous rule which was frequently misinterpreted and incorrectly applied. The current terminology clearly explains what is expected in terms of how the approach is to be executed.

One commenter suggests amending paragraph (d) to allow helicopters to reduce fixed-wing minimums in a Part 97 precision approach by 50 percent; however, the DH or MDA may not be lower than 100 feet AGL. The FAA does not agree that paragraph (d) should be arbitrarily amended for helicopters. These minimums are properly prescribed in Part 97 in accordance with TERPS procedures.

Several commenters recommend deleting paragraph (f) and including these requirements in other appropriate parts of the FAR. One commenter recommends adding minimums for helicopters at civil airports of ¼-mile visibility. However, since paragraph (f) is the subject of other rulemaking action, (Rotorcraft Regulatory Review No. 5) these comments will be considered during that rulemaking and no changes to this paragraph are proposed in this notice.

One commenter suggests deleting paragraph (h), two commenters suggest deleting paragraph (k), and one commenter states the requirements of paragraph (k) should be placed in Part 97 if it must be codified. The information contained in paragraph (h) is not incorporated into the instrument procedures published under Part 97 and, thus, does not appear on the approach charts used by pilots. Retaining this paragraph in Part 91 keeps it codified and readily available to pilots who don't normally have that text of Part 97 available. Paragraph (k) specifies the airborne and ground equipment that may be substituted for the basic ILS

components. The provisions of the paragraph must be retained in Part 91 since they provide the regulatory authority for substitution of the equipment.

Subparagraph (c)(4) appears to make use of visual descent point (VDP) mandatory if that point can be established. The "Airman's Information Manual" and other advisory information available to pilots clearly indicate that use of VDP's is not mandatory. However, the inclusion of subparagraph (c)(4) in proposed § 91.175 has resulted in the provisions of this paragraph being viewed by some persons as being mandatory. To prevent this misconception, which would take away from the pilot the decision of when to initiate the descent from the MDA, the FAA proposes to delete subparagraph (c)(4). No other changes are proposed for § 91.175.

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in Parts 95 and 97 of this chapter; or

(2) If no applicable minimum altitude is prescribed in those parts—

(i) In the case of operations over an area designated as a mountainous area in Part 95, and altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, and altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, when within 22 nautical miles of the VOR concerned (based on the pilot's reasonable estimate of that distance).

(b) *Climb.* Climb on a higher minimum IFR altitude shall begin immediately after passing the point beyond which that minimum altitude applies, except that when ground obstructions intervene, the point beyond which the higher minimum altitude applies shall be crossed at or above the applicable MCA.

Discussion. One commenter suggests that the additional language be added to subparagraph (a)(1) to include en route charts and other aeronautical publications. While the FAA realizes that this information is normally presented to the pilot via charts and other aeronautical publications, the FAR should cite only the appropriate regulatory authority, Parts 95 and 97, as the basis for these minimum altitudes.

One commenter suggests that references to "statute miles" throughout this section be changed to "nautical miles" for commonality with other regulations and charting. The FAA agrees with this suggestion and references are changed to nautical values to provide uniformity.

One commenter suggests that this section be expanded to include provisions for descent to lower minimum IFR altitudes because such descents might be required when operating under lost communications procedures. The FAA finds that the matter of descent under those conditions is specifically and appropriately provided for in proposed § 91.185: IFR Operations. Two-way radio communications failure.

§ 91.179 IFR cruising altitude or flight level.

(a) *In controlled airspace.* Each person operating an aircraft under IFR in level cruising flight in controlled airspace shall maintain the altitude or flight level assigned that aircraft by ATC. However, if the ATC clearance assigns "VFR conditions on-top," that person shall maintain and altitude or flight level as prescribed by § 91.159.

(b) *In uncontrolled airspace.* Except while holding in a holding pattern of 2 minutes or less or while turning, each person operating an aircraft under IFR in level cruising flight in uncontrolled airspace shall maintain and appropriate altitude as follows:

(1) When operating below 18,000 feet MSL and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude (such as 3,000, 5,000, or 7,000); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude (such as 2,000, 4,000, or 6,000).

(2) When operating at or above 18,000 feet MSL but below flight level 290, and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level (such as 190, 210, or 230); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level (such as 180, 200, or 220).

(3) When operating at flight level 290 and above, and—

(i) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 290 (such as flight level 290, 330, or 270); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 310 (such as flight level 310, 350, or 390).

Discussion. No public comments were received on § 91.179. Accordingly, the section is proposed without change.

§ 91.181 Course to be flown.

Unless otherwise authorized by ATC, no person may operate an aircraft within controlled airspace under IFR except as follows:

(a) On a Federal airway, along the centerline of that airway.

(b) On any other route, along the direct course between the navigational aids or fixes defining that route.

However, this section does not prohibit maneuvering the aircraft to pass well clear of other air traffic or the maneuvering of the aircraft in VFR conditions to clear the intended flight path both before and during climb or descent.

Discussion. No public comments were received on § 91.181. Accordingly, the section is proposed without change.

§ 91.183 IFR radio communications.

The pilot in command of each aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible—

(a) The time and altitude of passing each designated reporting point, or the reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(b) Any unforecast weather condition encountered; and

(c) Any other information relating to the safety of flight.

Discussion. One commenter suggests that paragraph (b) is unnecessary and should be deleted. The FAA disagrees because this information is vital and necessary to the safe operation of all aircraft in relaying any unforecast conditions when found to exist.

One commenter suggests that a new paragraph (d) be added to include the malfunction of equipment report required by § 91.187. The commenter states that he should know all of the times that he must report to ATC after reading § 91.183. Because of the very large number of sections in Part 91 which include reports to ATC, to enumerate all of the reporting

requirements in one section would be redundant with other sections. Therefore, this section is proposed without change.

§ 91.185 IFR operations. Two-way radio communications failure.

(a) *General.* Unless otherwise authorized by ATC, each pilot who has two-way radio communications failure when operating under IFR shall comply with the rules of this section.

(b) *VFR conditions.* If the failure occurs in VFR conditions, or if VFR conditions are encountered after the failure, each pilot shall continue the flight under VFR and land as soon as practicable.

(c) *IFR conditions.* If the failure occurs in IFR conditions, or if paragraph (b) of this section cannot be complied with, each pilot shall continue the flight according to the following:

(1) *Route.* (i) By the route assigned in the last ATC clearance received;

(ii) If being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) In the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) In the absence of an assigned route or a route that ATC has advised may be expected in a further clearance, by the route filed in the flight plan.

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segment being flown:

(i) the altitude or flight level assigned in the last ATC clearance received;

(ii) The minimum altitude (converted, if appropriate, to minimum flight level as prescribed in § 91.121(c)) for IFR operations; or

(iii) The altitude or flight level ATC has advised may be expected in a further clearance.

(3) *Leave holding fix.* If holding instructions have been received, leave the holding fix at the expect-further-clearance time received or, if an expected approach clearance time has been received, leave the holding fix in order to arrive over the fix from which the approach begins as close as possible to the expected approach clearance time.

(4) *Descent for approach.* Begin descent from the en route altitude or flight level upon reaching the fix from which the approach begins, but not before—

(i) The expect-approach-clearance time (if received); or

(ii) If no expect-approach-clearance time has been received, at the estimated time of arrival, shown on the flight plan, as amended with ATC.

Discussion. Several comments were received on § 91.185. However, since § 91.185 is the subject of other rulemaking action, these comments will be considered during that rulemaking and no changes to this section are proposed in this notice.

§ 91.187 Operation under IFR in controlled airspace: Malfunction reports.

(a) The pilot in command of each aircraft operated in controlled airspace under IFR shall report as soon as practical to ATC any malfunctions of navigational, approach, or communication equipment occurring in flight.

(b) In each report required by paragraph (a) of this section, the pilot in command shall include the—

(1) Aircraft identification;

(2) Equipment affected;

(3) Degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(4) Nature and extent of assistance desired from ATC.

Discussion. One commenter suggests that this section be deleted from Part 91 or, if retained, that subparagraphs (a)(1), (a)(2), and (a)(3) be deleted with a rewrite of paragraph (a). The commenter also states that "immediately" should be changed to "as soon as practical" which is the intent of this notification. Another commenter suggests that the list of equipment in these subparagraphs is out of date. The commenter states that there is equipment aboard today's aircraft, other than that in the list, whose loss would affect flight safety, or of which ATC should have knowledge. The FAA agrees with the intent of these suggestions, and paragraph (a) is rewritten accordingly.

§ 91.189 Category II and III operations: General operating rules.

(a) No person may operate a civil aircraft in a Category II or III operation unless—

(1) The flightcrew of the aircraft consists of a pilot in command and a second in command who hold the appropriate authorizations and ratings prescribed in § 61.3 of this chapter;

(2) Each flight crewmember has adequate knowledge of, and familiarity with, the aircraft and the procedures to be used; and

(3) The instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system that is being used.

(b) Unless otherwise authorized by the Administrator, no person may operate a civil aircraft in a Category II or Category III operation unless each ground component required for that operation and the related airborne equipment is installed and operating.

(c) *Authorized DH.* For the purpose of this section, when the approach procedure being used provides for and requires the use of a DH, the authorized DH is the highest of the following:

(1) The DH prescribed by the approach procedure.

(2) The DH prescribed for the pilot in command.

(3) The DH for which the aircraft is equipped.

(d) Unless othewise authorized by the Administrator, no pilot operating an aircraft in a Category II or Category III approach that provides and requires use of a DH may continue the approach below the authorized decision height unless the following conditions are met:

(1) The aircraft is in a position from which a descent to a landing on the intended runway can be made at a normal rate of descent using normal maneuvers, and where that descent rate will allow touchdown to occur within the touchdown zone of the runway of intended landing.

(2) At least one of the following visual references for the intended runway is distinctly visible and identifiable to the pilot:

(i) The approach light system, except that the pilot may not descend below 100 feet above the touchdown zone elevation using the approach lights as a reference unless the red terminating bars or the red side row bars are also distinctly visible and identifiable.

(ii) The threshold.

(iii) The threshold markings.

(iv) The threshold lights.

(v) The touchdown zone or touchdown zone markings.

(vi) The touchdown zone lights.

(e) Unless othewise authorized by the Administrator, each pilot operating an aircraft shall immediately execute an appropriate missed approach whenever, prior to touchdown, the requirements of paragraph (d) of this section are not met.

(f) No person operating an aircraft using a Category III approach without decision height may land that aircraft except in accordance with the provisions of the letter of authorization issued by the Administrator.

(g) Paragraphs (a) through (f) of this section do not apply to operations conducted by the holders of certificates issued under Parts 121, 125, 129, or 135 of this chapter. No person may operate a civil aircraft in a Category II or Category

III operation conducted by the holder of a certificate issued under Parts 121, 125, 129, or 135 of this chapter unless the operation is conducted in accordance with that certificate holder's operations specifications.

Discussion. No public comments were received on § 91.189. Accordingly, no changes are proposed for this section.

§ 91.191 Category II manual.

(a) No person may operate a civil aircraft of United States registry in a Category II operation unless—

(1) There is available in the aircraft a current, approved Category II manual for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in that manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II operation have been inspected and maintained in accordance with the maintenance program contained in that manual.

(b) Each operator shall keep a current copy of the approved manual at its principal base of operations and shall make it available for inspection upon request of the Administrator.

(c) This section does not apply to operations conducted by the holder of a certificate issued under Part 121 of this chapter.

(Approved by the Office of Management and Budget OMB under control number 2120-0005)

Discussion. One commenter questions why § 91.191 does not also include Category III manual requirements. The FAA finds that the costs associated with Category III operations are apparently prohibitive for Part 91 operators. Currently, only a very small number have met the Category II operational requirements; therefore a rule change is not necessary at this time.

§ 91.193 Certificate of authorization for certain Category II operations.

The Administrator may issue a certificate of authorization authorizing deviations from the requirements of §§ 91.189, 91.191, and 91.205(f) for the operation of small airplanes identified as Category A aircraft in § 97.3 of this chapter in Category II operations if he finds that the proposed operation can be safely conducted under the terms of the certificate. Such authorization does not permit operation of the aircraft carrying persons or property for compensation or hire.

Discussion. One commenter recommends including helicopters in the applicability of § 91.193. However, since § 91.193 is the subject of other rulemaking action, (Rotorcraft Regulatory Review Program No. 5) this comment will be considered during that rulemaking and no changes to this section are proposed in this notice.

§§ 91.195-91.199 [Reserved]

Subpart C—Equipment, Instrument, and Certificate Requirements

§ 91.201 Applicability.

This subpart prescribes general equipment, instrument, and certificate requirements. Additional requirements for certain operations and aircraft may be prescribed in other subparts.

Discussion. One commenter suggests adding a second sentence to read: "Additional requirements for certain operations and aircraft may be prescribed in other subparts." The FAA agrees that this comment has merit and proposes § 91.201 with the added sentence for clarification.

§ 91.201 Civil aircraft: Certifications required.

(a) Except as provided in § 91.715, no person may operate a civil aircraft unless it has within it the following:

(1) An appropriate and current airworthiness certificate. Each U.S. airworthiness certificate used to comply with this subparagraph (except a special flight permit, a copy of the applicable operations specifications issued under § 21.197(c) of this chapter, appropriate sections of the air carrier manual required by Parts 121, 127, and 135 of this chapter containing that portion of the operations specifications issued under § 21.197(c), or an authorization under § 91.611) must have on it the registration number assigned to the aircraft under Part 47 of this chapter. However, the airworthiness certificate need not have on it an assigned special identification number before 10 days after that number is first affixed to the aircraft. A revised airworthiness certificate having on it an assigned special identification number that has been affixed to an aircraft may only be obtained upon application to an FAA Flight Standards district office.

(2) An effective U.S. registration certificate isued to its owner or, for operation within the United States, the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b), or a registration certificate issued under the laws of a foreign country.

(b) No person may operate a civil aircraft unless the airworthiness certificate required by paragraph (a) of this section or a special flight authorization issued under § 91.175 is displayed at the cabin or cockpit entrance so that it is legible to passengers or crew.

Discussion. One commenter recommends deleting everything after the first sentence in paragraph (a)(1) and all of paragraph (b). The commenter believes that the word "appropriate" in subparagraph (a)(1) covers the need, or exceptions to the need, for a registration number on an airworthiness certificate. The commenter further states that other parts of the FAR should specify what constitutes an appropriate airworthiness certificate and the necessity for a registration number on it. As regards paragraph (b), the commenter states that the requirement to display the airworthiness certificate is meaningless without reference to the aircraft maintenance records.

Subparagraph (a)(1) prescribes certain requirements for airworthiness certificates that are not found in other parts of the FAR and is retained in this section to provide a high degree of operational awareness.

Another commenter states that § 21.197(c) applies to Part 135 certificate holders and asks whether a reference to Part 135 should be included after "and 127" in § 91.203(a)(1). Amendment 21-54, effective July 23, 1981, revised § 21.197 of the FAR to allow for special flight permits for certain Part 135 operators. Therefore, proposed §§ 91.203(4)(a)(1) is amended to include these operators.

As regards paragraph (b), safety and the public interest require that the current airworthiness certification status of an aircraft be immediately available to persons boarding that aircraft as passengers or crewmembers for the purpose of flight. Although the FAA agrees that an examination of aircraft maintenance records is required to determine the current airworthiness status of an aircraft, ready access to the airworthiness certificate provides passengers and crewmembers relevant information regarding whether or not that aircraft is certificated to perform the type of operation about to be embarked on. Since aircraft logbooks or other similar records which identify the airworthiness certification status of an aircraft are not required to be carried on board, this information may only be available by referring to the airworthiness certificate when the aircraft is away from its home base of operation.

The FAA proposes to amend subparagraph (a)(2) to clarify the current stated requirements that aircraft must carry an aircraft registration certificate

issued to its owner. The rule, as proposed, addresses the registration requirement for U.S.-registered aircraft operating in and outside of the United States, as well as foreign-registered aircraft operating in the United States.

In keeping with section 501(a) of the Federal Aviation Act and § 47.31(b) of the FAR, an aircraft whose owner has applied for U.S. aircraft registration may be operated *without registration* using the second duplicate copy of the Application for Aircraft Registration (pink slip) as temporary authority. The amendment reflects current U.S. practice that limits this temporary or pink-slip authority to operations in the United States. The limitation of pink-slip authority to aircraft operating in the United States is necessary for compliance with U.S. obligations under Article 29 of the Chicago Convention, which requires that every aircraft engaged in international air navigation carry with it its certificate of registration. Because the second duplicate copy of the Application for Aircraft Registration is not a certificate of registration, it may *not* be used as temporary authority for operations outside the United States.

The amendment also clarifies two aspects of the registration certificate requirement which reflect current U.S. laws and practice. First, aside from pink-slip authority, only a U.S. aircraft registration certificate that is effective, within the meaning of § 47.41(a), meets the requirements of § 91.203(a)(2). Second, the amendment recognizes that non-U.S.-registered aircraft operating in the United States must have an aircraft registration certificate issued under the laws of a foreign country.

No other substantive charges are proposed for this section.

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificate: Instrument and equipment requirements

(a) *General.* Except as provided in paragraphs (c)(3) and (e) of this section, no person may operate a powered civil aircraft with a standard category U.S. airworthiness certificate in any operation described in paragraphs (b) through (f) of this section unless that aircraft contains the instruments and equipment specified in those paragraphs (or FAA-approved equivalents) for that type of operation, and those instruments and items of equipment are in operable condition.

(b) *Visual flight rules (day).* For VFR flight during the day, the following instruments and equipment are required:

(1) Airspeed indicator.

(2) Altimeter.

(3) Magnetic direction indicator.

(4) Tachometer for each engine.

(5) Oil pressure gauge for each using pressure system.

(6) Temperature guage for each liquid-cooled engine.

(7) Oil temperature gauge for each air-cool engine.

(8) Manifold pressure gauge for each altitude engine.

(9) Fule gauge indicating the quantity of fuel in each tank.

(10) Landing gear position indicator, if the aircraft has a retractable landing gear.

(11) If the aircraft is operated for hire over water and beyond power-off gliding distance from shore, approved flotation gear readily available to each occupant and at least one pyrotechnic signaling device. As used in this section, "shore" means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

(12) Except as to airships, an approved safety belt with an approved metal-to-metal latching device for each occupant who has reached his or her second birthday.

(13) For small civil airplanes manufactured after July 18, 1978, an approved shoulder harness for each front seat. The shoulder harness must be designed to protect the occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. Each shoulder harness installed at a flight crewmember station must permit the crewmember, when seated and with his or her safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. For purposes of this paragraph—

(i) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(ii) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

(14) An emergency locator transmitter, if required by § 91.207.

(c) *Visual flight rules (night).* For VFR flight at night, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section.

(2) Approved position lights.

(3) An approved aviation red or aviation white anticollision light system on all U.S.-registered civil aircraft. Anticollision light systems initially installed after August 11, 1971, on aircraft for which a type certificate was issued or applied for before August 11, 1971, must at least meet the anticollision light standards of Part 23, 25, 27, or 29, as applicable, that were in effect on August 10, 1971, except that the color may be either aviation red or aviation white. In the event of failure of any light of the anticollision light system, operations with the aircraft may be continued to a stop where repairs or replacement can be made.

(4) If the aircraft is operated for hire, one electric landing light.

(5) An adequate source of electrical energy for all installed electrical and radio equipment.

(6) One spare set of fuses, or three spare fuses of each kind required, that are accessible to the pilot in flight.

(d) *Instrument flight rules.* For IFR flight, the following instruments and equipment are required:

(1) Instruments and equipment specified in paragraph (b) of this section, and, for night flight, instruments and equipment specified in paragraph (c) of this section.

(2) Two-way radio communications system and navigational equipment appropriate to the ground facilities to be used.

(3) Gyroscopic rate-of-turn indicator, except on the following aircraft:

(i) Large airplanes with a third attitude instrument system useable through flights attitudes of 360 degrees of pitch and roll and installed in accordance with § 121.305(j) of this chapter; and

(ii) Rotorcraft with a third attitude instrument system useable through flight attitudes of ±80 degrees of pitch and ±120 degrees of roll and installed in accordance with § 29.1303(g) of this chapter.

(4) Slip-skid indicator.

(5) Sensitive altimeter adjustable for barometric pressure.

(6) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

(7) Generator or alternator of adequate capacity.

(8) Gyroscopic pitch and bank indicator (artificial horizon).

(9) Gyroscopic direction indicator (directional gyro or equivalent).

(e) *Flight at and above 24,000 feet MSL.* If VOR navigational equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above 24,000 feet MSL unless that aircraft is equipped with approved distance measuring equipment (DME). When DME required by this paragraph

fails at and above 24,000 feet MSL, the pilot in command of the aircraft shall notify ATC immediately, and then may continue operations at and above 24,000 feet MSL to the next airport of intended landing at which repairs or replacement of the equipment can be made.

(f) *Category II operations.* For Category II operations the instruments and equipment specified in paragraph (d) of this section and Appendix A to this part are required. This paragraph does not apply to operations conducted by the holder of a certificate issued under Part 121 of this chapter.

Discussion. One commenter proposes to amend paragraph (a) to require that all instruments be maintained to a certain degree of accuracy. The same commenter proposes to amend paragraph (b)(2) to require periodic calibration of all altimeters. The FAA considers that the costs would not be commensurate with the increases in safety. Also, quite possibly the majority of instruments in use cannot meet the accuracy standards of which the commenter speaks.

One commenter suggests adding another paragraph to § 91.205(b) stating, "Any instrument or equipment required for the issuance of the airworthiness certificate." The commenter believes that by adding this requirement in § 91.205, § 91.213 could be deleted. However, the FAA notes that other parts of the regulations provide requirements for the equipment that must be installed and operable for issuing an airworthiness certificate. This section lists that equipment required for VFR flight during the day, and it must be operable. To combine an airworthiness requirement and an operational requirement in this section is unnecessary and could be confusing. Section 91.213 is only intended to apply to certain airplanes and not to aircraft in general as is § 91.205.

One commenter on § 91.205 recommends changing "altitude" to "reciprocating" in paragraph (b)(8). The FAA does not agree because a manifold pressure gauge is only required on an engine that uses a controllable-pitch propeller and is normally used on an altitude engine. Since requiring a manifold pressure gauge is not appropriate for all reciprocating engines, adopting such a requirement would cause an undue burden on operators of aircraft with these engines.

Another commenter states that paragraph (b)(11) should be amended to require flotation gear for each occupant when passengers are carried over water and beyond power-off gliding distance from shore. The FAA does not concur. It would require this equipment for all passenger-carrying aircraft operated over water and beyond power-off gliding distance from shore, whether or not those aircraft are being operated for hire. The commenter does not include justification for the recommendation, and past operating experience does not indicate a need to expand this requirement to all Part 91 operators.

The same commenter states that "pyrotechnic" should be changed to "high intensity" in paragraph (b)(11). The commenter indicates that this will update the requirements and would permit the use of signaling devices such as strobe lights. The FAA does not concur. The FAA notes that the U.S. Coast Guard, which has a long history of involvement in search and rescue activities, has found that pyrotechnics are universally recognized distress signals, whereas other visual distress signals may not be recognized as such. Additionally, devices other than pyrotechnic signaling devices have been found to be useful only in restricted circumstances. The Coast Guard does not believe that special purpose devices (such as strobe lights, mirrors, etc.) used by themselves meet the minimum requirements for an effective signal. Accordingly, since visual distress signals are required to be carried aboard aircraft during extended overwater operations, the FAA does not consider that devices other than pyrotechnic signaling devices should be permitted as the minimum means of compliance with this rule.

The FAA is aware of a need to clarify the intended definition of the term "shore" as it is used in § 91.205(b)(11). Several judicial decisions have defined the "shore" as including tidal flats. In some parts of the United States these tidal flats can extend for several miles and, because of the extreme tides prevalent in these areas, the land may be submerged under as much as 25 to 35 feet of water during periods of high tide. The intent of the rule is to require operators carrying passengers for hire over these areas to equip their aircraft with the necessary flotation gear and pyrotechnic device. Therefore, the FAA proposes to define "shore" to exclude land areas which are intermittently under water, such as tidal flats.

One commenter recommends moving the requirements for an approved metal-to-metal latching device for each safety belt to the first sentence of subparagraph (b)(12) and deleting the remainder of subparagraph (b)(12). Since a description of strength requirements for safety belts, as provided in the remainder of supparagraph (b)(12), is found in applicable airworthiness rules, the comment has merit and proposed subparagraph (b)(12) is revised accordingly.

One commenter suggests adding a requirement to paragraph (b) for an emergency locator transmitter if it is required by § 91.207. This will consolidate most of the instrument and equipment requirements into one section. The comment has merit and new subparagraph (14) is added to proposed paragraph (b).

One commenter suggests amending paragraph (c)(4) to require an electric landing light on all aircraft that are operated under VFR at night. Past experience with the present rule, as it pertains to VFR night flights, has not indicated a need to require an electric landing light for all Part 91 operations at night. Adopting such a requirement would not provide safety benefits commensurate with the costs imposed.

One commenter recommends changing paragraph (c)(6) by requiring that the spare fuses required for VFR night flight are accessible to the pilot during the flight. The commenter's justification for the recommendation is that the present requirement is outdated and most aircraft now use circuit breakers. The FAA does not understand the relationship expressed by the commenter between the proposal which would require fuses to be accessible to the pilot, and the assertion that the present requirement for carrying fuses is outdated since most aircraft have circuit breakers. Although the trend in recent years has been to install circuit breakers in aircraft, there are many aircraft in the fleet that still utilize fuses. Therefore, the spare fuses should be accessible to the pilot while the pilot is operating an aircraft under VFR at night and paragraph (c)(6) is revised accordingly.

One commenter states that paragraph (d)(3)(i) should be amended to require 30-minutes continuous operation after total electrical generating system failure. The commenter indicates that many aircraft modifiers are adding equipment to the gyro which, if used, could deplete the power within 30 minutes. The FAA considers that this subject is adequately addressed in other appropriate parts of the FAR. To restate the requirements in this section would be redundant.

Another commenter suggests moving paragraph (d)(3)(i) to Subpart F or G because it pertains only to large aircraft. The FAA does not agree because paragraph (d)(3)(i) is necessary to clearly identify when a gyroscopic rate of turn indicator is not required for IFR flight.

One commenter states that the reference to rotorcraft certificated under Part 29 should be deleted from paragraph (d)(3)(ii). The FAA, in its Rotorcraft Regulatory Review Program; Amendment No. 1, effective March 2, 1983, amended Part 27—Airworthiness Standards: Normal Category Rotorcraft to allow a standby attitude indicator installation which meets the requirements of § 29.1303(g)(1) through (7). Therefore, an editorial change to delete the reference to Part 29 is appropriate.

One commenter recommends changing paragraph (d)(7) to read "Generator or alternator of adequate capacity." The FAA agrees with the commenter. Although the word 'generator', by definition, includes an alternator, in common useage the word 'generator' denotes direct electrical current and the word 'alternator' is associated with alternating electrical current. Therefore, § 91.205(d)(7) is proposed with the words "or alternator" added.

One commenter states that paragraph (e) should be deleted while another commenter states that the paragraph should be revised to include additional types of equipment that are in use today. The latter commenter also states that a malfunction of equipment specified in paragraph (e) should be reported and repaired in accordance with a minimum equipment list (MEL).

The commenter that suggests deleting paragraph (e) does not offer any justification for the suggestion. The paragraph is retained because certain air traffic separation standards are based on the availability of the equipment specified by § 91.205(e). The en route IFR navigation system in the United States is predicated on VOR and DME systems. Therefore, it is appropriate that this equipment be on board and in working order when operations are conducted in airspace where separation standards may be predicated on its availability. The comment concerning use of an MEL is not discussed in this notice since other rulemaking action pertaining to MEL's is in progress, Docket No. 22320, and will be considered during that rulemaking.

One commenter states that the altitude in paragraph (e) should be lowered from 24,000 feet MSL to 18,000 feet MSL to correspond with the Positive Control Area. No justification for the recommendation is presented. Past experience does not indicate a need to lower the altitude above which DME must be installed if VOR navigational equipment is required under paragraph (d)(2).

Accordingly, § 91.205 is proposed with the changes discussed.

§ 91.207 Emergency locator transmitters.

(a) Except as provided in paragraphs (d) and (e) of this section, no person may operate a U.S.-registered civil airplane unless—

(1) There is attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO–C91 for the following operations:

(i) Those operations governed by the supplemental air carrier and commercial operator rules of Parts 121 and 125;

(ii) Charter flights governed by the domestic and flag air carrier rules of Part 121 of this chapter; and

(iii) Operations governed by Part 135 of this chapter; or

(2) For operations other than those specified in subparagraph (i) of this paragraph, there must be attached to the airplane a personal type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of TSO–C91.

(b) Each emergency locator transmitter required by paragraph (a) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter in the event of crash impact is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(c) Batteries used in the emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced (or recharged, if the batteries are rechargeable)—

(1) When the transmitter has been in use for more than 1 cumulative hour; or

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of chrge), as established by the transmitter manufacturer under TSO–C91, paragraph (g)(2), has expired.

The new expiration date for replacing (or recharging) the battery must be legibly marked on the outside of the transmitter and entered in the aircraft maintenance record. Paragraph (c)(2) of this section does not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

(d) Notwithstanding paragraph (a) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry and airplane with an inoperative emergency locator transmitter from a place where repairs or replacement cannot be made to a place where they can be made.

No person other than required crewmembers may be carried aboard an airplance being ferried under paragraph (d) of this section.

(e) Paragraph (a) of this section does not apply to—

(1) Turbojet-powered aircraft;

(2) Aircraft while engaged in scheduled flights by scheduled air carriers certificated by the Civil Aeronautics Board;

(3) Aircraft while engaged in training opertions conducted entirely within a 50-mile radius of the airport from which such local flight operations began;

(4) Aircraft while engaged in flight opertions incident to design and testing;

(5) New aircraft while engaged in flight operations incident to their manufacture, preparation, and delivery;

(6) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

(7) Aircraft certificated by the Administrator for research and development purposes;

(8) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys;

(9) Aircraft equipped to carry not more than one person; and

(10) An aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification, or replacement, subject to the following:

(i) No person may operate the aircraft unless the aircraft records contain an entry which includes the date of initial removal, the make, model, serial number, and reason for removing the transmitter, and a placard in located in view of the pilot to show "ELT not installed."

(ii) No person may operate the aircraft more than 90 days after the ELT is initially removed from the aircraft.

Discussion. One commenter states that the construction of the section should be simplified. The commenters also recommends that the FAA ask Congress to rescind the law making ELT's mandatory, thus paving the way for the FAA and industry to establish requirements without Congressional intervention.

The requirements in paragraphs (a) and (b) have been consolidated into one paragraph, thus eliminating the redundant language in paragraph (b) as

it appeared in Notice No. 79-2A. Editorial changes have been incorporated into the remainder of the section to conform with the consolidation of paragraphs (a) and (b).

Section 91.207 was adopted as a result of Public Law 91-596 which amended the Federal Aviation Act of 1958 by requiring the use of ELT's in certain operations. Despite some technical difficulties in the opertional use of this equipment, the FAA anticipates that the current equipment will continue to be improved resulting in many additional lives being saved due to expeditious rescue.

Further, the commenter does not provide any specific alternatives to the ELT requirement that make an argument for Congressional action to rescind Public Law 91-596. Accordingly, the FAA does not plan to request that Congress take the action requested by the commenter.

Another commenter states that the use of the word "ferry" in paragraph (e)(1) and (2) should be clarified to state that a special flight permit is or is not required. The FAR currently state when a special flight permit is required and the term "ferry" as used in the FAR does not, by itself, mean that a special flight permit is required. The FAA does not consider further clarification to be necessry.

One commenter states that the requirement for an ELT on board should be extended to include helicopters. Past operating history has not shown sufficient need to require ELT's on board helicopters at the present time. No other substantive changes are proposed for § 91.207.

§ 91.209 Aircraft lights.

No person may, during the period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon)—

(a) Operate an aircraft unless it has lighted position lights;

(b) Park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—

(1) Is clearly illuminated;

(2) Has lighted position lights; or

(3) Is in an area which is marked by obstruction lights;

(c) Anchor an aircraft unless the aircraft—

(1) Has lighted anchor lights; or

(2) Is in an area where anchor lights are not required on vessels; or

(d) Operate an aircraft, required by § 91.205(c)(3) to be equipped with an anticollision light system, unless it has approved and lighted aviation red or aviation white anticollision lights. However, the anticollision lights need not be lighted when the pilot in command determines that, because of operating conditions, it would be in the interest of safety to turn the lights off.

Discussion. One commenter states that § 91.209 should be moved to Subpart B. The FAA does not agree since Subpart B contains flight rules and this section prescribes minimum lighting equipment for night operations.

Another commenter on proposed § 91.209(d) states that this paragraph requires that the anticollision lights be on while taxiing. This commenter further states that some aircraft are equipped with a landing gear scissor switch which disables the anticollision light when the aircraft's weight is on the landing gear. The commenter expresses concern that if it is intended to require the light to be lighted when taxiing (unless the PIC determines it to be in the interest of safety to turn it off), this requirement may need attention elsewhere. The commenter does not offer any other information or suggestion. The technical method of controlling the anticollision lights is not intended to be contained in the operational rule. Accordingly, § 91.209 is proposed without change.

§ 91.211 Supplemental oxygen.

(a) *General.* No person may operate a civil aircraft of U.S. registry—

(1) At cabin pressure altitudes above 12,000 feet (MSL) up to and including 14,000 feet (MSL) unless the required minimum flightcrew is provided with and uses supplemental oxygen for that part of the flight at those altitudes that is of more than 30 minutes duration;

(2) At cabin pressure altitudes above 14,000 feet (MSL) unless the required minimum flightcrew is provided with and uses supplement oxygen during the entire flight time at those altitudes; and

(3) At cabin pressure altitudes above 15,000 feet (MSL) unless each occupant of the aircraft is provided with supplemental oxygen.

(b) *Pressurized cabin aircraft.* (1) No person may operate a civil aircraft of U.S. registry with a pressurized cabin—

(i) At flight altitudes above flight level 250 unless at least a 10-minute supply of supplemental oxygen, in addition to any oxygen required to satisfy paragraph (a) of this section, is available for each occupant of the aircraft for use in the event that a descent is necessitated by loss of cabin pressurization; and

(ii) At flight altitudes above flight level 350 unless one pilot at the controls of the airplane is wearing and using an oxygen mask that is secured and sealed and that either supplies oxygen at all times or automatically supplies oxygen whenever the cabin pressure altitude of the airplane exceeds 14,000 feet (MSL), except that the one pilot need not wear and use an oxygen mask while at or below flight level 410 if there are two pilots at the controls and each pilot has a quick-donning type of oxygen mask that can be placed on the face with one hand from the ready position within 5 seconds, supplying oxygen and properly secured and sealed.

(2) Notwithstanding subparagraph (1)(ii) of this paragraph, if for any reason at any time it is necessary for one pilot to leave his or her station at the controls of the aircraft when operating at flight altitudes above flight level 350, the remaining pilot at the controls shall put on and use an oxygen mask until the other pilot has returned to his or her station.

Discussion. One comment was received regarding this section. However, since § 91.211 is the subject of other rulemaking action, Docket No. 23745, this comment will be considered during that rulemaking and no changes to this section are proposed in this notice.

§ 91.213 Inoperable instruments and equipment for multiengine aircraft.

(a) No person may take off a multiengine civil aircraft with inoperable instruments or equipment installed unless the following conditions are met:

(1) An approved minimum equipment list exists for that aircraft.

(2) The aircraft has within it a letter of authorization, issued by the FAA Flight Standards district office having jurisdiction over the area in which the operator is located, authorizing operation of the aircraft under the minimum equipment list. The letter of authorization may be obtained by written request of the airworthiness certificate holder. The minimum equipment list and the letter of authorization constitute a supplemental type certificate for the aircraft.

(3) The approved minimum equipment list must—

(i) Be prepared in accordance with the limitations specified in paragraph (b) of this section; and

(ii) Provide for the operation of the aircraft with the instruments and equipment in an inoperable condition.

(4) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(5) The aircraft is operated under all applicable conditions and limitations

contained in the minimum equipment list and the letter authorizing the use of the list.

(b) The following instruments and equipment may not be included in a minimum equipment list:

(1) Instruments and equipment that are either specifically or otherwise required by the airworthiness requirements under which the aircraft is type certificated and which are essential for safe operations under all operating conditions.

(2) Instruments and equipment required by an airworthiness directive to be in operable condition unless the airworthiness directive provides otherwise.

(3) Instruments and equipment required for specific operations by this part.

(c) A person authorized to use an approved minimum equipment list issued under Part 121, 125, or 135 for a specific aircraft may use that minimum equipment list in connection with operations conducted with that aircraft under this part.

(d) Noitwithstanding any other provision of this section, an aircraft with inoperable instruments or equipment may be operated under a special flight permit issued in accordance with §§ 21.197 and 21.199 of this chapter.

Effective date note: The effective date of § 91.213 was stayed indefinitely at 44 FR 62885, November 1, 1979.

Discussion. Four comments were received on § 91.213. However, since § 912.213 is the subject of other rulemaking action, Docket No. 22320, these comments will be considered during that rulemaking and no changes to this section are proposed in this notice.

§ 91.215 ATC transporter and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Part 121, 127, or 135 of this chapter, ATC transponder equipment installed after January 1, 1974, in U.S.-registered civil aircraft not previously equipped with an ATC transponder and all ATC transponder equipment used in U.S.-registered civil aircraft after July 1, 1975, msut meet the performance and environmental requirements of any class of TSO–C74b or any class of TSPO–C47c, as appropriate, except that the Administrator may approve the use of TSO–C47 or TSO–C47a equipment after July 1, 1975, if the applicant submits data showing that such equipment meets the minimum performance standards of the appropriate class of TSO–C74c and environmental conditions of the TSO under which it is manufactured.

(b) *Controlled airspace: All aircraft.* Except for persons operating helicopters in terminal control areas at or below 1,000 feet AGL under the terms of a letter of agreement, and except for persons operating gliders above 12,500 feet MSL but below the floor of the positive control area, no person may operate an aircraft in the controlled airspace prescribed in subparagraphs (b)(1) through (b)(3) of this paragraph unless that aircraft is equipped with an operable coded radar beacon transponder having a Mode 3/A 4096 code capability, replying to Mode 3/A interrogation with the code specified by ATC, and is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) In Group I terminal control areas governed by § 91.131(a);

(2) In Group II terminal control areas governed by § 91.131(b), except as provided therein; and

(3) In all controlled airspace of the 48 contiguous States and the District of Columbia above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

(c) *ATC authorized deviations.* ATC may authorize deviations from paragraph (b) of this section—

(1) Immediately, to allow an aircraft with an inoperative transponder to continue to the airport of ultimate distination, including any intermediate stops, or to proceed to a place where suitable repairs can be made, or both;

(2) Immediately, for operations of aircraft with an operating transponder but without operating automatic pressure altitude reporting equipment having a Mode C capability; and

(3) On a continuing basis, or for individual flights, for operations of aircraft without a transponder, in which case the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least 1 hour before the proposed operation.

(Approved by the Office of Management and Budget under OMB control number 2120–0005)

Discussion. Several comments were received concerning this section. One commenter states that transponder and altitude reporting should be required in all controlled airspace. Another commenter states it should be mandated for all aircraft in flight. It has been determined that the present regulation adequately satisfies safety requirements and that these recommendations, if enacted, would place an unncessary burden on segments of the flying public.

One commenter suggests deleting the phrase in paragraph (b) concerning allowances for helicopters in TCA's below 1,000 feet under terms of a letter of agreement. The present regulation allows for the unique operating characteristics of helicopters and, in concert with letters of agreement, the exception for helicopters should be retained. Therefore, the FAA proposes no change to this paragraph and the exception for helicopters is retained.

One commenter recommends that subparagraph (b)(3) be deleted since it references Group III TCA's. The FAA concurs with this recommendation since the FAA proposes in § 91.133 to delete Group III TCA's. Therefore, subparagraph (b)(3) is deleted and subparagraph (b)(4) is redesignated as (b)(3). The reference to Part 125 in paragraph (a) was included in Notice 79–2A in error and is deleted.

One commenter suggests that the 4-hour lead time for requests for authorization to operate an aircraft without a transponder be deleted. The FAA finds (consistent with its position in Amenment 91–116) that without advance notice, controllers would be required to approve or deny entrance to specified airspace on a moment's notice. This would lead to excessive communication and additional workload to the detriment of ATC services available to transponder equipped aircraft. However, the FAA has reduced the required notice from 4 hours to 1 hour (Amendment 91–182, effective 4/11/83).

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder—

(a) When deactivation of that equipment is directed by ATC;

(b) Unless, as installed, that equipment was tested and calibrated to transmit altitude data corresponding within 125 feet (on a 95 percent probability basis) of the indicated or calibrated datum of the altimeter normally used to maintain flight altitude, with that altimeter referenced to 29.92 inches of mercury for altitudes from sea level to the maximum operating altitude of the aircraft; or

(c) Unless the altimeters and digitizers in that equipment meet the standards of TSO–C10b and TSO–C88, respectively.

Discussion. One commenter on § 91.217 suggests that the parenthetical

statement "(on a 95 percent probability basis)" be replaced with the appropriate technical document. This is not necessary. Amendment 91–42, Data Correspondence Between Automatically Reported Pressure Altitude Data and the Pilot's Altitude Reference, effective August 15, 1967, contains the rationale for the equipment accuracy and the "95-percent probability basis" as required by § 91.217(b). Therefore, to preserve the meaning of paragraph (b), the parenthetical statement is retained.

The obsolete date, September 1, 1979, was deleted in paragraph (c) as it appeared in Notice No. 79–2A. The word "unless" was inadvertently omitted from that paragraph in the same notice. The error is corrected with the inclusion of "Unless" in paragraph (c) in this proposal. Also, Proposal 5–67, contained in Amendment 91.141, "Airworthiness Review Program Amendment No. 5: Equipment and System Amendment" makes it clear that compliance with paragraphs (a), (b), and (c) is required after September 1, 1979. Accordingly, the word "or" at the end of paragraph (b) is deleted. No other changes are proposed for this section.

§ 91.219 Altitude alerting system or device: Turbojet-powered civil airplanes.

(a) Except as provided in paragraph (d) of this section, no person may operate a turbojet-powered U.S.-registered civil airplane unless that airplane is equipped with an approved altitude alerting system or device that is in operable condition and meets the requirements of paragraph (b) of this section.

(b) Each altitude altering system or device required by paragraph (a) of this section must be able to—

(1) Alert the pilot—

(i) Upon approaching a preselected altitude in either ascent or descent, by a sequence of both aural and visual signals in sufficient time to establish level flight at that preselected altitude; or

(ii) Upon approaching a preselected altitude in either ascent or descent, by a sequence of visual signals in sufficient time to establish level flight at that preselected altitude, and when deviating above and below that preselected altitude, by an aural signal;

(2) Provide the required signals from sea level to the highest operating altitude approved for the airplane in which it is installed;

(3) Preselect altitudes in increments that are commensurate with the altitudes at which the aircraft is operated;

(4) Be tested without special equipment to determine proper operation of the alerting signals; and

(5) Accept necessary barometric pressure settings if the system or device operates on barometric pressure.

However, for operations below 3,000 feet AGL, the system or device need only provide one signal, either visual or aural, to comply with this paragraph. A radio altimeter may be included to provide the signal if the operator has an approved procedure for its use to determine DH or MDA, as appropriate.

(c) Each operator to which this section applies must establish and assign procedures for the use of the altitude alerting system or device and each flight crewmember must comply with those procedures assigned to him.

(d) Paragraph (c) of this section does not apply to any operation of an airplane that has an experimental certificate or to the operation of an airplane for the following purposes:

(1) Ferrying a newly acquired airplane from the place where possession of it was taken to a place where the altitude alerting system or device is to be installed.

(2) Continuing a flight as originally planned, if the altitude alerting system or device becomes inoperative after the airplane has taken off; however, the flight may not depart from a place where repair or replacement can be made.

(3) Ferrying an airplane with an inoperative altitude alerting system or device from a place where repair or replacement cannot be made to a place where it can be made.

(4) Conducting an airworthiness flight test of the airplane.

(5) Ferrying an airplane to a place outside the United States for the purpose of registering it in a foreign country.

(6) Conducting a sales demonstration of the operation of the airplane.

(7) Training foreign flightcrews in the operation of the airplane before ferrying it to a place outside the United States for the purpose of registering it in a foreign country.

Discussion. One commenter recommends moving § 91.219 to Subpart F, although on justification is given for the recommendation. The FAA considers Subpart C to be the appropriate location for § 91.219 because the section contains standards for the equipment to be used.

Another commenter states that subparagraph (d)(2) should be amended to include provision of the aircraft to be operated in accordance with the MEL. The commenter states that the MEL must be considered at all times. A representative check of several master minimum equipment lists (MMEL's) shows that relief beyond that expressly provided for in present § 91.51 (proposed § 91.219) is not permitted in the MMEL's from which MEL's are developed. The FAA considers the reasons for initially adopting the rule still to be valid and safety considerations do not justify further relief from the requirements of subparagraph (d)(2).

§§ 91.221–91.299 [Reserved]

Subpart D—Special Flight Operations

§ 91.301 Applicability.

This subpart prescribes additional rules concerning aerobatic flight, flight test areas, parachutes and parachuting, towing gliders, towing other than gliders, restricted category aircraft, limited category aircraft, provisionally certificated aircraft, experimentally certificated aircraft, the carriage of candidates in Federal elections, and increased maximum certificated weights for certain airplanes operated in Alaska.

Discussion. No public comments were received on § 91.301. The FAA proposes to change "acrobatic" to "aerobatic" for consistency with § 91.303. Also, a reference is added to the subject of a new section which addresses maximum certificated weights for certain airplanes operated in Alaska. No other changes are proposed for § 91.301.

§ 91.303 Aerobatic flight.

No person may operate an aircraft in aerobatic flight—

(a) Over any congested area of a city, town, or settlement;

(b) Over an open air assembly of persons;

(c) Within a control zone or Federal airway;

(d) Below an altitude of 1,500 feet above the surface; or

(e) when flight visibility is less than 3 miles.

For the purposes of this section, aerobatic flight means an intentional maneuver involving an abrupt change in an aircraft's attitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight.

Discussion. One commenter states that the text of § 91.307(c) should be incorporated into § 91.303 to define acrobatic. Another commenter recommends deleting the present definition of acrobatic flight from § 91.303, incorporating the general provisions of § 91.307 (c), (d), and (e) into this section, and including the text

of § 91.307(c) into Part 1 as a definition of aerobatic.

The definition of acrobatic flight in § 91.303, as proposed in Notice No. 79-2A, is somewhat different and more encompassing than the requirement in § 91.307 (c), (d), and (e) which specify certain conditions during which a parachute must be worn and what constitutes an approved parachute. The definition in § 91.303, as proposed in Notice No. 79-2A, adequately describes acrobatic flight. It is inappropriate to place a definition of acrobatic flight in Part 1 because this would unnecessarily restrict its definition in present and future parts other than Part 91. As regards moving the text of paragraphs (c), (d), and (e) of § 91.307 to this section, because of the differences noted above, the FAA does not agree that those paragraphs should be moved.

One commenter recommends changing "may" to "shall" in the preface to § 91.303, changing "an" to "any" in paragraph (b), and adding "except as specifically authorized by the Administrator" to the end of paragraph (c). The rules of construction in § 1.3 of the FAR dictate that the preface language remain as it is to preserve the intent of the rule. The commenter does not offer any justification for the change to paragraph (b). The revision would not change the intent of the rule or add to clarity. Therefore, it is not proposed in this notice. The waiver terminology proposed for paragraph (c) is provided for with the listing of this section in § 91.905. The requested addition would be redundant.

Another commenter contends that a reference to "speeds in excess of those prescribed in § 91.117" should be included in the definition at the end of § 91.303. The need for this type of restriction has not been demonstrated in the past. The FAA considers the present methods for regulating speeds in excess of those in § 91.117 to be adequate.

One commenter states that a reference to terminal control areas and jet routes should be added to paragraph (c). Pilots of aircraft operating in a TCA must operate the aircraft according to the ATC clearance they have been given. An appropriate clearance would need to be obtained before initiating an altitude or heading change such as could occur in an aerobatic maneuver. As regards jet routes, most civilian aircraft operating on jet routes are prohibited by the aircraft's type certification from doing aerobatics of any kind. Some military aircraft may have an operational need to perform an aerobatic maneuver in this environment; however, since all aircraft in this airspace are under air traffic control with IFR separation standards in effect, clearance from ATC is required before initiating a maneuver which will cause the aircraft to deviate from its assigned heading and altitude. Additionally, past operating experience has not indicated a need to specifically include references to jet routes and TCA's in the section on aerobatic flight.

One commenter states that the visibility requirement in paragraph (e) should be raised from 3 to 5 miles and, further, that a 2,000-foot vertical and horizontal cloud separation requirement should be incorporated into the same paragraph. The FAA does not agree. The proposed change would be more restrictive for many operators, yet the commenter has not provided evidence to show that the current values are unsafe or inadequate.

Two commenters on § 91.303 recommend changing "acrobatic" to "aerobatic." The comments have merit and proposed § 91.303 is revised accordingly. The change will update the terminology to make it consistent with current definition as found in dictionaries and in common usage.

No other changes are proposed for § 91.303.

§ 91.305 Flight test areas.

No person may flight test an aircraft except over open water, or sparsely populated areas, having light air traffic.

Discussion. No public comments were received for § 91.305, accordingly, the section is proposed without change.

§ 91.307 Parachutes and parachuting.

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and—

(1) If a chair type (canopy in back), it has been packed by a certificated and appropriately rated parachute rigger within the preceding 120 days; or

(2) If any other type, it has been packed by a certificated and appropriately rated parachute rigger—

(i) Within the preceding 120 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(ii) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber, or materials not specified in subdivision (i) of this paragraph.

(b) Except in an emergency, no pilot in command may allow, and no person may make, a parachute jump from an aircraft within the United States except in accordance with Part 105.

(c) Unless each occupant of the aircraft is wearing an approved parachute, no pilot of a civil aircraft carrying any person (other than a crewmember) may execute any intentional maneuver that exceeds—

(1) A bank of 60 degrees relative to the horizon; or

(2) A nose-up or nose-down attitude of 30 degrees relative to the horizon.

(d) Paragraph (c) of this section does not apply to—

(1) Flight tests for pilot certification or rating; or

(2) Spins and other flight maneuvers required by the regulations for any certificate or rating when given by—

(i) A certificated flight instructor; or

(ii) An airline transport pilot instructing in accordance with § 61.169 of this chapter.

(e) For the purposes of this section, "approved parachute" means—

(1) A parachute manufactured under a type certificate or a technical standard order (C-23 series); or

(2) A personnel-carrying military parachute identified by an NAF, AAF, or AN drawing number, an AAF order number, or any other military designation or specification number.

Discussion. One commenter proposes combining § 91.307 with § 91.303 and inserting § 91.307(c) into Part 1 of the FAR. The FAA does not agree for the reasons stated in the *Discussion* of § 91.303, and no changes to this section are proposed.

§ 91.309 Towing: Gliders.

(a) No person may operate a civil aircraft towing a glider unless—

(1) The pilot in command of the towing aircraft is qualified under § 61.69 of this chapter;

(2) The towing aircraft is equipped with a tow-hitch of a kind, and installed in a manner, approved by the Administrator;

(3) The towline used has breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not more than twice this operating weight. However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider if—

(i) A safety link is installed at the point of attachment of the towline to the glider with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider and not greater than twice this operating weight; and

(ii) A safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider end of the towline and not greater than twice the maximum certificated operating weight of the glider;

(4) Before conducting any towing operation with a control zone, or before making each towing flight within a control zone if required by ATC, the pilot in command notifies the control tower if one is in operation in that control zone. If such a control tower is not in operation, the pilot in command must notify the FAA Flight Service Station serving the control zone before conducting any towing operation in that control zone; and

(5) The pilots of the towing aircraft and the glider have agreed upon a general course of action, including takeoff and release signals, airspeeds, and emergency procedures for each pilot.

(b) No pilot of a civil aircraft may intentionally release a towline, after release of a glider, in a manner so as to endanger the life or property of another.

Discussion. No public comments were received for § 91.309. Accordingly, § 91.309 is proposed without change.

§ 91.311 Towing: Other than § 91.309.

No pilot of a civil aircraft may tow anything with that aircraft (other than under § 91.309) except in accordance with the terms of a certificate of waiver issued by the Administrator.

Discussion. No public comments were received for § 91.311. Accordingly, the section is proposed without change.

§ 91.313 Restricted category civil aircraft: Operating limitations.

(a) No person may operate a restricted category civil aircraft—

(1) For other than the special purpose for which it is certificated; or

(2) In an operation other than one necessary to accomplish the work activity directly associated with that special purpose.

(b) For the purpose of paragraph (a), operating a restricted category civil aircraft to provide flight crewmember training in a special purpose operation for which the aircraft is certificated is considered to be an operation for that special purpose.

(c) No person may operate a restricted category civil aircraft carrying persons or property for compensation or hire. For the purposes of this paragraph, a special purpose operation involving the carriage of persons or material necessary to accomplish that operation, such as crop dusting, seeding, spraying, and banner towing (including the carrying of required persons or material to the location of that operation), and operation for the purpose of providing flight crewmember training in a special purpose operation, are not considered to be the carrying of persons or property for compensation or hire.

(d) No person may be carried on a restricted category civil aircraft unless that person—

(1) Is a flight crewmember;

(2) Is a flight crewmember trainee;

(3) Performs an essential function in connection with a special purpose operation for which the aircraft is certificated; or

(4) Is necessary to accomplish the work activity directly associated with that special purpose.

(e) Except when operating in accordance with the terms and conditions of certificate of waiver or special operating limitations issued by the Administrator, no person may operate a restricted category civil aircraft within the United States—

(1) Over a densely populated area;

(2) In a congested airway; or

(3) Near a busy airport where passenger transport operations are conducted.

(f) This section does not apply to nonpassenger-carrying civil rotorcraft external-load operations conducted under Part 133 of this chapter.

(g) No person may operate a small restricted category civil airplane, manufactured after July 18, 1978, unless an approved shoulder harness is installed for each front seat. The shoulder harness must be designed to protect each occupant from serious head injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) of this chapter. The shoulder harness installation at each flight crewmember station must permit the crewmember, when seated and with the safety belt and shoulder harness fastened, to perform all functions necessary for flight operation. For purposes of this paragraph—

(1) The date of manufacture of an airplane is the date the inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data; and

(2) A front seat is a seat located at a flight crewmember station or any seat located alongside such a seat.

Discussion. No public comments were received for § 91.313. However, the FAA proposes several editorial changes, including a clearer identification of the provisions of this section. Accordingly, the section is proposed without substantive change.

§ 91.315 Limited category civil aircraft: Operating limitations.

No person may operate a limited category civil aircraft carrying persons or property for compensation or hire.

Discussion. No public comments were received on § 91.315. Accordingly, the section is proposed without change.

§ 91.317 Provisionally certificated civil aircraft: Operating limitations.

(a) No person may operate a provisionally certificated civil aircraft unless that person is eligible for a provisional airworthiness certificate under § 21.21 of this chapter.

(b) No person may operate a provisionally certificated civil aircraft outside the United States unless that person has specific authority to do so from the Administrator and each foreign country involved.

(c) Unless otherwise authorized by the Director of Airworthiness, no person may operate a provisionally certificated civil aircraft in air transportation.

(d) Unless otherwise authorized by the Administrator, no person may operate a provisionally certificated civil aircraft except—

(1) In direct conjunction with the type or supplemental type certification of that aircraft;

(2) For training flightcrews, including simulated air carrier operations;

(3) Demonstration flights by the manufacturer for prospective purchasers;

(4) Market surveys by the manufacturer;

(5) Flight checking of instruments, accessories, and equipment that do not affect the basic airworthiness of the aircraft; or

(6) Service testing of the aircraft.

(e) Each person operating a provisionally certificated civil aircraft shall operate within the prescribed limitations displayed in the aircraft or set forth in the provisional aircraft flight manual or other appropriate document. However, when operating in direct conjunction with the type or supplemental type certification of the aircraft, that person shall operate under the experimental aircraft limitations of § 21.191 of this chapter and when flight testing, shall operate under the requirements of § 91.305 of this chapter.

(f) Each person operating a provisionally certificated civil aircraft shall establish approved procedures for—

(1) The use and guidance of flight and ground personnel in operating under this section; and

(2) Operating in and out of airports where takeoffs or approaches over populated areas are necessary.

No person may operate that aircraft except in compliance with the approved procedures.

(g) Each person operating a provisionally certificated civil aircraft shall ensure that each flight crewmember is properly certificated and has adequate knowledge of, and familiarity with, the aircraft and procedures to be used by that crewmember.

(h) Each person operating a provisionally certificated civil aircraft shall maintain it as required by applicable regulations and as may be specially prescribed by the Administrator.

(i) Whenever the manufacturer, or the Administrator, determines that a change in design, construction, or operation is necessary to ensure safe operation, no person may operate a provisionally certificated civil aircraft until that change has been made and approved. Section 21.99 of this chapter applies to operations under this section.

(j) Each person operating a provisionally certificated civil aircraft—

(1) May carry in that aircraft only persons who have a proper interest in the operations allowed by this section or who are specifically authorized by both the manufacturer and the Administrator; and

(2) Shall advise each person carried that the aircraft is provisionally certificated.

(k) The Administrator may prescribe additional limitations or procedures that he considers necessary, including limitations on the number of persons who may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control) number 2120-0005)

Discussion. No public comments were received on § 91.317. Accordingly, the section is proposed without change.

§ 91.319 Aircraft having experimental certificates: Operating limitations.

(a) No person may operate an aircraft that has an experimental certificate—

(1) For other than the purpose for which the certificate was issued; or

(2) Carrying persons or property for compensation or hire.

(b) No person may operate an aircraft that has an experimental certificate outside of an area assigned by the Administrator until it is shown that—

(1) The aircraft is controllable throughout its normal range of speeds and throughout all the maneuvers to be executed; and

(2) The aircraft has no hazardous operating characteristics or design features.

(c) Unless otherwise authorized by the Administrator in special operating limitations, no person may operate an aircraft that has an experimental certificate over a densely populated area or in a congested airway. The Administrator may issue special operating limitations for particular aircraft to permit takeoffs and landings to be conducted over a densely populated area or in a congested airway in accordance with terms and conditions specified in the authorization in the interest of safety in air commerce.

(d) Each person operating an aircraft that has an experimental certificate shall—

(1) Advise each person carried of the experimental nature of the aircraft;

(2) Operate under VFR, day only, unless otherwise specifically authorized by the Administrator; and

(3) Notify the control tower of the experimental nature of the aircraft when operating the aircraft into or out of airports with operating control towers.

(e) The Administrator may prescribe additional limitations that be considers necessary, including limitations on the persons that may be carried in the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. No public coments were received on § 91.319. Accordingly, § 91.319 is proposed without change.

§ 91.321 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of Part 121, 125, 127, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commerical operator;

(2) The carriage is conducted under the rules of Part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR et seq.).

(b) For the purposes of this section, the terms "candidate" and "election" have the same meaning as that set forth in the regulations of the Federal Election Commission.

Discussion. No public comments were received for § 91.321. Accordingly, the section is proposed without change.

§ 91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.

(a) Notwithstanding any other provision of the Federal Aviation Regulations, the Administrator will approve, as provided in this section, an increase in the maximum certificated weight of an airplane type certificated under Aeronautics Bulletin No. 7-A of the U.S. Department of Commerce dated January 1, 1931, as amended, or under the normal category of Part 4a of the former Civil Air Regulations (14 CFR 4A, 1964 ed.) if that airplane is operated in the State of Alaska by—

(1) An air taxi operator or other air carrier; or

(2) The U.S. Department of Interior in conducting its game and fish law enforcement activities or its management, fire detection, and fire suppression activities concerning public lands.

(b) The maximum certificated weight approved under this section may not exceed—

(1) 12,500 pounds;

(2) 115 percent of the maximum weight listed in the FAA aircraft specifications;

(3) The weight at which the airplane meets the positive maneuvering load factor requirement for the normal category specified in § 23.337 of this chapter; or

(4) The weight at which the airplane meets the climb performance requirements under which it was type certificated.

(c) In determining the maximum certificated weight, the Administrator considers the structural soundness of the airplane and the terrain to be traversed.

(d) The maximum certificated weight determined under this section is added to the airplane's operation limitations and is identified as the maximum weight authorized for operations within the State of Alaska.

Discussion. This section was proposed as § 91.707. One commenter recommends that the section be moved to Subpart D to provide a more logical order of information and to make the information easier to locate. The FAA agrees that § 91.707 should be moved to Subpart D because it applies to operations of certain small airplanes in the State of Alaska and not to the aviation industry in general.

Accordingly, § 91.707 is redesignated as § 91.323 with no substantive changes.

§§ 91.325–91.399 [Reserved]

Subpart E—Maintenance, Preventive Maintenance, and Alterations

§ 91.401 Applicability.

(a) This subpart prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-registered civil aircraft operating within or outside of the United States.

(b) Sections 91.405, 91.409, 91.417, and 91.419 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in Part 121, Part 127, or § 135.411(a)(2) of this chapter

(c) Sections 91.405 and 91.409 of this part do not apply to an airplane inspected in accordance with Part 125 of this chapter.

Discussion. One commenter recommends amending the Subpart E title to read, "Aircraft Maintenance, Inspections, Preventive Maintenance, and Equipment Tests and Inspections." This commenter also recommends amending paragraph (a) to read, "This subpart prescribes rules governing specific equipment tests and the U.S.-registered aircraft operating anywhere." Although the commenter recommends removing the reference to alterations in the title, it must be retained because alterations are not included in the definition of maintenance. The FAA considers the present title to be appropriate because the word maintenance includes equipment tests and inspections of the aircraft and its equipment. The FAA also considers the terminology of "within or without the United States" to be more definitive than the word "anywhere" and this terminology is retained.

Another commenter recommends that Part 123 be included in paragraph (b) since it is effective until January 1983. This is unnecessary because any amendment resulting from these proposals would become effective after January 1983.

Another commenter states that an additional paragraph (d) should be added to indicate that §§ 91.409 and 91.411 of this subpart do not apply to an aircraft inspected in accordance with Subpart F of this part. Because Amendment 91–181, effective October 15, 1982, (47 FR 41076; September 16, 1982) transferred the maintenance requirements from Subpart F to § 91.409, this comment is not appropriate for consideration in the present notice.

The progressive inspection requirements contained in § 91.411 and the inspection requirements in Subpart F, as they appeared in Notice No. 79–2A, are incorporated in present § 91.169 (proposed § 91.409) by Amendment No. 91–181. This amendment also transferred the inspection procedures for altimeters and altitude reporting equipment to present § 91.171 (proposed § 91.411). Therefore, the reference to §§ 91.411, 91.413, and Subpart F are deleted in proposed § 91.401.

No other changes are proposed for this section.

§ 91.403 General.

(a) The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with Part 39 of this chapter.

(b) No person may perform maintenance, preventive maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including Part 43.

(c) No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitations section unless the mandatory replacement times, inspection intervals, and related procedures specified in that section or alternative inspection intervals and related procedures set forth in an operations specification approved by the Administrator under Parts 121, 127, or 135 or in accordance with an inspection program approved under § 91.4.09(e) have been complied with.

Discussion. One commenter suggests that the title of Parts 39 and 43 be included in the text of the rule so what the reader knows what the Part pertains to. The FAA does not agree because these references are readily available and this change would require extensive changes throughout the regulations.

Another commenter proposes to combine §§ 91.403 and 91.405 as new § 91.404. As regards proposed §§ 91.403 and 91.404, the commenter proposes to add the word "ensure" to require that the owner/operator maintains the aircraft in an airworthy condition, including compliance with airworthiness directives prescribed in Part 39. The commenter also proposes to "ensure" that the maintenance personnel make the appropriate entries in the aircraft and maintenance records. The rule presently provides for the owner/operator responsibilities as recommended by the commenter. Paragraph (b) requires that any person who performs maintenance or alterations shall comply with the recordkeeping requirements of Part 43. Therefore, adding the word "ensure" is unnecessary and redundant.

The commenter's proposed § 91.404 states who may perform maintenance and inspections. Additionally, it provides for preventive maintenance to be accomplished by pilots certificated under Part 61 and includes a reference to a new proposed appendix which contains the list of preventive maintenance items that can be accomplished by a pilot. The FAA disagrees with the proposal because the maintenance (which includes inspection), preventive maintenance, rebuilding, and alteration of aircraft requirements are adequately and appropriately covered in Part 43, and it is not appropriate to combine them with the operating requirements of Part 91.

Another commenter states that both Parts 39 and 91 state or imply that the owner or operator is responsible for AD compliance. The commenter believes that the operator should be defined and a clear designation of responsibility for AD compliance should be made. Past operating experience indicates, however, that paragraph (a) is clear as currently drafted and further change is unnecessary.

The FAA has deleted the reference to § 91.537(e) because all aircraft inspection requirements have been transferred to present § 91.169 (proposed § 91.409) as a result of Amendment No. 91–181. No other changes are proposed.

§ 91.405 Maintenance required.

Each owner or operator of an aircraft shall have that aircraft inspected as prescribed in §§ 91.409, 91.411, and 91.413 and shall, between required inspections, have discrepancies repaired as prescribed in Part 43 of this chapter. In addition, each owner or operator shall ensure that maintenance personnel make appropriate entries in the maintenance records indicating that the aircraft has been approved for return to service.

Discussion. One commenter proposes a new paragraph (a) that will require an owner or operator to ensure that known unairworthy conditions have been corrected as prescribed in Part 43 before operating, or knowingly permitting any person to operate, that aircraft. The FAA considers that §§ 91.7 and 91.407 adequately address this subject.

The same commenter proposes to add a paragraph (b) substantively identical to proposed § 91.403(c). The FAA disagrees with the proposal because this is a general requirement and, therefore, it is more appropriate in § 91.403.

The FAA has deleted the reference to Subpart F and added a reference to § 91.413 (proposed § 91.415 in Notice No. 79–2A). These changes align the requirements of this section with changes made by Amendment No. 91.181. The reference to § 91.411 reflects the redesignation of § 91.413. No other changes are proposed for § 91.405.

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless—

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

(b) No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

(c) The aircraft does not have to be flown as required by paragraph (b) of this section if, prior to flight, ground tests, inspections, or both show conclusively that the maintenance, preventive maintenance, rebuilding, or alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.

(Approved by the Office of Management and Budget under OMB control number 2120–0005)

Discussion. No public comments were received on § 91.407. This section is revised to incorporate the provisions of Amendment No. 91–181, effective October 15, 1982. No additional changes are proposed for § 91.407.

§ 91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the preceding 12 calendar months, it has had—

(1) An annual inspection in accordance with Part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter; or

(2) An inspection for the issuance of an airworthiness certificate in accordance with Part 21 of this chapter.

No inspection performed under paragraph (b) of this section may be substituted for any inspection required by this paragraph unless it is performed by a person authorized to perform annual inspections and is entered as an "annual" inspection in the required maintenance records.

(b) Except as provided in paragraph (c) of this section, no person may operate an aircraft carrying any person (other than a crewmember) for hire, and no person may give flight instruction for hire in an aircraft which that person provides, unless within the preceding 100 hours of time in service the aircraft has received an annual or 100-hour inspection and been approved for return to service in accordance with Part 43 of this chapter or has received an inspection for the issuance of an airworthiness certificate in accordance with Part 21 of this chapter. The 100-hour limitation may be exceeded by not more than 10 hours while enroute to reach a place where the inspection can be done. The excess time used to reach a place where the inspection can be done must be included in computing the next 100 hours of time in service.

(c) Paragraphs (a) and (b) of this section do not apply to—

(1) An aircraft that carries a special flight permit, a current experimental certificate, or a provisional airworthiness certificate;

(2) An aircraft inspected in accordance with an approved aircraft inspection program under Part 125 or 135 of this chapter and so identified by the registration number in the operations specifications of the certificate holder having the approved inspection program;

(3) An aircraft subject to the requirements of paragraph (d) or (e) of this section; or

(4) Turbine-powered rotorcraft when the operator elects to inspect that rotorcraft in accordance with paragraph (e) of this section.

(d) *Progressive inspection.* Each registered owner or operator of an aircraft desiring to use a progressive inspection program must submit a written request to the FAA Flight Standards district office having jurisdiction over the area in which the applicant is located, and shall provide—

(1) A certificated mechanic holding an inspection authorization, a certificated airframe repair station, or the manufacturer of the aircraft to supervise or conduct the progressive inspection;

(2) A current inspection procedures manual available and readily understandable to pilot and maintenance personnel containing, in detail,—

(i) An explanation of the progressive inspection, including the continuity of inspection responsibility, the making of reports, and the keeping of records and technical reference material;

(ii) An inspection schedule, specifying the intervals in hours or days when routine and detailed inspections will be performed and including instructions for exceeding an inspection interval by not more than 10 hours while en route and for changing an inspection interval because of service experience;

(iii) Sample routine and detailed inspection forms and instructions for their use; and

(iv) Sample reports and records and instructions for their use;

(3) Enough housing and equipment for necessary disassembly and proper inspection of the aircraft; and

(4) Appropriate current technical information for the aircraft.

The frequency and detail of the progressive inspection shall provide for the complete inspection of the aircraft within each 12 calendar months and be consistent with the manufacturer's recommendations, field service experience, and the kind of operation in which the aircraft is engaged. The progressive inspection schedule must ensure that the aircraft, at all times, will be airworthy and will conform to all applicable FAA aircraft specifications, type certificate data sheets, airworthiness directives, and other approved data. If the progressive inspection is discontinued, the owner or operator shall immediately notify the local FAA Flight Standards district office, in writing, of the discontinuance. After the discontinuance, the first annual inspection under § 91.409(a)(1) is due within 12 calendar months after the last complete inspection of the aircraft under the progressive inspection. The 100-hour inspection under § 91.409(b) is due within 100 hours after that complete inspection. A complete inspection of the aircraft, for the purpose of determining when the annual and 100-hour inspections are due, requires a detailed inspection of the aircraft and all its components in accordance with the progressive inspection. A routine inspection of the aircraft and a detailed inspection of several components is not considered to be a complete inspection.

(e) *Large airplanes (to which Part 125 is not applicable), turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-*

powered rotorcraft. No person may operate a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft unless the replacement times for life-limited parts specified in the aircraft specifications, type data sheets, or other documents approved by the Administrator are complied with and the airplane or turbine-powered rotorcraft, including the airframe, engines, propellers, rotors, appliances, survival equipment, and emergency equipment, is inspected in accordance with an inspection program selected under the provisions of paragraph (f) of this section, except that, the owner or operator of a turbine-powered helicopter may elect to use the inspection provisions of § 91.169 (a), (b), (c), or (d) in lieu of an inspection option of § 91.169(f).

(f) *Selection of inspection programs under paragraph (e) of this section.* The registered owner or operator of each airplane or turbine-powered rotorcraft described in paragraph (e) of this section must select, identify in the aircraft maintenance records, and use one of the following programs for the inspection of the aircraft:

(1) A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate or an operating certificate issued under Part 121, 127, or 135 of this chapter and operating that make and model aircraft under Part 121 or 127 or operating that make and model under Part 135 and maintaining it under § 135.411(a)(2).

(2) An approved aircraft inspection program approved under § 135.419 of this chapter and currently in use by a person holding an operating certificate issued under Part 135.

(3) A current inspection program recommended by the manufacturer.

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision to this inspection program in accordance with the provisions of § 91.415.

Each operator shall include in the selected program the name and address of the person responsible for scheduling the inspections required by the program and make a copy of that program available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(g) *Inspection program approval under paragraph (e) of this section.* Each operator of an airplane or turbine-powered rotorcraft desiring to establish or change an approved inspection program under paragraph (f)(4) of this section must submit the program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model airplane or turbine-powered rotorcraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the program expressed in terms of the time in service, calendar time, number of system operations, or any combination of these.

(h) *Changes from one inspection program to another.* When an operator changes from one inspection program under paragraph (f) of this section to another, the time in service, calendar times, or cycles of operation accumulated under the previous program must be applied in determining inspection due times under the new program.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. One commenter proposes a change to paragraph (a)(1) to include the requirement that a mechanic with an inspection authorization, as described in § 91.409(a)(1), has inspected the aircraft and returned it to service. The FAA does not agree with this proposal because it would permit only a mechanic with an inspection authorization to approve an aircraft for return to service and, as provided in § 43.7, persons other than mechanics, such as repair stations and manufacturers, are allowed to approve aircraft for return to service after an annual or progressive inspection. This provides for a wider selection of persons to approve the aircraft for return to service and saves on costs without any derogation of safety.

Another commenter proposes to revise subparagraph (a)(2) by adding after "airworthiness certificate" the phrase "in accordance with Part 21 of this chapter." The FAA agrees that this would be consistent with paragraph (b); therefore the wording is revised to provide the same standards in both paragraphs (a) and (b) for an inspection for the issuance of an airworthiness certificate. The same commenter suggests changes to subparagraphs (c)(1), (c)(2), and (c)(3) as proposed in Notice No. 79-2A. These suggestions have been essentially accomplished by Amendment 91-181, effective October 15, 1982, and no further action is necessary.

This same commenter proposes to revise paragraph (e)(3) to reference Part 125 instead of Part 123. Finally, the commenter proposes to change paragraph (c)(5) to include aircraft instead of airplanes and to delete the inspection requirements in Subpart F. Amendment 91-181 revised § 91.409 and paragraph (c)(2) was amended to include aircraft inspected in accordance with an approved aircraft inspection program under Part 125 or 135 of this chapter. That amendment also revised the inspection requirements formerly contained in subparagraph (c)(5) to include turbine-powered rotorcraft with certain large turbine-powered airplanes. The FAA does not agree that other aircraft should be included in this subparagraph (proposed (e)) because paragraphs (a), (b), and (d) of § 91.409, as presently proposed, contain inspection requirements appropriate to other than the large and turbine-powered airplanes and turbine-power rotocraft discussed.

One commenter requested a clarification of the term "for hire" in § 91.409(b) and a clarification of the 10 hour extension associated with the 100-hour inspection. The FAA does not agree with changing the term "for hire" because the term is self explanatory and needs no further explanation. The FAA does agree with this commenter on a clarification of the 10-hour extension and has incorporated the change.

One commenter requested a clarification of the accomplishment procedures of the progressive inspection. The FAA does not agree with the commenter because the step-by-step procedure for the accomplishment of a progressive inspection is contained in § 91.409(d).

The FAA proposes to amend § 91.409 to allow operators of turbine-powered rotorcraft, if they desire, to use the inspection provisions of § 91.409(e). This will allow the operators of turbine-powered rotorcraft to utilize the same inspection privileges as operators of large and turbine-powered airplanes. The main benefit of alternate inspection programs is that operators will be able to schedule inspections in a manner that

will allow a higher level of utilization of the rotorcraft.

No other substantive changes are proposed for § 91.409.

§ 91.411 Altimeter system and altitude reporting equipment tests and inspections.

(a) No person may operate an airplane in controlled airspace under IFR unless—

(1) Within the preceding 24 calendar months, each static pressure system, each altimeter instrument, and each automatic pressure altitude reporting system has been tested and inspected and found to comply with Appendices E and F of Part 43 of this chapter;

(2) Except for the use of system drain and alternate static pressure valve, following any opening and closing of the static pressure system, that system has been tested and inspected and found to comply with paragraph (a), Appendix E, of Part 43 of this chapter; and

(3) Following installation or maintenance on the automatic pressure altitudes reporting system of the ATC transponder where data correspondence error could be introduced, the integrated system has been tested, inspected, and found to comply with paragraph (c), Appendix E, of Part 43 of this chapter.

(b) The tests required by paragraph (a) of this section must be conducted by—

(1) The manufacturer of the airplane on which the tests and inspections are to be performed;

(2) A certificated repair station properly equipped to perform those functions and holding—

(i) An instrument rating, Class I;

(ii) A limited instrument rating appropriate to the make and model of appliance to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) An airframe rating appropriate to the airplane to be tested; or

(v) A limited rating for a manufacturer issued for the appliance in accordance with § 145.101(b)(4) of this chapter; or

(3) A certificated mechanic with an airframe rating (static pressure system tests and inspections only).

(c) Altimeter and altitude reporting equipment approved under Technical Standard Orders are considered to be tested and inspected as of the date of their manufacture.

(d) No person may operate an airplane in controlled airspace under IFR at an altitude above the maximum altitude at which all altimeters and the automatic altitude reporting system of that airplane have been tested.

Discussion. One commenter proposed to change the word airplane to aircraft to require both airplanes and rotorcraft operating in IFR to have the altimeter system tests and inspection completed. However, this issue is under consideration as part of the Rotorcraft Regulatory Review Program No. 5. The FAA has redesigned § 91.413 as § 91.411 to maintain the renumbering sequence. The original § 91.411 has been included in § 91.409 to place all inspection procedures into one section. No other changes are proposed for this section.

§ 91.413 ATC transponder tests and inspections.

(a) No persons may use ATC transponder that is specified in § 91.215(a), § 121.345(c), § 127.123(b), or § 135.143(c) of this chapter unless, within the preceding 24 calendar months, the ATC transponder has been tested and inspected and found to comply with Appendix F of Part 43 of this chapter; and

(b) Following any installation or maintenance on an ATC transponder where data correspondence error could be the integrated system has been tested, inspected, and found to comply with paragraph (c), Appendix E, of Part 43 of this chapter.

(c) The tests and inspections specified in this section must be conducted by—

(1) A certificated repair station properly equipped to perform those functions and holding—

(i) A radio rating, Class III;

(ii) A limited radio rating appropriate to the make and model transponder to be tested;

(iii) A limited rating appropriate to the test to be performed;

(iv) A limited rating for a manufacturer issued for the transponder in accordance with § 145.101(b)(4) of this chapter; or

(2) A holder of a continuous airworthiness maintenance program as provided in Part 121, 127, or § 135.411(a)(2) of this chapter; or

(3) The manufacturer of the aircraft on which the transponder to be tested is installed, if the transponder was installed by that manufacturer.

Discussion. One commenter recommends that the 24 month check of the ATC transponder be deleted. The commenter contends that FAA Air Traffic will notify the operator that the ATC transponder is not working. While FAA Air Traffic Control will advise a pilot of a non-functioning transponder, ATC does not have the capability of detecting all ATC transponder errors. Therefore, the ATC transponder must be checked for accuracy on a scheduled basis.

The FAA proposes to delete the reference to Part 125 in proposed § 91.415(a) because it is not appropriate. The ATC transponder equipment requirements for operations conducted under Part 125 are contained in proposed § 91.215(a) (present § 91.24(a)) and Part 125 has no separate requirements. This reference was included in error in Notice No. 79–2A and in Amendment No. 91–181. Except to redesignate § 91.415 as § 91.413 to consolidate the sections and keep them in sequence, no other changes are proposed.

§ 91.415 Changes to aircraft inspection programs.

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

(b) The owner or operator may petition the Administrator to reconsider the notice to make any changes in a program in accordance with paragraph (a) of this section.

(c) The petition must be filed with the FAA Flight Standards district office which requested the change to the program within 30 days after the certificate holder receives the notice.

(d) Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

Discussion. This proposed section was not contained in Notice No. 79–2A. However, it is consistent with the requirements adopted as present § 91.170 in Amendment No. 91–181, and is proposed as § 91.415.

§ 91.417 Maintenance records.

(a) Except for work performed in accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(a) Records of the maintenance and alteration and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include—

(i) A description (or reference to data acceptable to the Administrator) of the work performed; and

(ii) The date of completion of the work performed; and

(iii) The signature and certificate number of the person approving the aircraft for return to service

(2) Records containing the following information:

(i) The total time in service of the airframe, each engine, each propeller, and each rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The current inspection status of the aircraft, including the time since the last inspection required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number, and revision date. If the Ad involves recurring action, the time and date when the next action is required.

(vi) Copies of the forms prescribed by § 43.9(a) of this chapter of each major alteration to the airframe and currently installed engines, rotors, propellers, and appliances.

(b) The owner or operator shall retain the following records for the periods prescribed:

(1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after work is performed.

(2) The records specified in paragraph (a)(2) of this secion shall be retained and transferred with the aircraft at the time the aircraft is sold.

(3) A list of defects furnished to a registered owner or operator under § 43.11 of this chapter shall be retained until the defects are repaired and the aircraft is approved for return to service.

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB).

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. One commenter proposes to change paragraph (a)(2)(i) to read, "The total time in service of the airframe, each engine, or engine module, and each propeller or serialized component thereof." The FAA does not agree with the recommendation because an engine module is not defined in Part 1. The total time in service is only required for the engine and not for all the components that would make up a module. Also, to require a record of total time of components would be inappropriate and would place an economic burden on a majority of operators.

Another commenter proposes to change paragraph (a)(20)(i) to read, "The total time and/or cycles in service of the airframe, each engine, and each propeller." the FAA does not agree with the use of the term "cycles in service" because records of total time in service give a more realistic history of the airframe, powerplants, and propellers which can be used for determining maintenance and overhaul requirements.

One commenter questioned the recordkeeping requirements of §§ 91.411 and 91.413 in the § 91.417 state "Except for work performed accordance with §§ 91.411 and 91.413, each registered owner or operator shall keep the following records for the period specified in paragraph (b)." The commenter contends that there is no requirement in Part 91 for recording any maintenance on altimeters and ATC transponders. The FAA does not agree with the commenter because Appendices E and F of Part 43 require a maintenance entry to be made in accordance with § 43.9 and §§ 91.44, and 91-413 requires that the altimeter and ATC transponder be tested and inspected within the preceding 24 calendar months.

The FAA proposes to amend § 91.417(a)(2)(i) to include the records pertaining to rotors of rotorcraft. Section 91.417, as proposed in Notice No. 79-2A, contains requirements for maintenance recordkeeping for rotorcraft rotors and also contains a requirement to record current status of life-limited parts of other components including rotorcraft rotors. To be consistent with other maintenance recordkeeping requiements, rotors should be included in the total time in service records required by (a)(2)(i).

One commenter proposes to amend paragraph (a)(2)(iii) to include cycles since last overhaul of all items installed on the aircraft which are required to be overhauled on a specific time basis. The FAA does not agree with this recommendation because cycles since last overhaul can not be equated to time since last overhaul on all items that are required to be overhauled on a specific time basis.

One commenter contends that the maintenance record requirements of §§ 91.417 and 121.380 are not identical. The commenter contends that considerable confusion exists when a Part 121 aircraft is sold and transferred to a Part 91 operator. The FAA does not agree with the commenter because the recordkeeping requirements for a Part 121 operator are in excess of the requirements for Part 91 aircraft. An actual comparison between the two requirements indicates very little difference.

Appropriate references to requirements of Part 43 found in § 91.417(a)(2)(vi) and (b)(3) are included to conform with Amendment 91-181. Reference to § 91.411 is included in paragraph (a) to reflect the renumbering of that section. The reference to § 91.415 is deleted in the same paragraph since it is no longer appropriate as a result of the amendment.

§ 91.419 Transfer of maintenance records.

Any owner or operator who sells a U.S.-registered aircraft shall transfer to the purchaser, at the time of sale, the following records of that aircraft, in plain language form or in coded form at the election of the purchaser, if the coded form provides for the preservation and retrieval of information in a manner acceptable to the Administrator:

(a) The records specified in § 91.417(a)(2).

(b) The records specified in § 91.417(a)(1) which are not included in the records covered by paragraph (a) of this section, except that the purchaser may permit the seller to keep physical custody of such records. However, custody of records by the seller does not relieve the purchaser of his or her responsibility under § 91.417(c) to make the records available for inspection by the Administration or any authorized representative of the National Transportation Safety Board (NTSB).

Discussion. One commenter proposed to amend § 91.419(a) to include the records specified in § 91.417(a)(1) and (a)(2). The commenter further proposes to amend the first sentence of § 91.419(b) to allow the purchaser to permit the seller to keep physical custody of all of the records in § 91.417(a) and (b) or certain records in those paragraphs as determined by the FAA. The proposal, according to the commenter, will clarify § 91.419(b). The FA does not agree because the proposal would allow the seller to keep more maintenance records than presently allowed. Certain records must be transferred to the purchaser to establish a complete operating history of the aircraft. Additionally, past operating history has not resulted in problems with the requirements of this section as presently written.

§ 91.421 Rebuilt engine maintenance records.

(a) The owner or operator may use a new maintenance record, without previous operating history, for an aircraft engine rebuilt by the manufacturer or by an agency approved by the manufacturer.

(b) Each manufacturer or agency that grants zero time to an engine rebuilt by it shall enter in the new record—

(1) A signed statement of the date the engine was rebuilt;

(2) Each change made as required by airworthiness directives; and

(3) Each change made in compliance with manufacturer's service bulletins, if the entry is specifically requested in that bulletin.

(c) For the purposes of this section, a rebuilt engine is a used engine that has been completely disassembled, inspected, repaired as necessary, reassembled, tested, and approved in the same manner and to the same tolerances and limits as a new engine with either new or used parts. However, all parts used in it must conform to the production drawing tolerances and limits for new parts or be of approved oversized or undersized dimensions for a new engine.

Discussion. Three commenters firmly object to allowing the engine manufacturer to grant zero time to rebuilt engines when used parts are incorporated in the rebuilt engine. However, since § 91.421 is the subject of other rulemaking action, (Regulatory Docket No. 22773) these comments will be considered during that rulemaking and no changes to this paragraph are proposed in this notice.

§§ 91.423-91-499 [Reserved]

Subpart F—Recoverable Expenses for Certain Operations

§ 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large and of turbojet-powered multiengine civil airplanes of U.S. registry. The operating rules in this subpart do not apply to those airplanes when they are required to be operated under Parts 121, 125, 135, and 137 of this chapter. [Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes of U.S. registry when they are operated under this part or Part 129 or 137.]

(b) Operations they may be conducted under the rules in this subpart instead of those in Parts 121, 129, 135, and 137 when common carriage is not involved, include—

(1) Ferry or training flights;

(2) Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations;

(3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section.

(4) Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation;

(5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company;

(6) The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange, or joint ownership agreement as defined in paragraph (c) of this section;

(7) The carriage of property (other than mail) on an airplane operated by a person in the furtherance of a busines or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section;

(8) The carriage on an airplane of an athletic team, sports group, choral group, or similar group having a common purpose or objective when there is no charge, assessment, or fee of any kind made by any person for that carriage; and

(9) The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling to them land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment, or fee is made for that carriage.

(c) As used in this section—

(1) A "time sharing agreement" means an arrangement whereby a person leases his airplance with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section;

(2) An "interchange agreement" means as arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A "joint ownership agreement" means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplance and each of the registered joint owners pays a share of the charge specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by subparagraphs (b)(3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hangar and tie-down costs away from the aircraft's base of operation.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in subparagraph (1) of this paragraph.

Discussion. As noted under "Discussion" in the preamble of this notice, most sections of Subpart F as proposed in Notice No. 79-2A have been relocated in other subparts. Sections 91.503 through 91.535 have been relocated in proposed Subpart G and §§ 91.537 and 91.539 have been incorported into Subpart E. The remaining section, § 91.501, contains the same provisions as present § 91.181.

Five public comments were received in response to proposed § 91.501. Four deal with changes to the applicability of the section. Another proposes changes to the provision of paragraph (d) to charge for certain expenses in specific

operations. However, these issues are the subject of a separate rulemaking project (Docket No. 2470) and these comments will be considered in that action. Therefore, exept to propose a more appropriate title to reflect the proposed relocation of the other sections current Subpart D, §91.501 is proposed in this notice without change.

§§ 91.503-91.599 [Reserved]

Subpart G—Additional Equipment and Operating Requirements for Large and Transport Category Aircraft

§ 91.601 Applicability.

This subpart prescribes equipment and operating rule requirements governing the operation of large and transport category U.S.-registered civil aircraft in addition to those prescribed in other subparts of this part and other parts of this chapter.

Discussion. There were no public comments on § 91.601. Except for an editorial change, to clarify that this subpart applies to civil aircraft only, § 91.601 is proposed without change from Notice No. 79-2A.

§ 91.603 Aural speed warning device.

No person may operate a transport category airplane in air commerce unless that airplane is equipped with an aural speed warning device that complies with § 25.1303(c)(1).

Discussion. There were no public comments on § 91.603. Accordingly, the section is proposed without change.

§ 91.605 Transport category civil airplane weight limitations.

(a) No person may take off any transport category airplane (other than a turbine-engine-powered airplane certificated after September 30, 1958) unless—

(1) The takeoff weight does not exceed the authorized maximum takeoff weight for the elevation of the airport of takeoff;

(2) The elevation of the airport of takeoff is within the altitude range for which maximum takeoff weights have been determined;

(3) Normal consumption of fuel and oil in flight to the airport of intended landing will leave a weight on arrival not in excess of the authorized maximum landing weight for the elevation of that airport; and

(4) The elevations of the airport of intended landing and of all specified alternate airports are within the altitude range for which the maximum landing weights have been determined.

(b) No person may operate a turbine-engine-powered transport category airplane certificated after September 30, 1958, contrary to the airplane flight manual, or take off that airplane unless—

(1) The takeoff weight does not exceed the takeoff weight specified in the airplane flight manual for the elevation of the airport and for the ambient temperature existing at the time of takeoff;

(2) Normal consumption of fuel and oil in flight to the airport of intended landing and to the alternate airports will leave a weight on arrival not in excess of the landing weight specified in the airplane flight manual for the elevation of each of the airports involved and for the ambient temperatures expected at the time of landing;

(3) The takeoff weight does not exceed the weight shown in the airplane light manual to correspond with the minimum distances required for takeoff considering the elevation of the airport, the runway to be used, the effective runway gradient, and the ambient temperature and wind component existing at the time of takeoff; and

(4) Where the takeoff distance includes a clearway, the clearway distance is not greater than one-half of—

(i) The takeoff run, in the case of airplanes certificated after September 30, 1958, and before August 30, 1959; or

(ii) The runway length, in the case of airplanes certificated after August 29, 1959.

(c) No person may take off a turbine-engine-powered transport category airplane certificated after August 29, 1959, unless, in addition to the requirements of paragraph (b) of this section—

(1) The accelerate-stop distance is no greater than the length of the runway plus the length of the stopway (if present);

(2) The take off stop distance if no greater than the length of the runway plus the length of the clearway (if present); and

(3) The takeoff run is no greater than the length of the runway.

Discussion. No public comments were received for § 91.605. Accordingly the section is proposed without change.

§ 91.607 Emergency exits for airplanes carrying passengers for hire.

(a) Notwithstanding any other provision of this chapter, no person may operate a large airplane (type certificated under the Civil Air Regulations effective before April 9, 1957) in passenger-carrying operations for hire, with more than the number of occupants—

(1) Allowed under Civil Air Regulations § 4b.362(a), (b), and (c) as in effect on December 20, 1951; or

(2) Approved under Special Civil Air Regulations SR-387, SR-389, SR-389A, or SR-389B, or under this section as in effect.

However, an airplane type listed in the following table may be operated with up to the listed number of occupants (including crewmembers) and the corresponding number of exits (including emergency exits and doors) approved for the emergency exit of passengers or with an occupant-exit configuration approved under paragraph (b) or (c) of this section.

Airplane type	Maximum number of occupants including all crewmembers	Corresponding number of exits authorized for passenger use
B-307	61	4
B-377	96	9
C-46	67	4
CV-240	53	6
CV-340 and CV-440	53	6
DC-3	35	4
DC-3 (Super)	39	5
DC-4	86	5
DC-6	87	7
DC-6B	112	11
L-18	17	3
L-049, L-649, L-749	87	7
L-1049 series	96	9
M-202	53	6
M-404	53	7
Viscount 700 series	53	7

(b) Occupants in addition to those authorized under paragraph (a) of this section may be carried as follows:

(1) for each additional floor-level exit at least 24 inches wide by 48 inches high, with an unobstructed 20-inch-wide access aisleway between the exit and the main passenger aisle, 12 additional occupants.

(2) For each additional window exit located over a wing that meets the requirements of the airworthiness standards under which the airplane was type certificated or that is large enough to inscribe an ellipse 19 × 26 inches, eight additioinal occupants.

(3) For each additional window exit that is not located over a wing but that otherwise complies with subparagraph (2) of this paragraph, five additional occupants.

(4) For each airplane having a ratio (as computed from the table in paragraph (a) of this section) of maximum number of occupants to number of exits greater than 14:1, and for each airplane that does not have at least one full-size, door-type exit in the side of the fuselage in the rear part of the cabin, the first additional exit must be a floor-level exit that complies with subparagraph (1) of this paragraph and must be located in the rear part of the

cabin on the opposite side of the fuselage from the main entrance door. However, no person may operate an airplane under this section carrying more than 115 occupants unless there is such an exit on each side of the fuselage in the rear part of the cabin.

(c) No person may eliminate any approved exit except in accordance with the following:

(1) The previously authorized maximum number of occupants must be reduced by the same number of additional occupants authorized for that exit under this section.

(2) Exists must be eliminated in accordance with the following priority schedule: First, non-over-wing window exits; second, over-wing window exits; third, floor-level exits located in the forward part of the cabin; and fourth, floor-level exits located in the rear of the cabin.

(3) At least one exit must be retained on each side of the fuselage regardless of the number of occupants.

(4) No person may remove any exit that would result in a ratio of maximum number of occupants to approved exits greater than 14:1.

(d) This section does not relieve any person operating under Part 121 of this chapter from complying with § 121.291.

Discussion. One commenter believes that the subject of emergency exits needs to be addressed for all aircraft. The commenter states that, based on his company's experience, modification centers converting former airliners to business jets do not pay attention to either Part 25 or Civil Air Regulation section 4B. The commenter offers no further explanation or suggestion for amending this section. This section applies to large airplanes type certificated before April 9, 1957, and all airplanes type certificated after that date must comply with the emergency exit requirements of Part 23 or Part 25, as appropriate. Therefore, the FAA does not find any change necessary. Accordingly, except to redesignate § 91.609 as § 91.607, this section is proposed without change.

§ 91.609 Flight recorders and cockpit voice recorders.

No holder of an air carrier operating certificate or an operating certificate may conduct any operation under this part with an aircraft listed in the holder's operations specifications or current list of aircraft used in air transportation unless that aircraft complies with any applicable flight recorder and cockpit voice recorder requirements of the part under which its certificate is issued except that the operator may—

(a) Ferry an aircraft with an inoperative flight recorder or cockpit voice recorder from a place where repair or replacement cannot be made to a place where they can be made;

(b) Continue a flight as originally planned, if the flight recorder or cockpit voice recorder becomes inoperative after the aircraft has taken off;

(c) Conduct an airworthiness flight test during which the flight recorder or cockpit voice recorder is turned off to test it or to test any communications or electrical equipment installed in the aircraft; or

(d) Ferry a newly acquired aircraft from the place where possession of it is taken to a place where the flight recorder or cockpit voice recorder is to be installed.

Discussion. No public comments were received on proposed § 91.611. The FAA proposes to revise the first sentence of the section by deleting the words "commercial operator" and inserting the words "operating certificate" and "an operating." The revision aligns this section with SFAR 38 and Part 125 which eliminate the commerical operator certificate and provide for issuance of either an "air carrier operating certificate" or an "operating certificate."

Section 91.611 is redesignated as § 91.609 to maintain a consistent numbering system.

§ 91.611 Authorization for ferry flight with one engine inoperative.

(a) *General.* The holder of an air carrier operating certificate or an operating certificate issued under Part 125 may conduct a ferry flight of a four-engine airplane or a turbine-engine-powered airplane equipped with three engines, with one engine inoperative, to a base for the purpose of repairing that engine subject to the following:

(1) The airplane model has been test flown and found satisfactory for safe flight in accordance with paragraph (b) or (c) of this section, as appropriate. However, each operator who before November 19, 1966, has shown that a model of airplane with an engine inoperative is satisfactory for safe flight by a test flight conducted in accordance with performance data contained in the applicable airplane flight manual under § 91.611(a)(2) need not repeat the test flight for that model.

(2) The approved airplane flight manual contains the following performance data and the flight is conducted in accordance with those data:

(i) Maximum weight.

(ii) Center of gravity limits.

(iii) Configuration of the inoperative propeller (if applicable).

(iv) Runway length for takeoff (including temperature accountability).

(v) Altitude range.

(vi) Certificate limitations.

(vii) Ranges of operational limits.

(viii) Performance information.

(ix) Operating procedures.

(3) The operator has approved procedures for the safe operation of the airplane, including specific requirements for—

(i) Limiting the operating weight on any ferry flight to the minimum necessary for the flight plus the necessary reserve fuel load;

(ii) A limitation that takeoffs must be made from dry runways unless, based on a showing of actual operating takeoff techniques on wet runways with one engine inoperative, takeoffs with full controllability from wet runways have been approved for the specific model aircraft and included in the airplane flight manual;

(iii) Operations from airports where the runways may require a takeoff or approach over populated areas; and

(iv) Inspection procedures for determining the operating condition of the operative engines.

(4) No person may take off an airplane under this section if—

(i) The initial climb is over thickly populated areas; or

(ii) Weather conditions at the takeoff or destination airport are less than those required for VFR flight.

(5) Persons other than required flight crewmembers shall not be carried during the flight.

(6) No person may use a flight crewmember for flight under this section unless that crewmember is thoroughly familiar with the operating procedures for one-engine inoperative ferry flight contained in the certificate holder's manual and the limitations and preformance information in the Airplane Flight Manual.

(b) *Flight tests: reciprocating-engine-powered airplanes.* The airplane performance of a reciprocating-engine-powered airplane with one engine inoperative must be determined by flight test as follows:

(1) A speed not less than $1.3V_{s1}$ must be chosen at which the airplane may be controlled satisfactorily in a climb with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator) and with all other engines operating at the maximum power determined in subparagraph (3) of this paragraph.

(2) The distance required to accelerate to the speed listed in subparagraph (1)

of this paragraph and to climb to 50 feet must be determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator; and

(iii) The other engines operating at not more than maximum power established under subpargrah (3) of this paragraph.

(3) The takeoff, flight and landing procedures, such as the approximate trim settings, method of power application, maximum power, and speed must be established.

(4) The performance must be determined at a maximum weight not greater than the weight that allows a rate of climb of a least 400 feet a minute in the en route configuration set forth in § 25.67(d) of this chapter in effect on January 31, 1977, at an altitude of 5,000 feet.

(5) The performance must be determined using temperature accountability for the takeoff field length, computed in accordance with § 25.61 of this chapter in effect on January 31, 1977.

(c) *Flight tests: Turbine-engine-powered airplanes.* The airplane performance of a turbine-engine-powered airplane with one engine inopertive must be determined by flight tests, including at least three takeoff tests, in accordance with the following:

(1) Takeoff speed V_R and V_2, not less than the corresponding speeds under which the airplane was type certified under § 25.107 of this chapter, must be chosen at which the airplane was type certificated under § 25.107 of this chapter, must be chosen at which the airplane may be controlled satisfactorily with the critical engine inoperative (with its propeller removed or in a configuration desired by the operator, if applicable) and with all other engines operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(2) The minimum takeoff field length must be the horizontal distance required to accelerate and climb to the 35-foot height at V_2 speed (including any additional speed increment obtained in the tests) multiplied by 115 percent and determined with—

(i) The landing gear extended;

(ii) The critical engine inoperative and its propeller removed or in a configuration desired by the operator (if applicable); and

(iii) The other engine operating at not more than the power selected for type certification as set forth in § 25.101 of this chapter.

(3) The takeoff, flight, and landing procedures such as the approximate trim settings, method of power application, maximum power, and speed must be established. The airplane must be satisfactorily controllable during the entire takeoff run when operated according to these procedures.

(4) The performance must be determined at a maximum weight not greater than the weight determined under § 25.121(c) of this chapter but with—

(i) The actual steady gradient of the final takeopp climb requirement not less than 1.2 percent at the end of the takeopp path with two critical engines inoperative; and

(ii) The climb speed not less than the two-engine inoperative trim speed for the actual steady gradient of the final takeopp climb prescribed by subdivision (i) of this subparagraph.

(5) The airplane must be satisfactorily controllable in a climb with two critical engines inoperative. Climb performance may be shown by calculations based on, and equal to accuracy to, the results of testing.

(6) The performance must be determined using temperature accountability for takeoff distance and final takeoff climb computed in accordance with § 25.101 of this chapter.

For the purposes of paragraphs (c) (4) and (5) of this chapter, "two critical engines" means two adjacent engines on one side of an airplane with four engines, and the center engine and one outboard engine on an aiplane with three engines.

Discussion. One commenter suggests that the authority for ferry flight with one engine inoperative be extended to any operator who can meet the rule requirements.

The FAA does not agree. The authorization for ferry flight with one engine inoperative is based in part on the fact that the persons authorized to conduct such flights hold operating certificates as specified in proposed § 91.611. As the holders of those certificates, they are required to establish certain operating procedures, including those for one-engine-inoperative ferry flights if they seek authority to conduct such flights. Those procedures must be listed in the operator's manual and are readily identifiable. Other operators may obtain a special flight permit for the purpose of ferrying an airplane with one engine inoperative. This allows the FAA to review the proposed operation on an individual basis and to prescribe any special conditions and limitations considered necessary in the interest of safety.

One commenter requests that proposed § 91.611(a)(5) be amended by deleting the prohibition against the carriage of any persons other than required flight crewmembers during ferry flights with one engine inoperative. The commenter contends that the regulation has become obolete and should change to allow the carriage of freight or non-revenue personnel that are not necessary for the flight, particularly on modern transport aircraft. The commenter argues that this is feasible because modern engines produce an overabundance of power for takeoff and are consistently operated at reduced thrust for takeoff. The FAA does not agrees it would be appropriate to allow the carriage of freight or non-revenue personnel on ferry flights with one engine inoperative.

Section 91.611 provides for the operation of certain airplanes with one engine inoperative for the specific purpose of conducting a ferry flight to a base for the purpose of repairing that engine. Under these conditions, the airplane does not meet the airworthiness requirement to which it is certificated, and the restrictions imposed by § 91.611 are considered necessary to ensure an acceptable level of safety. To allow the carriage proposed by the petitioner would not be consistent with the purpose of the rule and could have adverse effects on safety if additional engine or other mechanical problems developed in flight.

Amendment No. 25–38 deleted §§ 25.45 through 25.75 and references to §§ 25.67(d) and 25.61 in proposed § 91.611 (b)(4) and (b)(5) are obsolete for aircraft certification purposes. However, to continue to provide criteria for determining performance for reciprocating engine powered airplanes operated under § 91.611, reference to the sections, as effective on January 31, 1977, is made by editorial change.

Therefore, except for editorial changes to reflect Amendment No. 91–179, effective July 12, 1982, which extended the authorization for ferry flight with one engine inoperative to the holder of an operating certificate issued under Part 125, Amendment No. 25–38, and to redesignate § 91.613 as § 91.611, the section is proposed without change.

§ 91.613 Materials for compartment interiors.

No person may operate an airplane that conforms to an amended or supplemental type certificate issued in accordance with SFAR No. 41 for a maximum certificated takeoff weight in excess of 12,500 pounds unless within 1 year after issuance of the initial

airworthiness certificate under that SFAR the airplane meets the compartment interior requirements set forth in § 25.853 (a), (b), (b–1), (b–2), and (b–3) of this chapter in effect on September 26, 1978.

Discussion. No public comments were received for § 91.615. Accordingly, except to redesignate § 91.615 as § 91.613, the section is proposed without change.

§ 91.615 Flying equipment and operating information.

(a) The pilot in command of an airplane shall ensure that the following flying equipment and aeronautical charts and data, in current and appropriate form, are accessible for each flight at the pilot station of the airplane:

(1) A flashlight having at least two size-"D" cells, or the equivalent, that is in good working order.

(2) A cockpit checklist containing the procedures required by paragraph (b) of this section.

(3) Pertinent aeronautical charts.

(4) For IFR, VFR over-the-top, or night operations, each pertinent navigational en route, terminal area, and approach and letdown chart.

(5) In the case of multiengine airplanes, one-engine inoperative climb performance data.

(b) Each cockpit checklist must contain the following procedures and shall be used by the flight crewmembers when operating the airplane:

(1) Before starting engines.

(2) Before takeoff.

(3) Cruise.

(4) Before landing.

(5) After landing.

(6) Stopping engines.

(7) Emergencies.

(c) Each emergency cockpit checklist procedure required by paragraph (b)(7) of this section must contain the following procedures, as appropriate:

(1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.

(2) Emergency operation of instruments and controls.

(3) Engine inoperative procedures.

(4) Any other procedures necessary for safety.

(d) The equipment, charts, and data prescribed in this section shall be used by the pilot in command and other members of the flightcrew, when pertinent.

Discussion. No public comments were received for proposed § 91.503. Therefore, except to redesignate it as § 91.615, the section is proposed without change.

§ 91.617 Familiarity with operating limitations and emergency equipment.

(a) Each pilot in command of an airplane shall, before beginning a flight, become familiar with the airplane flight manual for that airplane, if one is required, and with any placards, listings, instrument markings, or any combination thereof, containing each operating limitation prescribed for that airplane by the Administrator, including those specified in § 91.9(b).

(b) Each required member of the crew shall, before beginning a flight, become familiar with the emergency equipment installed on the airplane to which he or she is assigned and with the procedures to be followed for the use of that equipment in an emergency situation.

Discussion. No public comments were received on proposed § 91.505. Therefore, except to redesignate it as § 91.617, the section is proposed without change.

§ 91.619 Equipment requirements: Over-the-top or night VFR operations.

No person may operate an airplane over-the-top or at night under VFR unless the airplane is equipped with the instruments and equipment required for IFR operations under § 91.205(d) and one electric landing light for night operations. Each required instrument and item of equipment must be in operable condition.

Discussion. No public comments were received on proposed § 91.507. Accordingly, except to redesignate it as § 91.619 the section is proposed without change.

§ 91.621 Survival equipment for overwater operations.

(a) No person may take off an airplane for a flight over water more than 50 nautical miles from the nearest shore unless that airplane is equipped with a life preserver or an approved flotation means for each occupant of the airplane.

(b) No person may take off an airplane for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

(1) A life preserver, equipped with an approved survivor locator light, for each occupant of the airplane.

(2) Enough liferafts (each equipped with an approved survival locator light) of a rated capacity and buoyancy to accommodate the occupants of the airplane.

(3) At least one pyrotechnic signaling device for each liferaft."

(4) One self-buoyant, water-resistant, portable emergency radio signaling device that is capable of transmission on the appropriate emergency frequency of frequencies and not dependent upon the airplane power supply.

(5) A lifeline stored in accordance with § 25.1411(g) of this chapter.

(c) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(d) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(e) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

Discussion. One commenter on § 91.509 states that "aircraft" should be substituted for "airplane" in paragraphs (a) and (b), as well as throughout the rule, to permit helicopters to be considered under this rule. The commenter also recommends changing "shoreline" to "suitable landing area" in paragraphs (a) and (b) in addition to deleting the reference to 30-minutes flying time in paragraph (b). Finally, the commenter recommends changing "pyrotechnic" to "high intensity" in subparagraph (b)(3).

The FAA does not agree with the recommendation to make this section applicable to all aircraft since past experience has not shown the need for such a change. Additionally, previously proposed Subparts F and G have been rearranged in this notice to keep the equipment and operating rules for large and turbojet-powered multiengine airplanes intact under one subpart. This is done in an effort to keep from putting an undue economic burden on operators of other types of aircraft when it is not warrented by past operating experience. Further, the FAR currently require certain survival equipment for overwater operations that are conducted for hire including operation with helicopters.

The commenter's proposal to change the term "shoreline" is offered to permit pilots of helicopters operating offshore to consider landing platforms in planning when survival gear must be onboard. This suggestion is in concert with the commenter's recommendation to expand the applicability of Subpart F as it appeared in Notice No. 79–2A. The FAA does not agree with the proposal for the reasons discussed in the preceding paragraph.

The FAA disagrees with the proposal to delete the 30-minute requirement in paragraph (b). The FAA considers the reaons for adopting this requirement (Amendment 91-101, 37 FR 14758; July 15, 1972) valid and experience does not indicate a need to change the present requirement.

The FAA does not concur with the recommendation to change "pyrotechnic" to "high intensity" for the reasons stated in the discussion of § 91.205.

The FAA proposes to change "shoreline" to "shore" where it appears in paragraphs (a) and (b). The FAA also proposes to add a new paragraph (e) defining "shore." The terms are synonymous in general usage and the revision should clarify the rule for the reasons stated in the discussion of § 91.205. Section 91.509 is redesignated § 91.621 in keeping with the reorganization of Subparts F and G in the present notice.

§ 91.623 Radio equipment for overwater operations.

(a) Except as provided in paragraphs (c) and (d) of this section, no person may take off an airplance for a flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has at least the following operable equipment:

(1) Radio communication equipment appropriate to the facilities to be used and able to transmit to, and receive from, any place on the route, at least one surface facility:

(i) Two transmitters.

(ii) Two microphones.

(iii) Two headsets or one headset and one speaker.

(iv) Two independent receivers.

(2) Appropriate electronic navigational equipment consisting of at least two independent electronic navigation units capable of providing the pilot with the information necessary to navigate the airplane within the airspace assigned by air traffic control. However, a receiver that can receive both communications and required navigational signals may be used in place of a separate communications receiver and a separate navigational signal receiver or unit.

(b) For the purposes of subparagraph (a)(1)(iv) and paragraph (a)(2) of this section, a receiver or electronic navigation unit is independent if the function of any part of it does not depend on the functioning of any part of another receiver or electronic navigation unit.

(c) Notwithstanding the provisions of paragraph (a) of this section, a person may operate an airplane on which no passengers are carried from a place where repairs or replacement cannot be made to a place where they can be made, if not more than one of each of the dual items of radio communication and navigational equipment specified in subparagraphs (1) (i) through (iv) and paragraph (a)(2) of this section malfunctions or becomes inoperative.

(d) Notwithstanding the provisions of paragraph (a) of this section, when both VHF and HF communications equipment are required for the route and the airplane has two VHF transmitters and two VHF receivers for communications, only one HF transmitter and one HF receiver is required for communications.

(e) As used in this section, the term "shore" means that area of the land adjacent to the water which is above the high-water mark and excludes land areas which are intermittently under water.

Discussion. One commenter on § 91.511 states that "airplane" should be changed to "aircraft" in pargraph (a). The commenter also recommends deleting the reference to 30 minutes flying time and changeing "shoreline" to "nearest suitable landing area" in the same paragraph. The FAA disagrees with the recommendations for the same reasons stated in the discussion of § 91.621. The FAA proposes to revise this section to reflect the contemporary sophistication of electronic navigation equipment used in the current fleet of aircraft engaged in long-range global navigation for overwater operations. Although the word "receiver" normally connotes radio reception capability for communications as well as for navigation purposes, its intrinsic meaning does not include or imply the self-contained nature of navigational units, such as an Inertial Navigation System (INS). This type of navigational unit does not depend on the reception of radio signals for determining the position of the aircraft. Therefore, the FAA proposes to change the terminology of "receivers for navigation" to "electronic navigation units" which more accurately represents *all* types of navigation equipment now in use or that may be developed in the future. Paragraph (a) is also revised to consolidate required communications equipment in subparagraph (1) and required navigation equipment in subparagraph (2). The references to requirements in paragraph (a) have been changed in paragraphs (b) and (c) to correspond with the revised paragraph (a).

The FAA also proposes to change "shoreline" to "shore" where it appears in paragraph (a) and to add a new paragraph (e) defining "shore." The reasons for the proposal are the same as those stated in the *Discussion* of §§ 91.621 and 91.205.

Section 91.511 is redesignated § 91.623 in keeping with the reorganization of Subparts F and G in the present notice.

§ 91.625 Emergency equipment.

(a) No person may operate an airplane unless it is equipped with the emergency equipment listed in this section.

(b) Each item of equipment—

(1) Must be inspected in accordance with § 91.409 to ensure its continued serviceability and immediate readiness for its intended purposes;

(2) Must be readily acessible to the crew;

(3) Must clearly indicate its method of operation; and

(4) When carried in a compartment or container, must have that compartment or container marked as to contents and date of last inspection.

(c) Hand fire extinguishers must be provided for use in crew, passenger, and cargo compartments in accordance with the following:

(1) The type and quantity of extinguishing agent must be suitable for the kinds of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher must be provided and located on or near the flight deck in a place that is readily accessible to the flightcrew.

(3) At least one hand fire extinguisher must be conveniently located in the passenger compartment of each airplane accommodating more than six but less than 31 passengers, and at least two hand fire extinguishers must be conveniently located in the passenger compartment of each airplance accommodating more than 30 passengers.

(4) Hand fire extinguishers must be installed and secured in such a manner that they will not interfere with the safe operation of the airplane or adversely affect the safety of the crew and passengers. They must be readily accessible and, unless the locations of the fire extinguishers are obvious, their stowage provisions must be properly identified.

(d) First aid kits for treatment of injuries likely ot occur in flight or in minor accidents must be provided.

(e) Each airplane accommodating more than 19 passengers must be equipped with a crash axe.

(f) Each passenger-carring airplane must have a portable battery-powered megaphone or megaphones readily accessible to the crewmembers assigned

to direct emergency evacuation, installed as follows:

(1) One megaphone on each airplane with a seating capacity of more than 60 but les than 100 passengers, at the most rearward location in the passenger cabin where it would be readily accessible to a normal flight attendant seat. However, the Administrator may grant a deviation from the requirements of this subparagraph if he finds that a different location would be more useful for evacuation of persons during an emergency.

(2) On each airplane with a seating capacity of 100 or more passengers, one megaphone installed at the forward end and one installed at the most rearward location where it would be readily accessible to a normal flight attendant seat.

Discussion. One commenter on § 91.513 states that a battery-powered megaphone should be located in the cockpit area. The FAA has determined that it is not necessary to specifically require a megaphone in the cockpit area. The rule currently requires that megaphones be readily accessible to the crewmembers assigned to direct emergency evacuation of the airplane and specifies where the required megaphones are to be located. However, the rule does not preclude locating a megaphone in the cockpit area, if the operator so desires.

The reference to § 91.537 is revised to read § 91.409. This reflects the consolidation of the inspection requirements previously adopted in Amendment No. 91–181. Section 91.513 is redesignated § 91.625 in keeping with the reorganization of Subparts F and G in the present notice. No other changes are proposed.

§ 91.627 Flight altitude rules.

(a) Notwithstanding § 91.119, and except as provided in paragraph (b) of this section, no person may operate an airplane under VFR at less than—

(1) One thousand feet above the surface, or 1,000 feet from any mountain, hill, or other obstruction to flight, for day operations; and

(2) The altitudes prescribed in § 91.177, for night operations.

(b) This section does not apply—

(1) During takeoff or landing;

(2) When a different altitude is authorized by a waiver to this section under Subpart J of this part; or

(3) When a flight is conducted under the special VFR weather minimums of § 91.157 with an appropriate clearance from ATC.

Discussion. No public comments were received on § 91.515. However, subparagraph (b)(2) in Notice No. 79–2A incorrectly refers to waiver authority under Subpart I. Accordingly, except to resdesignate it as § 91.627 and to correct subparagraph (b)(2) to reference the waiver authority of Subpart J, the section is proposed without change.

§ 91.629 Smoking and safety belt signs.

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane carrying passengers unless it is equipped with signs that are visible to passengers and cabin attendants to notify them when smoking is prohibited and when safety belts should be fastened. The signs must be so constructed that the crew can turn them on and off. They must be turned on for each takeoff and each landing and when otherwise considered to be necessary by the pilot in command.

(b) The pilot in command of an airplane that is not equipped as provided in paragraph (a) of this section shall ensure that the passengers are orally notified each time that it is necessary to fasten their safety belts and when smoking is prohibited.

Discussion. One commenter on § 91.517 states that the section could be restated in one sentence requiring that passengers will be notified when to put on safety belts and when not to smoke. The FAA has determined that the commenter's proposal is too vague and does not provide the clarity contained in the present rule. Additionally, it would delete the requirements for when the notifications are to be accomplished. Adopting the recommendation would lower the level of safety assured by the present rule.

Accordingly, except to redesignate it as § 91.629, the section is proposed without change.

§ 91.631 Passenger briefing.

(a) Before each takeoff the pilot in command of an airplane carrying passengers shall ensure that all passengers have been orally briefed on—

(1) Smoking;

(2) Use of safety belts;

(3) Location and means for opening the passenger entry door and emergency exits;

(4) Location of survival equipment;

(5) Ditching procedures and the use of flotation equipment required under § 91.623 for a flight over water; and

(6) The normal and emergency use of oxygen equipment installed on the airplane.

(b) The oral briefing required by paragraph (a) of this section shall be given by the pilot in command or a member of the crew, but need not be given when the pilot in command determines that the passengers are familiar with the contents of the briefing. It may be supplemented by printed cards for the use of each passenger containing—

(1) A diagram of, and methods of operating, the emergency exits; and

(2) Other instructions necessary for use of emergency equipment.

(c) Each card used under paragraph (b) must be carried in convenient locations on the airplane for the use of each passenger and must contain information that is pertinent only to the type and model airplane on which it is used.

Discussion. No public comments were received on § 91.519. Accordingly, except to redesignate it as § 91.631, the section is proposed without change.

§ 91.633 Shoulder harness.

(a) No person may operate a transport category airplane that was type certificated after January 1, 1958, unless it is equipped at each seat at a flight deck station with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

(b) No person may operate a transport category airplane unless it is equipped at each required flight attendant seat in the passenger compartment with a combined safety belt and shoulder harness that meets the applicable requirements specified in § 25.785 of this chapter, except that—

(1) Shoulder harnesses and combined safety belt and shoulder harnesses that were approved and installed before March 6, 1980, may continue to be used; and

(2) Safety belt and shoulder harness restraint systems may be designed to the inertia load factors established under the certification basis of the airplane.

Discussion. No public comments were received on § 91.521. However, the FAA issued Amendment No. 91–183, effective March 31, 1983, amending proposed § 91.521 (current § 91.200) to harmonize the requirement of Part 91 with that of Part 121 and to avoid placing operators of the affected airplanes in the position

of having to ground their equipment and incur devastating financial loss. No other changes are proposed for § 91.521 except to redesignate it as § 91.633.

§ 91.635 Carry-on baggage.

No pilot in command of an airplane having a seating capacity of more than 19 passengers may permit a passenger to stow baggage aboard that airplane except—

(a) In a suitable baggage or cargo storage compartment, or as provided in § 91.637; or

(b) Under a passenger seat in such a way that it will not slide forward under crash impacts severe enough to induce the ultimate inertia forces specified in § 25.561(b)(3) of this chapter, or the requirements of the regulations under which the airplane was type certificated. Restraining devices must also limit sideward motion of under-seat baggage and be designed to withstand crash impacts severe enough to induce sideward forces specified in § 25.561(b)(3) of this chapter.

Discussion. No public comments were received on § 91.523. Therefore, except to redesignate it as § 91.635, the section is proposed without change.

§ 91.637 Carriage of cargo.

(a) No pilot in command may permit cargo to be carried in any airplane unless—

(1) It is carried in an approved cargo rack, bin, or compartment installed in the airplane;

(2) It is secured by means approved by the Administrator; or

(3) It is carried in accordance with each of the following:

(i) It is properly secured by a safety belt or other tiedown having enough strength to eliminate the possibility of shifting under all normally anticipated flight and ground conditions.

(ii) It is packaged or covered to avoid possible injury to passengers.

(iii) It does not impose any load on seats or on the floor structure that exceeds the load limitation for those components.

(iv) It is not located in a position that restricts the access to or use of any required emergency or regular exit, or the use of the aisle between the crew and the passenger compartment.

(v) It is not carried directly above seated passengers.

(b) When cargo is carried in cargo compartments that are designed to require the physical entry of a crewmember to extinguish any fire that may occur during flight, the cargo must be loaded so as to allow a crewmember to effectively reach all parts of the compartment with the contents of a hand fire extinguisher.

Discussion. No public comments were received on § 91.525. Accordingly, except to redesignate it as § 91.637, the section is proposed without change.

§ 91.639 Operating in icing conditions.

(a) No pilot may take off an airplane that has—

(1) Frost, snow, or ice adhering to any propeller, windshield, or powerplant installation or to an airspeed, altimeter, rate of climb, or flight attitude instrument system;

(2) Snow or ice adhering to the wings or stabilizing or control surfaces; or

(3) Any frost adhering to the wings or stabilizing or control surfaces, unless that frost has been polished to make it smooth.

(b) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly—

(1) Under IFR into known or forecast moderate icing conditions; or

(2) Under VFR into known light or moderate icing conditions unless the aircraft has functioning de-icing or anti-icing equipment protecting each propeller, windshield, wing, stabilizing or control surface, and each airspeed, altimeter, rate of climb, or flight attitude instrument system.

(c) Except for an airplane that has ice protection provisions that meet the requirements in section 34 of Special Federal Aviation Regulation No. 23, or those for transport category airplane type certification, no pilot may fly an airplane into known or forecast severe icing conditions.

(d) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing conditions that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (b) and (c) of this section based on forecast conditions do not apply.

Discussion. One commenter on § 91.529 states that the section should be moved to Subpart C so that it would apply to small aircraft, too. Another commenter states that the section should be moved to Subpart D because it is a special flight operation which could be done in other than large and turbine-powered multiengine airplanes.

The FAA disagrees with both commenters. Subpart F, as proposed in Notice No. 79-2A, incorporates the requirements of present Subpart D of Part 91. That subpart provides an adequate level of safety for the operation of large and turbine-powered multiengine airplanes. The FAA has determined that this level of safety should be maintained as it applies to the aforementioned airplanes and, accordingly, the operational and equipment requirements (except § 91.501) are moved to Subpart G in an effort to further consolidate all of these requirements. The other subparts in Part 91 neither prescribe equipment for operations conducted in icing conditions nor restrict the operation of aircraft in such conditions if the aircraft are not equipped with de-icing equipment. Past operating history has not indicated a need for the requirements of this section to be extended to operations governed by the other subparts of Part 91. The specific operating limitations for each make and model of aircraft, plus the enforcement capability under § 91.13(a), have been adequate in the past for Part 91 operations.

Accordingly, except to redesignate § 91.529 as § 91.639, the section is proposed without change.

§ 91.641 Flight engineer requirements.

(a) No person may operate the following airplanes without a flight crewmember holding a current flight engineer certificate:

(1) An airplane for which a type certificate was issued before January 2, 1964, having a maximum certificated takeoff weight of more than 80,000 pounds.

(2) An airplane type certificated after January 1, 1964, for which a flight engineer is required by the type certification requirements.

(b) No person may serve as a required flight engineer on an airplane unless, within the preceding 6 calendar months, that person has had at least 50 hours of flight time as a flight engineer on that type airplane or has been checked by the Administrator on that type airplane and is found to be familiar and competent with all essential current information and operating procedures.

Discussion. No pubic comments were received on § 91.531. Accordingly, except to redesignate § 91.531 as § 91.641, the section is proposed without change.

§ 91.643 Second-in-command requirements.

(a) Except as provided in paragraph (b) of this section, no person may operate the following airplanes without a pilot who is designated as second in command of that airplane.

(1) A large airplane, except that a person may operate an airplane certificated under SFAR 41 without a pilot who is designated as second in command if that airplane is certificated for operation with one pilot.

(2) A turbojet-powered multiengine airplane for which two pilots are required under the type certifiction requirements for that airplane.

(b) The Administrator may issue a letter of authorization for the operation of an airplane without compliance with the requirements of paragraph (a) of this section if that airplane is designed for and type certificated with only one pilot station. The authorization contains any conditions that the Administrator finds necessary for safe operation.

(c) No person may designate a pilot to serve as second in command, nor may any pilot serve as second in command, of an airplane required under this section to have two pilots unless that pilot meets the qualifications for second in command prescribed in § 61.55 of this chapter.

Discussion. No public comments were received on § 91.533. Present § 91.213(a)(1) (proposed § 91.533(a)(1)) was amended by Amendment No. 91-180, effective July 15, 1982. The text of the current rule (as amended) is incorporated into this notice unchanged, except to redesignated it as § 91.643.

§ 91.645 Flight attendant requirements.

(a) No person may operate an airplane unless at least the following number of flight attendants are on board the airplane:

(1) For airplanes having more than 19 but less than 51 passengers on board, one flight attendant.

(2) For airplanes having more than 50 but less than 101 passengers on board, two flight attendants.

(3) For airplanes having more than 100 passengers on board, two flight attendants plus one additional flight attendant for each unit (or part of a unit) of 50 passengers above 100.

(b) No person may serve as a flight attendant on an airplane when required by paragraph (a) of this section unless that person has demonstrated to the pilot in command that he or she is familiar with the necessary functions to be performed in an emergency or a situation requiring emergency evacuation and is capable of using the emergency equipment installed on that airplane for the performance of those functions.

Discussion. One commenter on § 91.535 points out the use of the male gender in paragraph (b). The FAA agrees and proposes to add the words "or she" after the word "he" in paragraph (b).

Except to redesignate § 91.535 as § 91.645, the section is proposed without any other changes.

§§ 91.647-91.699 [Reserved]

Subpart H—Foreign Aircraft Operations and Operations of U.S.-Registered Civil Aircraft Outside of the United States

§ 91.701 Applicability.

This subpart contains additional rules applicable to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

Discussion. No public comments were received on § 91.701. However, one commenter states that § 91.707 should be moved to Subpart D and the title of Subpart H should then be changed to delete the reference to the conterminous U.S. The comment has merit, and the FAA proposes to delete the word "conterminous" from the title of Subpart H and from § 91.701 to more accurately describe the area of operations after moving § 91.707 to Subpart D. The FAA proposes to delete the phrase "to areas" because this phrase was inadvertently included in Notice No. 79-2A and is unnecessary.

No other changes are proposed to the section.

§ 91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) Each person operating a civil aircraft of U.S. registry outside of the United States shall—

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation and with §§ 91.117(c) and 91.133;

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force;

(3) Except for §§ 91.307(b), 91.309, 91.323, and 91.711, comply with this part so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or Annex 2 to the Convention on International Civil Aviation; and

(4) When over the North Atlantic within airspace designated as Minimum Navigation Performance Specifications airspace, comply with § 91.705.

(b) Annex 2 to the Convention on International Civil Aviation, Sixth Edition—September 1970, with amendments through Amendment 20 effective August 1976, to which reference is made in this part, is incorporated into this part and made a part hereof as provided in 5 U.S.C. 552 and pursuant to 1 CFR Part 51. Annex 2 (including a complete historic file of changes thereto) is available for public inspection at the Rules Docket, AGC-204, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. In addition, Annex 2 may be purchased from the International Civil Aviation Organization (Attention: Distribution Officer), P.O. Box 400, Succursale, Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada #H3A 2R2.

Discussion. No public comments were received on § 91.703. Accordingly, it is proposed without change.

§ 91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.

No person may operate a civil aircraft of U.S. registry in North Atlantic (NAT) airspace designated as Minimum Navigation Performance Specifications (MNPS) airspace unless—

(a) The aircraft has approved navigation performance capability which complies with the requirements of Appendix C of this part; and

(b) The operator is authorized by the Administrator to perform such operations.

(c) The Administrator authorizes deviations from the requirements of this section in accordance with Section 3 of Appendix C to this part.

Discussion. No public comments were received on § 91.705. However, the FAA proposes that this section be revised to identify more clearly the specific requirements to operate in NAT airspace designated as MNPS airspace.

§ 91.707 Flights between Mexico or Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

Discussion. One commenter on § 91.709 suggests that this section require foreign operators to depart from or arrive at international airport due to enforcement problems with illegal narcotic drugs transportation. However, existing U.S. Customs Regulations that require aircraft entering the U.S. to make their initial landing at specified airports are designed to deal with this problem and do so in an adequate manner. Therefore, except to

redesignate it as § 91.707, the section is proposed without change.

§ 91.709 Operations to Cuba.

No person may operate a civil aircraft from the United States to Cuba unless—

(a) Departure is from an international airport of entry designated in § 6.13 of the Air Commerce Regulations of the Bureau of Customs (19 CFR 6.13); and

(b) In the case of departure from any of the 48 conterminous States or the District of Columbia, the pilot in command of the aircraft has filed—

(1) A DVFR or IFR flight plan as prescribed in § 99.11 or § 99.13 of this chapter; and

(2) A written statement, within 1 hour before departure, with the Office of Immigration and Naturalization Service at the airport of departure, containing—

(i) All information in the flight plan;

(ii) The name of each occupant of the aircraft;

(iii) The number of occupants of the aircraft; and

(iv) A description of the cargo, if any.

This section does not apply to the operation of aircraft by a scheduled air carrier over routes authorized in operations specifications issued by the Administrator.

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. No public comments were received for § 91.711. Therefore, except to redesignate it as § 91.709, the section is proposed without change.

§ 91.711 Special rules for foreign civil aircraft.

(a) *General.* In addition to the other applicable regulations of this part, each person operating a foreign civil aircraft within the United States shall comply with this section.

(b) *VFR.* No person may conduct VFR operations which require two-way radio communications under this part unless at least on crewmember of that aircraft is able to conduct two-way radio communications in the English language and is on duty during that operation.

(c) *IFR.* No person may operate a foreign civil aircraft under IFR unless—

(1) That aircraft is equipped with—

(i) Radio equipment allowing two-way radio communications with ATC when it is operated in control zone or control area; and

(ii) Radio navigational equipment appropriate to the navigational facilities to be used;

(2) Each person piloting the aircraft—

(i) Holds a current United States instrument rating or is authorized by his foreign airman certificate to pilot under IFR; and

(ii) Is thoroughly familiar with the United States en route, holding, and letdown procedures; and

(3) At least one crewmember of that aircraft is able to conduct two-way radiotelephone communications in the English language and that crewmember is on duty while the aircraft is approaching, operating within, or leaving the United States.

(d) *Over water.* Each person operating a foreign civil aircraft over water off the shores of the United States shall give flight notification or file a flight plan in accordance with the Supplementary Procedures for the ICAO region concerned.

(e) *Flight at and above 24,000 feet MSL.* If VOR navigational equipment is required uder paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above 24,000 feet MSL, unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. When DME required by this paragraph fails at and above 24,000 feet MSL, the pilot in command of the aircraft shall notify ATC immediately and may then continue operations at and above 24,000 feet MSL to the next airport of intended landing at which repairs or replacement of the equipment can be made. However, paragraph (e) does not apply to foreign civil aircraft that are not equipped with DME when operated for the following purposes and if ATC is notified prior to each takeoff:

(1) Ferry flights to and from a place in the United States where repairs or alterations are to be made.

(2) Ferry flight to a new country of registry.

(3) Flight of a new aircraft of U.S. manufacture for the pupose of—

(i) Flight testing the aircraft;

(ii) Training foreign flightcrews in the operation of the aircraft; or

(iii) Ferrying the aircraft for export delivery outside the United States.

(4) Ferry, demonstration, and test flights of an aircraft brought to the United States for the purpose of demonstration or testing the whole or any part thereof.

Discussion. No public comments were received for § 91.713. Accordingly, except for redesignating it as § 91.711, the section is proposed without change.

§ 91.713 Operation of civil aircraft of Cuban registry.

No person may operate a civil aircraft of Cuban registry except in controlled airspace and in accordance with air traffic clearances or air traffic control instructions that may require use of specific airways or routes and landings at specific airports.

Discussion. No public comments were received on § 91.715. Accordingly, except to redesignate the section as § 91.713, it is proposed without change.

§ 91.715 Special flight authorizations for foreign civil aircraft.

(a) Foreign civil aircraft may be operated without airworthiness certificates required under § 91.203 if a special flight authorization for that operation is issued under this section. Application for a special flight authorization must be made to the Regional Director of the FAA region in which the applicant is located or to the region within which the U.S. point of entry is located. However, in the case of an aircraft to be operated in the U.S. for the purpose of demonstration at an airshow, the application may be made to the Regional Director of the FAA region in which the airshow is located.

(b) The Administrator may issue a special flight authorization for a foreign civil aircraft subject to any conditions and limitations that the Administrator considers necessary for safe operation in the U.S. airspace.

(c) No person may operate a foreign civil aircraft under a special flight authorization unless that operation also complies with Part 375 of the Special Regulations of the Civil Aeronautics Board (14 CFR Part 375).

(Approved by the Office of Management and Budget under OMB control number 2120-0005)

Discussion. One comment was received in response to proposed § 91.717. However, present § 91.28 (proposed § 91.717) was amended by Amendment No. 91-178, effective April 18, 1982. That amendment deleted the paragraph referenced by the commenter, and no further discussion is necessary. The text of the current rule (as amended) is incorporated into this notice unchanges, except to redesignate it as § 91.715.

§§ 91.717-91.799 [Reserved]

Subpart I—Operating Noise Limits

§ 91.801 Applicability: Relation to Part 36.

(a) This subpart prescribes operating noise limits and related requirements that apply, as follows, to the operation of civil aircraft in the United States:

(1) Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to civil subsonic turbojet airplanes with maximum weights of more than 75,000 pounds and—

(i) If U.S. registered, that have standard airworthiness certificates; or

(ii) If foreign registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and Parts 121, 125, 129, and 135 of this chapter.

(2) Section 91.813 applies to U.S. operators of civil subsonic turbojet airplanes covered by this subpart. That section applies to operators operating to or from airports in the United States under this part and Parts 121, 125, and 135, but not to those operating under Part 129 of this chapter.

(3) Sections 91.803, 91.819, and 91.821 apply to U.S.-registered civil supersonic airplanes having standard airworthiness certificates and to foreign-registered civil supersonic airplanes that, if registered in the United States, would be required by this chapter to have U.S. standard airworthiness certificates in order to conduct the operations intended for the airplane. Those sections apply to operations under this part and under Parts 121, 125, 129, and 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart "Part 36" refers to 14 CFR Part 36, including the noise levels under Appendix C of that part, notwithstanding the provisions of that part excepting certain airplanes from the specified noise requirements. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meanings specified under Part 36 of this chapter. For purposes of this subpart, for subsonic airplanes operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements under Annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under, Part 36 for that airplane. Determinations made under these provisions are subject to the limitations of § 36.5 of this chapter as if those noise levels were Part 36 noise levels.

Discussion. No public comments were received on § 91.801. However, the first sentence of paragraph (a)(3) is revised to include a reference to § 91.803 which was omitted in Notice No. 79-2A. No other changes are proposed for § 91.801.

§ 91.803 Part 125 operators: Designation of applicable regulations.

For airplanes covered by this subpart and operated under Part 125, the following regulations apply as specified:

(a) For each airplane operation to which requirements prescribed under this subpart applied before November 29, 1980, those requirements of this subpart continue to apply.

(b) For each subsonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or Part 121, 129, or 135, the requirements prescribed under §§ 91.805, 91.809, 91.811, and 91.813 of this subpart apply.

(c) For each supersonic airplane operation to which requirements prescribed under this subpart did not apply before November 29, 1980, because the airplane was not operated in the United States under this part or Part 121, 129, or 135, the requirements of §§ 91.819 and 91.821 of this subpart apply.

(d) For each airplane required to operate under Part 125 for which a deviation under that part is approved to operate, in whole or in part, under this part or Part 121, 129, or 135, notwithstanding the approval, the requirements prescribed under paragraphs (a), (b), and (c) of this section continue to apply.

Discussion. No substantive public comments were received on § 91.803. The dates in paragraphs (a), (b), and (c) are revised to reflect the correct dates as set forth in Amendment 91-170A (45 FR 79302; November 28, 1980). No other changes are proposed for § 91.803.

§ 91.805 Final compliance: Subsonic airplanes.

Except as provided in §§ 91.809 and 91.811, on and after January 1, 1985, no person may operate to or from an airport in the United States any subsonic airplane covered by this subpart unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under Part 36 of this chapter.

Discussion. No public comments were received on § 91.805. Accordingly, it is proposed without change.

§ 91.807 Phased compliance under Parts 121, 125, and 135: Subsonic airplanes.

(a) *General.* Each person operating airplanes under Part 121, 125, or 135 of this chapter, as prescribed under § 91.803 of this subpart, regardless of the state of registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) *Compliance schedule.* Except for airplanes shown to be operated in foreign air commerce under paragraph (c) of this section or covered by an exemption (including those issued under § 91.811), airplanes operated by U.S. operators in air commerce in the United States must be shown to comply with Stage 2 or Stage 3 noise levels under Part 36, in accordance with the following schedule, or they may not be operated to or from airports in the United States:

(1) By January 1, 1981—

(i) At least one quarter of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) At least half of the airplanes powered by engines with any other bypass ratio or by another number of engines.

(2) By January 1, 1983—

(i) At least one half of the airplanes that have four engines with no bypass ratio or with a bypass ratio less than two; and

(ii) All airplanes powered by engines with any other bypass ratio or by another number of engines.

(c) *Apportionment of airplanes.* For purposes of paragraph (b) of this section, a person operating airplanes engaged in domestic and foreign air commerce in the United States may elect not to comply with the phased schedule with respect to that portion of the airplanes operated by that person shown, under an approved method of apportionment, to be engaged in foreign air commerce in the United States.

Discussion. No public comments were received on § 91.807. Accordingly, it is proposed without change.

§ 91.809 Replacement airplanes.

A Stage 1 airplane may be operated after the otherwise applicable compliance dates prescribed under §§ 91.805 and 91.807 if, under an approved plan, a replacement airplane has been ordered by the operator under a binding contract as follows:

(a) For replacement of an airplane powered by two engines, until January 1, 1986, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies delivery before January 1, 1986, of a replacement airplane which has been shown to comply with Stage 3 noise levels under Part 36 of this chapter.

(b) For replacement of an airplane powered by three engines, until January 1, 1985, but not after the date specified in the plan, if the contract is entered into by January 1, 1983, and specifies

delivery before January 1, 1985, of a replacement airplane which has been shown to comply with Stage 3 noise levels under Part 36 of this chapter.

(c) For replacement of any other airplane, until January 1, 1985, but not after the date specified in the plan, if the contract specifies delivery before January 1, 1985, of a replacement airplane which—

(1) Has been shown to comply with Stage 2 or Stage 3 noise levels under Part 36 of this chapter prior to issuance of an original standard airworthiness certificate; or

(2) Has been shown to comply with Stage 3 noise levels under Part 36 of this chapter prior to issuance of a standard airworthiness certificate other than original issue.

(d) Each operator of a Stage 1 airplane for which approval of a replacement plan is requested under the section shall submit to the Director, Office of Environment and Energy, an application constituting the proposed replacement plan (or revised plan) that contains the information specified under this paragraph and which is certified (under penalty of 18 U.S.C. 1001) as true and correct. Each application for approval must provide information corresponding to that specified in the contract, upon which the FAA may rely in considering its approval, as follows:

(1) Name and address of the applicant.

(2) Aircraft type and model and registration number for each airplane to be replaced under the plan.

(3) Aircraft type and model of each replacement airplane.

(4) Scheduled dates of delivery and introduction into service of each replacement airplane.

(5) Name and addresses of the parties to the contract and any other persons who may effectively cancel the contract or otherwise control the performance of any party.

(6) Information specifying the anticipated disposition of the airplanes to be replaced.

(7) A statement that the contract represents a legally enforceable, mutual agreement for delivery of an eligible replacement airplane.

(8) Any other information or documentation requested by the Director, Office of Environment and Energy, reasonably necessary to determine whether the plan should be approved.

Discussion. No public comments were received on § 91.809. Accordingly, the section is proposed without change.

§ 91.811 Service to small communities exemption: Two-engine, subsonic airplanes.

(a) A Stage 1 airplane powered by two engines may be operated after the compliance dates prescribed under §§ 91.805, 91.807, and 91.809 when, with respect to that airplane, the Adminstrator issues an exemption to the operator from the noise level requirements under this subpart. Each exemption issued under this section terminates on the earliest of the following dates:

(1) For an exempted airplane sold, or otherwise desposed, of, to another person on or after January 1, 1983, on the date of delivery to that person.

(2) For an exempted airplane with a seating configuration of 100 passenger seats or less, on January 1, 1988.

(3) For an exempted airplane with a seating configuration of more than 100 passenger seats, on January 1, 1985.

(b) For the purposes of this section, the seating configuration of an airplane is governed by that shown to exist on December 1, 1979, or an earlier date established for that airplane by the Administrator.

Discussion. No public comments were received on § 91.811. Accordingly, the section is proposed without change.

§ 91.813 Compliance plans and status: U.S. operations of subsonic airplanes.

(a) Each U.S. operator of a civil subsonic airplane covered by this subpart (regardless of the state of registry) shall submit to the Director, Office of Environment and Energy, in accordance with this section, the operator's current compliance status and plan for achieving and maintaining compliance with the applicable noise level requirements of this subpart. If appropriate, and operator may substitute for the required plan a notice, certified as true (under penalty of 18 U.S.C. 1001) by that operator, that not change in the plan or status of any airplane affected by the plan has occured since the date of the plan most recently submitted under the section.

(b) Each compliance plan, including each revised plan, must contain the information specified under paragraph (c) of this section for each airplane covered by this section that is operated by the operator. Unless otherwise approved by the Administrator, compliance plans must provide the required plan and status information as it exists on the date 30 days before the date specified for submission of the plan. Plans must be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001) and be submitted for each airplane covered by this section on or before 90 days after initially commencing operation of airplanes covered by this section, whichever is later, and thereafter—

(1) Thirty days after any change in the operator's fleet or compliance planning decisions that has a separate or cumulative effect on 10 percent or more of the airplanes in either class of airplanes covered by § 91.807(b); and

(2) Thirty days after each compliance date applicable to that airplane under this subpart, and annually thereafter through 1985, or until any later date for that airplane prescribed under this subpart, on the anniversary of that submission date, to show continuous compliance with this subpart.

(c) Each compliance plan submitted under this section must identify the operator and include information regarding the compliance plan and status for each airplane covered by the plan as follows:

(1) Name and address of the airplane operator.

(2) Name and telephone number of the person designated by the operator to be responsible for the preparation of the compliance plan and its submission.

(3) The total number of airplanes covered by this section and in each of the following classes and subclasses:

(i) For airplanes engaged in domestic air commerce—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(ii) For airplanes engaged in foreign air commerce under an approved apportionment plan—

(A) Airplanes powered by four turbojet engines with no bypass ratio or with a bypass ratio less than two;

(B) Airplanes powered by engines with any other bypass ratio or by another number of engines; and

(C) Airplanes covered by an exemption issued under § 91.811 of this subpart.

(4) For each airplane covered by this section—

(i) Aircraft type and model;

(ii) Aircraft registration number;

(iii) Aircraft manufacturer serial number;

(iv) Aircraft powerplant make and model;

(v) Aircraft year of manufacture;

(vi) Whether Part 36 noise level compliance has been shown, "Yes/No";

(vii) The appropriate code prescribed under paragraph (c)(5) of this section

which indicates the acoustical technology installed, or to be installed, on the airplane;

(viii) For airplanes on which acoustical technology has been or will be applied, following the appropriate code entry, the actual or scheduled month and year of installation on the airplane;

(ix) For DC-8 and B-707 airplanes operated in domestic U.S air commerce which have been or will be retired from service in the United States without replacement between January 24, 1977, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of retirement of the airplane from service;

(x) For DC-8 and B-707 airplanes operated in foreign air commerce in the United States which have been or will be retired from service in the United States without replacement between April 14, 1980, and January 1, 1985, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of retirement of the airplane from service;

(xi) For airplanes covered by an approved replacement plan under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the scheduled month and year for replacement of the airplane;

(xii) For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.807(c) of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section;

(xiii) For airplanes covered by an exemption issued to the operator granting relief from noise level requirements of this subpart, the appropriate code prescribed under paragraph (c)(5) of this section followed by the actual or scheduled month and year of expiration of the exemption and the appropriate code and applicable dates which indicate the compliance strategy planned or implemented for the airplane;

(xiv) For all airplanes covered by this section, the number of spare shipsets of acoustical components needed for continuous compliance and the number available on demand to the operator in support of those airplanes; and

(xv) For airplanes for which none of the other codes prescribed under paragraph (c)(5) of this section describes either the technology applied or to be applied to the airplane in accordance with the certification requirements under Parts 21 and 36 of this chapter, or the compliance strategy or methodology, following the code "OTH," enter the date of any certificate action and attach an addendum to the plan explaining the nature and the extent of the certificated technolgy, strategy, or methodology employed, with reference to the type certificate documentation.

(5) TABLE OF ACOUSTICAL TECHNOLOGY/STRATEGY CODES

Code	Airplane type/ model	Certificate technology
A	B-707-120B B-707-320B/C B-720B	Quiet nacelles + 1-ring.
B	B-727-100	Double wall fan duct treatment.
C	B-727-200	Double wall fan duct treatment (pre-January installations and amended type certificate).
D	B-727-200 B-737-100 B-737-200	Quiet nacelles + double wall fan duct treatment.
E	B-747-100 (pre-December 1971). B-747-200 (pre-December 1971).	Fixed lip inlets + sound absorbing material treatment.
F	DC-8	New extended inlet and bullet with treatment + fan duct treatment areas.
G	DC-9	P-36 sound absorbing material treatment kit.
H	BAC-111-200	Silencer kit (BAC Acoustic Report 522).
I	BAC-111-400	Silencer kit (BAC Acoustic Report 598).
J	B-707 DC-8	Reengined with high bypass ratio turbojet engines + quiet nacelles (if certificated under stage 3 noise level requirements).

REP—For airplanes covered by an approved replacement under § 91.807(c) of this subpart.

EFC—For airplanes designated as "engaged in foreign commerce" in accordance with an approved method of apportionment under § 91.811 of this subpart.

RET—For DC-8 and B-707 airplanes operated in domestic U.S air commerce and retired from service in the United States without replacement between January 24, 1977, and January 1, 1985.

RFC—For DC-8 and B-707 airplanes operated by U.S. operators in foreign air commerce in the United States and retired from service in the United States without replacement between April 14, 1980, and January 1, 1985.

EXD—For airplanes exempted from showing compliance with the noise level requirements of this subpart.

OTH—For airplanes for which no other prescribed code describes either the certificated technology applied or to be applied to the airplane, or the compliance strategy or methodology. (An addendum must explain the nature and extent of technology, strategy, or methodology and reference the type certificate documentation.)

Discussion. No public comments were received on § 91.813. Accordingly, no changes are proposed for § 91.813.

§ 91.815 Agricultural and firefighting airplanes: Noise operating limitations.

(a) This section applies to propeller-driven, small airplanes having standard airworthiness certificates that are designed for "agricultural aircraft operations" (as defined in § 137.3 of this chapter, as effective on January 1, 1966) or for dispensing firefighting materials.

(b) If the airplane flight manual, or other approved manual material, information, markings, or placards for the airplane indicated that the airplane has not been shown to comply with the noise limits under Part 36 of this chapter, no person may operate that airplane, except—

(1) To the extent necessary to accomplish the work activity directly associated with the purpose for which it is designed;

(2) To provide flight crewmember training in the special purpose operation for which the airplane is designed; and

(3) To conduct "nondispensing aerial work operations" in accordance with the requirements under § 137.29(c) of this chapter.

Discussion. No public comments were received on § 91.815. Accordingly, the section is proposed without change.

§ 91.817 Civil aircraft sonic boom.

(a) No person may operate a civil aircraft in the United States at a true flight Mach number greater than 1 except in compliance with conditions and limitations in an authorization to exceed Mach 1 issued to the operator under Appendix B of this Part.

(b) In addition, no person may operate a civil aircraft for which the maximum operating limit speed M_{mo} exceeds a Mach number of 1, to or from an airport in the United States, unless—

(1) Information available to the flightcrew includes flight limitations that ensure that flights entering or leaving the United States will not cause a sonic boom to reach the surface within the United States; and

(2) The operator complies with the flight limitations prescribed in paragraph (b)(1) of this section or complies with conditons and limitations in an authorization to exceed Mach 1 issued under Appendix B of this part.

(Approved by the Office of Management and Budget under OMB control number 2120-005)

Discussion. No public comments were received on § 91.817. Accordingly, the section is proposed without change.

§ 91.819 Civil supersonic airplanes that do not comply with Part 36.

(a) *Applicability.* This section applies to civil supersonic airplanes that have

not been shown to comply with the Stage 2 noise limits of Part 36 in effect on October 13, 1977, using applicable tradeoff provisions, and that are operated in the United States, after July 31, 1978.

(b) *Airport use.* Except in an emergency, the following apply to each person who operates a civil supersonic airplane to or from an airport in the United States:

(1) Regardless of whether a type design change approval is applied for under Part 21 of this chapter, no person may land or take off an airplane covered by this section for which the type design is changed, after July 31, 1978, in a manner constituting an "acoustical change" under § 21.93 unless the acoustical change requirements of Part 36 are complied with.

(2) No flight may be scheduled, or otherwise planned, for takeoff or landing after 10 p.m. and before 7 a.m. local time.

Discussion. No public comments were received on § 91.819. Accordingly, the section is proposed without change.

§ 91.821 Civil supersonic airplanes: Noise limits.

Except for Concorde airplanes having flight time before January 1, 1980, no person may operate in the United States, a civil supersonic airplane that does not comply with Stage 2 noise limits of Part 36 in effect on October 13, 1977, using applicable tradeoff provisions.

Discussion. No public comments were received on § 91.821. Accordingly, the section is proposed without change.

§§ 91.823-91.899 [Reserved]

Subpart J—Waivers

§ 91.901 Applicability.

This subpart outlines the Administrator's policy and procedures concerning the issuance of waivers to this part and also lists by number those rules that may be waived.

Discussion. No public comments were received for § 91.901. Accordingly, the section is proposed unchanged from Notice No. 79-2A.

§ 91.903 Policy and procedures.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation from any rule listed in this subpart if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this part is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate of waiver.

Discussion. No public comments were received on § 91.903. Accordingly, this section is proposed without change.

§ 91.905 List of rules subject to waiver.

Sec.
91.107 Use of safety belts.
91.111 Operating near other aircraft.
91.113 Right-of-way rules: Except water operations.
91.115 Right-of-way rules: Water operations.
91.117 Aircraft speed.
91.119 Minimum safe altitudes: General.
91.121 Altimeter settings.
91.123 Compliance with ATC clearances and instructions.
91.125 ATC light signals.
91.127 Operating on or in the vicinity of an airport: General rules.
91.129 Operating at airports with operating control tower.
91.131 Terminal control areas.
91.133 Restricted and prohibited areas.
91.135 Positive control areas and route segments.
91.137 Temporary flight restrictions.
91.141 Flight restrictions in the proximity of the Presidential and other parties.
91.143 Flight limitation in the proximity of space flight recovery operations.
91.151 VFR flight plan: Information required.
91.153 Basic VFR weather minimums.
91.157 Special VFR weather minimums.
91.159 VFR cruising altitude or flight level.
91.169 IFR flight plan: Information required.
91.173 ATC clearance and flight plan required.
91.175 Takeoff and landing under IFR.
91.177 Minimum altitudes for IFR operations.
91.179 IFR cruising altitude or flight level.
91.181 Course to be flown.
91.183 IFR radio communications.
91.185 IFR operations: Two-way radio communications failure.
91.187 Operation under IFR in controlled airspace: Malfunction reports.
91.209 Aircraft lights.
91.303 Aerobatic flight.
91.305 Flight test areas.
91.311 Towing: Other than under § 91.309.
91.313(e) Restricted category civil aircraft: Operating limitations.
91.627 Flight altitude rules.
91.705 Operations within the North Atlantic Minimum Navigation Performance Specifications Airspace.
91.707 Flights between Mexico or Canada and the United States.
91.713 Operation of civil aircraft of Cuban registry.

Discussion. On commenter on § 91.905 states that the list of rules subject to waiver is too long. The commenter states that only three sections of Part 91 have been waived in the past. Aerial demonstrations and air shows require that the waiver authority for those sections should continue in effect with no other sections eligible.

Waivers are issued for many operations other than aerial demonstrations and air shows. Past experience has not indicated a need to discontinue the practice. Section 91.905 is a complete list of the rules in Part 91 that can be waived. Therefore, it should not be abbreviated to include only the rules that are most frequently waived. To do so would negate the reason for having the listing compiled in a separate section. As in the past, the Administrator will determine that the intended operation can be safely accomplished before issuing a waiver.

Section 91.153 was incorrectly stated as § 91.151 in § 91.905 as it appeared in Notice No. 79-2A. The correction is made in the present notice. Additionally, "Acrobatic" is changed to "Aerobatic" where it appears as the title of § 91.303. This corresponds to the proposed title of that section as previously stated in this notice. The reference to § 91.129, "Operation and airports without control towers," is deleted since the requirements of that section are incorporated into § 91.127. Sections 91.129 through 91.143 are renumbered accordingly. Section 91.627, "Flight altitude rules," was inadvertently omitted from the list of rules which may be waived. Accordingly, § 91.905 is changed to include § 91.627. No other changes to § 91.905 are proposed.

§§ 91.907-91.999 [Reserved]

Appendix A—Category II Operations: Manual, Instruments, Equipment, and Maintenance

1. *Category II manual.*

(a) *Application for approval.* An applicant for approval of a Category II manual or an amendment to an approved Category II manual must submit the proposed manual or amendment to the Flight Standards district office having jurisdiction of the area in which the applicant is located. If the application requests and evaluation program, it must include the following:

(1) The location of the airplane and the place where the demonstrations are to be conducted; and

(2) The date the demonstrations are to commence (at least 10 days after filing the application).

(b) *Contents.* Each Category II manual must contain:

(1) The registration number, make, and model of the airplane to which it applies;

(2) A maintenance program as specified in § 4 of this Appendix; and

(3) The procedures and instructions related to recognition of decision height, use of runway visual range information, approach monitoring, the decision region (the region between the middle marker and the decision height), the maximum permissible deviations of the basic ILS indicator within the decision region, a missed approach, use of airborne low approach equipment, minimum altitude for the use of the autopilot, instrument and equipment failure warning systems, instrument failure, and other procedures, instructions, and limitations that may be found necessary by the Administrator.

2. *Required instruments and equipment.*

The instruments and equipment listed in this section must be installed in each airplane operated in a Category II operation. This section does not require duplication of instruments and equipment required by § 91.205 or any other provisions of this chapter.

(a) *Group I.* (1) Two localizer and glide slope receiving systems. Each system must provide a basic ILS display and each side of the instrument panel must have a basic ILS display. However, a single localizer antenna and a single glide slope antenna may be used.

(2) A communications system that does not affect the operation of at least one of the ILS systems.

(3) A marker beacon receiver that provides distinctive aural and visual indications of the outer and the middle markers.

(4) Two gyroscopic pitch and bank indicating system.

(5) Two gyroscopic direction indicating systems.

(6) Two airspeed indicators.

(7) Two sensitive altemiters adjustable for barometric pressure, each having a placarded correction for altimeter scale error and for the wheel height of the airplane. Two sensitive altimeters adjustable for barometric pressure, having makings at 20-foot intervals and each having a placarded correction for altimeter scale error and for the wheel height of the airplane.

(8) Two vertical speed indicators.

(9) A flight control guidance system that consists of either an automatic approach coupler or a flight director system. A flight director system must display computed information as steering command in relation to an ILS localizer and, on the same instrument, either computed information as pitch command in relation to an ILS glide slope or baisc ILS glide slope information. An automatic approach coupler must provide at least automatic steering in relation to an ILS localizer. The flight control guidance system may be operated from one of the receiving systems required by subparagraph (1) of this paragraph.

(10) For Category II operations with decision heights below 150 feet either a marker beacon receiver providing aural and visual indications of the inner marker or a radio altimeter.

(b) *Group II.* (1) Warning systems for immediate detection by the pilot of system faults in items (1), (4), (5), and (9) of Group I and, if installed for use in Category II operations, the radio altimeter and autothrottle system.

(2) Dual controls.

(3) An externally vented static pressure system with an alternate static pressure source.

(4) A windshield wiper or equivalent means of providing adequate cockpit visibility for a safe visual transition by either pilot to touchdown and rollout.

(5) A heat source for each airspeed system pitot tube installed or an equivalent means of preventing malfunctioning due to icing of the pitot system.

3. *Instruments and equipment approval.*

(a) *General.* The instruments and equipment required by § 2 of this appendix must be approved as provided in this section before being used in Category II operations. Before presenting an airplane for approval of the instruments and equipment, it must be shown that since the beginning of the 12th calendar month before the date of submission—

(1) The ILS localizer and glide slope equipment were bench checked according to the manufacture's instructions and found to meet those standards specified in RTCA Paper 23-63/DO-117 dated March 14, 1963, "Standard Adjustment Criteria for Airborne Localizer and Glide Slope Receivers," which may be obtained from the RTCA Secretariat, 2000 K St., NW., Washington, D.C. 20006.

(2) The Altimeters and the static pressure systems were tested and inspected in accordance with Appendix E to Part 43 of this chapter; and

(3) All other instruments and items of equipment specified in § 2(a) of this appendix that are listed in the proposed maintenance program were bench checked and found to meet the manufacturer's specifications.

(b) *Flight control guidance system.* All components of the flight control guidance system must be approved as installed by the evaluation program specified in paragraph (e) of this section if they have not been approved for Category II operations under applicable type or supplemental type certification procedures. In addition, subsequent changes to make, model, or design of these components must be approved under this paragraph. Related systems or devices, such as the autothrottle and computed missed approach guidance system, must be approved in the same manner if they are to be used for Category II operations.

(c) *Radio Altimeter.* A radio altimeter must meet the performance criteria of this paragraph for original approval and after each subsequent alteration.

(1) It must display to the flightcrew clearly and positively the wheel height of the main landing gear above the terrain.

(2) It must display wheel height above the terrain to an accuracy of plus or minus 5 feet or 5 percent, whichever is greater, under the following conditions:

(i) Pitch angles of zero to plus or minus 5 degrees about the mean approach attitude.

(ii) Roll angles of zero to 20 degrees in either direction.

(iii) Forward velocities from minimum approach speed up to 200 knots.

(iv) Sink rates from zero to 15 feet per second at altitudes from 100 to 200 feet.

(3) Over level ground, it must track the actual altitude of the airplane without significant lag or oscillation.

(4) With the airplane at an altitude of 200 feet or less, any abrupt change in terrain representing no more than 10 percent of the airplane's altitude must not cause the altimeter to unlock, and indicator response to such changes must not exceed 0.1 seconds and, in addition, if the system unlocks for greater changes, it must reacquire the signal in less than 1 second.

(5) Systems that contain a push-to-test feature must test the entire system (with or without an antenna) at a simulated altitude of less than 500 feet.

(6) The system must provide to the flightcrew a positive failure warning display any time there is a loss of power or an absence of ground return signals within the designed range of operating altitudes.

(d) *Other instruments and equipment.* All other instruments and items of equipment required by § 2 of this appendix must be capable of performing as necessary for Category II operations. Approval is also required after each subsequent alteration to these instruments and items of equipment.

(e) *Evaluation program.* (1) *Application.* Approval by evaluation is requested as a part of the application for approval of the Category II manual.

(2) *Demonstrations.* Unless otherwise authorized by the Administrator, the evaluation program for each airplane requires the demonstrations specified in

this subparagraph. At least 50 ILS approaches must be flown with at least five approaches on each of three different ILS facilities and no more than one half of the total approaches on any one ILS facility. All approaches shall be flown under simulated instrument conditions to a 100-foot decision height and 90 percent of the total approaches made must be successful. A successful approach is one in which—

(i) At the 100-foot decision height, the indicated airspeed and heading are satisfactory for a normal flare and landing (speed must be plus or minus 5 knots of programmed airspeed, but may not be less than computed threshold speed if autothrottles are used);

(ii) The airplane, at the 100-foot decision height, is positioned so that the cockpit is within, and tracking so as to remain within, the lateral confines of the runway extended;

(iii) Deviation from glide slope after leaving the outer marker does not exceed 50 percent of full-scale deflection as displayed on the ILS indicator;

(iv) No unusual roughness or excessive attitude changes occur after leaving the middle marker; and

(v) In the case of an airplane equipped with an approach coupler, the airplane is sufficiently in trim when the approach coupler is disconnected at the decision height to allow for the continuation of a normal approach and landing.

(3) *Records.* During the evaluation program the following information must be maintained by the applicant for the airplane with respect to each approach and made available to the Administrator upon request:

(i) Each deficiency in airborne instruments and equipment that prevented the initiation of an approach.

(ii) The reasons for discontinuing an approach, including the altitude above the runway at which it was discontinued.

(iii) Speed control at the 100-foot decision height if autothrottles are used.

(iv) Trim condition of the airplane upon disconnecting the autocoupler with respect to continuation to flare and landing.

(v) Position of the airplane at the middle marker and at the decision height indicated both on a diagram of the basic ILS display and a diagram of the runway extended to the middle marker. Estimated touchdown point must be indicated on the runway diagram.

(vi) Compatibility of flight director with the autocoupler, if applicable.

(vii) Quality of overall system performance.

(4) *Evaluation.* A final evaluation of the flight control guidance system is made upon successful completion of the demonstrations. If no hazardous tendencies have been displayed or are otherwise known to exist, the system is approved as installed.

4. *Maintenance program*

(a) Each maintenance program must contain the following: (1) A list of each instrument and item of equipment specified in § 2 of this appendix that is installed in the airplane and approved for Category II operations, including the make and model of those specified in § 2(a).

(2) A schedule that provides for the performance of inspections under subparagraph (5) of this paragraph within 3 calendar months after the date of the previous inspection. The inspection must be performed by a person authorized by Part 43 of this chapter, except that each alternate inspection may be replaced by a functional flight check. This functional flight check must be performed by a pilot holding a Category II pilot authorization for the type airplane checked.

(3) A schedule that provides for the performance of bench checks for each listed instrument and item of equipment that is specified in § 2(a) within 12 calendar months after the date of the previous bench check.

(4) A schedule that provides for the performance of a test and inspection of each static pressure system in accordance with Appendix E to Part 43 of this chapter within 12 calendar months after the date of the previous test and inspection.

(5) The procedures for the performance of the periodic inspections and functional flight checks to determine the ability of each listed instrument and item of equipment specified in § 2(a) of this appendix to perform as approved for Category II operations, including a procedure for recording functional flight checks.

(6) A procedure for assuring that the pilot is informed of all defects in listed instruments and items of equipment.

(7) A procedure for assuring that the condition of each listed instrument and item of equipment upon which maintenance is performed is at least equal to its Category II approval condition before it is returned to service for Category II operations.

(8) A procedure for an entry in the maintenance records required by § 43.9 of this chapter that shows the date, airport, and reasons for each discontinued Category II operation because of a malfunction of a listed instrument or item of equipment.

(b) *Bench check.* A bench check required by this section must comply with this paragraph.

(1) It must be performed by a certificated repair station holding one of the following ratings as appropriate to the equipment checked:

(i) An instrument rating.

(ii) A radio rating.

(iii) A rating issued under Subpart D of Part 145.

(2) It must consist of removal of an instrument or item of equipment and performance of the following:

(i) A visual inspection for cleanliness, impending failure, and the need for lubrication, repair, or replacement of parts;

(ii) Correction of items found by that visual inspection; and

(iii) Calibration to at least the manufacturer's specifications unless otherwise specified in the approved Category II manual for the airplane in which the instrument or item of equipment is installed.

(c) *Extensions.* After the completion of one maintenance cycle of 12 calendar months, a request to extend the period for checks, tests, and inspections is approved if it is shown that the performance of particular equipment justifies the requested extension.

Discussion. No public comments were received for Appendix A. However, the FAA proposes to amend § 1(a) of Appendix A by changing the words "General Aviation District Office" to "Flight Standards district office." This change would permit more flexibility for applicants by not restricting them to General Aviation District Offices only.

Appendix B—Authorizations To Exceed Mach 1(§ 91.817)

Section 1. Application.

(a) An applicant for an authorization to exceed Mach 1 must apply in a form and manner prescribed by the Administrator and must comply with this appendix.

(b) In addition, each application for an authorization to exceed Mach 1 covered by § 2(a) of this appendix must contain all information requested by the Administrator necessary to assist him in determining whether the designation of a particular test area or issuance of a particular authorization is a "major Federal action significally affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1964 (42 U.S.C. 4321 et seq.), and to assist him in complying with that act and with related Executive Orders, guidelines, and orders prior to such action.

(c) In addition, each application for an authorization to exceed Mach 1 covered by § 2(a) of this appendix must contain—

(1) Information showing that operation at a speed greater than Mach 1 is necessary to accomplish one or more of the purposes specified in § 2(a) of this appendix, including a showing that the purpose of the test cannot be safely or properly accomplished by overocean testing;

(2) A description of the test area proposed by the applicant, including an environmental analysis of that area meeting the requirements of paragraph (b) of this section; and

(3) Conditions and limitations that will ensure that no measurable sonic boom overpressure will reach the surface outside of the designated test area.

(d) An application is denied if the Administrator finds that such action is necessary to protect or enhance the environment.

Section 2. Issuance.

(a) For a flight in a designated test area, an authorization to exceed Mach 1 may be issued when the Administrator has taken the environmental protective actions specified in § 1(b) of this appendix and the applicnt shows one or more of the following:

(1) The flight is necessary to show compliance with airworthiness requirements.

(2) The flight is necessary to determine the sonic boom characeristics of the airplane or to establish means of reducing or eliminating the effects of sonic boom.

(3) The flight is necessary to demonstrate the conditions and limitations under which speeds greater than a true flight Mach number of 1 will not cause a measurable sonic boom overpressure to reach the surface.

(b) For a flight outside of a designated test area, an authorization to exceed Mach 1 may be issued if the applicant shows conservatively under paragraph (a)(3) of this section that—

(1) The flight will not cause a measurable sonic boom overpressure to reach the surface when the aircraft is operated under conditions and limitations demonstrated under paragraph (a)(3) of this section; and

(2) Those conditions and limitations represent all foreseeable operating conditions.

Section 3. Duration

(a) An authorization to exceed Mach 1 is effective until it expires or is surrendered, or until it is suspended or terminated by the Administrator. Such an authorization may be amended or suspended by the Administrator at any time if the Administrator finds that such action is necessary to protect the environment. Within 30 days of notification of amendment, the holder of the authorization must request reconsideration or the amendment becomes final. Within 30 days of notification of suspension, the holder of the authorization must request reconsideration or the authorization is automatically terminated. If reconsideration is requested within the 30-day period, the amendment or suspension continues until the holder shows why, in his or her opinion, the authorization should not be amended or terminated. Upon such showing, the Administrator may terminate or amend the authorization if he finds that such action is necessary to protect the environment, or he may reinstate the authorization without amendment if he finds that termination or amendment is not necessary to protect the environment.

(b) Findings and actions by the Administrator under this section do not affect any certificate issued under Title VI of the Federal Aviation Act of 1958.

Discussion. No public comments were received for Appendix B. Accordingly Appendix B is proposed without change.

Appendix C—Operations in the North Atlantic (NAT) Minimum Navigation Performance Specification (MNPS) Airspace

Section 1. NAT MNPS airspace is that volume of airspace between FL 275 and FL 400 extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik and in the west by the western boundary of Reykjavik Oceanic Control Area, the western boundary of Gander Oceanic Control Area, and the western boundary of New York Oceanic Control Area excluding the area west of 60 degrees west and south of 38 degrees 30 minutes north.

Section 2. The navigation performance capability required for aircraft to be operated in the airspace defined in § 1 of this appendix is as follows:

(a) The standard deviation of lateral track errors shall be less than 6.3 NM (11.7 Km). Standard deviation is a statistical measure of data about a mean value. The mean is zero nautical miles. The overall form of data is such that the plus and minus 1 standard deviation about the mean encompasses approximately 68 percent of the data and plus or minus 2 deviations encompasses approximately 95 percent.

(b) The proportion of the total flight time spent by aircraft 30 NM (55.6 Km) or more off the cleared track shall be less than 5.3×10^{-4} (less than 1 hour in 1,887 flight hours).

(c) The proportion of the total flight time spent by aircraft between 50 NM and 70 NM (92.6 Km and 129.6 Km) off the cleared track shall be less than 13×10^{-5} (less than 1 hour in 7,693 flight hours).

Section 3. Air traffic control (ATC) may authorize an aircraft operator to deviate from the requirements of § 91.705 for a specific flight if, at the time of flight plan filing for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden upon, the operations of other aircraft which meet the requirements of § 91.705.

Discussion. No public comments were received on Appendix C. However, a change to Section 1 of Appendix C is proposed to reflect the latest definition of the NAT MNPS airspace.

2. By amending Parts 1, 21, 43, 45, 47, 61, 63, 65, 91, 93, 99, 121, 133, 135, 137 and 141 of the Federal Aviation Regulations by removing the references to current Part 91 provisions and substituting for them references to the revised Part 91 provisions as follows:

Rule	Deletion	Substitution
Part 1:		
Section 1.1 (Operate)	"§ 91.10 of this chapter"	"§ 91.13"
Part 21:		
SFAR No. 29-2 in Part 21 of this chapter.	"§ 91.23(a)"	"§ 91.15"
Section 21.81(a)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.83(a)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.83(b)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"

Rule	Deletion	Substitution
Section 21.85(f)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.221(a)(2)	"§ 91.41 of this chapter"	"§ 91.317 of this subchapter"
Section 21.221(e)	"§ 91.41"	"§ 91.317"
Section 21.223(a)(2)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.223(f)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.225(a)(2)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Section 21.225(e)	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Part 23:		
Appendix G	"§ 91.163"	"§ 91.403"
Part 25:		
Appendix H	"§ 91.163"	"§ 91.403"
Part 27:		
Appendix A	"§ 91.163"	"§ 91.403"
Part 29:		
Appendix A	"§ 91.163"	"§ 91.403"
Part 31:		
Appendix A	"§ 91.163"	"§ 91.403"
Part 33:		
Appendix A	"§ 91.163"	"§ 91.403"
Part 35:		
Appendix A	"§ 91.163"	"§ 91.403"
Part 36:		
§ 36.1583(b)	"§ 91.56"	"§ 91.815"
Part 43:		
Section 43.5(a)(4)	"§ 91.31 of this chapter"	"§ 91.9 of this chapter"
Section 43.9(a)(5)	"§ 91.217 of this chapter"	"§ 91.409 of this chapter"
Section 43.13(d)	"§ 91.217 of this chapter"	"§ 91.409 of this chapter"
Section 43.13(d)(1)	"(§ 91.217(b)(1) of this chapter)"	"(§ 91.409(f)(1) of this chapter)"
Section 43.13(d)(2)	"(§ 91.217(b)(2) of this chapter)"	"(§ 91.409(f)(2) of this chapter)"
Section 43.13(d)(3)	"(§ 91.217(b)(3) of this chapter)"	"(§ 91.409(f)(3) of this chapter)"
Section 43.13(d)(4)	"(§ 91.217(b)(4) of this chapter)"	"§(91.409(f)(4) of this chapter)"
Section 43.313(d)(5)	"(§ 91.217(b)(5) of this chapter)"	"(§ 91.409(f)(5) of this chapter)"
Section 43.16	"§ 91.217(e)"	"§ 91.409"
Appendix E	"§ 91.170"	"§ 91.411"
Appendix F	"§ 91.177 of this chapter"	"§ 91.413 of this chapter"
Part 45:		
Section 45.22(a)(3)(ii)	"§ 91.83 of this chapter"	"§ 91.153 and 91.169 of this chapter"
Part 47:		
Section 47.9(f)(1)(i)	"§ 91.173(a)(2)(i)"	"§ 91.417(a)(2)(i)"
Part 61:		
Section 61.15(b)	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 61.118(d)(5)	"§ 91.169 of this chapter"	"§ 91.409 of this chapter"
Section 61.153(a)	"§§ 91.1 thru 91.9"	"§§ 91.1, 91.3, 91.5, 91.11, 91.13, 91.193 91.103, 91.189, 91.105"
Part 63:		
Section 63.12(b)	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Part 65:		
Section 65.12(b)	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Part 71:		
Section 71.17(a)	"§ 91.125 of this chapter"	"§ 91.183 of this chapter"
Part 93:		
Section 93.111	"§ 91.107 of this chapter"	"§ 91.157 of this chapter"
Section 93.113	"§ 91.107 of this chapter"	"§ 91.157 of this chapter"
Section 93.183(b)(3)	"§ 91.24"	"§ 91.215"
Section 93.199(c)	"§ 91.127 of this chapter"	"§ 91.185 of this chapter:
Part 99:		
Section 99.11(b)(1)	"§ 91.83 of this chapter"	"§ 91.153 and § 91.169 of this chapter"
Section 99.11(b)(2)	"§ 91.83(a)(1) thru (7) of this chapter"	"§ 91.153(a)(1) thru (7) of this chapter"
Section 99.13(b)(1)	"§ 91.83 of this chapter"	"§ 91.169 of this chapter"
Section 99.13(b)(2)	"§ 91.83(a)(1) thru (7) of this chapter"	"§ 91.153(a)(1) thru (7) of this chapter"
Section 99.17(a)	"§ 91.125 of this chapter"	"§ 91.183 of this chapter"
Section 99.25(a)(1)	"§ 91.125 of this chapter"	"§ 91.183 of this chapter"
Section 99.27(a)	"§ 91.75 of this chapter"	"§ 91.123 of this chapter"
Section 99.31	"§ 91.127 of this chapter"	"§ 91.185 of this chapter"
Part 121:		
Section 121.1(f)	"§ 91.59"	"§ 91.321"
Section 121.15	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 121.207	"§ 91.41"	"§ 91.317"

Rule	Deletion	Substitution
Section 121.579(b)(1)	"§ 91.105 of this chapter"	"§ 91.155 of this chapter"
Section 121.579(b)(2)	"§ 91.105 of this chapter"	"§ 91.155 of this chapter"
Section 121.649(c)	"§ 91.105 of this chapter"	"§ 91.155 of this chapter"
Section 121.657(a)	"§ 91.79"	"§ 91.119"
Section 121.667(b)	"§ 91.83"	"§ 91.153 and 91.169"
Part 125:		
Section 125.23(b)	"§ 91.1(c) of this chapter"	"§ 91.703(b) of this chapter"
Section 125.39	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 125.329(c)	"§ 91.105 of this chapter"	"§ 91.155 of this chapter"
Part 127:		
Section 127.1(b)	"§ 91.59"	"§ 91.321"
Section 127.22	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 127.85	"§ 91.41 of this chapter"	"§ 91.317 of this chapter"
Part 133:		
Section 133.14	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Part 135:		
Section 135.1(b)(10)	"§ 91.59"	"§ 91.321"
Section 135.3(b)	"§ 91.1(c) of this chapter"	"§ 91.703(b) of this chapter"
Section 135.41	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 135.71	"§ 91.169 of this chapter"	"§ 91.409 of this chapter"
Section 135.93(c)	"§ 91.105 of this chapter"	"§ 91.155 of this chapter"
Section 135.211(a)(2)	"§ 91.116(f) of this chapter"	"§ 91.175(f) of this chapter"
Part 137:		
Section 137.23	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 137.43(c)	"§ 91.107(e) of this chapter"	"§ 91.157(e) of this chapter"
Section 137.53(c)(ii)	"§ 91.217 of this chapter"	"§ 91.409 of this chapter"
Part 141:		
Section 141.18	"§ 91.12(a) of this chapter"	"§ 91.19(a) of this chapter"
Section 141.41(a)(1)(iii)	"§ 91.33 of this chapter"	"§ 91.205 of this chapter"
Section 141.41(a)(2)(iii)	"§ 91.33 of this chapter"	"§ 91.205 of this chapter"

(Secs. 307, 313(a), 402, 601, 602, 603, 902, 1110, and 1202 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a), 1372, 1421, 1422, 1443, 1472, 1510, and 1522); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983); and 14 CFR 11.45)

Conclusion

The reporting and recordkeeping requirements contained in this notice have been approved by the Office of Management and Budget (or the Bureau of the Budget, its predecessor agency). The citations approving the various reporting and recordkeeping requirements in this notice will be inserted in the rule before any final rulemaking action is taken.

The FAA has determined that this document is not considered major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It proposes only four minor substantive changes, three of which will provide benefits with no additional costs to the aviation public. The fourth will impose negligible costs which are substantially outweighted by the benefits provided. Other proposed amendments provide general benefits by deleting obsolete requirements, relaxing certain operating and flight rule requirements, updating equipment requirements, and updating and clarifying the text. Under the provisions of Executive Order 12291, its implementation will not have a major economic effect on consumers, industries, Federal, State, or local government agencies, or geographic regions. There would be no significant effects on competition, employment, investment, productivity, innovations, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises and domestic or import markets. As discussed in the preamble, I certify that under the criteria of the Regulatory Flexibility Act, this proposal, if enacted, would not have a significant economic impact on a substantial number of small entities. The total projected cost of this rule may be found in the draft regulatory evaluation contained in the public docket. a copy of the evaluation may be obtained by contacting the individual named in the **"FOR FURTHER INFORMATION CONTACT"** paragraph.

Issued in Washington, D.C., on December 13, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 85-6208 Filed 3-19-85; 8:45 am]

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Federal Register

Wednesday
March 20, 1985

Part III

Department of Education

Pell Grant Program; Notice of Deadline Dates for the 1984-85 Award Year

DEPARTMENT OF EDUCATION

Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of deadline dates for receipt of applications, reports, and other documents under the Pell Grant Program for the 1984–85 award year.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from persons applying for financial assistance under, and from institutions participating in, the Pell Grant Program during the 1984–85 award year.

SUPPLEMENTARY INFORMATION: The purpose of the Pell Grant Program is to assist students in the continuation of their training and education at the postsecondary level by providing financial aid to help pay for their educational costs. Authority for the Pell Grant Program is contained in section 411 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a). The regulations for the Pell Grant Program was codified in 34 CFR Part 690.

Determination of Expected Family Contribution

As a prerequisite to receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education—or to the Secretary of Education in the case of institutions under the Alternate Disbursement System (ADA)—a valid Student Aid Report (SAR) that states the amount of the student's expected family contribution (referred to on the SAR as a student aid index) and the information used in calculating that amount. Consequently, each applicant must first submit to an agency listed in Table I of this notice his or her application for determining the expected family contribution. That application—referred to in this notice as the original application—must be submitted on one of the forms shown in Table I and received by the designated agency at the agency's address no later than the deadline date, May 1, 1985, shown in Table I.

(Approved by the Office of Management and Budget under OMB Control Number 1840–0132)

TABLE I.—DEADLINE DATE FOR RECEIPT OF APPLICATION FORMS FOR DETERMINING EXPECTED FAMILY CONTRIBUTION MAY 1, 1985

Type of form	Address for submission
Application for Federal Student Aid (AFSA)	Federal Student Aid Programs, P.O. Box 4101, Iowa City, Iowa 52244.
Special Condition Application for Federal Student Aid.	Federal Student Aid Programs, P.O. Box 4102 Iowa City, Iowa 52244.
Family Financial Statement (FFS)	ACT Student Need Analysis Services, P.O. Box 1000, Iowa City, IA 52243.
Financial Aid Form (FAF)	College Scholarship Service, Box 2700, Princeton, NJ 08541, or College Scholarship Service, Box 380, Berkeley, CA 94701.
Pennsylvania Higher Education Assistance Agency (PHEAA).	Pennsylvania Higher Education, Assistance Agency, P.O. Box 3157, Harrisburg, PA 17105.
Student Aid Application for California (SAAC).	College Scholarship Service, Box 70, Berkeley, CA 94701.

(34 CFR 690.12)

Other Documents

Once an applicant has filed his or her original application, additional information may be necessary. In some cases the agency receiving the original application (the processing agency) may request the information. In other cases, the applicant is responsible for initiating a request that additional or alternative information be considered.

The type of information and the forms to be used to report that information are listed in Table II of this notice. Each category designates an address to which the specified information or request must be sent, and the deadline date by which that information or request must be received at that address. The following explains each category:

Category 1—If an original application is incomplete, the Secretary will send a correction application to the applicant. In addition, if an applicant has misreported his or her dependency status on the original application, the applicant has the responsibility for requesting a correction application either from the processing agency or through the financial aid administrator. The correction application must be returned to the appropriate address listed in Table II and received at that address no later than the deadline date, July 15, 1985, shown in Table II.

Category 2—If an edit check causes the Secretary to return an SAR to an applicant for verification of correct information on the SAR, that SAR, with the verification statement checked—if appropriate—must be returned to the appropriate address listed in Table II and received at that address no later than the deadline date, July 15, 1985, shown in Table II.

Note.—This verification of correct information is different from a request for validation, explained elsewhere in this notice.

Category 3—If an applicant wishes to have his or her student aid index recomputed—because of a clerical or arithmetic error or because of extraordinary circumstances as described in § 690.39(c) or § 690.48(c) of the regulations for the Pell Grant Program—the applicant may request a recomputation of the index. In addition, if the applicant wishes to correct misreported data on the SAR he or she may do so. These requests must be on the SAR, sent to the appropriate address listed in Table II, and received no later than the deadline date, July 15, 1985, shown in Table II.

Category 4—If an applicant wishes to receive a duplicate SAR, the applicant may write or call one of the addresses or phone numbers listed in Table II. A written request must be received at either address no later than the July 15, 1985 deadline date. All telephone requests must also be made no later than July 15, 1985.

(Approved by the Office of Management and Budget under Control Number—Application 1840–0110 and Special Condition Form 1840–0111).

Students Enrolled in Institutions Under the Alternate Disbursement System (ADS)

In order to receive a Pell Grant payment, the applicant who attends an institution participating in the Pell Grant Program under the Alternate Disbursement System must submit a completed ED Form 304 and Part 3 (Payment Document Portion) of the valid SAR to the appropriate address listed in Table II of this notice. The required documents must be received at that address no later than the appropriate deadline date specified in this notice.

If a student must submit an additional or corrected request for payment, that request must be made on ED Form 304–1, submitted to the appropriate address listed in Table II, and received at the address no later than the deadline date, August 26, 1985, shown in Table II.

(Approved by the Office of Management and Budget under OMB Control Number 1840–0008)

TABLE II.—DEADLINE DATED FOR RECEIPT OF OTHER DOCUMENTS

Type of form	Address for submission	Deadline date
Correction Application		
(Category 1)—Application for Federal student aid correction application.	Federal Student Aid Programs, P.O. Box 4103, Iowa City, Iowa 52244.	July 15, 1985.
Verification of Information		
(Category 2)—Request for verification of corrected information.	Federal Student Aid Programs, P.O. Box 4103, Iowa City, Iowa 52244.	Do.
Recomputations and Corrections		
(Category 3)—Request for: (1) Recomputation of a student aid index because of clerical or arithmetic errors, or because of extraordinary circumstances as described in § 690.39(c) and 690.46(c) of the Pell Grant program regulations, (2) correction or misreported data.	Federal Student Aid Programs, P.O. Box 4103, Iowa City, Iowa 52244.	Do.
Duplicate SAR		
(Category 4)—Request in writing or request by phone.	Federal Student Aid Programs, P.O. Box 4106, Iowa City, Iowa 52244, (319) 337-3738. Federal Student Financial Aid Programs, P.O. Box 84, Washington, DC 20044, (301) 984-4070.	Do. Do.
ADS Forms		
ED Form-304 Initial Request for Payment; Part 3 of SAR (Payment Document) and a copy of the student's financial aid transcript/304/1 (if applicable).	ADS Payment Processing Center, P.O. Box 8547, Silver Spring, Maryland 20907.	Do.
ED Form-304-1 Additional and/or corrected request for payment.	ADS Payment Processing Center, P.O. Box 8547, Silver Spring, Maryland 20907.	Aug. 26, 1985.

(34 CFR 690.14, 690.61 and 690.95)

Note.—ED Forms 304 and 304–1 do not apply to students enrolled in institutions that particpate in the Pell Grant Program under the Regular Disbursement System (RDS).

Note.—Although the Pell application processing site will accept and process corrections through July 15, 1985, this does not extend the deadline by which the student must submit his/her valid SAR to the financial aid office. If the student does not give the financial aid office a valid SAR, showing he/she is eligible (an SAI between 0 and 1700), by his/her last date of enrollment or June 30, 1985, whichever is earlier, he/she will not be eligible for an award payment.

Verification (Validation) Procedures and Deadline Dates

The information provided on an application and included on an SAR may be subject to verification (validation). In that case, in order to receive a Pell Grant award for the 1984–85 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following validation procedures. The documents must be received no later than the deadline date specified below and does not conflict with nor supersede the deadline dates specified in Tables I and II of this notice.

Regular Disbursement System

Verification (validation) of Information on Application. If an applicant is selected to have the information on his or her application verified under the validation procedures, and if the applicant attends an institution that participates in the Pell Grant Program under the Regular Disbursement System (RDS), he or she must complete the entire validation process as noted below within 60 days from his or her last day of enrollment or August 15, 1985, whichever comes first.

In order to complete the entire validation process, the applicant must complete all 4 of the following steps—

(1) Submit all requested verification documents to his or her institution;

(2) Make all necessary corrections on Part 2 of the SAR;

(3) Submit the corrected SAR (Part 2) to the Department of Education's processing center at the address indicated in the lower left hand corner on the back of Part 2; and

(4) Resubmit the corrected/reprocessed SAR to the institution.

Alternate Disbursement System

Verification (Validation) of information on application. If an applicant is selected to have the information on his or her application verified under the validation procedures and the applicant attends an institution that participates in the Pell Grant Program under the Alternate Disbursement System (ADS), he or she must submit the requested documents as specified below. An applicant undergoing validation who leaves school because of graduation, withdrawal or completion of an academic term has 60 days from his/her last day of enrollment or August 15, 1985, whichever comes first to complete the entire validation process which ends with submission of a corrected/reprocessed valid SAR to the ADS institution.

If the ADS institution conducts the verification, the applicant must: (1) Submit the requested documents along with all three copies of the SAR to the institution, (2) correct any inaccurate information reported on the SAR, (3) sign and resubmit the SAR with corrections to the Department of Education's Processing Center in Iowa City, Iowa by the deadline date established for correcting a Student Aid Report, and (4) submit the corrected/reprocessed SAR received from Iowa City to the institution.

If the Department of Education conducts the verification, the applicant must: (1) Correct any inaccurate information reported on the SAR, if requested by the Department of Education or the institution, (2) sign and submit all three parts of his or her SAR along with requested documents to: ADS Validation, P.O. Box 23967, Washington, D.C. 20024, (3) submit the corrected/reprocessed SAR received from the Department of Education to the institution.

Receipt of Payment

If a student's SAR was validated on or before June 15, 1985:

(a) The student's completed ED Form 304 and validated SAR must be received at the ADS processing site on or before July 15, 1985; and

(b) All corrections to prior payment requests and/or additional payment requests (completed 304–1 forms) must be received by August 26, 1985.

If a student's SAR was validated on or after June 16, 1985:

(a) The student's completed ED Form 304 and validated SAR must be received at the ADS processing site within 30 days of the SAR validation date, or September 30, 1985, whichever come first; and

(b) All corrections to prior payment requests and/or additional payment requests (completed 304–1 forms) must be received within 30 days after the processing date shown in Section 1 of the 304–1.

(34 CFR 690.77)

Institutional Payment Summary (IPS)

An institution participating in the Pell Grant Program under the Regular Disbusement System (RDS) is required as of the 1984–85 award year, to provide the Secretary with Institutional Payment Summary (IPS) documents. Two copies of the IPS document must be submitted to—Pell Grant Program, P.O. Box 1400, Merrifield, Virginia 22116–1400, both with an original handwritten signature of the institutional administrator officially responsible for the accuracy

and completeness of the IPS. An IPS document must be submitted to the above noted address at least once in each of the three (3) *required* reporting periods/quarters.

TABLE III.—DEADLINE DATES FOR RECEIPT OF INSTITUTIONAL PAYMENT SUMMARY (IPS) DOCUMENTS

Reporting periods in quarters	Deadline date
Oct. 1, 1984 through Dec. 31, 1984	Dec. 31, 1984.
Jan. 1, 1985 through Mar. 31, 1985	Apr. 1, 1985.
Apr. 1, 1985 through June 30, 1985	July 1, 1985.

However, for the quarters ending September 30, 1984, and September 30, 1985, an institution may, but need not, submit IPS documents. An institution may submit an IPS document as often as necessary during a quarter, but no later than deadline dates shown in Table III.

(34 CFR 690.74 and 690.82)

Failure of an institution to comply with these requirements may result in the initiation of a proceeding to fine, suspension, limitation, or termination of the institution in accordance with Subpart G of the Student Assistance General Provisions regulations in 34 CFR Part 668.

(Approved by the Office of Management and Budget under OMB Control Number IPS Form 1840-0540)

Submission of Student Aid Reports by Institutions to the Secretary

As required by 34 CFR 690.83, institutions must submit 1984–85 Student Aid Report Payment Documents to the Secretary of Education by December 31, 1985. Student Aid Reports and Student Eligibility Reports for years prior to 1984–85 must also be submitted to the Secretary by December 31, 1985.

Institutions will not be permitted to adjust their Pell Grant accounts after December 31, 1985 for 1984–85 or any award years prior to 1984–85 except under the following circumstances:

- Adjustments are required after a program review of the institution's records by an official or employee of the Department of Education.
- Adjustments are required by an audit conducted under the requirements of 34 CFR 690.84.
- The institution is required to adjust a student's award because of a court order.
- The institution discovers that a student has been overpaid.

Adjustments can be made in above circumstances by contacting an areas desk representative at (202) 245–1271. Note that an adjustment cannot be made for an underpayment discovered by an institution after December 31. If an institution discovers an underpayment, and submits to the Secretary 1984–85 SAR Payment Documents or SARs for years prior to 1984–85, that institution will not receive additional Pell Grant Funds. This deadline has been established to permit an orderly closing of accounts from previous years.

Application Forms and Information

Student aid application forms, correction application forms, and information brochures may be obtained through college and university financial aid administrators, Educational Opportunity Center counselors, or by writing to: Federal Student Aid Programs, P.O. Box 84, Washington, D.C. 20044.

Applicable Regulations

The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR Part 690 as published in the **Federal Register** on March 15, 1985 (50 FR 10710–10731), and the Student Assistance General Provisions regulations in 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: Ms. Gail L. Cornish, Pell Grant Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue, SW., [ROB–3, Room 4318], Washington, D.C. 20202. Telephone (202) 472–4300.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: March 15, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85-6658 Filed 3-19-85; 8:45 am]

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federal register

Wednesday
March 20, 1985

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 324

Research in Education of the Handicapped; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 324

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue revisions to the regulations under sections 641–644 of Part E of the Education of the Handicapped Act, as amended by Pub. L. 98–199. The program authorized by sections 641–644 of the Act provides support for research and related activities designed to increase knowledge and understanding of handicapping conditions and of teaching, learning, and education-related practices and services for handicapped children and youth. The proposed regulations, among other things, describe the purpose of the program, identify the types of activities that are eligible for support, set forth the process for selecting funding priorities, and describe weighted selection criteria. An appendix to the regulations contains nonbinding guidelines for the preparation of applications.

DATE: Comments must be received on or before May 20, 1985.

ADDRESS: Comments should be addressed to: Dr. Wendy M. Cullar, Special Education Program, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3086), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Doris P. Gamser. Telephone (202) 732-1064.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped program, authorized by sections 641–644 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444), supports research, surveys, demonstration projects, and other activities relating to the education of handicapped children and youth. Under this program, the Secretary makes awards to eligible parties for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and research-related activities supported under this program must be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth, including physical education and recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to section 641. Under section 641(c) of the Act, the Secretary is required to publish proposed research priorities in the **Federal Register** every two years, analyze and consider any public comments, and then publish final research priorities. In accordance with this requirement, a notice of proposed biennial funding priorities was published on November 16, 1984 (49 FR 45478).

Regulations for this program were published on August 18, 1978 (43 FR 36634), were last amended on June 18, 1981 (46 FR 31997), and are currently codified at 34 CFR Part 324. These proposed regulations implement Sections 641–644 of the Act, as amended by Pub. L. 98–199, and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78). These proposed regulations are expected to become effective in time to apply to Fiscal Year 1986 awards. Grant awards made in Fiscal Year 1985 will be governed by the current regulations.

A summary of the proposed regulations follows.

(a) *Subpart A—General.*

Section 324.1 describes the basic purpose of the Research in Education of the Handicapped program.

Section 324.2 identifies the parties that are eligible to receive grants.

Section 324.3 lists other regulations that apply to this program.

Section 324.4 incorporates certain EDGAR definitions as well as the definitions of "handicapped children," "related services," and "special education" used in the Assistance to States for Education of Handicapped Children program (34 CFR Part 300). These definitions in 34 CFR Part 300, as well as the definition of "handicapped youth" under Section 602(b) of the Act, are adopted to ensure consistency among programs under the Act.

(b) *Subpart B—What Kinds of Projects Does the Secretary Assist Under this Program?*

Section 324.10 identifies the types of projects that the Secretary supports. This section identifies the particular activities authorized uder sections 641(a) and 642 of the Act as examples of the kinds of projects that are consistent with the purposes of the Act. This section includes student-initiated and field-initiated activities, in accordance with the legislative history of the Act, which states: "The Committee intends that the field and student initiated research projects and successful model projects be continued." S. Rep. No. 191, 98th Cong., 1st Sess. 25 (1983).

Section 324.11 dscribes the kinds of research and model projects supported under this program. This information is included to assist applicants in understanding the purpose of the two different types of projects authorized under this part.

(c) *Subpart C*—[Reserved].

(d) *Subpart D—How Does the Secretary Make a Grant?*

Section 324.30 describes the process the Secretary uses to select priorities for funding. This process is consistent with the requirements of section 641(c) of the Act.

Sections 324.31 and 324.32 contain the selection criteria the Secretary uses to evaluate applications and award new grants. The Secretary proposes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected. The Secretary proposes different selection criteria for research projects and for model projects to reflect the difference in the nature of those projects. The selection criteria contained in §§ 324.31(h) and 324.32(h) are designed to implement the requirement under section 641)b) of the Act that the Secretary shall consider the special education experience of an applicant and the ability of an applicant to disseminate the findings of any project funded under this part.

(e) *Subpart E—What Conditions Must Be Met by a Grantee?*

Section 324.40 describes the content of the project report that must be submitted upon completion of a project. These requirements are necessary to ensure that the project reports will be useful to the persons to whom they are disseminated.

(f) *Appendix.* The appendix to Part 344 (guidelines—Education of the Handicapped Act—Part E) is revoked.

An appendix is attached which contains nonbinding guidance for use by applicants in preparing applications for research and model projects.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The application procedures and other requirements in the proposed regulations will not place undue burdens on small entities participating in the program or have a significant economic impact on these entities.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations will be sent to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Information collection requirements are contained in the following sections: 324.31, 324.32, and 324.40.

A copy of comments that pertain *only* to information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Invitation to Comment

Interested persons are invited to submit comments and recommendations to the address given at the beginning of this document.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3529, Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 324

Education, Education of handicapped, Education—research, Grant programs—education, Local educational agency, Reporting and recordkeeping requirements, School, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.023, Research in Education of the Handicapped)

Dated: March 14, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 324 of Title 34 of the Code of Federal Regulations to read as follows:

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

324.1 What is the Research in Education of the Handicapped program?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?
324.5 What definitions apply to this program?
324.5–324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under this Program?

324.10 What kinds of projects are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12–324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating applications for model projects?
324.33 What are the selection criteria for evaluating research-related acivities other than research and model projects?
324.34–324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

324.40 What conditions must be met by a Recipient?
324.41–324.49 [Reserved]

Authority: Secs. 641–644 of the Education of the Handicapped Act, as amended by Pub. L. 98–199, 97 Stat. 1372–1374 (20 U.S.C. 1441–1444), unless otherwise noted.

Subpart A—General

§ 324.1 What is the Research in Education of the Handicapped program?

The purpose of this program is to provide support for—

(a) Research and related activities to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth;

(b) Research, surveys, or demonstrations relating to the education of handicapped children and youth;

(c) Research and related purposes relating to physical education or recreation for handicapped children; and

(d) Research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)

§ 324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

(b) The Secretary may award contracts to States, State or local educational agencies, insitutions of higher education, and other public or private educational or research agencies and organizations under this program for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation.

(20 U.S.C. 1441(a), 1442)

§ 324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 324.

(b) The Education Department General Administrative Regulations (EDGAR), set out in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Prgrams);

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 78 (Education Appeal Board.)

(20 U.S.C. 1441–1444)

§ 324.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Secretary
State educational agency

(20 U.S.C. 1441–1444)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part:

"Handicapped youth" means any handicapped child who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401(b))

§§ 324.25—324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 324.10 What kinds of projects are authorized under this part?

Research and related activities that may be assisted under this part include, but are not limited to—

(a) The development of new and improved techniques and devices for teaching handicapped children and youth;

(b) The development of curricula which meet the unique educational needs of handicapped children and youth;

(c) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth;

(d) The development of program models and exemplary practices in areas of special education;

(e) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations;

(f) Reserach and related activities, surveys, or demonstrations relating to physical education or recreation for handicapped children; and

(g) Student-initiated or field-initiated projects consistent with the purpose of the program, as described in § 324.1

(20 U.S.C. 1441(a), 1442)

§ 324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the education of handicapped children and youth and to translate that knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative educational programs that serve handicapped children and youth either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the education of handicapped children and youth;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(20 U.S.C. 1441, 1442)

§§ 324.12–324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under § 324.10.

(b) The Secretary publishes proposed research priorities for public comment in the **Federal Register** every two years, not later than July 1. The Secretary publishes final priorities for this program not later than 30 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(20 U.S.C. 1441(c), 1442)

§ 324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel that applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reaonsable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application for information that shows the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.

(g) *Impact.* (5 points) The Secretary reviews each application for information that shows the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.

(h) *Organizational capability.* (10 points) The Secretary looks for information that shows—

(1) The applicant's special education experience; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(20 U.S.C. 1441–1442)

(Approved by the Office of Management and Budget under control number 1820–0028.)

§ 324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualification, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary looks for information that shows—

(1) The applicant's special education experience; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

(1) The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individized educational program planning; and

(viii) Parent and family participation.

(20 U.S.C. 1441–1442)

(Approved by the Office of Management and Budget under control number 1820–0028)

§ 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 *(Selection criteria for a discretionary grant program that does not have regulations)* to evaluate applications for new awards for research-related activities other than reseach and model projects.

(20 U.S.C. 1441–1442)

§§ 324.34–324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 324.40 What conditions must be met by a recipient?

Not more than 60 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(20 U.S.C. 1441(d))

§§ 324.41–324.49 [Reserved]

Appendix

Note.—This appendix will not be codified in the Code of Federal Regulations.

Guidelines—Research in Education of the Handicapped Program

Part 1—Introduction

Sec.

1.1 Scope of guidelines.

Part 2—Application Information

2.1 Preparation of applications for research projects.

2.2 Preparation of applications for model projects.

Part 1—Introduction

§ 1.1 Scope of guidelines.

The guidelines contained in this document are recommendations and suggestions for meeting legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, sections 641–644. The legal requirements include the Act itself (20 U.S.C. 1441–1444) and applicable regulations (34 CFR Parts 75 and 324). The guidelines are not requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1441–1444)

Part 2—Application Information

§ 2.1 Preparation of applications for research projects.

It is suggested that project applications include the following features in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The problem or issue the project is addressing; (2) the project's goals and products; and (3) the methodology. The overview of the methodology should provide specific detail on the sample, if one is to be used (i.e. number of local educational agencies, number of students, category of exceptionality), and a brief description of the project's design, measurement, and analysis procedures.

(b) *Importance.* This section should present the problem or issue to be addressed. Using previous research findings, the experiences of service providers, and a conceptual framework, the applicant should make a convincing argument for the significance of the need which exists, and the importance of the proposed project in understanding, remediating, or compensating for the problem/issue. This section should also include a description of the expected outcomes. Finally, it should provide a list of procedural objectives which describe the major activities to be implemented during the project and for which detailed explanations and justifications are provided in the subsequent sections of the application.

(c) *Technical Method (Soundness).* This section should provide both a description and justification for the project design, sample, measurement techniques, instrumentation, and data analysis procedures. This section should provide sufficient detail for reviewers to be able to make informed judgments about the soundness of the proposed research procedures. This is the one aspect of the application narrative which is frequently too short. Applicants need to explain and justify their selection of procedures. The relationship between the proposed activities and the proposed duration of the project should also be made apparent in this section.

(d) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates, for each major activity, the number of days by person. This section should explicitly describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(e) *Evaluation Plan.* This section of the application should describe procedures to assure that the project's activities are being implemented appropriately and that project objectives are being met. Project evaluation procedures should differ from the analysis procedures for the research data described in section (c), *Technical Methods (Soundness).*

(f) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for that designated position. This section should also describe procedures for encouraging applications for employment from persons who are members of groups that have been traditionally underrepresented such as

members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately-supported activities.

(g) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed research activity, and it should demonstrate access to and commitment from schools, agencies, or other organizations necessary to carry out the proposed research. This is particularly important regarding access to proposed samples.

(h) *Impact.* This section of the application should be used to make the best case for the potential difference the proposed research could make in addressing the needs developed in the purpose section. The impact statement should consider the contribution the findings or products will make to current understanding, knowledge, and practice.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

§ 2.2 Preparation of applications for model projects.

It is suggested that project descriptions include the following features, in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The service delivery problem the project is addressing; (2) the project's goals and strategies, and (3) the methods. The overview of the methods should provide specific details on the population to be served and the intervention to be used.

(b) *Importance.* This section should present the service delivery problem to be addressed. Using previous research findings, need assessments, and the experiences of service providers, the applicant should make a convincing argument for the significance of the delivery problem to service providers across the Nation.

(c) *Innovativeness.* This section should provide a conceptual framework that is founded on previous theory and research and provides a basis for the unique strategies and approaches that will be used in addressing the identified service delivery problem. This section should also make clear the contribution the proposed findings and products will make in advancing current knowledge, understanding, and practice.

(d) *Technical Method (Soundness).* This section should provide both a description and justification of the project's strategies. Specific information should be provided as to the population to be served, the model planning process, coordination among service providers, the interventions to be used, and parent and family participation. Model projects that will provide direct services to students should also include information as to the identification and assessment of students, record keeping systems, proposed curricula, and individualized educational program planning. This aspect of the application narrative should be detailed enough to make it clear what activities will be carried out in the project. Applicants need to explain and justify their strategies.

(e) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates for each major activity the number of days by person. This section should explicity describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(f) *Evaluation Plan.* This section should describe the plan and the procedures to evaluate the project, including the effectiveness of the model in educating handicapped students. In particular, procedures should be described for comparing the effectiveness of the model with other service delivery strategies.

(g) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for his/her designated position. This section should also describe procedures for encouraging applications or employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately supported activities.

(h) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed project, and it should demonstrate access to schools, agencies, or other organizations necessary to carry out the proposed project.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

(20 U.S.C. 1441–1444; 34 CFR 324.31–324.32)

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