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Friday
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Animal and Plant Health Inspection Service

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-307]

7 CFR Part 301

Gypsy Moth Regulated Areas; Michigan, et al.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Federal Gypsy Moth and Browntail Moth Quarantine and Regulations by: (1) Redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas; (2) designating previously nonregulated areas in the District of Columbia and in Virginia as gypsy moth high-risk areas; (3) designating previously nonregulated areas in Michigan and Virginia as gypsy moth low-risk areas; (4) removing portions of regulated areas in Michigan, Oregon, and Washington, and removing all regulated areas in California, Illinois, Ohio, and Wisconsin from the list of gypsy moth regulated areas; (6) removing California, Illinois, Ohio, and Wisconsin from the list of States quarantined because of gypsy moth; and (7) adding District of Columbia to the list of States quarantined because of gypsy moth. The quarantine and regulations impose restrictions on the interstate movement of certain articles from gypsy moth high-risk areas and gypsy moth low-risk areas. This amendment is necessary as an emergency measure in order to prevent the artificial spread interstate of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

DATES: Effective date of this interim rule is April 5, 1985. Written comments concerning this interim rule must be received on or before June 4, 1985.

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

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of approximately $33,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action. Due to the possibility that gypsy moths could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest. Also, where gypsy moth no longer occurs, or when there is reason to believe that the density of egg masses per acre has decreased sufficiently to remove the area from a gypsy moth high-risk area and gypsy moth low-risk area classification, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

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

Certification Under the Regulatory Flexibility Act

The Administrator of the Aminal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in the District of Columbia and in the States of California, Illinois, Michigan, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from such States and the District of Columbia and many thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that only approximately 347 small entities move regulated articles interstate from the specified areas affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $33,000.

Background

The gypsy moth, *Lymantria dispar* (Linnaeus) is a highly destructive pest of

forest trees. The Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 *et seq.*) quarantine certain States because of the gypsy moth, and restrict the interstate movement from regulated areas of articles designated as regulated articles because of the gypsy moth. Such restrictions are necessary for the purpose of preventing the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are areas in which a gypsy moth infestation has been found by an inspector, or areas which are necessary to regulate because of proximity to gypsy moth infestation or inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations there is a basis for designating an area as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Paragraphs (a), (b), and (c) of § 301.45–3 of the "Domestic Quarantine" regulations [7 CFR 301.45–3 (a), (b), and (c)] impose the following conditions on the movement of regulated articles:

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth or browntail moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth or browntail moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area.

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of the gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Quarantined District and Designation of Areas as High-Risk Areas

This document, as an emergency measure, quarantines the District of Columbia and designates the entire District as a high-risk area because of gypsy moth. This document also redesignates the following areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas:

Michigan

Oakland County. Sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.

New York

Cattaraugus County. The towns of Ashford, Conewango, Dayton, East Otto, Ellicottville, Leon, Mansfield, New Albion, Otto, Perrsyburg, Persia, Randolph, and South Valley.

Chautauqua County. The entire county.

Erie County. The towns of Aurora, Boston, Brant, Cattaragus, Colden, Collins, Concord, Eden, Evans, Hamburg, Holland, North Collins, Orchard Park, Sardinia, and Wales.

Jefferson County. The towns of Brownville and Clayton.

Livingston County. The towns of North Dansville, Sparta, and West Sparta.

Pennsylvania

Clarion County. The entire county.

Venango County. The entire county.

Virginia

Arlington County. The entire county.

City of Alexandria. The entire city.

City of Fairfax. The entire city.

City of Falls Church. The entire city.

City of Manassas. The entire city.

City of Winchester. The entire city.

Clarke County. The entire county.

Fairfax County The entire county.

Frederick County The entire county.

Loudoun County. That portion of the county beginning at a point where State Highway 7 intersects the Clarke and Loudoun County line; then southwesterly along said line to its intersection with the Loudoun-Fauquier County line; then southeasterly along said line to its intersection with the Loudoun-Prince William County line; then southeasterly along said line to its intersection with the Loudoun-Fairfax County line; then northeast along said line to its intersection with the Potomac River; then northwesterly along said river to its intersection with State Highway 287; then southerly along said highway to its intersection with State Highway 7; then westerly along said highway to the point of beginning.

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of such regulated articles. Therefore, as an emergency measure, it is necessary to designate such areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Designation of Areas as Low-Risk Areas

As an emergency measure, the following areas in Michigan and Virginia, which were previously nonregulated areas, are designated as gypsy moth low-risk areas:

Michigan

Branch County. The entire county.

Calhoun County. The entire county.

Clinton County. The entire county.

Eaton County. The entire county.

Huron County. The entire county.

Ingham County. The entire county.

Ionia County. The entire county.

Iosco County. The entire county.

Jackson County. The entire county.

Lapeer County. The entire county.

Lenawee County. The entire county.

Livingston County. The entire county *except* sec. 10, 11, 14, and 15, T. 1 N., R. 5 E., and sec. 13 and 14, T. 3 N., R 6 E.

Macomb County. The entire county.

Missaukee County. The entire county.

Monroe County. The entire county.

Newaygo County. The entire county.

Ogemaw County. The entire county.

Roscommon County. The entire county.

St. Clair County. The entire county.

Sanilac County. The entire county.

Shiawasee County. The entire county.

Tuscola County. The entire county.

Washtenaw County. The entire county.

Wayne County. The entire county.

Virginia

Accomack County. That portion of the county north of a line beginning at the intersection of State Road 695 and the Chesapeake Bay on the west; then easterly along State Road 695 to its intersection with State Road 679; then north along State Road 679 to its intersection with State Road 695; then easterly along State Road 695 to its intersection with Powells Bay; then east from said intersection along an imaginary line to its intersection with the Atlantic Ocean.

Culpeper County. That portion of the county beginning at a point where State Road 729 intersects the Rappahannock County line; then southwest along the Rappahannock-Culpeper County line to its intersection with Madison County line; then southeast along Madison-Culpeper County line to its intersection with Orange County line; then northeast along the Orange-Culpeper County line to its intersection with Spotsylvania County line; then east along Spotsylvania-Culpeper County line to its intersection with Stafford County line and Rappahannock River; then northwest along The Rappahannock River to its intersection with Hazel River; then west along Hazel River to its intersection with Muddy Run; then west along Muddy Run to its intersection with State Road 625; then south and west along State Road 625 to its intersection with State Road 729; then northwest along State Road 729 to the point of beginning.

Madison County. That portion of the county north of a line beginning at the intersection of State Route 615 and the Greene-Madison County line; then easterly along State Route 615 to its intersection with State Route 662; then northerly along State Route 662 to the boundary of the Shenandoah National Park; then northerly along the Shenandoah National Park Boundary to its intersection with State Route 672; then east along State Route 672 to its intersection with State Route 649; then northeast along State Route 649 to its intersection with State Route 670; then southeasterly along State Route 670 to its intersection with State Route 231; then southeasterly along State Route 231 to its intersection with State Route 609; then easterly along State Route 609 to its intersection with the Madison-Culpeper County line.

Page County. The entire county.

Rappahannock County. The entire county.

Based on recent surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth low-risk areas, but that the number of egg masses per acre is not high enough to meet the criteria referred to above for gypsy moth high-risk areas.

As noted above, restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7 of the regulations. In this connection, it is necessary as an emergency measure to designate such areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in such areas and that based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from such areas.

Removal of States From Quarantine and Deletion of Areas From List of Regulated Areas

Prior to the effective date of this document the following areas in California, Illinois, Michigan, Ohio, Oregon, Washington, and Wisconsin were designated as gypsy moth low-risk regulated areas. This document removes these areas from the list of gypsy moth low-risk regulated areas.

California

Alameda County. That portion of the county bounded by a line beginning at a point where Interstate Highway 680 and Bernal Avenue intersect; then northwesterly on Interstate Highway 680 to its intersection with Stoneridge Drive; then easterly along Stoneridge Drive to its intersection with Hopyard Road; then easterly along an imaginary line from said intersection to the intersection of West Las Positas Boulevard and Santa Rita Road; then southerly along said road to its intersection with Mohr Avenue; then easterly along said avenue to its intersection with Kolln Street; then southerly along said street to its intersection with Valley Avenue; then southerly from said intersection along an imaginary line to the end of Kolln Street; then southerly along Kolln Street to its intersection with Jensen Street; then westerly along Jensen Street to its intersection with Main Street; then southerly along Main Street to its intersection with Bernal Avenue; then westerly along said avenue to the point of beginning.

That portion of the county bounded by a line beginning at a point where 82nd Avenue intersects 14th Street; then northwesterly on said street to its intersection with 55th Avenue; then northeasterly on said avenue to its intersection with Fairfax Avenue; then northerly on said avenue to its intersection with High Street; then northeasterly on said street to its intersection with Brookdale Avenue; then northwesterly on said avenue to its intersection with 38th Avenue; then northeasterly on said avenue to its intersection with MacArthur Boulevard; then southerly on said boulevard to its intersection with 39th Avenue; then northeasterly on said avenue to its intersection with Aliso Avenue; then northwesterly on said avenue to its intersection with Redwood Road; then easterly on said road to its intersection with Skyline Boulevard; then southeasterly on said boulevard to its intersection with Lexford Place; then southerly along an imaginary line to its intersection with the intersection of Partridge Avenue and 82nd Avenue; then southwesterly on 82nd Avenue to the point of beginning.

Contra Costa County. "That portion of the county bounded by a line beginning at a point where Pine Hollow Road and Mitchell Canyon Road intersect; then southerly on Mitchell Canyon Road to its intersection with Mitchell Creek; then southerly from said intersection along an imaginary line to the peak of Mitchell Rock; then easterly from said rock along an imaginary line to the intersection off Trail Ride Road and East Trail; then due north from said intersection along an imaginary line to an unimproved and unnamed road through Irish Canyon; then northwesterly along said road to its intersection with Black Diamond Way; then westerly along Black Diamond Way to its junction with Main Street in the town of Clayton; then westerly on Main Street to its end; then westerly from the end of said street along an imaginary line to the east end of Pine Hollow Road; then westerly on Pine Hollow Road to the point of beginning.

That portion of the county bounded by a line beginning at a point where Greenbrook Drive intersects Interstate 680; then southeasterly on Interstate 680 to its intersection with Bollinger Canyon Road; then northeasterly on said road to its intersection with Alcosta Boulevard; then northeasterly from said intersection along an imaginary line to its intersection with Doughery Road and Camino Tassajara Road; then northwesterly from said intersection along an imaginary line to its intersection with Sycamore Freitas Valley Road and Greenbrook Drive;

then southerly on Greenbrook Drive to the point of beginning."

Marin County. "That portion of the county bounded by a line beginning at a point where San Marin Drive intersects Business U.S. Highway 101; then easterly on San Marin Drive to its junction with Atherton Avenue; then easterly on Atherton Avenue to its intersection with Binford Road; then northerly on Binford Road to Rush Creek; then northeasterly along the southern boundary of Rush Creek to the northern most corner of Marin Memorial Gardens (cemetery); then southeasterly along the eastern boundary of Marin Memorial Gardens to Bahia Drive; then easterly along an imaginary line to the west end of Laguna Vista Drive; then southeasterly from the west end of said drive along an imaginary line to the intersection of School Road and Atherton Avenue; then southeasterly on Atherton Avenue to State Highway 37; then southwesterly on State Highway 37 to its intersection with an Movato Creek; then northwesterly along Novato Creek to its intersection with unnamed tributary; then southwesterly and northwesterly along said tributary to its intersection with U.S. Highway 101; then northerly on U.S. Highway 101 to Rowland Boulevard; then westerly on Rowland Boulevard to Business U.S. Highway 101; then northerly on Business U.S. Highway 101 to the point of beginning."

San Mateo County. "That portion of the county bounded by a line beginning at a point where 27th Avenue and Alameda De Las Pulgas intersect; then northeasterly along 27th Avenue to its intersection with South El Camino Real; then northeasterly along an imaginary line from said intersection to the intersection of East Hillsdale Boulevard and South Norfolk Street; then southeasterly along South Norfolk Street to its intersection with Los Prados; then southeasterly along Los Prados to its intersection with Bahia; then southeasterly along an imaginary line from said intersection to the intersection of Winchester Court and Galveston Street; then southeasterly along Galveston Street to its intersection with Bodega Street; then southerly along said street to its intersection with Chesapeake Avenue; then easterly along said avenue to its intersection with Biscayne Avenue; then southerly along an imaginary line from said intersection to the intersection of U.S. Highway 101 and Ralston Avenue; then southwesterly along Ralston Avenue to its intersection with Alameda De Las Pulgas; then northerly along Alameda De Las Pulgas to its intersection with Sharon Avenue; then westerly along said avenue to its intersection with Coronet Boulevard; then southerly along said boulevard to its intersection with Casa Bona Avenue; then westerly along said avenue to its intersection with Semeria Avenue; then northwesterly along said avenue to its intersection with Cipriani Boulevard; then westerly along said boulevard to its intersection with Wooster Avenue; then westerly along said avenue to its intersection with Thurm Avenue; then northerly along said avenue to its intersection with Bettina Avenue; then northerly along said avenue to its intersection with 42nd Avenue; then easterly along said avenue to its intersection Kingridge Drive; then northwesterly along said drive to its merger with 36th Avenue; then northeasterly along said avenue to its intersection with Alameda De Las Pulgas; then northerly along Alameda De Las Pulgas to the point of beginning.

That portion of the county beginning at a point where El Camino Real (State Highway 82) intersects Encinal Avenue; then northwesterly along El Camino Real to its intersection with Charter; then northeasterly along Charter to its end; then northeasterly along an imaginary line from the end of Charter to the intersection of Middlefield and Charter Street; then northeasterly along Charter Street to its intersection with Broadway; then northwesterly along an imaginary line from said intersection to the intersection of Woodside Road (State Highway 84) and U.S. Highway 101; then easterly along an imaginary line from said intersection to the end of Marsh Road; then southerly along Marsh Road to its intersection with U.S. Highway 101; then southerly along an imaginary line from said intersection to the intersection of Acorn Way and Greenoaks Drive; then westerly along Acorn Way to its intersection with Catalpa Drive; then southerly along said drive to its intersection with Linden Avenue; then southerly along said avenue to its intersection with Middlefield; then westerly along Middlefield to its intersection with Encinal Avenue; then southerly along said avenue to the point of beginning."

Santa Clara County. "That portion of the county bounded by a line beginning at a point where East Charleston Road intersects Independence Avenue; then southerly along said avenue to its intersection with West Middlefield Road; then easterly along said road to its intersection with Thompson Avenue; then southwesterly along said avenue to its intersection with Central Expressway; then southwest from said intersection along an imaginary line to its intersection with the intersection of Gabriel Avenue and Showers Drive; then southerly along Showers Drive to its intersection with El Camino Real; then northwesterly along El Camino Real to its intersection with San Antonio Road; then southerly along said road to its intersection with Loucks Avenue; then westerly along said avenue to its intersection with Los Altos Avenue; then northwesterly along an imaginary line from said intersection to the end of Laguna Avenue; then northwesterly along said avenue to its intersection with Matadero Avenue; then northwesterly along said avenue to its intersection with El Camino Real; then northwesterly along El Camino Real to its intersection with Lambert Avenue; then northeasterly along said avenue to its intersection with Park Boulevard; then northwesterly along an imaginary line from said intersection to the intersection of Alma Street and El Dorado Avenue; then northeasterly along said avenue to its intersection with Cowper Street; then northwesterly along said street to its intersection with Colorado Avenue; then northeasterly along said avenue to its intersection with Middlefield Road; then southeasterly along said road to its intersection with Loma Verde Avenue; then northeasterly along said avenue to its intersection with Louis Road; then southeasterly along said road to its intersection with East Meadow Drive; then northeasterly along said drive to its intersection with Fabian Way; then southerly along said way to its intersection with East Charleston Road; then easterly along said road to the point of beginning.

That portion of the country beginning at a point where Blossom Hill Road intersects Cahalan Avenue; then southerly on Cahalan Avenue to its end; then southerly from the end of said avenue along an imaginary line to its intersection with Camden Avenue and Almaden Expressway; then southeasterly on Almaden Expressway to Almaden Road; then southeasterly on Almaden Road to its intersection with McKean Road; then northeasterly on said road to its intersection with Harry Road; then northeasterly on Harry Road to its intersection with Henwood Road; then northeasterly from said intersection along an imaginary line to its intersection with the intersection of Curie Drive and Cottle Road; then north on Cottle Road to its intersection with Santa Teresa Boulevard; then west on said boulevard to its intersection with Lean Avenue; then northerly on Lean Avenue to its intersection with Blossom

Hill Road; then westerly on said road to the point of beginning.

San Diego County. "That portion of the county bounded by a line beginning at a point where Interstate 805 crosses Friars Road; then southerly on Interstate 805 to its intersection with Adams Avenue; then east on Adams Avenue to its intersection with Aldine Drive; then northerly and easterly on Aldine Drive to its intersection with Fairmount Avenue; then north on said avenue to its intersection with Montezuma Road; then easterly on said road to its intersection with Yerba Santa Drive; then northwesterly on said road to its intersection with Mesquite Road; then northwesterly on said drive to its intersection with Yerba Anita Drive; then northerly on said drive to its end; then northerly along an imaginary line from the end of Yerba Anita Drive to its intersection with the intersection of Elsa Road and Fenmore Way; then westerly on Elsa Road to its intersection with Crawford Street; then north on Crawford Street to its intersection with Zion Avenue; then west on Zion Avenue to its intersection with Mission Gorge Road; then northwesterly from said intersection along an imaginary line to its intersection with the intersection of Taussig Street and Patriot Street; then westerly from said intersection along an imaginary line to its intersection with the intersection of Melbourne Drive and Irvington Avenue; then southerly on Melbourne Drive to its intersection with Ronda Avenue; then west and north on said avenue to its intersection with Bartel Place; then southerly from said intersection along an imaginary line to its intersection with the point of beginning."

Illinois

DuPage County. "SE¼ sec. 2, sec. 11, W½ sec. 12, NW¼ sec. 13, and N½ sec. 14, T. 38 N., R. 9 E.; secs. 8, 9, 10, 11, 16, 17, 18, 19, 20, 29, and 30, T. 39 N., R. 10 E.; SW¼ sec. 5, S½ sec. 6, sec. 7, W½ sec. 8, NW¼ sec. 17 and N½ sec. 18, T. 38 N., R. 11 E.; and secs. 10, 11, 13, 14, 15, 16, 21, 22, and 23, T. 40 N., R. 11 E."

Kane County. "SW¼ sec. 21, T. 40 N., R. 8 E."

Lake County. "SE¼ sec. 28, T. 43 N., R. 10 E.; NE¼ sec. 24, T. 45 N., R. 11 E.; and SW¼ sec. 6, T. 45 N., R. 11 E."

Michigan

Berrien County. "Sec. 1 and 2, T. 3 S., R. 18 W."

Grand Traverse County. "Sec. 36, T. 28 N., R. 11 W."

Kalamazoo County. "Sec. 1 and 2, T. 1 S., R. 11 W., and sec. 16 and 17, T. 3 S., R. 11 W."

Kent County. "Sec. 27, T. 5 N., R. 10 W."

Muskegon County. "Sec. 6 and 7, R. 16 W., T. 9 N., and sec. 1 and 2, R. 17 W., T. 9 N."

Ottawa County. "Secs. 23, 24, 25, and 26, T. 7 N., R. 16 W."

Van Buren County. "Sec. 15, 16, 21, and 22, T. 3 S., R. 13 W."

Ohio

Columbiana County. "That portion of the city of Salem and Perry Township bounded by a line beginning at a point where Painter Road and Brooklyn Avenue intersect, then south along Brooklyn Avenue to its intersection with 3rd Avenue, then west along 3rd Avenue to its intersection with Highland Avenue, then north along Highland Avenue to its intersection with Painter Road, then east along Painter Road to the point of beginning."

Franklin County. "That portion of the village of Blacklick bounded by a line beginning at a point where Blacklick Creek and Columbus-Newark Road intersect; then west along said road to its intersection with Taylor Station Road; then northerly along said road to its intersection with Taylor Road; then easterly along said road to its intersection with Reynoldsburg-New Albany Road; then due east from said intersection along an imaginary line to its intersection with Blacklick Creek; then southerly along said creek to the point of beginning.

"That portion of the city of Gahanna bounded by a line beginning at a point where Morse Road and Shull Road intersect; then southerly along said road to its intersection with Headley Road; then east along Headley Road to its intersection with Clark State Road; then southwesterly along said road to its intersection with Clofts Road; then northerly along said road to its intersection with Columbus-Millersburg Road; then northeasterly along said road to its intersection with Morse Road; then east along said road to the point of beginning."

Hamilton County. "That portion of the city of Cincinnati bounded by a line beginning at a point where Wasson Road intersects with Paxton Avenue; then south along said avenue to its intersection with Erie Avenue; then west along said avenue to its intersection with Edwards Road; then north along said road to its intersection with Wasson Road; then east along said road to the point of beginning."

"That portion of Anderson Township bounded by a line beginning at a point where Lawyer Road intersects with Hunley Road; then northeast along said road to its intersection with Wolfangle Road; then southerly along said road to its intersection with Clough Pike; then southwest, southwesterly, and northwest along said pike to its intersection with Newtown Road; then northeast along said road to its intersection with Lawyer Road; then southeast along said road to the point of beginning."

Knox County. "That portion of Clinton and Morris Townships bounded by a line beginning at a point where McKensie Road and the eastern boundary line of Morris Township intersect; then south along said township line to its intersection with the northern boundary line of the city limit line of the city of Mt. Vernon; then westerly, northerly, and westerly along said city limit line to its intersection with Mansfield Road; then northerly along said road to its intersection with McKensie Road; then easterly along said road to the point of beginning."

Lucas County. "That portion of the city of Sylvania bounded by a line beginning at a point where Monroe Street and Whiteford Road intersect; then south along said road to its intersection with Cory Road; then northwest along said road to its intersection with Monroe Street; then southeast along said street to the point of beginning."

Oregon

Marion County. "That portion of the city of Salem beginning at a point where Liberty Road S.E. intersects Salem Heights Avenue; then east along said avenue to Ratcliff Drive; then easterly along said drive to its intersection with Bluff Avenue; then due east from said intersection along an imaginary line to the Southern Pacific Railroad; then southeast along said railroad to its intersection with Madrona Avenue; then southwest along said avenue to its intersection with Strong Road; then southeast along said road to its intersection with Reed Road; then southwest along said road to its intersection with Battle Creek Road; then southeast along said road to its intersection with Boone Road; then east along said road to its intersection with Interstate Highway 5; then southerly along said highway to its intersection with Delaney Road; then westerly along said road to its intersection with Sunnyside Road; then north along said road to its intersection with Hylo Road; then west along said road to its intersection with Liberty Road; then north along said road to its intersection with Cole Road; then westerly along said road to its intersection with Moore Road; then northwesterly along said

road to its intersection with Skyline Road; then northeast along said road to its intersection with Liberty Road; then northeast along said road to the point of the beginning."

"Sec. 23, T. 7 S., R. 3 W."

"Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, and 35, T. 8 S., R. 3 W."

"Secs. 6, 7, 17, 18, 19, 20, 28, 29, 30, and S½ of 21, T. 8 S., R. 2 W."

Washington

King County. "The entire county."

Kitsap County. "The entire county."

Snohomish County. "That portion of the county lying west of State Highway 9."

Wisconsin

Dane County. "That portion of the city of Monona beginning at a point where Lake Monona shoreline and Winnequah Road intersect; then easterly on said road to its intersection with Schluter Road; then northeasterly on said road to its intersection with Maywood Road; then northeasterly along said road to its intersection with Greenway Road; then east on said road to its intersection with Midmoor Road; then northerly on said road to its intersection with Outlook Street; then northwesterly on said street to its intersection with Lake Monona shoreline; then southeasterly along said shoreline to the point of beginning."

Waukesha County. "N½ sec. 2, and NE¼ sec. 3, T. 7 N., R. 17 E.; SE¼ sec. 34, and S½ sec. 35, T. 8 N., R. 17 E.

That portion of the city of Elm Grove bounded by a line beginning at a point where Juneau Boulevard and Highland Drive intersect; then north on Highland Drive to its intersection with North Avenue; then east on North Avenue to its intersection with CM ST P&P railroad tracks; then southeasterly along said tracks to their intersection with Juneau Boulevard; then west on Juneau Boulevard to the point of beginning."

Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been determined that the gypsy moth no longer occurs in the above-described areas. Accordingly, there is no longer a basis for continuing to list such areas as regulated areas for the purpose of preventing the artificial spread interstate of gypsy moth. Therefore, as an emergency measure, it is necessary to delete those areas from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

Further, the effect of deleting the above-described areas in California, Illinois, Ohio, and Wisconsin from the list of gypsy moth regulated areas is to remove all areas in California, Illinois, Ohio, and Wisconsin from the list of regulated areas. As a result, there is no longer a basis for quarantining California, Illinois, Ohio, and Wisconsin for gypsy moth. Therefore, this amendment also deletes the States of California, Illinois, Ohio, and Wisconsin from the list of States quarantined because of gypsy moth in § 301.45(a).

In addition, this document amends the regulations by making several nonsubstantive editorial changes.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Gypsy moth, Plant pests, Quarantine, Transportation.

PART 301—[AMENDED]

Under the circumstances referred to above, the Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 through 301.45–14) are amended as follows:

§ 301.45 [Amended]

1. Section 301.45(a) is amended by removing all references to "California", "Illinois", "Ohio", and "Wisconsin".

2. In § 301.45(a) is amended by adding (in alphabetical order) the reference to "District of Columbia".

3. In § 301.45–2a(a) is revised to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The areas described below are designated as gypsy moth regulated areas, and such regulated areas are divided into high-risk areas or low-risk areas as follows:

Connecticut

(1) *High-risk area.* The entire State.

(2) *Low-risk area.* None.

Delaware

(1) *High-risk area.*

Kent County. The entire county.

New Castle County. The entire county.

(2) *Low-risk area.*

Sussex County. The entire county.

District of Columbia

(1) *High-risk area.* The entire District.

(2) *Low-risk area.* None.

Maine

(1) *High-risk area.*

Androscoggin County. The entire county.

Cumberland County. The entire county.

Franklin County. The townships of Avon, Carthage, Chesterville, Farmington, Industry, Jay, New Sharon, New Vineyard, Perkins, Strong, Temple, Washington, Weld, and Wilton.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Albany, Batchelders Grant, Bethel, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hanover, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Mexico, Milton Plantation, Norway, Oxford, Paris, Peru, Porter, Rumford, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Carmel, Charleston, Clifton, Corinna, Cornith, Dexter, Dixmont, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kenduskeag, La Grange, Levant, Lincoln, Lowell Mattamiscontis, Maxfield, Milford, Newburgh, Newport, Old Town City, Orono, Orrington, Pasadumkeag, Plymouth, Stetson, Summit, Veazie-Eddington, and 1 ND.

Piscataquis County. The townships of Atkinson, Medford, Milo, and Orneville.

Sagadahoc County. The entire county.

Somerset County. The townships of Anson, Athens, Cambridge, Canaan, Cornville, Detroit, Embden, Fairfield, Harmony, Hartland, Madison, Mercer, New Portland, Norridgewock, Palmyra, Pittsfield, Ripley, Skowhegan, Smithfield, Solon, St. Albans, and Starks.

Waldo County. The entire county.

Washington County. The townships of Addison, Beals, Beddington, Centerville, Cherryfield, Columbia, Columbia Falls, Crawford, Deblois, East Machias, Harrington, Jonesborro, Jonesport, Machias, Machiasport, Marshfield, Milbridge, Northfield, Rogue Bluffs, Steuben, Wesley, Whitneyville, 5 ND, 18 ED, 18 MD, 19 ED, 19 MD, 24 MD, 25 MD, 26 ED, 27 ED, 29 MD, 30 MD, 31 MD, 36 MD, 37 MD, 42 MD, and 43 MD.

York County. The entire county.

(2) *Low-risk area.*

Aroostook County. Township of Molunkus.

Franklin County. The townships of Crockertown, Dallas Plantation, Freeman, Jerusalem, Kingfield, Madrid, Mount Abraham, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, 6, E, and D.

Oxford County. The townships of Andover, Andover North, Andover West, Byron, Gilead, Grafton, Magalloway Plantation, Newry, Richardsontown, Riley, Roxbury, Upton, C, and C Surplus.

Penobscot County. The townships of Burlington, Chester, E, Millinocket, Hopkins Academy Grant, Indian Purchase, Lee, Long A, Mattawamkeag, Medway, Millinocket, Winn, Woodville, Veazie Gore, AR 7, AR 8 & 9, and 3 R 1.

Piscataquis County. The townships of Abbott, Dover-Foxcroft, Guilford, Kingsbury Plantation, Parkman, Sangeville, Sebec, Wellington, and 1 R 9.

Somerset County. The townships of Bingham, Brighton Plantation, Caratunk, Concord Plantation, Highland Plantation, Lexington Plantation, Mayfield, Moscow, and Pleasant Ridge Plantation.

Washington County. The townships of Alexander, Baileyville, Baring, Calais,

Cooper, Charlotte, Cutler, Dennysville, Eastport, Edmonds, Lubec, Marion, Meddybemps, Pembroke, Perry, Princeton, Robbinston, Trescott, Whiting, Plantation 14, and Plantation 21.

Maryland

(1) *High-risk area.*
Allegany County. The entire country.
Baltimore City. The entire city.
Baltimore County. The entire county.
Caroline County. That portion of the county bounded by a line beginning at a point where State Highway 404 intersects the Caroline County-Queen Annes County line; then northerly along said line to its intersection with the Maryland-Delaware State line; then southerly along said line to its intersection with State Highway 404; then northwesterly along said highway to the point of beginning.
Carroll County. The entire county.
Cecil County. The entire county.
Frederick County. The entire county.
Garrett County. That portion of the county where State Highway 669 intersects with the Maryland-Pennsylvania State line; then south along said highway to its intersection with U.S. Highway 40; then east along said highway to its intersection with State Highway 495; then southerly along said highway to its intersection with State Highway 135; then east along said highway to its intersection with the Garrett County-Allegany County line; then north along said line to its intersection with the Maryland-Pennsylvania State line; then west along the Maryland-Pennsylvania State line to the point of beginning.
Harford County. The entire county.
Howard County. The entire county.
Kent County. The entire county.
Queen Annes County. The entire county.
Washington County. The entire county.
(2) *Low-risk area.*
Anne Arundel County. The entire county.
Caroline County. That portion of the county bounded by a line beginning at a point where State Highway 404 intersects the Caroline County-Queen Annes County line; then southerly along said line to its intersection with the Caroline County-Talbot County line; then southerly along the Caroline County-Talbot County line to its intersection with the Caroline County-Dorchester County line; then easterly along the Caroline County-Dorchester County line to the Maryland-Delaware State line; then north along the Maryland-Delaware State line to its intersection with State Highway 404; then northwesterly along said highway to the point of beginning.
Dorchester County. The entire county.
Garrett County. That portion of the county bounded by a line beginning at a point where State Highway 669 intersects with the Maryland-Pennsylvania State line; then west along said line to its intersection with the Maryland-West Virginia State line; then south and northeasterly along said line to its intersection with the Garrett County-Allegany County line; then north along said line to its intersection with State Highway 135; then westerly along said highway to its intersection with State Highway 495; then northerly along said highway to its intersection with U.S. Highway 40; then west along said highway to its intersection with State Highway 669; then north on said highway to the point of beginning.
Montgomery County. The entire county.
Prince Georges County. The entire county.
Talbot County. The entire county.
Wicomico County. The entire county.
Worcester County. The entire county.

Massachusetts

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None

Michigan

(1) *High-risk area.*
Isabella County. Sec. 11, 12, 13, and 14, T. 14 N., R. 3 W., sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.
Midland County. Sec. 5 and 6, T. 14 N., R. 2 W.
Oakland County. Sec. 18, T. 3 N., R. 7 E., sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.
(2) *Low-risk area.*
Arenac County. The entire county.
Bay County. The entire county.
Branch County. The entire county.
Calhoun County. The entire county.
Clare County. The entire county.
Clinton County. The entire county.
Eaton County. The entire county.
Genesee County. The entire county.
Gladwin County. The entire county.
Gratiot County. The entire county.
Huron County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Iosco County. The entire county.
Isabella County. The entire county *except* sec. 11, 12, 13, and 14, T. 14 N., R. 3 W.; sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.
Jackson County. The entire county.
Lapeer County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county.
Macomb County. The entire county.
Mecosta County. The entire county.
Midland County. The entire county *except* sec. 5 and 6, T. 14 N., R. 2 W.
Missaukee County. The entire county.
Monroe County. The entire county.
Montcalm County. The entire county.
Newaygo County. The entire county.
Oakland County. The entire county *except* sec. 18, T. 3 N., R. 7 E., sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.
Ogemaw County. The entire county.
Osceola County. The entire county.
Roscommon County. The entire county.
Saginaw County. The entire county.
St. Clair County. The entire county.
Sanilac County. The entire county.
Shiawasee County. The entire county.
Tuscola County. The entire county.
Washtenaw County. The entire county.
Wayne County. The entire county.

New Hampshire

(1) *High-risk area.*
Belknap County. The entire county.
Carroll County. The entire county.
Cheshire County. The entire county.
Grafton County. The entire county.
Hillsboro County. The entire county.
Merrimack County. The entire county.
Rockingham County. The entire county.
Strafford County. The entire county.
Sullivan County. The entire county.
(2) *Low-risk area.*
Coos County. The entire county.

New Jersey

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

New York

(1) *High-risk area.*
Albany County. The entire county.
Allegany County. The entire county.
Bronx County. The entire county.
Broome County. The entire county.
Cattaraugus County. The entire county.
Cayuga County. The towns of Fleming, Genoa, Ledyard, Locke, Moravia, Niles, Owasco, Scipio, Sempronius, Springport, Sterling, Summer Hill, and Venice.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The towns of Afton, Bainbridge, Coventry, German, Greene, Guilford, McDonough, New Berlin, North Norwich, Norwich, Oxford, Pharsalia, Pitcher, Plymouth, Preston, Smithville, and the city of Norwich.
Clinton County. The entire county.
Columbia County. The entire county.
Cortland County. The towns of Cincinnatus, Cortlandville, Freetown, Hartford, Lapeer, Marathon, Solon, Taylor, Virgil, Willet, and the city of Cortland.
Delaware County. The entire county.
Dutchess County. The entire county.
Erie County. The towns of Aurora, Boston, Brant, Cattaraugus, Colden, Collins, Concord, Eden, Evans, Hamburg, Holland, North Collins, Orchard Park, Sardinia, and Wales.
Essex County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Greene County. The entire county.
Hamilton County. The entire county.
Herkimer County. The entire county.
Jefferson County. The towns of Alexandria, Antwerp, Brownville, Cape Vincent, Clayton, and Theresa.
Kings County. The entire county.
Livingston County. The towns of Conesus, Lima, North Dansville, Ossian, Sparta, Springwater, and West Sparta.
Madison County. The town of Sullivan.
Monroe County. The entire county.
Montgomery County. The entire county.
Nassau County. The entire county.
New York County. The entire county.
Oneida County. The towns of Annsville, Camden, Deerfield, Lee, Marcy, New Hartford, Rome City, Utica City, Verona, Vienna, Western, Westmoreland, and Whitestown.
Onondaga County. The towns of Clay, Lafayette, and Otisco.
Ontario County. The towns of Naples and South Bristol.
Orange County. The entire county.
Otsego County. The entire county.
Oswego County. The towns of Constantia, Hastings, Palermo, Schroeppel, Volney, and West Monroe.
Putnam County. The entire county.
Queens County. The entire county.
Rensselaer County. The entire county.

Richmond County. The entire county.
Rockland County. The entire county.
Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Schuyler County. The entire county.
Seneca County. The towns of Covert, Lodi, Ovid, Romulus, and Varick.
St. Lawrence County. The towns of Brasher, Hammond, Hopkinson, Lawrence, Louisville, Macomb, Massena, Norfolk, Rossie, and Stockholm.
Steuben County. The entire county.
Suffolk County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Westchester County. The entire county.
Yates County. The entire county.
(2) *Low-risk area.*
Cayuga County. The towns of Aurelius, Brutus, Cato, Conquest, Ira, Mentz, Montezuma, Sennett, Throop, and Victory.
Chenango County. The towns of Columbus, Lincklaen, Otselie, Smyrna, and Sherburne.
Cortland County. The towns of Cuyler, Homer, Preble, Scott, and Truxton.
Erie County. The towns of Amherst, Alden, Cheektowaga, Clarence, Elma, Grand Island, Lancaster, Marilla, New Stead, Tonawanda, West Seneca, and the cities of Buffalo, Lackawana, and Tonawanda.
Genesee County. The entire county.
Jefferson County. The towns of Adams, Champion, Ellisburg, Henderson, Hounsfield, LeRay, Lorraine, Lyme, Orleans, Pamelia, Philadelphia, Rodman, Rutland, Wilma, Worth, Watertown, and Watertown City.
Lewis County. The entire county.
Livingston County. The towns of Avon, Calendonia, Geneseo, Groveland, Leicester, Livonia, Mount Morris, Nunda, Portage, and York.
Madison County. The entire county *except* the town of Sullivan.
Niagara County. The entire county.
Oneida County. The towns of Augusta, Ava, Boonville, Bridgewater, Florence, Floyd, Forestport, Kirkland, Marshall, Paris, Remsen, Sangerfield, Steuben, Trenton, and Vernon.
Onondaga County. The entire county *except* the towns of Clay, Lafayette, and Otisco.
Ontario County. The entire county *except* the towns of Naples and South Bristol.
Orleans County. The entire county.
Oswego County. The entire county *except* the towns of Constantia, Hastings, Palermo, Schroeppel, Volney, and West Monroe.
Seneca County. The towns of Fayette, Junus, Seneca Falls, Tyre, and Waterloo.
St. Lawrence County. The entire county *except* the towns of Brasher, Hammond, Hopkinson, Lawrence, Louisville, Macomb, Massena, Norfolk, Rossie, and Stockholm.
Wayne County. The entire county.
Wyoming County. The entire county.

North Carolina

(1) *High-risk area.* None.
(2) *Low-risk area.*
Carteret County. That area bounded by a line beginning at a point on the northern shoreline of Taylors Creek and running north on an imaginary course to the intersection of State Secondary Road 1310 and State Secondary Road 1311; then northerly along State Secondary Road 1311 to its ending; then northerly along an imaginary line to its intersection with North River; then southwesterly along North River shoreline to its junction with Taylors Creek; then westerly along Taylors Creek to the point of beginning.

Oregon

(1) *High-risk area.*
Lane County. Beginning at the point where Interstate 5 intersects with Interstate 105; then easterly on Interstate 105 to its intersection with Highway 126; then easterly on said highway to its intersection with Deerhorn Road; then easterly on said road to its intersection with Booth Kelly Road; then easterly on Booth Kelly Road to its intersection with the north boundary of sec. 27, T. 17 S., R. 1 E.; then due east along an imaginary line to the northeast corner of sec. 26, T. 17 S., R. 3 E.; then due south along an imaginary line to the north boundary of sec. 1, T. 20 S., R. 4 E.; then due west along said boundary to the northwest corner of said section; then due south along an imaginary line to the southeast corner of sec. 26, T. 22 S., R. 3 E.; then due west along an imaginary line to the northwest corner of sec. 31, T. 22 S., R. 2 E.; then due south along the west boundary of said section to the northeast corner of sec. 36, T. 22 S., R. 1 E.; then due west along an imaginary line to the southwest corner of sec. 28, T. 22 S., R. 1 W.; then due north along an imaginary line to the northwest corner of said section; then due west along an imaginary line to the northwest corner of sec. 30, T. 22 S., R. 1 W.; then due south along the west boundary of said section to the northeast corner of sec. 25, T. 22 S., R. 2 W.; then due west along an imaginary line to the northwest corner of sec. 29, T. 22 S., R. 2 W.; then due north along an imaginary line to the northeast corner of sec. 17, T. 22 S., R. 2 W.; then due west along the north boundary of said section to the east boundary of sec. 13, T. 22 S., R. 3 W.; then due north along said boundary to the northeast corner of said section; then due west along an imaginary line to the northwest corner of sec. 18, T. 22 S., R. 3 W.; then due north along an imaginary line to the northwest corner of sec. 30, T. 21 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 29, T. 20 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 9, T. 20 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the intersection of said line and Camas Swale Road; then westerly along said road to its intersection with the west boundary of sec. 13, T. 19 S., R. 4 W.; then due north along an imaginary line to its intersection with Fox Hollow Road; then westerly along said road to its intersection with McBeth Road; then northerly along McBeth Road to its intersection with the west boundary of sec. 23, T. 18 S., R. 4 W.; then due north along the west boundary of said section to the northwest corner of said section; then due west along an imaginary line to the southwest corner of sec. 16, T. 18 S., R. 4 W.; then due north along an imaginary line to the intersection of said line with Highway 126; then westerly along said highway to its intersection with Territorial Highway; then due south along Territorial Highway to its intersection with the south boundary of sec. 36, T. 17 S., R. 6 W.; then due west along an imaginary line to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 14, T. 16 S., R. 6 W.; then due east along an imaginary line to its intersection with Siegman-Smyth Road; then northerly along said road to its intersection with High Pass Road; then easterly along High Pass Road to the northwest corner of sec. 1, T. 16 S., R. 5 W.; then due south along an imaginary line to the southwest corner of sec. 12, T. 16 S., R. 5 W.; then due east along the south boundary of said section to Vogt Road; then southerly along said road to its intersection with Meadowview Road West; then due east along Meadowview Road West to its intersection with Highway 99; then southeasterly along said highway to its intersection with Belt Line Highway; then easterly along Belt Line Highway to its intersection with the west boundary of sec. 18, T. 17 S., R. 3 W.; then due north along said boundary to the northwest corner of said section; then due east along an imaginary line to the northeast corner of sec. 17, T. 17 S., R. 3 W.; then due south along the east boundary of said section to its intersection with Belt Line Highway; then easterly along said highway to its intersection with Interstate 5; then southerly along Interstate 5 to the point of beginning.
(2) *Low-risk area.* None.

Pennsylvania

(1) *High-risk area.*
Adams County. The entire county.
Bedford County. The entire county.
Berks County. The entire county.
Blair County. The entire county.
Bradford County. The entire county.
Bucks County. The entire county.
Cambria County. The entire county.
Cameron County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clarion County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Elk County. The entire county.
Forest County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Huntingdon County. The entire county.
Indiana County. The entire county.
Jefferson County. The entire county.

Juniata County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
McKean County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Philadelphia County. The entire county.
Pike County. The entire county.
Potter County. The entire county.
Schuylkill County. The entire county.
Somerset County. The entire county.
Snyder County. The entire county.
Sullivan County. The entire county.
Susquehanna County. The entire county.
Tioga County. The entire county.
Union County. The entire county.
Venango County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Westmoreland County. The entire county.
Wyoming County. The entire county.
York County. The entire county.
(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

Vermont

(1) *High-risk area.*
Addison County. The entire county.
Bennington County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Rutland County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.
(2) *Low-risk area.*
Caledonia County. The entire county.
Essex County. The entire county.
Lamoille County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Washington County. The entire county.

Virginia

(1) *High-risk area.*
Arlington County. The entire county.
City of Alexandria. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Manassas. The entire city.
City of Winchester. The entire city.
Clarke County. The entire county.
Fairfax County. The entire county.
Frederick County. The entire county.
Loudoun County. The entire county.
(2) *Low-risk area.*
Accomack County. That portion of the county north of a line beginning at the intersection of State Road 695 and the Chesapeake Bay on the west; then easterly along State Road 695 to its intersection with State Road 679; then north along State Road 679 to its intersection with State Road 695; then easterly along State Road 695 to its intersection with Powells Bay; then east from said intersection along an imaginary line to its intersection with the Atlantic Ocean.
Culpeper County. The entire county.
Fauquier County. The entire county.
Madison County. That portion of the county north of a line beginning at the intersection of State Route 615 and the Greene-Madison County line; then easterly along State Route 615 to its intersection with State Route 662; then northerly along State Route 662 to the boundary of the Shenandoah National Park; then northerly along the Shenandoah National Park boundary to its intersection with State Route 672; then east along State Route 672 to its intersection with State Route 649; then northeast along State Route 649 to its intersection with State Route 670; then southeasterly along State Route 670 to its intersection with State Route 231; then southeasterly along State Route 231 to its intersection with State Route 609; then easterly along State Route 609 to its intersection with the Madison-Culpeper County line.
Page County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Shenandoah County. That portion of the county which lies north and east of State Route 675.
Stafford County. The entire county.
Warren County. The entire county.

Washington

(1) *High-risk area.* None.
(2) *Low-risk area.*
Pierce County. The entire county.
Whatcom County. That portion of the county bounded by a line beginning at a point where the Skagit-Whatcom County line intersects the Belingham-Samish Bays; then easterly along said line to its intersection with State Highway 9; then northerly along said highway to its intersection with State Highway 542; then westerly from said intersection along an imaginary line to its intersection with the easterly most point of Gushen Road; then westerly along Gushen Road to its intersection with Axton Road; then westerly along Axton Road to its intersection with the Nooksack River; then southerly along the Nooksack River to Bellingham Bay; then southerly along Bellingham Bay to the point of beginning.

West Virginia

(1) *High-risk area.*
Berkeley County. The entire county.
Jefferson County. The entire county.
Morgan County. The entire county.
(2) *Low-risk area.*
Grant County. That portion of the county lying north of State Highway 93 and west of State Highway 42 and U.S. Highway 50.
Hampshire County. The entire county.
Mineral County. The entire county.

Authority: 7 U.S.C. 161, 162; 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 2nd day of April 1985.

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

[FR Doc. 85-8180 Filed 4-4-85; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 510]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period April 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period April 7–13, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 2, 1985, at Los Angeles, California, to consider

the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the lemon demand pattern continues to be good on larger sizes, steady on middle sizes, and easy on smaller sizes of fruit.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.810 is added as follows:

§ 910.810 Lemon Regulation 510.

The quantity of lemons grown in California and Arizona which may be handled during the period April 7, 1985, through April 13, 1985, is established at 280,000 cartons.

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

Dated: April 3, 1985.

Thomas R. Clark,

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

[FR Doc. 85–8364 Filed 4–4–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule removes Paralegal Specialist from the list of Service positions that have been designated to exercise the powers and duties of an immigration officer. This position was abolished by the Reorganization Act of 1983.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Thomas E. Cook, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–5014

SUPPLEMENTARY INFORMATION: The Paralegal Program was begun in 1975 in recognition of the fact that there was much in the naturalization function that did not require the expertise of an attorney. The paralegal was an assistant to the general attorney empowered to administer oaths, take testimony, and recommend courses of action.

On January 1, 1983 the Service reorganization plan became effective. Included in the plan was the merger of the Naturalization and Adjudications Programs under a single Assistant Commissioner for Adjudications in the Examinations Division. As part of the merger, the paralegal position was abolished and existing paralegals were converted to Immigration Examiners in accordance with formal reduction-in-force proceedings. Paralegals who chose not to accept examiner positions were offered other positions at the same grade level and location where feasible. The position was formally abolished effective June 12, 1983.

Compliance with 5 U.S.C. 533 as to notice of proposed rulemaking and delayed effective date is unnecessary because this order relates to agency management or personnel.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant 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 because it relates to agency organization, management, or personnel.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government Agencies), Organization and functions (Government Agencies).

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

In § 103.1, paragraph (q) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration Officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention service officer, detention guard, investigator, general attorney, applications adjudicator, contact representative, or supervisory officer of such employees is hereby designated an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

* * * * *

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

Dated: April 1, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85–8183 Filed 4–4–85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85–027]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

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

DATES: Effective date of the interim rule is April 5, 1985. Written comments must be received on or before June 4, 1985.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

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

Prior to the effective date of this document, the State of Georgia was classified as a Class B State. It has been necessary to classify this State as Class B rather than Class A because of the herd infection rate. To attain and maintain Class A status, a State or Area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 2.5 herds per 1,000 (0.25 percent) if the State has more than 10,000 herds. A review of brucellosis program records establishes that the brucellosis classification of the State of Georgia, which has approximately 43,000 herds of cattle, should be changed to Class A since this State now meets the criteria for classification as Class A.

Executive Order and Regulatory Flexibility Act

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

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

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

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Georgia.

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

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for 9 CFR Part 78 is revised to read:

Authority: 21 U.S.C. 111-113, 114a-1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(b) is amended by adding "Georgia," immediately before "Idaho".

3. In § 78.20(c), "Georgia," is removed.

Done at Washington, D.C., this 1st day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-8179 Filed 4-4-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-83-AD; Amdt. 39-5033]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires inspection and repairs, as necessary, of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks. Several cases of bonding delamination in these components have been reported. If this condition is not corrected, it has the potential of leading to rapid decompression of the airplane.

EFFECTIVE DATE: May 13, 1985.

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

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

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) issued a Consigne de Navigabilité which requires correction of bonding delamination and corrosion on the fuselage structure of the Airbus Industrie Model A300 airplane. The DGAC has classified three Airbus Industrie service bulletins pertaining to the subject as mandatory. These service bulletins prescribe inspections and repairs, as necessary, of the fuselage structure.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the **Federal Register** on Sepember 11, 1984 (49 FR 35641). The comment period closed on October 29, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. Since the NPRM was issued before the French DGAC airworthiness directive (AD) had been published, the manufacturer requested that the FAA postpone issuance of the final rule until after the DGAC had released its AD. This was done.

The other commenter indicated that the compliance time of six months after the effective date of the AD was too short, and requested that the compliance time be changed to twelve months or, at least, to June 30, 1985. The FAA has determined that this commenter's request has been satisfied, in light of the fact that issuance of this final rule has been held for a period of time pending the release of the French DGAC airworthiness directive. The FAA considers a six-month compliance time to be appropriate, without compromising safety.

After the NPRM was published, the manufacturer released later revisions of the pertinent service bulletins which contain minor changes and do not increase the burden on any operator. Accordingly, the final rule has been revised to:

1. Reference the later revisions to the service bulletins,

2. Incorporate an optional terminating action for certain inspections by accomplishing Airbus Industrie Modification 2904; and

3. Reduce the area which needs to be inspected according to the requirements of paragraph C. of the final rule.

It is estimated that 27 U.S. registered airplanes will be affected by this AD, that it will take approximately 550 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $594,000.

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

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes mentioned above.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156, certificated in all categories. To prevent rapid decompression of the aircraft, accomplish the following, unless already accomplished. Compliance is required within the time schedules indicated below, or within six months after the effective date of this AD, whichever occurs later:

A. Prior to the threshold limits specified in Table 1 of Airbus Industrie Service Bulletin A300-53-148, Revision 6, dated October 10, 1984, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination in accordance with the accomplishment instructions of the service bulletin:

1. If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

2. If delamination is detected in any of the inspections above, perform the actions indicated in Figure 3, Follow-up Action, of the service bulletin.

B. Prior to the threshold limits specified in Figure 1, Inspection Program, of Airbus Industrie Service Bulletin A300-53-178, Revision 4, dated October 10, 1984, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the accomplishment instructions of the service bulletin. Repeat the inspections in accordance with the schedule shown in Figure 1 of the service bulletin.

C. Prior to the threshold limits specified in Figure 1, Inspection Frequency, of Airbus Industrie Service Bulletin A300-53-149, Revision 6, dated October 10, 1984, inspect for debonding and repair, if necessary, bonded stringers and bonded doublers in the area between frame 1 and frame 18 and between frame 40 and frame 80 on all airplanes up to and including serial number 156, and in the area between frame 18 and frame 40 on all airplanes up to and including serial number 104, in accordance with the accomplishment instructions of the service bulletin.

The inspection of stringers is divided into three areas, as indicated in Figure 2 of the service bulletin with the following options:

(1) Inspection in Area 1 is not required if Modification No. 2904, described in Airbus

Industrie Service Bulletin A300-53-146, dated November 28, 1980, has been incorporated.

(2) Preventive riveting of stringers located in Area 2 in accordance with Airbus Industrie Service Bulletin A300-53-197, dated October 10, 1984, allows for an extension of the interval of subsequent repetitive inspections to the interval required for Area 3.

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

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

This amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8114 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-90-AD; Amdt. 39-5031]

Airworthiness Directives; Douglas Aircraft Company A-26/B-26 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Douglas Aircraft Company A-26/B-26 series airplanes by individual letters. The AD requires the inspection of the lower forward and aft wing spar cap, inboard and outboard of the engine nacelle. The AD is prompted by a report of loss of structural integrity of the wing spar cap, which subsequently led to wing failure and loss of the airplane.

DATES: Effective April 16, 1985. This AD was effective earlier to all recipients of priority mail AD 84-15-02, issued August 1, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be examined at the Western Aircraft Certification Office, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California.

Note.—The Douglas Aircraft Company has never held a type certificate and has no service information available for the A-26/B-26.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536-6032.

SUPPLEMENTARY INFORMATION: On August 1, 1984, priority mail Airworthiness Directive (AD) 84-15-02 was issued and made effective immediately upon receipt to all known U.S. owners and operators of Douglas Aircraft Company A-26/B-26 series airplanes. [In 1948, the U.S. Air Force, through administrative action, redesignated the A-26 as B-26. Presently, there are approximately 81 airplanes of this type design operating under U.S. registry which are affected by this AD action.] The AD was prompted by a report of a fatal crash due to structural failure of the wing. The AD requires repetitive inspection of the lower wing spar caps for cracks or fretting, and repair as necessary.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority mail letters issued to all known U.S. owners and operators of Douglas Aircraft Company A-26/B-26 series airplanes.

Since the AD was issued on August 1, 1984, it has been determined that the spar failure occurred at a wing station approximately 3 to 4 inches outboard of the three bolt holes used for the outboard nacelle fitting to spar attachment at wing station 140. Photographs of the failed spar cap show that a pre-existing fatigue crack had penetrated from the lower surface upwards through approximately 25% of the spar cap section. These findings confirm the need for the AD.

The conditions which led to the initial issuance still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Reporting requirements of this AD are approved by the Office of Management and Budget under OMB No. 2120-0056.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety.

Adoption of the Amendment

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

Douglas Aircraft Company: Applies to Douglas Aircraft Model A-26/B-26 series airplanes certificated in all categories.

Compliance schedule as prescribed in the body of the AD, unless previously accomplished.

To prevent loss of wing structural integrity due to failure of a lower spar cap, accomplish the following:

A. Within ten (10) hours time in service after the effective date of this AD, perform a visual dye penetrant inspection of the lower forward and aft spar cap, outboard and inboard of each nacelle in the area where the nacelle fairing upper edge runs across the lower spar cap surface. Trim the fairing edge, if necessary, to ensure that the fairing edge is smooth and that there is a minimum of one-sixteenth inch (1/16") clearance between the fairing and spar cap surface.

B. If no cracking or fretting of the spar cap is detected, repeat the inspection for cracks, surface clearance, and condition in accordance with Paragraph A. of this AD at intervals not to exceed 500 hours time in service.

C. If any evidence of cracking or fretting is found in the spar caps, polish out to a machine finish not to exceed approximately 125 microinches on both sides of the damaged area to a maximum depth of 0.030 inches and repeat the inspection of Paragraph A., above. Continue to inspect in accordance with Paragraph A. at intervals not to exceed 30 hours time in service.

D. If cracking or fretting in excess of 0.030 inches in a spar cap is detected, repair in a manner approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Hawthorne, California.

E. For those aircraft which have been modified to incorporate a steel or titanium

lower front spar cap strap (in the area where the nacelle fairing upper edge is in contact with the lower wing surface) in accordance with AD 64-12-03, the requirements of Paragraph A. of this AD are applicable only to the lower aft spar cap, outboard and inboard of each nacelle.

F. Within 72 hours after performing the inspections required by Paragraph A., above, report the results of the inspections to the Manager, Western Aircraft Certification Office, ANM-170W, FAA, Northwest Mountain Region, 15000 Aviation Blvd., Hawthorne, California. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. The reports should cite the airplane registration and serial number, crack location and extent of damage, total airplane operating hours, and time since last inspection.

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

H. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Hawthorne, California.

This amendment becomes effective April 16, 1985.

It was effective earlier to all recipients of priority mail AD 84-15-02, issued August 1, 1984.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8116 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-87-AD; Amdt. 39-5032]

Airworthiness Directives; British Aerospace Model HS/BH/DH 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model HS/BH/DH 125 series airplanes which requires modification of the electrical power supply system to ensure that electrical power is available to the audio communication system in the event of a principal electrical (PE) bus failure. This action is necessary to avoid loss of audio system communication between flight crew, ground personnel, and other aircraft. In certain weather conditions, this communication breakdown has the potential for creating a flight hazard.

EFFECTIVE DATES: May 13, 1985.

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

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) notified the FAA of an unsafe condition on certain British Aerospace Model HS/BH/DH 125 series airplanes which must be corrected by complying with British Aerospace HS 125 Service Bulletin 23-21-(8765). In the event of a principal electrical (PE) bus failure, the audio system communication between the flight crew, ground personnel, and other aircraft would be lost. The service bulletin prescribes incorporation of fuse or circuit breaker linking changes so that electrical power for the audio communication system is transferred from the PE bus to the principal service (PS) electrical bus if a PE bus failure occurs.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the **Federal Register** on September 20, 1984 (49 FR 36865). The comment period closed on November 9, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. The only comment received was from the manufacturer, who indicated that only eleven U.S. registered airplanes require modification and not the entire U.S. fleet as stated in the proposal.

It is estimated that eleven U.S. registered airplanes will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $100 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $1,980.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model HS/BH/DH 125 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

British Aerospace: Applies to Model HS/BH/DH 125 series airplanes with the serial numbers listed in the applicability statement of British Aerospace HS 125 Service Bulletin 23-21-(8765), dated March 22, 1983. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished. To prevent failure of the audio communication system, accomplish the following:

A. Modify the power supply system in accordance with the accomplishment instructions of British Aerospace HS 125 Service Bulletin 23-21-8765, dated March 22, 1983.

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

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

This amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8113 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-99-AD; Amdt. 39-5034]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 855

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires rerouting of the toilet flush motor power wire harnesses in the forward and aft lavatories. This action is necessary to aid in eliminating a potential fire.

DATES: Effective May 13, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications, and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Thompson or George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) requiring rerouting of the toilet flush motor power wire harnesses in the forward and aft lavatories on certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 1, 1984 (49 FR 38643). The comment period for the proposal closed on December 20, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Seven comments were received. Two commenters had no objections to the issuance of the proposed AD. Another commenter had no objection provided there were no problems in obtaining parts. The FAA does not foresee a problem in obtaining the parts since they are normally stocked items.

The fourth commenter had not yet received a copy of McDonnell Douglas DC-9 Service Bulletin 24-76, but stated that he would have no objections to the proposed AD if the proposed harness routing is like that of fuselage number 855 and subsequent. The FAA has been assured by McDonnell Douglas that all affected operators received a copy of SB 24-76 which specifies routing the wire harness in a way that is similar to that on fuselage number 855 and subsequent.

The fifth commenter requested a 24-month compliance period. The FAA has determined that a 24-month compliance period is not commensurate with the potential impact on safety, considering parts availability and the maintenance tasks associated with the proposed wire harness rerouting. Therefore, the compliance period remains at 12 months, as proposed.

The sixth commenter suggested that the requirement of the proposed AD would be best served not by rerouting the wire as per McDonnell Douglas DC-9 Service Bulletin 24-76, but rather by relocating the toilet timer behind the lavatory outboard sidewall panel above the tank. This would remove the power wire harness from the top of the toilet tank, thereby satisfying the intent of the proposed AD. Further, the commenter advised that moving the timer from its current remote location and creating an appropriate access panel in the sidewall lining would greatly facilitate flush motor replacement because of shortened wire harness and simplified routings. The FAA concurs that relocating the toiler timer, as suggested, would provide an acceptable level of safety and would facilitate flush motor replacement. However, since the suggestion would not provide a greater level of safety than that proposed, the FAA has not adopted the suggestion. The commenter may elect to comply with the AD in accordance with paragraph B. of the AD.

The seventh commenter recommended that additional wording be added to the AD to: (1) Require that before rerouting the affected wiring an inspection of the wiring in the vicinity of the flush pump assembly be conducted for any degradation such as exposed wire or chafed/cut insulation, and (2) require that if any such degradation is detected, the affected wiring be refurbished or replaced in accordance with approved repair practices. The FAA agrees that the integrity of the rerouted wires should be inspected and refurbished or replaced as necessary; however, the FAA has concluded that this is a normal maintenance practice and, therefore, should not be added in the AD.

It is estimated that 462 U.S. registered airplanes will be affected by this AD. It will require approximately 6.6 manhours per airplane to accomplish the required modification at an average labor charge of $40 per manhour. The cost of parts necessary to accomplish the modification is estimated to be $450 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $329,868.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since few, if any, small entities operate DC-9 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 855, certificated in all categories. Compliance required as indicated unless previously accomplished.

To eliminate a potential ignition source from the forward and aft lavatories, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), reroute the toilet flush motor power wire harness in the forward and aft lavatories in accordance with the Accomplishment

Instructions of McDonnell Douglas DC-9 Service Bulletin 24-76, dated November 7, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8111 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-122-AD; Amdt. 39-5036]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive that requires replacement of the existing forward and aft cargo compartment blowout panels with new panels incorporating an improved retention system. The cargo compartment blowout panels are designed to blow out in case of a decompression in order to minimize the differential pressure on floor panels. Operators have reported blowout panels becoming dislodged. Missing blowout panels reduce fire containment and fire suppression capability of the cargo compartment.

DATE: Effective May 13, 1985. Compliance required within 120 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of cargo compartment blowout panels on Boeing 757 airplanes was published in the **Federal Register** on January 15, 1985 (50 FR 2063). This action is necessary to prevent degradation of fire protection capability in the cargo compartments.

The comment period for the NPRM, which ended February 2, 1985, afforded interested persons an opportunity to participate in the making of this amendment. The Air Transport Association of America, representing operators of Boeing 757 airplanes, noted that the operators have begun replacement of panels, and offered no substantive comments on the proposed rule.

It is estimated that 15 airplanes of U.S. registry are affected by this AD; that it will require approximately 4 manhours per airplane to accomplish the required replacement, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is $2400. Kits are available from the manufacturer at no cost.

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

For the reasons discussed above, the FAA has determined that this regulation (1) is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Boeing: Applies to Boeing Model 757 airplanes listed in the Boeing Service Bulletin 757-25A0036, Revision 1, dated September 21, 1984. To prevent degradation of fire protection capability in the cargo compartments, accomplish the following within 120 days after the effective date of this AD, unless already accomplished:

A. Replace the existing cargo compartment blowout panels in accordance with Boeing Service Bulletin 757-25A0036, Revision 1, dated September 21, 1984, or later FAA approved revision.

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

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

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

This amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on March 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8117 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-135-AD; Amdt. 39-5030]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC-7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On December 7, 1984, the FAA issued telegraphic Airworthiness Directive T84-24-51, effective upon receipt, to all known U.S. operators of DeHavilland DHC-7 airplanes. The airworthiness directive (AD) requires a change to the airplane flight manual to reflect a higher threshold temperature for the use of ice protection procedures. This action was prompted by reports of two engine flameouts occurring in icing conditions. This action amends and publishes telegraphic AD T84-24-51.

DATES: Effective April 16, 1985. This AD was effective earlier to all recipients of telegraphic AD T84-24-51 dated December 7, 1984. Compliance required within 10 days after the effective date of this AD.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to DeHavilland Aircraft of Canada, Ltd., Garratt Blvd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On December 7, 1984, telegraphic AD T84-24-51 was issued and made effective immediately to all known U.S. owners and operators of DeHavilland DHC-7 series airplanes. The AD requires a change to the airplane flight manual which specifies a higher temperature threshold for the use of ice protection procedures. The AD was prompted by recent reports of two engine flameouts on DHC-7 airplanes. The causes of these incidents have not been specifically identified; however, an increase in the threshold temperature will provide an added safety margin and is required pending further investigation. The telegraphic AD specified a 12° C threshold. Further evaluation showed that a 13° threshold is necessary and is specified in this final rule.

Since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

DeHavilland Aircraft of Canada, Ltd. Applies to all DeHavilland Model DHC-7 airplanes certificated in all categories. To prevent engine flameouts, accomplish the following, unless already accomplished. Within 10 days after the effective date of this AD, incorporate the following information into the airplane flight manual:

A. Increase the threshold temperature from 5 °C to 13° C on page 2-21-1, Paragraph 2.21 of the airplane flight manual and provide this information to flight crews.

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

Note.—Compliance with this directive may be effected by including a copy of this AD in the airplane flight manual and operating manual.

This amendment becomes effective April 16, 1985; and was effective, in part, earlier to those recipients of telegraphic AD T84-24-51, dated December 7, 1984.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8115 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-101-AD; Amdt. 39-5035]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) 79-08-04, applicable to Lockheed-California Model L-1011-385 series airplanes, that requires inspection of the main landing gear (MLG) truck pivot pins and pivot pin journal bushings. This amendment requires the replacement of the MLG truck beam shock strut piston pivot pin and bushing. This amendment is prompted by additional reports of fractures in the truck beam pivot pin journal bores on airplanes which had been inspected. Such fractures, if not corrected, could result in collapse of the MLG upon landing.

DATES: Effective May 13, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commerical Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend an existing airworthiness directive (AD) requiring

the replacement of MLG truck beam shock strut piston pivot pin and bushing in Lockheed-California Model L-1011-385 series airplanes was published as Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 25, 1984 (49 FR 42944). The comment period for the proposal closed December 14, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

All five Air Transport Association of America (ATA) member operators who commented had no objection to the proposed amendment.

Of the 142 U.S. registered airplanes affected, only 13 airplanes are yet to be modified. The necessary modification will require approximately 35 manhours per airplane at an average labor charge of $40 per manhour. The modification kits can be obtained at a cost of $37,000 each. Based upon these figures, the total economic impact of this AD on U.S. operators is estimated to be $499,200.

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

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending AD 79-08-04, Amendment 39-4097, (46 FR 24158; April 30, 1981), by revising paragraphs (d) and (f) to read as follows:

"(d) Within twelve (12) calendar months after the effective date of this AD, accomplish the installation or modification of the main landing gear uplock snubber, truck pivot pin and bushings using kits 1630482-101, -103, -105, and -107, or alternate Kits 1630642-109, -111, -113, and -115, in accordance with Lockheed-California L-1011 Service Bulletin 093-32-154, Revision 2, dated January 5, 1981, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Compliance with this paragraph constitutes terminating action for this AD."

"(f) Equivalent inspection procedures and truck pin retainer installation may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective May 13, 1985.

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

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8112 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-5, Amdt. 39-5019]

Airworthiness Directives; Westland Helicopters Limited, Westland 30 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the replacement of the main rotor head sleeve tie-bar pins on all Westland 30 helicopters prior to obtaining 500 hours' time in service. The AD is needed to prevent cracking of the main rotor head tie-bar pin which could result in the loss of a main rotor blade and subsequent loss of the helicopter.

DATE: Effective April 9, 1985. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from the Customer Manager, Product Support Civil Business Group, Westland Helicopters Ltd., Yeovil, Somerset, England BA20 2YB.

A copy of the alert service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Thomas G. Horeff, Brussels Aircraft Certification Office, AEU-100, FAA, c/o American Embassy, APO NY 09667, telephone number 513.38.30, or Samuel E. Brodie, Helicopter Policy and Procedures Staff, Aircraft Certification Division, FAA, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2577.

SUPPLEMENTARY INFORMATION: There has been a reported crack in a main rotor blade sleeve tie-bar pin. Failure of the tie-bar pin, as a result of a possible crack, may cause loss of a main rotor blade. The tie-bar is an integral part of the main rotor blade retention system. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires the removal from service of main rotor head tie-bar pins prior to obtaining 500 hours' time in service.

Since a situation exists that reques the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a reduction in life for parts installed on about nine helicopters and a cost of about $2,800 per helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

Westland Helicopters Limited: Applies to Westland 30 helicopters certificated in all categories that are equipped with main rotor tie-bar pin Part Number (P/N) WK 3069-0020-101 or WK 3069-0016-101.

Compliance is required as indicated, unless already accomplished.

To prevent cracking of the main rotor blade sleeve tie-bar pin and possible loss of a main rotor blade, accomplish the following:

(a) Within 50 hours' time in service after the effective date of this AD or prior to attaining 500 hours' total time in service, whichever occurs later, remove tie-bar pins before further flight.

(b) An equivalent method of compliance with this AD may be used when approved by the Manager of the Brussels Aircraft Certification Office, Brussels, Belgium.

(c) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

Alert Service Bulletin W30-05-A38, Rev. 1 dated February 26, 1985, pertains to this subject.

This amendment becomes effective April 9, 1985.

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

Issued in Fort Worth, Texas, on March 19, 1985.

F.E. Whitfield

Acting Director, Southwest Region.

[FR Doc. 85-8118 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1030

Revision To Regulations on Ethics Counselor

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulation concerning the agency's Ethics Counselor to show that the General Counsel is the agency's Ethics Counselor and also serves as the designated ethics official under the Ethics in Government Act. The regulation now states that these functions are performed by the Assistant General Counsel for General Law.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Cindy Anderson, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: Part 1030 of Title 16 of the Code of Federal Regulations contains the Commission's regulations pertaining to employee standards of conduct. Section 1030.104 states that the official who serves as the Commission's Ethics Counselor for matters pertaining to standards of conduct for Commission employees, and as the designated ethics official under the Ethics in Government Act, is the Assistant General Counsel for General Law. The head of the agency has now appointed the General Counsel as the Commission's Ethics Counselor and the designated agency ethics official under the Ethics in Government Act. In addition, the Assistant General Counsel for General Law is to function as alternate designated ethics official under the Ethics in Government Act and as alternate Ethics Counselor in the absence of the Ethics Counselor.

Therefore, § 1030.104(a) has been revised to show that the General Counsel has been designated as Ethics Counselor for all matters pertaining to standards of conduct for Commission employees and is the designated agency ethics official under the Ethics in Government Act.

Section 1030.104(b) has been revised to show that the Assistant General Counsel for General Law is the alternate Ethics Counselor and alternate designated agency ethics official under the Ethics in Government Act and will act in these capacities in the absence of the Ethics Counselor.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553, the agency finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and thus is exempt from the provisions of that act.

List of Subjects in 16 CFR Part 1030

Government employees, and Conflict of interest.

PART 1030—[AMENDED]

Accordingly, Part 1030 of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1030 is as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964-1965 Comp., p. 306; 5 CFR Part 735; Pub. L. 95-521, 92 Stat. 1824, as amended by Pub. L. 96-19, 93 Stat. 37 (5 U.S.C. App.).

§ 1030.104 [Amended]

2. Section 1030.104(a) is amended by removing the words, "The Assistant General Counsel for General Law," and inserting in their place, "The General Counsel."

3. Section 1030.104(b) is amended by removing the words, "The Assistant General Counsel for Regulatory Affairs" and inserting in their place, "The Assistant General Counsel for General Law."

Dated: April 1, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-8204 Filed 4-4-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 105 and 107

[Docket No. 82N-0130]

Infant Formula; Labeling Requirements; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of the final rule that established labeling requirements for infant formula, including the label declaration of nutrients required by the Infant Formula Act of 1980; a "use by" date; a warning statement to inform consumers of consequences of improper preparation or use; a statement informing consumers that infant formula should be used as directed by a physician; and directions for preparation and use, including pictograms and a symbol to indicate the need for dilution.

DATE: Effective January 14, 1986, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1985 (50 FR 1833), FDA issued a final rule that established the labeling requirements for infant formulas in Subpart B of 21 CFR Part 107. The requirements include the label declaration of nutrients required by the Infant Formula Act of 1980; a "use by" date; a warning statement to inform consumers of consequences of improper preparation or use; a statement informing consumers

that infant formula should be used as directed by a physician; and directions for preparation and use, including pictograms and a symbol to indicate the need for dilution. An exemption from certain labeling requirements is provided for individual containers containing infant formula in a ready-to-feed form in multiunit packages.

Section 107.10, which contains nutrient labeling requirements, and the amendment to remove § 105.65 (c), (d), and (e) (21 CFR 105.65 (c), (d), and (e)) were the only portions of the final rule that were promulgated under the formal rulemaking procedures of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) and therefore subject to objections and requests for a hearing. Any person who would be adversely affected by these provisions could have, at any time on or before February 13, 1985, filed written objections and requested a public hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects

21 CFR Part 105

Dietary foods, Food labeling, Infant foods, Nutrition, Vitamins and minerals.

21 CFR Part 107

Food labeling, Infant formula, Nutrient information.

PART 105—FOOD FOR SPECIAL DIETARY USE

PART 107—INFANT FORMULA

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 (n) and (aa), 403 (a) and (j), 412, 701 (a) and (e), 52 Stat. 1041 as amended, 1047 as amended, 1048, 1055, 70 Stat. 919 as amended, 94 Stat. 1190 (21 U.S.C. 321 (n) and (aa), 343 (a) and (j), 350a, 371(a) and (e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the removal of § 105.65 (c), (d), and (e) and the addition of § 107.10 published in the **Federal Register** of January 14, 1985 (50 FR 1833) will become effective January 14, 1986.

Dated: March 29, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8131 Filed 4-2-85; 3:19 pm]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 84F-0169]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-methyl acrylate copolymer resins as a food-contact surface in aseptic packaging systems employing hydrogen peroxide as a sterilizing agent. This action responds to a petition filed by the Gulf Oil Corp.

DATES: Effective April 5, 1985; objections by May 6, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 13, 1984 (49 FR 24446), FDA announced that a petition (FAP 4B3803) had been filed by Gulf Oil Corp., P.O. Box 1166, Pittsburgh, PA 15230, proposing that § 178.1005 (21 CFR 178.1005) be amended to provide for the safe use of ethylene-methyl acrylate copolymer resins as a food-contact surface in aseptic packaging systems employing hydrogen peroxide as a sterilizing agent. One comment was received in response to the notice of filing. It favored the proposed use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.1005 by revising paragraph (e)(1), to read as follows:

§ 178.1005 Hydrogen peroxide solution

* * * * *

(e) *Conditions of use.* (1) Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination wiht other processes to treat food-contact surfaces prepared from ionomeric resins complying with § 177.1330 of this chapter, ethylene-methyl acrylate copolymer resins complying with § 177.1340 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, and polyethylene terephthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)) to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 6, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made.

Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective April 5, 1985.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 11, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8141 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 78N-0281]

GRAS Status of Magnesium Carbonate, Magnesium Chloride, Magnesium Hydroxide, Magnesium Oxide, Magnesium Phosphate, Magnesium Stearate, and Magnesium Sulfate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that certain magnesium salts are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective May 6, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1425, 184.1426, 184.1428, 184.1431, 184.1434, 184.1440, and 184.1443 effective on May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1983 (48 FR 2782), FDA published a proposal to affirm that magnesium carbonate, magnesium chloride, magnesium hydroxide, magnesium oxide, magnesium phosphate, magnesium stearate, and magnesium sulfate are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on magnesium salts are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of magnesium carbonate, magnesium chloride, magnesium hydroxide, magnesium oxide, magnesium phosphate, magnesium stearate, and magnesium sulfate, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior-sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for these magnesium salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of these ingredients under conditions different from those set forth in this final rule has been waived.

Four comments were received in response to the agency's proposal on magnesium salts.

1. One comment indicated that all the magnesium salts are currently used in other food categories in addition to those reported in the proposal. The comment requested that the agency modify the regulations for all of the listed magnesium salts to affirm their use as GRAS with no food categories specified.

The agency has reviewed this comment. FDA has decided that it is not necessary to list the food categories in which these magnesium salts are used. Both the Select Committee and the agency have concluded that a large margin of safety exists for the use of magnesium salts. In addition, FDA has concluded that a reasonably foreseeable increase in the level of consumption of magnesium salts, including the increase that would result from not listing food categories, will not adversely affect human health. However, the GRAS affirmation regulations for magnesium carbonate, magnesium hydroxide, magnesium stearate, and magnesium sulfate do not state that these ingredients may be used in infant formulas because FDA has no specific information that these ingredients are used in these products, and the agency has not evaluated these uses.

The agency has therefore modified the regulations by removing the food categories and affirming the use of magnesium salts as GRAS when they are used in accordance with current good manufacturing practice under § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of magnesium salts is based on the evaluation of currently known uses, the regulations set forth the technical effects that FDA has evaluated.

2. The comment also reported that all the magnesium salts are used as nutrient supplements and requested that FDA modify the regulations for these substances to reflect this fact.

The agency points out that the proposal listed the technical effect of nutrient supplement in the regulations for all of the magnesium salts except magnesium stearate. The comment has reported that, in fact, magnesium stearate also is used for this technical effect. Based on its review of the report of the Select Committee and its own review of the relevant data, FDA is affirming this use of magnesium stearate as GRAS and has amended § 184.1440(c)(1) (21 CFR 184.1440(c)(1)) accordingly.

3. One comment reported use of magnesium carbonate, magnesium hydroxide, and magnesium oxide in a proprietary formulation that is used for color retention in canned peas. The comment supported FDA's proposed

rule and did not request any modifications because the proposal included use of all three of these ingredients in processed vegetables.

FDA has thoroughly reviewed this comment and finds that magnesium carbonate, magnesium hydroxide, and magnesium oxide contribute to color retention in this formulation because they may be used to adjust the pH of canned peas. This use was addressed in a recent regulation on the standard of identity for canned peas, published in the **Federal Register** of April 8, 1983 (48 FR 15241). FDA also included the use of these three ingredients as pH control agents in the GRAS affirmation proposal. Therefore, the agency is not modifying the proposal based upon this comment.

4. One comment reported the use of magnesium sulfate in the brewing of beer at a maximum level of 0.0068 percent. The comment reported that a substantial portion of the added magnesium sulfate is used by yeast in brewing the beer and is removed when the yeast is removed after fermentation. The comment requested that FDA modify the proposed rule for magnesium sulfate to include its use as a processing aid in alcoholic beverages.

FDA agrees that this use is best described by the technical effect "processing aid," as defined in 21 CFR 170.3(o)(24). The agency additionally notes that it listed the technical effect of processing aid for magnesium sulfate in the proposal. Moreover, it is unnecessary for the agency to include the food category alcoholic beverages in § 184.1443 (21 CFR 184.1443) because, as explained in paragraph 1, the agency has decided not to specify food categories in the GRAS affirmation regulations on magnesium salts. Thus, FDA has not modified § 184.1443 in response to this comment.

5. One comment reported use of magnesium oxide as an anticaking and free-flow agent in tea mixes at levels not to exceed current good manufacturing practice. The comment requested that FDA modify the proposed rule to include this use.

As discussed in paragraph 1 above, the additional listing of the food category tea mixes is no longer necessary. Although the proposed rule for magnesium oxide did not include its use as an anticaking and free-flow agent as defined in § 170.3(o)(1) (21 CFR 170.3(o)(1)), it did include its use for similar technical effects that require similar chemical properties. FDA has concluded that these chemical properties are consistent with the use of magnesium oxide as an anticaking and free-flow agent, and that this use is GRAS. Therefore, FDA has modified § 184.1431 (21 CFR 184.1431) to include this technical effect.

6. FDA has, on its own initiative, reconsidered the specifications for magnesium stearate set forth in proposed § 184.1440(b). The agency has concluded that the tests for chick-edema factor, which are described in § 172.860(b)(2) (21 CFR 172.860(b)(2)) and which are included by reference in proposed § 184.1440(b), are specific for free fatty acids and are not applicable to salts of fatty acids such as magnesium stearate. The agency notes that the food additive regulation for salts of fatty acids (21 CFR 172.863) requires that each fatty acid, rather than its salt, conform to the provisions of § 172.860.

Consequently, FDA has modified § 184.1440(a) (21 CFR 184.1440(a)) to require that sodium stearate be derived from stearic acid that conforms to § 172.860(b)(2) and has modified § 184.1440(b) by removing the requirement that magnesium stearate meet the specifications of § 172.860(b)(2).

The agency is making these changes to clarify the regulation. Therefore, the agency finds that further public procedure on this regulation is unnecessary.

Additionally, the agency has also made a minor editorial change in the proposed magnesium oxide regulation to correct the Chemical Abstracts Registry number in this final rule.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entries for "Magnesium carbonate," "Magnesium chloride," "Magnesium hydroxide," and "Magnesium sulfate."

§§ 182.1425, 182.1428, 182.1431, 182.1440, 182.8431, 182.8434, 182.8443 [Removed]

b. By removing § 182.1425 *Magnesium carbonate*, § 182.1428 *Magnesium hydroxide*, § 182.1431 *Magnesium oxide*, § 182.1440 *Magnesium stearate*, § 182.8431 *Magnesium oxide*, § 182.8434 *Magnesium phosphate*, and § 182.8443 *Magnesium sulfate*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1425, to read as follows:

§ 184.1425 Magnesium carbonate.

(a) Magnesium carbonate (molecular formula approximately $(MgCO_3)_4.Mg(OH)_2.5H_2O$, CAS Reg. No. 39409-82-0) is also known as magnesium carbonate hydroxide. It is a white powder formed either by adding an alkaline carbonate (such as sodium carbonate) to a solution of magnesium sulfate or by carbonation of a slurry of

magnesium hydroxide followed by boiling of the resulting magnesium carbonate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 177, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o)(1) of this chapter; a flour treating agent as defined in § 170.3(o)(13) of this chapter; a lubricant and release agent as defined in § 180.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; and a synergist as defined in § 170.3(o)(31) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1426, to read as follows:

§ 184.1426 Magnesium chloride.

(a) Magnesium chloride ($MgCl_2.6H_2O$, CAS Reg. No. 7786-30-3) is a colorless, deliquescent, crystalline material that occurs naturally as the mineral bischofite. It is prepared by dissolving magnesium oxide, hydroxide, or carbonate in aqueous hydrochloric acid solution and crystallizing out magnesium chloride hexahydrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 117, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter and a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

c. By adding new § 184.1428, to read as follows:

§ 184.1428 Magnesium hydroxide.

(a) Magnesium hydroxide ($Mg(OH)_2$, CAS Reg. No. 1409-42-8) occurs naturally as the colorless, crystalline mineral brucite. It is prepared as a white precipitate by the addition of sodium hydroxide to a water soluble magnesium salt or by hydration of reactive grades of magnesium oxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 178, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

d. By adding new § 184.1431, to read as follows:

§ 184.1431 Magnesium oxide.

(a) Magnesium oxide (MgO, CAS Reg. No. 1309-48-4) occurs naturally as the colorless, crystalline mineral periclase. It is produced either as a bulky white powder (light) or a relatively dense white powder (heavy) by heating magnesium hydroxide or carbonate. Heating these magnesium salts under moderate conditions (400° to 900° C for a few hours) produces light magnesium oxide. Heating the salts under more rigorous conditions (1200° C for 12 hours) produces heavy magnesium oxide. Light magnesium oxide is converted to heavy magnesium oxide by sustained heating at high temperatures.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 178, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o)(1) of this chapter; a firming agent as defined in § 170.3(o)(10) of this chapter; a lubricant and release agent as defined in § 170.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in foods at levels not be exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

e. By adding new § 184.1434, to read as follows:

§ 184.1434 Magnesium phosphate.

(a) Magnesium phosphate includes both magnesium phosphate, dibasic, and magnesium phosphate, tribasic. Magnesium phosphate, dibasic ($MgHPO_4 \cdot 3H_2O$, CAS Reg. No. 7782-75-4) occurs naturally as the white, crystalline mineral newberyite. It is prepared commercially as a precipitate formed by treating a solution of magnesium sulfate with disodium phosphate under controlled conditions. Magnesium phosphate, tribasic ($Mg_3(PO_4)2 \cdot xH_2O$, CAS Reg. No. 7727-87-1) may contain 4, 5, or 8 molecules of water of hydration. It is produced as a precipitate from a solution of magnesite with phosphoric acid.

(b) Magnesium phosphate, dibasic, meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 179, which is incorporated by reference. Magnesium phosphate, tribasic, meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 180, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredients as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the Act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

f. By adding new § 184.1440, to read as follows:

§ 184.1440 Magnesium stearate.

(a) Magnesium stearate ($Mg(C_{17}H_{35}COO)_2$, CAS Reg. No. 557-04-0) is the magnesium salt of stearic acid. It is produced as a white precipitate by the addition of an aqueous solution of magnesium chloride to an aqueous solution of sodium stearate derived from stearic acid that is obtained from edible sources and that conforms to the requirements of § 172.860(b)(2) of this chapter.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 182, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a lubricant and release agent as defined in § 170.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

g. By adding new § 184.1443, to read as follows:

§ 184.1443 Magnesium sulfate.

(a) Magnesium sulfate ($MgSO_4 \cdot 7H_2O$, CAS Reg. No. 10034-99-8) occurs naturally as the mineral epsomite. It is prepared by neutralization of magnesium oxide, hydroxide, or carbonate with sulfuric acid and evaporating the solution to crystallization.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 183, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective May 6, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: March 12, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8142 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Phenylbutazone Gel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods Corp. providing for safe and effective oral use of phenylbutazone gel for relief of inflammatory conditions associated with the musculoskeletal system in horses.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: International Multifoods Corp., 8th and Marquette Sts., Minneapolis, MN 55402, filed NADA 118-979 providing for oral use in horses of phenylbutazone for relief of inflammatory conditions associated with the musculoskeletal system. The drug product consists of a calibrated plastic syringe containing 4 grams (g) of phenylbutazone in 30 g of gel. The drug is administered at a rate of 1 to 2 g of phenylbutazone per 500 pounds of body weight, not to exceed 4 g daily. Based on the data and information submitted, the NADA is approved and the regulations are

amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding § 520.1720d, to read as follows:

§ 520.1720d Phenylbutazone gel.

(a) *Specifications.* Each 30 grams of gel contains 4 grams of phenylbutazone.

(b) *Sponsor.* See 012518 in § 510.600(c) of this chapter.

(c) *NAS/NRC status.* The conditions of use are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Conditions of use in horses*—(1) *Amount.* 1 to 2 grams of phenylbutazone per 500 pounds of body weight, not to exceed 4 grams daily.

(2) *Indications for use.* For relief of inflammatory conditions associated with the musculoskeletal system of horses.

(3) *Limitations.* Use a relatively high dose for the first 48 hours, then gradually reduce to a maintenance level at the lowest level capable of producing the desired clinical response. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 18, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85-8146 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Ayerst Laboratories to Fort Dodge Laboratories.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, has informed FDA of a change in sponsor for NADA 30-416 from Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017. Ayerst Laboratories has confirmed the change of sponsor. The NADA covers use of sulfamethizole and methenamine mandelate tablets for treatment of urinary tract infections of dogs and cats and as an aid in management of complications of urinary tract surgical manipulations and instrumentation of the urethra and bladder.

This is an administrative change that does not otherwise affect approval of the firm's NADA. The agency is amending the regulations to reflect the change.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2260 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.2280 *Sulfamethizole and methenamine mandelate tablets* in paragraph (b) by changing the phrase "No. 000046" to read "No. 000856."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 28, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-8139 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Nicarbazin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. providing for safe and effective use of nicarbazin premix in manufacturing a chicken feed to be used as an aid in prevention of coccidiosis caused by certain *Eimeria* species.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, filed NADA 135-468 providing for use of a premix containing 25 percent nicarbazin in manufacturing a complete broiler feed containing 113.5 grams of nicarbazin per ton (0.0125 percent). The feed is indicated as an aid in preventing outbreaks of cecal *(Eimeria tenella)* and intestinal *(E. acervulina, E. maxima, E. necatrix,* and *E. brunetti)* coccidiosis. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers

Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iii)), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.366 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.366 *Nicarbazin* is amended by removing the phrase "No. 000006" and replacing it with "Nos. 000006 and 000986" in paragraph (a) and by adding "000986" under "000006" at the top of the "Sponsor" column in the table in paragraph (e).

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 11, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-8147 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for use of certain lasalocid premixes in manufacturing liquid feed supplements for use in sheep.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, filed a supplement to NADA 96-298 which covers Bovatec* Premixes (lasalocid sodium). The supplement provides for use of the premixes at levels of 15, 20, 33.1, and 50 percent lasalocid sodium activity to manufacture medicated liquid feed supplements for use in sheep. The supplements are intended for use in producing finished feeds for prevention of coccidiosis caused by *Eimeria ovina, E. crandallis, E. ovinoidalis (E. ninakohlyakimovae), E. parva,* and *E. intricata* in sheep maintained in confinement. The firm currently holds approval for use of the premixes to manufacture medicated dry feed supplements and finished feeds for use in sheep at the same dosage level and for the same indication. The supplement is approved and the regulations are amended accordingly.

Because this approval does not involve the submission of safety and effectiveness data, a freedom of information summary as described in Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.311 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.311 *Lasalocid* is amended in the introductory text of paragraph (e)(1) by changing the phrase "Finished cattle feeds" to read "Finished cattle and sheep feeds," in the introductory text of paragraph (e)(6)(i) by changing the parenthetical words "(cattle only)" to read "(cattle and sheep)," and at the end of the second sentence in paragraph (e)(6)(i) by changing the phrase "fatal to cattle" to read "fatal to cattle and sheep."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-8136 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Roxarsone, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A.H. Robins Co., providing for safe and effective use of 4 to 50 grams per ton of bacitracin methylene disalicylate (bacitracin MD) in combination with salinomycin and roxarsone in making complete broiler feed.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, is sponsor of NADA 135-321 which provides for combining separately approved salinomycin, roxarsone, and bacitracin MD premixes in making a complete broiler feed. The currently approved levels (i.e., grams per ton) of the drug components in the complete feed are salinomycin, 40 to 60 grams; roxarsone, 45.4 grams; and bacitracin MD, 4 to 30 grams. The feed is used for prevention of coccidiosis caused by certain *Eimeria* species and for increased rate of weight gain. The firm has filed a supplement to the NADA providing for increasing the complete feed use level of bacitracin MD to 4 to 50 grams per ton. With the exception of this change in use level, the conditions of use remain the same. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.550 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.550 *Salinomycin* is amended in paragraph (c)(1)(iv)(*a*) by changing "30 grams" to read "50 grams."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 27, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-8135 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Music City Supplement Co., providing for manufacturing a 40-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Music City Supplement Co., 401 Cowan St., Nashville, TN 37202, is sponsor of a supplement to NADA 107-958 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 40-gram-per-pound tylosin premix subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(51) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(51) *To 017519:* 10 grams per pound, paragraph (f)(1)(i), (iii), (iv), and (vi) of this section; 40 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

Effective date: April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 26, 1985.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 85-8140 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 1010

[Docket No. 85N-0033]

Performance Standards for Electronic Products; Number of Copies of an Exemption Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted to obtain exemptions from one or more provisions of a standard for electronic products. The agency has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: 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 section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. Section 1010.5 of the regulations governing the establishment of performance standards (21 CFR 1010.5) under the RCHSA provides the basis on which a manufacturer of an electronic product intended for U.S. Government use may apply for exemption from one or more provisions of a standard. Section 1010.5(c) requires that applications for exemption or for amendments or extensions thereof be submitted in quintuplicate (OMB control number 0910-0025).

In the Federal Register of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which established policies and procedures for

controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1010.5(c) and has concluded that its existing requirement that a manufacturer applying for an exemption, or an amendment, or an extension of an existing exemption submit five copies of the application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of such documents.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for exemption or for amendments or extensions of an existing exemption.

In accordance with the Administrative Procedures Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for exemption or for amendments or extensions thereof will not affect the public health and will be less burdensome on, and less costly for, applicants. The agency, nevertheless, providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register**.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exemptions, Exports, Radiation protection, Standards, Variances.

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 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), Part 1010 is amended in § 1010.5 by revising the first sentence of paragraph (c), to read as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

§ 1010.5 Exemptions for products intended for United States Government use.

* * * * *

(c) *Application for exemption.* An original and two copies of any application for exemption, or for amendment or extension thereof, shall be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. * * *

* * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263))

Dated: March 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–8143 Filed 4–4–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 1010

[Docket No. 85N-0013]

Performance Standards for Electronic Products; Number of Copies of an Application for Variance

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted in order to obtain variances from provisions of performance standards for electronic products. FDA has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: 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 section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. Section 1010.4 of the regulations governing establishment of performance standards (21 CFR 1010.4) under the RCHSA provides the basis on which a manufacturer of an electronic product may apply for a variance or for amendments or extension of an existing variance from one or more provisions of a standard. Section 1010.4(b) requires that applications for variances or for amendments or extensions thereof be submitted in quintuplicate (OMB approval number 0910–0025).

In the **Federal Register** of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which established policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1010.4(b) and has concluded that its existing requirement that a manufacturer applying for a variance or an amendment or extension of an existing variance must submit five copies of the application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of variance requests.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for variance or for amendments or extensions of an existing variance.

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for variance or for amendments or extensions thereof will not affect the public health and will be less burdensome on, and less costly for, applicants. The agency, nevertheless, is providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register.**

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

Lists of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exemptions, Exports, Radiation protection, Standards, Variances.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 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), Part 1010 is amended in § 1010.4 by revising the introductory text of paragraph (b), to read as follows:

§ 1010.4 Variances.

* * * * *

(b) *Applications for variances.* Applications for variances or for amendments or extensions thereof shall be submitted in an original and two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)).

Dated: March 12, 1985

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8145 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 1030

[Docket No. 85N-0005]

Performance Standards for Microwave and Radio Frequency Emitting Products; Number of Copies of an Exemption Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted to obtain exemptions from one or more of the requirements to post radiation safety warnings on microwave ovens. FDA has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: 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 section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. The performance standard for microwave and radio frequency emitting products is found in Part 1030 of the regulations governing establishment of performance standards under the RCHSA (21 CFR Part 1030). Section 1030.10(c)(6)(iv) of the standard provides the basis on which a manufacturer of a microwave oven may apply for exemption from one or more of the microwave oven radiation safety warnings specified in § 1030.10(c)(6)(i). Section 1030.10(c)(6)(iv) requires that applications for exemption be submitted in quintuplicate (OMB approval number 0910-0025).

In the **Federal Register** of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which established policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1030.10(c)(6)(iv) and has concluded that its existing requirement that a manufacturer applying for an exemption submit five copies of the exemption application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of such documents.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for exemption from one or more of the radiation safety warnings specified in § 1030.10(c)(6)(i).

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for exemption from one or more provisions of the radiation safety warnings will not affect the public health and will be less burdensome on, and less costly for, applicants. The

agency, nevertheless, is providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register**.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

List of Subjects in 21 CFR Part 1030

Electronic products, Microwave ovens, Radiation protection, Standards.

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263(f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1030 is amended in § 1030.10 by revising the third sentence of paragraph (c)(6)(iv), to read as follows:

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

§ 1030.10 Microwave ovens.

* * * * *

(c) * * *

(6) * * *

(iv) * * * An original and two copies of applications shall be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. * * *

* * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f))

Dated: March 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–8144 Filed 4–4–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Availability of Final Draft Technical Report—Special Study Report, Texas Topsoil Substitution Practice

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

ACTION: Notice of availability.

SUMMARY: The Office of Surface Mining (OSM) is making available to the public upon request a copy of the final draft technical report which pertains to the adequacy of information available to the Texas Railroad Commission (TRC), Surface Mining and Reclamation Division (SMRD) when it evaluates topsoil substitution practices permitted by Texas under the approved State program. A thorough evaluation of the information prepared for mining and reclamation plans under the Texas State program is completed, and OSM anticipated that it will be presented in the form of a final report in May 1985.

ADDRESSES: Technical reports are available at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Interior South Building, Technical Information Branch, Room 139, 1951 Constitution Avenue NW., Washington, D.C. 20240 (telephone: 202–343–5587)

Office of Surface Mining, Tulsa Field Office, 333 West Fourth St., Room 3014, Tulsa, Oklahoma 74103 (telephone: 918–581–7927)

Office of Surface Mining, Western Technical Service Center, Administrator's Office, Brooks Towers, 1020 15th Street, Denver, CO. 80202 (telephone: 303–844–5421).

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240 (telephone: 202–343–1510) or Kenneth Wangerud, Office of Surface Mining, 1020 15th Street, Denver, Colorado 80202 (telephone: 303–844–2451)

SUPPLEMENTARY INFORMATION: A special study report has been prepared to evaluate the adequacy of information available to the Texas Railroad Commission (TRC) in approving mining and reclamation plans under the approved Texas State program. The primary focus of the study is to determine whether or not the information available to the TRC is adequate to make a finding that the applicant has demonstrated that surface coal mining and reclamation operations can be feasibly accomplished utilizing the topsoil substitution practice.

OSM previously released drafts of the study on December 18, 1984, 49 FR 49113. The study is entitled *Special Study Report: Technical Evaluation of Topsoil Substitution Practices and Handling of Potential Acid/Toxic-forming Materials in Texas.* Since release of these previous draft reports, OSM has completed a final draft report which is now being made available to the public. The final report is expected to be available on May 31, 1985. OSM is releasing this final draft report in response to requests from the public for this material, and because OSM believes that it is appropriate to make the material available to the public at large.

Dated: April 1, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–8207 Filed 4–4–85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

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

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

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Indiana to (1) promulgate rules governing the training, examination and certification of blasters and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 6, 1984, Indiana requested an extension of time for the development of a blaster certification program. On May 14, 1984, OSM announced its decision to extend Indiana's deadline to March 4, 1985 (49 FR 20285). On January 10, 1985, Indiana requested an additional six-month extension to submit a blaster training program and examination. All States with regulatory programs approved under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional six-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: April 5, 1985.

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

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

On March 6, 1984, Indiana advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSM granted Indiana an extension to March 4, 1985 (49 FR 20285).

On January 10, 1985, the Director of the Indiana Department of Natural Resources, Division of Reclamation, advised OSM that the State would require another extension of time to submit its blaster training and examination program. He stated that the Department's blasting expert resigned over a year ago and has not yet been replaced, and that the one remaining person with responsibility for the blasting program recently resigned. He stated that more time is necessary to hire individuals to fill these two vacant positions which are "paramount to our ability to submit the blasting program." An additional six-month extension was requested.

In the February 15, 1985 **Federal Register** (50 FR 6363), OSM proposed an additional six month extension for Indiana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending March 18, 1985. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Indiana to submit a proposed blaster training program until September 4, 1985. This extension will allow the Director of the Indiana Department of Natural Resources to consider, develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

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

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

Dated: April, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended by revising the introductory text and paragraph (a) of § 914.16 to read as follows:

§ 914.16 Required program amendments.

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

(a) By September 4, 1985, Indiana shall submit for OSM's approval:

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

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

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[FR Doc. 85-8169 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Extension of Staffing Deadlines for the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Interim final rule.

SUMMARY: OSM is announcing the extension of staffing deadlines established in the **Federal Register** dated December 31, 1984, "Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977" (SMCRA) (49 FR 50718). In that notice OSM announced the disapproval of Kentucky's proposed amendment to reduce budget and staffing levels and established required actions the State must take to bring staffing levels to the level previously approved in the State regulatory program. The State was required: To announce position vacancies by February 1, 1985; to have reached the approved permanent program staffing level (408) by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing the actions taken to achieve the approved program staffing levels by May 1, 1985.

Since the publication of the rule denying the proposed amendment,

Kentucky has acted in good faith, making substantial effort to locate funds and personnel in order to comply with the Director's decision, but has indicated that the deadlines imposed will not be met. The Director has determined that the best interests of Kentucky's program will be served by extending the hiring period to August 31, 1985, to allow the State additional time to meet approved staffing levels so that qualified personnel can be recruited and selected.

Accordingly, the Director is granting an extension of time to allow Kentucky to reach the approved permanent program staffing level. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement this action.

EFFECTIVE DATE: April 5, 1985. Public comment is invited on the action set forth herein. Written comments not received before 4:00 p.m. May 6, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

A copy of the proposed amendment, the notice of disapproval and the subsequent grant agreement amendment to extend the deadline for State actions are available for review at the OSM offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one single copy of the above material by contacting the OSM Lexington Field Office.

Office Of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C.

Office Of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Mr. W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 **Federal Register** notice.

By a transmittal dated June 29, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to change approved levels of staffing and budget. Kentucky submitted a justification for proposed staffing levels by program area which gave an explanation of and reasons for the changes.

OSM published a notice in the **Federal Register** on July 24, 1984, announcing receipt of the amendment, and procedures for the public hearing on the adequacy of the amendment (49 FR 29804). The public comment period ended August 23, 1984. Since no one requested a public hearing, the hearing scheduled for August 20, 1984, was not held.

OSM subsequently published a notice in the **Federal Register** on December 31, 1984, (49 FR 50718) announcing disapproval of the proposed budget and staffing amendment based on the Director's finding that the proposal failed to meet the requirements of SMCRA and the Federal regulations. Section 503(a)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel and sufficient funding to regulate mining in accordance with the Act. The Federal regulations require sufficient legal, administrative, and technical staff and sufficient funding to implement the approved program. The State's justification for the reduced levels relied heavily on the assertion that it has been demonstrated that Kentucky has adequately administered all aspects of the State program with existing staff. However, OSM's oversight program previously documented that Kentucky was encountering problems with the Kentucky State Program and, therefore, the Director disapproved the amendment.

II. Extension of Deadline

Since publication of the notice of disapproval of Kentucky's proposed staffing agreement in the December 31, 1984 **Federal Register**, the Director, OSM and the Governor of Kentucky have engaged in meetings to discuss Kentucky's ability to meet staffing requirements imposed in that notice. The Governor made clear in these meetings that Kentucky wished to retain program primacy but would be unable to meet the deadlines imposed by the Director for staff increases. In a January 16, 1985 meeting, the Governor stated that 14 positions were available to be filled and would be acted upon as soon as possible. The State has also issued a promotional bulletin and has received numerous applications for inspector positions in response to that notice. The State expects to be able to achieve the required staffing level of 408 in the Kentucky Department of Surface Mining Reclamation and Enforcement by August 1, 1985.

On February 21, 1985, the Director, OSM and the Governor of Kentucky came to an agreement as to Kentucky's staffing. On that day, an Amendment to Agreement was signed to amend Grant Number G5143213, the Fiscal Year 1984 Administration and Enforcement Grant to Kentucky. Part of the Amendment was titled "Attainment of Approved Staffing Levels" wherein it was agreed that: the State shall meet and maintain by August 31, 1985, the approved program staffing levels; the State shall provide monthly progress reports to OSM on the fifth of each month, describing actions taken to achieve approved levels; and the State must complete advertisement and other recruitment actions for necessary positions to meet approved levels by May 1, 1985.

III. Director's Decision

Because Kentucky has shown good faith in its efforts to obtain necessary funding and staffing to meet approved levels, and because Kentucky has indicated that approved levels can be reached by August 31, 1985, but could not have been reached by the previously imposed deadline of May 1, 1985, the Director has decided to extend the deadlines imposed in the December 31, 1984 **Federal Register** notice. This action will allow Kentucky to obtain necessary funding and to recruit and select the best-qualified persons available.

This action is being made effective immediately to bring the required staffing actions previously imposed on Kentucky into agreement with the grant amendment agreement which was signed by the Governor and the Director on February 21, 1985. To satisfy the public participation requirements for State program approval actions, the

Director is inviting public comment for 30 days on the action set forth herein. Following OSM's review of the comments received OSM will issue a final decision on this action. In completing final action on this decision, the Director may clarify or modify the decision made effective with this notice based on the comments received in response to the action being announced today.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

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

Dated: April 1, 1985.

John D. Ward,

Director, Office of Surface Mining.

Accordingly, 30 CFR 917.16 is amended as set forth herein.

PART 917—KENTUCKY

30 CFR 917.16 is amended by revising paragraph (b) to read as follows:

§ 917.16 Required program amendments.

* * * * *

(b) Pursuant to 30 CFR 732.17, Kentucky is required to accomplish the following actions or termination of the program approval found in § 917.10 will be initiated on August 31, 1985.

(1) Action to recruit personnel to meet the approved program staffing levels of 408 must begin upon publication of this notice. No later than May 1, 1985, notices concerning vacant positions must be advertised.

(2) Kentucky must have employed sufficient personnel to reach the approved permanent program level (408) no later than August 31, 1985. Of the approved permanent program level of 408, a minimum of 156 must be inspection and enforcement personnel.

(3) By the fifth of each month, beginning on February 5, 1985, Kentucky will provide a report to OSM describing the actions taken to acohieve the approved program staffing levels by August 31, 1985, and of any additional vacancies which may have occurred during the month.

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

[FR Doc. 85-8168 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Combined Presort and ZIP+4 Presort First-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking eliminates, until at least April 6, 1986, the requirement that a combined Presort First-Class mailing must contain a minimum percentage of ZIP+4 coded mail pieces. This change is designed to assist Presort mailers in the conversion of their mailing lists to usage of ZIP+4 codes, by permitting these mailers to maintain the current level of presortation and Presort discounts during the conversion process. The change will also permit mailers to receive ZIP+4 discounts on any qualified ZIP+4 portion of a combined mailing, so long as the mailing contains at least 500 pieces addressed with complete ZIP+4 codes.

EFFECTIVE DATE: April 7, 1985.

FOR FURTHER INFORMATION CONTACT: Donald D. Dillman, (202) 245-5187.

SUPPLEMENTARY INFORMATION: On February 1, 1985, the Postal Service published in the **Federal Register**, for comment, a proposed rule concerning combined Presort and ZIP+4 Presort First-Class mailings. 50 FR 4709-11. The change was proposed to assist Presort mailers in the conversion of their mailing lists to ZIP+4 by eliminating, for at least a one-year period, the requirement that a minimum percentage of the pieces in a combined Presort and ZIP+4 Presort mailing include ZIP+4 codes in their addresses. The regulation, section 365.2 of the Domestic Mail Manual, currently requires that at least 85 percent of the addresses in such a combined mailing include ZIP+4 codes.

As explained more fully in the supplementary information accompanying the proposed rule, many mailers have found it difficult to achieve 85-percent ZIP+4 addressing levels through conventional computer matching techniques, and these mailers have been denied the benefits of ZIP+4 discounts as they undertake time-consuming efforts to improve addressing quality and to add ZIP+4 codes to address list entries unmatched by computer. Larger, multi-list mailers and presort service bureaus have found the 85-percent requirement particularly onerous, as they are unable to achieve a sufficient number of simultaneous, high-quality list conversions among their customers or constituent originators to achieve an overall 85-percent match rate.

The proposed rule would provide for a transition period extension of approximately one year, during which all mailers, as well as presort service bureaus, could qualify for ZIP+4 discounts without regard to the level of ZIP+4 addressing in combined Presort mailings presented to the Postal Service. Because the Postal Service intends to establish a permanent ZIP+4 addressing minimum at the end of the period, mailers could utilize the transition period for intensified efforts to achieve higher quality addressing and higher levels of ZIP+4 code utilization. After careful consideration of the comments received, as discussed below, the Postal Service has concluded that the proposed regulation should be adopted as a final rule, with a three-week delay in the expiration date provided.

In the notice of proposed rulemaking, the Postal Service also invited comments on several other changes contemplated for implementation not earlier than the end of the transition period. First, the Postal Service plans to establish a permanent minimum ZIP+4 addressing level on the basis of reasonable expectations of matching levels to be achieved on well-maintained lists, using state-of-the-art software. Second, as automation levels increase, the Postal Service plans to

alter the presortation requirements for ZIP+4 Presort mail, so as to require only separations by three-digit ZIP Code prefixes. Finally, the Postal Service announced its intention to work with presort service bureaus and mailers to devise appropriate verification procedures upon adoption of a final rule.

The Postal Service received 45 comments in response to the proposed rule. The commenters consisted of eleven firms in the mailing services field, an array of utility, retail and financial services firms, as well as three associations, a labor union and two government agencies, the Oregon Department of Revenue and the Postal Rate Commission. The following analysis of the comments is organized by subject raised in the notice of proposed rulemaking.

A. The Proposed Rule, Temporary Elimination of Minimum Addressing Level for Combined Mailings

Of the 45 commenters, 31 endorsed the temporary elimination of the minimum addressing level for combined ZIP+4 Presort and regular Presort mailings. These commenters indicated that the proposed rule would eliminate an obstacle to list conversion by providing discounts for mailers in the early stages of conversion, and for mailers which merge a number of mailing lists, only some of which have been converted to ZIP+4 coding.

Six commenters, five of whom endorsed a temporary elimination of the minimum ZIP+4 addressing level, requested that the transition period be extended beyond the one-year period contemplated in the proposed rule, by as much as two years. Another suggested that the Postal Service consider such an extension, noting that the existence of ZIP+4 discounts would itself promote high levels of ZIP+4 code utilization in combined mailings. Four commenters suggested that the Postal Service consider or implement a permanent elimination of the minimum addressing requirement; one of these commenters also suggested that the existence of ZIP+4 discounts would promote high utilization rates in the long run.

Most commenters addressing the length of the transition period raised general questions about the sufficiency of a one-year period, in view of difficulties encountered in the more advanced stages of the ZIP+4 coding process. Two commenters suggested that presort service bureaus might especially need a longer period; one of these considered a one-year period arbitrary. Two commenters, firms in the presort service industry, cited difficulties in achieving a high level of ZIP+4 usage among all their customers within one year; one projected that only a 75-percent ZIP+4 usage level in the mailings it presents could be achieved even over a two-year transition period.

As noted in the discussion of a permanent minimum ZIP+4 addressing level below, there are extra costs to the Postal Service associated with the processing of non-ZIP+4 mail in combined Presort mailings in an automated processing environment. These extra costs grow in proportion to the volumes of non-ZIP+4 mail in combined mailings. Thus, to the extent that the Postal Service is successful in utilizing its automated equipment more fully, and in promoting the growth of ZIP+4 volumes, allowing the combining of mailings without restriction could lead to the granting of discounts where combined mailings would provide insufficient offsetting cost benefits.

The proposed rule was designed to provide mailers with a full, one-year transition period; this purpose is being furthered in the final rule by setting the expiration date for the transition period one full year from the effective date of the regulation, April 6, 1986. Given the Postal Service's expectations of volume growth and equipment utilization, the costs associated with an extension of the transition period beyond one year could be unacceptably high. As the transition period progresses, the Postal Service will reassess both the costs and the benefits associated with an extension of the transition period beyond the April 6, 1986, expiration date.

One commenter, a utility association, opposed a temporary elimination of the minimum addressing level. This commenter asserted that the proposed change was not sufficiently substantial to address the problem, and that the proportions of ZIP+4 and non-ZIP+4 pieces in a combined mailing could not be verified. The proposed rule is not designed to be the final improvement to the ZIP+4 program; rather, it is designed to deal with one set of difficulties encountered by mailers in converting to ZIP+4 usage. The ideas advanced by the Postal Service in the notice deal with other issues related to the ZIP+4 program, and extraneous mailer comments, which are discussed briefly in section E below, reflect other concerns. The Postal Service does not agree that the split between ZIP+4 and non-ZIP+4 pieces in a combined mailing cannot be verified. While verification has proved a difficult issue, the Postal Service will work with customers and their associations to find practical approaches to the problem. At this point, the Postal Service is directing its efforts toward finding the most cost-effective way to do the job; this effort is discussed briefly in section D.

Another commenter opposed the extended transition period for other reasons. This commenter stated that elimination of the minimum addressing level would lead to higher costs and under-utilization of automated mail processing equipment, and that the relaxed rules combined with the relatively small ZIP+4 discount give the impression that the Postal Service is not serious about the ZIP+4 program. The Postal Service expects that the change in regulations will produce fuller utilization of the recently procured automated equipment. By promoting the use of ZIP+4 codes by presort mailers, the Postal Service can expect to utilize the equipment for greater quantities of presorted mail. There are costs associated with the non-ZIP+4 portion of combined mailings, and these are discussed below. The Postal Service has taken the steps of changing discount-related regulations and advancing further ideas on improvements in the program because it remains committed to the ZIP+4 program's success. The ZIP+4 discounts, while small in comparison to the discount offered for presorted mail, has provided an incentive to mailer participation in the ZIP+4 program; moreover, changes in the level of the discount would require action by the Postal Rate Commission and are beyond the scope of this rulemaking.

One commenter criticized the proposed relaxation of the combined mailing minimum as excessively liberal and excessively long. This commenter suggested that the minimum percentage be lowered no further than the rate of matching achieved in a typical first attempt to add ZIP+4 codes to an address list, perhaps 60 percent. This commenter rejected the difficulties encountered by presort service bureaus as a justification for a temporary elimination of the requirement, contending that the "combining of mail by presort bureaus violates the [P]rivate [E]xpress [S]tatutes." The commenter suggests that, if the temporary elimination is designed to accommodate multi-list mailers, the period of elimination should be considerably shorter than one year, so as to encourage rapid progress to full utilization of ZIP+4 codes.

The validity of this criticism hinges largely on a legal conclusion that the Postal Service does not accept as valid. The commenter cited no legal precedent for its conclusion that presort service bureaus, by combining mail, are in

violation of the Private Express Statutes. One federal district court has concluded that the Private Express Statutes are violated by the pickup and carriage of unstamped letters by a presort bureau before combining, and the carriage to a post office for mailing, after combining or aggregating, if each letter bears less than ordinary First-Class Mail postage. To the extent that the court's decision relates to any business activities of presort service bureaus, the Postal Service has appealed the district court's decision, and is awaiting a decision by the U.S. Court of Appeals for the Tenth Circuit.

As noted above, the commenter also suggested that any transition period allowed should be considerably shorter than one year, so as to induce quick action on the part of mailers to increase the level of ZIP+4 addressing in their mailing lists. The Postal Service believes that this commenter has underestimated the time required for the full process of list conversion for multi-list mailers.

Mailers which make a conversion decision today generally require substantial time for preparation, software development, and contracting for conversion-related services, in addition to the time required for actual matching operations. Only after this process has been completed can the mailer begin to give serious attention to the issues of improvements in addressing hygiene and ascertainment of further ZIP+4 codes. The proposed rule would provide mailers with a margin of time for decision-making, implementation and improvement, without the threat of imminent loss of discounts.

B. Establishment of a Permanent Minimum ZIP+4 Addressing Level

Several commenters addressed the Postal Service's plan to establish a permanent minimum level of ZIP+4 addressing in combined Presort mailings. One commenter suggested that an 85-percent minimum would be acceptable, but cautioned that attaining a 90-percent conversion level would entail far greater costs than achieving an 85-percent level; the higher cost of conversion would extend the payback period for the investment in conversion to ZIP+4 coding. Another commenter presented similar conclusions, and advocated that the permanent minimum be set at 80 percent, and another at 75–85 percent. Yet another commenter noted simply that a margin for error would be required to accommodate address changes and other situations.

Several commenters, firms in the business of mail preparation, opposed the establishment of a relatively high minimum ZIP+4 addressing level for combined mailings. The projection of a 75-percent ZIP+4 addressing level in two years, noted above, is relevant to the permanent minimum level, as well as to the length of the transition period. Another firm expressed concern about the expense associated with establishing separate processing streams for regular and ZIP+4 mail, which it believed would be required in its operations, in the event that a high minimum level were established. Another firm stated that conversion to an 85-percent level would be too costly to achieve.

In addition to comments addressing the Postal Service's plan to establish a permanent addressing minimum at the end of the transition period, commenters (noted above) that advocated permanent elimination of a minimum ZIP+4 addressing requirement were, by inference, opposed to the plan to establish a high, permanent minimum. One of these commenters suggested that a minimum ZIP+4 addressing level be established for mailers utilizing the 3-digit presortation option, when implemented.

The Postal Service is aware that many mailers encounter difficulties in achieving high levels of ZIP+4 coding, and that mail preparation firms face special difficulties by virtue of their role as consolidators of mail. Both the transition period originally proposed, and the extension and modification of the transition period accomplished in this rulemaking, are designed to aid mailers in dealing with these difficulties. However, as noted in section A above, the costs associated with handling the non-ZIP+4 portions of combined mailings increase as volumes grow. Indeed, the comments received included expressions of concern about the magnitude of these costs. A high but realistically achievable permanent addressing minimum will be required to contain these costs.

The Postal Rate Commission noted that the Postal Service's costs of processing ZIP+4 Presort mailings would be increased if non-ZIP+4 pieces were included in mailings. This increase in costs occurs because automated processing of mail that is presorted to five-digit destinations and does not bear ZIP+4 codes is of no benefit to the Postal Service. When such mail is presented to automated equipment as part of a combined mailing, it incurs the cost of two unproductive processing steps. The Postal Service plans to establish a minimum ZIP+4 addressing level that balances the Postal Service's interest in reducing these unproductive costs with the requirement that the difficulties of list conversion to ZIP+4 coding not present unwarranted obstacles to mailer participation in the program.

Two commenters suggested that the Postal Service consult with, or survey, users on ZIP+4 coding levels, before establishing a permanent minimum requirement. Another commenter suggested that a permanent percentage could be established through the Postal Service's "Operation M.A.I.L." During the extended transition period, the Postal Service will survey customers and ZIP+4 software vendors on their experience in adding ZIP+4 codes to address lists. In order to hold unproductive processing costs to a reasonable minimum, the Postal Service will base the permanent minimum requirement on mailers' experience with well-maintained lists, using state-of-the-art software.

The Postal Service intends to take the steps necessary to permit, on a permanent basis, a prescribed percentage of non-ZIP+4 pieces in combined mailings. This effort will be designed to implement a permanent allowance upon completion of the transition period. The Postal Service will provide an opportunity for comment on its proposal to establish a permanent ZIP+4 addressing minimum for combined mailings, as well as on the specific percentage level proposed.

C. Presortation of ZIP+4 Mail to 3-Digit Areas

The Postal Service's plan to implement a 3-digit presortation requirement for ZIP+4 mail at some point after the transition period received favorable response from 23 commenters. These commenters generally agreed that a 3-digit presortation requirement (as opposed to the current requirement of 5-digit and 3-digit separations) would greatly reduce the costs associated with preparing Presort mailings; one commenter noted that the Postal Service might also receive Presort mailings at an earlier time in the day. Several of these commenters urged that the Postal Service implement such a presortation system at the earliest possible time.

While not opposing a 3-digit presortation requirement categorically, eight commenters were concerned about the terms under which 3-digit presortation would be available, or about the impact of the change on discount levels. One commenter, a firm in the mail preparation business, suggested that the minimum number of pieces required to qualify for Presort discounts be increased substantially. On the other hand, one of the banking

associations which submitted comments suggested that the minimum quantities required for Presort eligibility be decreased. This is an area of competing considerations for the Postal Service as well. During the coming months, the Postal Service intends to evaluate this issue, in order to determine what minimum number of pieces per 3-digit destination would be best from an operational standpoint. Minimum requirements could then be established on the basis of operating efficiencies and volume considerations.

Seven commenters expressed concern that 3-digit presortation would lead to a decrease in the size of Presort discounts. Two others adverted to this issue, assuming that the discount would remain unchanged, or expressing a desire to know future discount levels. One of the seven commenters, a presort service bureau, stated that a reduction in the discount was a threat to the presort service bureau industry and its investments, and to presort mailers generally. This comment was echoed by a mailer association. Other commenters noted that presort mailers would be doing less preparation work for the Postal Service under a 3-digit presortation requirement. Although the Postal Service recognizes that such a change in presortation would reduce mailer workload, it is contemplating the change because finer presortation to 5-digit separations do not yield incremental benefits to the Postal Service in an automated mail processing environment. Nevertheless, the Postal Service will take cost consequences of the shift to 3-digit separations into consideration in determining the timing and terms of implementation.

Of the commenting presort service bureaus, four addressed the 3-digit presortation concept. Three of the bureaus addressed the issues of decreased discounts and possible changes in the minimum number of pieces required for Presort discounts; these issues are addressed above. One bureau opposed 3-digit presortation as discriminatory, since discounts would be granted for presorted mail requiring additional handlings. As noted above, in an automated environment, 3-digit presortation leads to fewer, not more, handlings. In the case of nonautomated processing, which would be the case for a small portion of the mailstream, there may be additional handlings. The offsetting costs associated with these handlings are discusssed in the following paragraphs.

The Postal Rate Commission focused on the cost effects of a shift to 3-digit presortation for ZIP+4 mail. Other than the cost effect of combining ZIP+4 and non-ZIP+4 pieces in a Presort mailing, the negative cost consequences identified by this commenter arise in cases where ZIP+4 Presort mail destinates at facilities not equipped with optical character readers and bar code sorters. In such facilities, the presorted mail would generally require an additional sort, to 5-digit separations, in order to return the mail to the degree of sortation that is produced by mailers under the 3- and 5-digit requirements currently in effect. Under the assumptions employed by this commenter, the offsetting cost of this sortation would be substantial. However, in view of several factors, the effect is likely to be diminished greatly.

First, currently funded procurement of additional automated processing equipment will roughly halve the amount of First-Class Mail that can be expected to destinate at a postal facility not equipped with automated mail processing machinery. Second, not all ZIP+4 Presort mail would be affected by the change to a 3-digit requirement, as Presort mail today reflects a mixture of 3- and 5-digit separations. Third, if mailers shift from 5-digit to 3-digit separations for portions of their presorted mailings, the resulting 3-digit packages may still be prepared in 5-digit ZIP Code sequence; this could reduce the costs associated with additional distribution functions at nonautomated facilities. Finally, the adverse cost consequences occur only if mail presorted to 3-digit separations is processed at nonautomated facilities. This could be avoided through the routing of 3-digit Presort mail through automated facilities, or through a requirement that presorted ZIP+4 mail destined for nonautomated offices be presorted to 5-digit separations. These possibilities will be under study during the transition period.

In addition to further study of the topics noted above, the Postal Service will continue the operational tests to which it referred in the notice of proposed rulemaking. There will be further opportunity for public participation before a 3-digit presortation system is implemented. Upon development of any proposal to implement a 3-digit presortation requirement for ZIP+4 Presort mailings, an opportunity for public comment on all details of the proposal will be provided.

D. Verification Procedures

Seven commenters directed their comments to the issue of mail verification. Two of these commenters made general comments, noting that verification problems had interfered with growth in ZIP+4 volumes, and noting the need for the establishment of satisfactory procedures for combined mailings. Two commenters advocated the use of sampling techniques; one of these commenters also recommended that verification procedures be established on a national basis, and the other suggested that computer verification could be utilized.

Another commenter advocated verification on the mailer's premises, and suggested that the percentage of ZIP+4 addressing in combined mailings be established on a monthly basis, by recourse to the mailer's computer records. This mailer also noted several problems related to postage payment, including metering levels and decimal metering. Yet another commenter suggested that the Postal Service utilize a simple piece-count verification system. Finally, one commenter stated that compliance with current procedures is too expensive, while it feared that less exepensive procedures would not withstand the scrutiny of auditors.

When a mailer affixes ZIP+4 Presort postage to all pieces in a combined Presort mailing, additional postage must be paid for the 5-digit ZIP Code pieces which qualify for the Presort First-Class rate. Also, additional postage must be paid for all residual pieces; this amounts to an additional 3.6 cents for the ZIP+4 coded pieces; coded pieces and 4.5 cents for the 5-digit ZIP Code pieces. The Postal Service will continue to explore ways to verify postage for mailers who may wish to participate in the ZIP+4 program, but are unable to provide the Postal Service with a listing for verification of postage and commingling ratio.

The Postal Service has formed a working group, consisting of representatives from a number of its functional areas. Mailers will be invited to join the group in the near future. This group will develop workable and effective verification procedures, based on suggestions contained in the comments noted above, and on other information it gathers. Verification procedures currently in effect will continue to be used until the group's work results in the establishment of new procedures.

E. Comments on Other Subjects

Several comments addressed issues not directly related to the topics covered in the notice of proposed rulemaking. For example, two commenters proposed that a new subclass be created within First-Class Mail, and seven commenters suggested that the current discount of

0.5¢ for presorted ZIP+4 mail be increased. Other commenters advocated changes in the regulations defining the restricted "read area" required on discount eligible mailings, noted the importance of accurate ZIP+4 codes, or advanced ideas on the imprinting of bar codes by mailers. Another commenter proposed that Presort mailers be required to use ZIP+4 codes, while another proposed that ZIP+4 discounts be extended to business reply mail and third-class mail. Yet another commenter discussed the ratemaking process as it might be structured in the future, listing the categories of cost data that the Postal Service should generate. These comments are beyond the scope of this rulemaking; they have been forwarded to appropriate postal managers for their consideration.

The Postal Service has reviewed all the comments and, for the reasons set forth above, has determined that it is appropriate to implement the proposed rule without change, with the exception of a change in the section's expiration date. As noted above, the regulation change provides for a one-year elimination of the current addressing level requirement, measured from the effective date of April 7, 1985. It is the usual practice of the Postal Service to set effective dates 30 days after publication; however, because the instant change does not impose new requirements, but relieves restrictions, the change is being made effective immediately. Therefore, the Postal Service hereby adopts the following final regulation on this subject as an amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

In 365, amend 365.2 to read as follows:

PART 365—COMBINED PRESORT MAILINGS

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365.2 Transition Period.

Until April 6, 1986, mailers are permitted to fully combine ZIP+4 Presort First-Class Mail and regular PRESORT First-Class Mail. Except as provided in 365.31, no minimum number of ZIP+4 coded pieces is required. This section expires April 6, 1986, at which time it is expected that a permanent minimum percentage of ZIP+4 coded pieces in a combined Presort mailing will be implemented.

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

(39 U.S.C. 101(d), 401, 403, 404)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-8198 Filed 4-4-85; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ENF-84-15; ENF-84-19, et al; FCC 85-101]

Petitions for Waiver of Rules Filed by Pacific Bell, et al.

AGENCY: Federal Communications Commission.

ACTION: Waiver of rules.

SUMMARY: By this order, the FCC conditionally grants petitions by certain Bell Operating Companies for waiver of the structural separation requirements of the FCC's Second Computer Inquiry ("Computer II") rules so that they can perfom conversion from asynchronous protocols to standard X.25 packet-switched network protocols in facilities located in their central offices. Under the Computer II rules, services such as these ordinarily must be implemented in facilities outside of the Bell Operating Companies' central offices. The petitioning companies argued that this would result in inefficiency and higher data transport and other telephone costs to the public unless the requested waivers were granted. The FCC concludes that the public interest would be served by grant of the waivers, subject to three conditions to promote meaningful competition and to promote the carrier's obligation not to discriminate in the provision of basic services.

EFFECTIVE DATE: This decision is effective April 5, 1985. (Before the grants become final, the petitioners are required to furnish the Commission with specified additional information; no date is specified for such filings.)

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

FOR FURTHER INFORMATION CONTACT: Michael S. Slomin, Legal Assistant to the Chief, Common Carrier Bureau (202-632-6910) or Jane E. Jackson (202-632-4887).

SUPPLEMENTARY INFORMATION: The rule provisions that are waived are in 47 CFR 64.702. *See also*, Second Computer Inquiry, 77 FCC2d 384 (1980), *aff'd on reconsideration*, 84 FCC2d 50 (1980) and 88 FCC2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana v. United States, 103 S.Ct. 2109 (1983); Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC2d 1117 (1984), *aff'd sub nom.*, Illinois Bell Tel. Co. v. FCC, 740 F.2d 465 (7th Cir. 1984); Communications Protocols Inquiry, 95 FCC2d 584 (1983).

List of Subjects in 47 CFR Part 64

Communications common carriers, Telegraph, Telephone.

Memorandum Opinion and Order

In the matter of petitions for waiver of § 64.702 of the Commission's Rules (Computer II) filed by:

Pacific Bell	ENF-84-15.
Southern Bell Telephone & Telegraph Company and South Central Bell Telephone Company.	ENF-84-19.
Southwestern Bell Telephone Company.	ENF-84-20.
New York Telephone Company and New England Telephone & Telegraph Company.	ENF-84-21.
New Jersey Bell Telephone Company.	ENF-84-22.
Northwestern Bell Telephone Company.	ENF-84-23.
Pacific Northwest Bell Telephone Company.	ENF-84-24.
Ameritech Operating Companies	ENF-84-48.

Adopted: March 1, 1985.

Released March 26, 1985.

By the Commission. Commissioner Patrick issuing a separate statement.

I. Introduction

1. Before the Commission are eight petitions seeking waiver of the structural separation requirements of the *Second Computer Inquiry* (hereafter, "Computer II") governing the provision of certain protocol conversion offerings by the Bell Operating Companies ("BOCs"). Specifically, the petitioning BOCs seek to be able to perform conversion from asynchronous protocols to standard X.25 packet-switched network protocols (hereafter, ("asynchronous/X.25 conversion") in facilities located in their central offices.[1]

[1] Northwestern Bell Telephone Company also seeks to be able to offer resold basic services within the structurally separate affiliate, as an alternative to relaxation of the requirement that the facilities for enhanced services be separated and not collocated in the central offices of telephone

Continued

2. Protocol conversion, including asynchronous/X.25 conversion, is including within the definition of enhanced services under the Computer II rules, 47 CFR 64.702(a). The BOCs are permitted under Computer II to offer enhanced services, including protocol conversion, but only through a structurally separate affiliate utilizing its own separate processing facilities. Any communications channels necessary to the provision of an enhanced service must be acquired by the affiliate under tariff. As long as the affiliate conforms to the Computer II separation requirements, 47 CFR 64.702 (c) and (d), it need not obtain the approval of the Commission to offer any enhanced service.

3. The BOC separate affiliates are thus free to provide asynchronous/X.25 conversion, as well as other protocol conversions, in the same way that the "value added network" service providers (hereafter referred to as "VANs")[2] and other enhanced service vendors today provide similar services. The BOCs, however, seek to offer asynchronous/X.25 conversion through their operating companies' facilities, in conjunction with existing or proposed basic packet switching services. This approach is inconsistent with the structural separation requirements of Computer II. The BOCs therefore request that we waive § 64.702(c) of the Rules and allow provision of this particular protocol conversion service on an unseparated basis. Some BOCs go further, requesting that we allow the asynchronous/X.25 protocol conversion to be offered under tariff as a basic service. The BOCs claim that grant of their waiver requests will enable them to provide an inexpensive local data transport service to many customers who are not reached by, or who cannot afford to use, the services of the VANs.

4. An extensive record is available to us in our assessment of the merits of the petitions,[3] and of the effects of a grant or denial on the specific objectives of the Computer II proceedings [4] and on the broader statutory objectives upon which they were grounded.[5] It is clear, based on this record, that the BOCs would avoid some economic costs if they could collocate asynchronous/X.25 conversion in their central offices. Such economies should lower the rates that the BOCs would otherwise charge ffor transmission of data in the asynchronous format and potentially allow those rates to be set lower than those currently charged by the VANs for local data transport. Users of the millions of terminals and terminal-emulating personal computers in the United States which communicate only in the asynchronous format could thereby benefit from reduced cost data service. On the other hand, if these costs are unnecessarily required to be sustained by the public through denial of the requests, only the present vendors of services that include protocol conversion would be benefitted, a result which would be inconsistent with the objectives of the Act.[6]

5. However, it is also clear, based on this record, that a material portion of the savings that BOCs anticipate passing on to the public are not the result of "superior skill, foresight, and industry." [7] Instead, these "savings" result from the BOCs' assumption that waiver will enable them to use at cost the same inter-office transmission channels which competing packet switched service vendors must purchase from the BOCs at higher, tariffed rates. Even if this "price squeeze" by the monopoly provider of local transmission channels could be rationalized with respect to our Computer II rules and decisions, it is unacceptable to us on other grounds.[8]

6. First, it represents improper discrimination under the standards of Section 202(a) of the Act, 47 U.S.C. 202(a). The VANs and other enhanced service vendors, and their customers, would be improperly disadvantaged in that they would be paying a substantially different price than the BOCs' customers using identical transmission channels. The same channels are used in both cases. They are merely to be priced differently. In addition, if the BOCs' cost for transmission facilities is set too low, users of BOC asynchronous format data transmission services employing these underlying transmission channels could be improperly advantaged at the expense of other ratepayers who would sustain costs thereof not assumed by the data transmission users.

7. Second, the BOC proposals to wholesale inter-office channels to the VANs at prices substantially higher than the cost at which they themselves would include those same channels in their own packet services is a classic version of the price squeeze, a practice condemned under the antitrust laws. The FCC has authority to enforce certain of the antitrust laws directly.[9]

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companies subject to structural separation. We address Northwestern's alternative request in the course of our treatment of the petitions below. We use the phrases "BOCs" and "petitioners" when referring to the requests of all of the petitioners for relaxation of the collocation restriction, including Northwestern Bell.

[2] The term "VAN" is commonly used to refer to vendors of switched communications services that acquire common carrier facilities, add economic "value" to them by using them more efficiently than they are used when offered to the public by the underlying carrier, and themselves offer the reconfigured facilities to the public as new services. Traditionally, such value has been created through the use of packet switched technology, which for a long period was not employed by the underlying carriers. Initially, the Commission certificated as common carriers several such VANs, including Telenet and Tymnet, two commenting parties herein. Since these entities' services involved protocol conversion, after Computer II was adopted they were treated no differently than other enhanced service vendors. Since they offer data transport, rather than information services as such, many in the industry in the United States and in other nations have continued to term them "VANs" to distinguish them from information service providers. This is a distinction without effect under Computer II, and we use the term "VAN" and "enhanced service provider" interchangeably herein.

[3] First, we placed the petitions on public notice and solicited comments and replies thereon. Second, the staff transmitted comprehensive requests for information to each petitioning BOC. These questions sought detailed information not only on the specifics of the BOC's proposals, but also on the future effects of these proposals on competiton and on technological trends in telecommunications. Public comment was solicited on the responses filed by the BOCs. Third, a number of interested entities, including the petitioners, their supporters and their opponents, have made their views known to the Commission through informal filings on the petitions. These filings, which include letters from the public and summaries of oral presentations made to the Commission and its staff, are also part of the record of these proceedings. And fourth, the matters at issue herein were the subject of three years of proceedings in our *Communications Protocols Inquiry* in which a record was compiled on the broad policy issues surrounding structural separation of all forms of protocol conversion, including, but not limited to, asynchronous/X.25 conversion. *See*, 95 FCC 2d 584 (1983) (Memorandum Opinion, Order, and Statement of Principles), 83 FCC 2d 319 (1980) (Notice of Inquiry). The record of that proceeding, which established principles under which requests of this nature will be analyzed, is part of the record herein.

[4] Second Computer Inquiry, 77 FCC 2d 384 (1980), *aff'd on reconsideration*, 84 FCC 2d 50 (1980) and 88 FCC 2d 512 (1981), *aff'd sub nom.*, C.C.I.A. v. FCC 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana v. United States, 103 S. Ct. 2109 (1983) (applying structural separation to the then-integrated Bell System). *See also*, Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117 (1984), *aff'd sub nom.*, Illinois Bell Tel. Co. v. FCC, 740 F.2d. 465 (7th Cir. 1984) (applying modified structural separation conditions to the BOCs divested pursuant to United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131 (1982), *aff'd sub nom.*, Maryland v. United States, 103 S. Ct. 1240 (1983)).

[5] *E.g.*, promotion of the availability "so for as possible, to all the people of the United States, a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *" Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. 151.

[6] *Id.*

[7] United States v. Aluminum Co. of America, 148 F.2d 416, 430 (2d Cir. 1945).

[8] *Id.* at 436–438.

[9] 15 U.S.C. 21 (enforcement of sections 2, 3, 7 and 8 of the Clayton Act).

and it weights in antitrust issues and concerns as part of its broader consideration of the public interest in reaching regulatory decisions.[10] One purpose of the structural separation rules we are asked to waive is to make it difficult for the BOCs to use their control over local transmission facilities to compete unfairly with other enhanced service providers. We must therefore be wary of any waiver request which appears to be premised in part on "benefits" to be derived by BOCs and their customers from squeezing out competitors. Consideration of such potential antitrust implications seems particularly appropriate in this context where pro-competitive decisions of this Commission authorized and promoted the competition among protocol-converted packet switched services that now exists, and that could be threatened by unconditional grant of the asynchronous/X.25 conversion petitions.

8. In view of these and other concerns discussed below, while we grant petitioners' requests that they be permitted to collocate at their central offices asynchronous/X.25 conversion capabilities, their authority to do so is contingent upon their accepting certain conditions. In the absence of such acceptance, their petitions are denied.

9. We recall that we commenced the Second Computer Inquiry because technological changes has so strained the lines drawn in the First Computer Inquiry the entire industry was unable to plan because of regulatory uncertainty. In our Protocols Inquiry, we continued to seek balance between telecommunications efficiency and the multi-faceted goals of Computer II. The record of that proceeding was compehensive on the efficiency and technological effects of limiting protocol conversion in the central offices of AT&T and the BOCs. However, that record completed only four years ago does not reflect the current state of the industry. Private and common carrier communications systems that might be used as alternatives to those of AT&T and the BOCs have grown, and AT&T has divested itself of the BOCs. We attempted to alleviate some of the uncertainties created by these and other changes in our November, 1983 *Memorandum Opinion, Order, and Statement of Principles* in the Protocols Inquiry, (hereafter *"Protocols Decision"*). In that Order we adoped principles under which requests such as those before us herein would be evaluated. The uncertainty which has prevailed during the pendency of this proceeding, however, suggests that the waiver process is insufficient to provide the stability needed by users, carriers, VANs and other enhanced service providers, whose business planning and decisionmaking are affected by our decisions.[11]

10. Our experience with this proceeding suggests the need for a different approach to treating problems of protocol conversion. We would be remiss if we did not use the record compiled here as a base to minimize or eliminate uncertainty for the future. Accordingly, in a forthcoming notice of proposed rulemaking we will seek to formulate general rules of future applicability to govern the treatment of protocol conversion and similar enhanced services. Our conclusions and conditions herein have been constructed so as not to foreclose the results of the rulemaking proceeding, and they are without prejudice to its outcome, but they will permit progress to be made during its pendency.

II. The Petitions

A. Background

11. *Asynchronous Protocols.* The requests before us address the conversion of asynchronous transmission protocols to the synchronous X.25 protocol, currently accepted as the standard interface between users' equipment and a packet network. Generally the requests are justified on the basis of a particular, existing asynchronous terminal population that is most commonly used for communications purposes. The particular terminal population, considered as the market of interest, are those transmitting an asynchronous data stream while using the ASCII code (infra) to encode characters and variants of the RS232 physical interface standard to control the ASCII encoded information. In common parlance these terminals are referred to as "ASCII" data terminals, although ASCII is merely a standard manner of encoding characters using binary symbols. The X.25 synchronous transmission protocol, to which the BOCs seek to convert asynchronous terminal transmissions, does not depend on the particular character encoding in use by a given terminal. It can be used for the transfer of ASCII-encoded data or data encoded using others codes.

12. For example the FBCDIC, Baudot, and Fieldata,[12] codes, which are different from the ASCII one, can also be transmitted using asynchronous protocols, and data using these codes can also be converted to the X.25 transmission protocol. The terminal at the other end of the connection must be able to accept and utilize the specifically-encoded data, but the fact that ASCII or any other is in use in a given call is irrelevant to the network transmission (although the packet network itself must be able to accept and utilize "header" and call set-up information in the code in which it is transmitted). Since, as noted, much of the BOCs' proffered justification for grant of the petitions is that there are literally millions of existing and potential ASCII terminals and personal computer data terminal devices that could use their protocol conversion capabilities if the waiver is granted, we describe in some detail why this format has become so common.

13. The American Standard Code for Information Interchange or ASCII, has been adopted as a voluntary standard by the American National Standards Institute (ANSI X.3) and is also the subject of international recommendations or standards (CCITT Recommendation V-3;[13] ISO standards 646-1973.[14] While it is, strictly speaking, a code for representing alphanumeric characters in terms of binary symbols, as noted the term "ASCII terminal" is often used more broadly to describe the combination of ASCII coding with other transmission attributes, i.e., serial ASCII coding in asynchronous format, and use of the RS-232C standard for access and transmission control.[15]

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[10] E.g., Satellite Business Systems, 62 FCC 2d 997, recon denied, 64 FCC 2d 872 (1977), aff'd sub nom United States v. FCC, 652 F.2d. 72 (1980) (en banc). See also Gulf States Utilities Corp. v. FPC 411 U.S. 747-760 (1972).

[11] Some ten months has elapsed since the petitions were filed, yet we have not been dilatory in addressing them. As filed, the petitions did not sufficiently particularize the details of what each petitioner was proposing. Comments point up the need for additional information on the scope of the waiver sought in each case; the extend to which alternative safeguards would secure the goals of Computer II if we waived structural separation for asynchronous/X.25 protocol conversion; and the short and long term effects of waiver on competition, technological trends, and the broad public interest. Information requests and a second round of pleadings produced that information. Without the comprehensive record now before us, it would be difficult to reach the conclusions and judgments that we make today.

[12] FBCDIC is an acronym for Extended Binary Coded Decimal Interexchange, a code commonly used in IBM systems. Baudot is a code name for Emile Baudot, the inventor of the printing telegraph. Fieldata is a code used in military systems.

[13] CCITT Recommendation on International Alphabet No. 5, Vol. VIII, Fascicle VIII-I-Rec. V-3.

[14] 7 Bit Coded Character Set for Information Processing Interexchange, ISO Standard 646-1973.

[15] EIA Standard RS-232C, Interface Between Data Terminal Equipment and Data Communications Equipment Employing Serial Binary Data Interexchange.

14. ASCII originated as the code for asynchronous communications used by TWX teletypewriters in the 1930s, and the RS-232-C interface similarly was developed as a method to control asynchronous teletypewriter transmissions. Teletypewriters often were (and are) used to transfer manually-typed information, and the typist might hit the keys at any time. Because of this, asynchronous transmission character coding normally contains patterns used, not for communications as such, but to permit the receiving device to accept that character whenever it is transmitted.[16]

15. When remote access data processing employing remote terminals with computers was developed, because this teletypewriter equipment was readily available (often incorporating the needed modulators/demodulators, or "modems", and interface to transmit over common carriers' voice circuits), it became common for computers to support the ASCII/RS-232-based asynchronous protocol for remote access by teletypewriters and teletypewriter-like devices in order that the available teletypewriters could be used for this purpose. As faster or more convenient data terminal alternatives to these traditional relatively low-speed teletypewriters were developed, these devices, too, often used the asynchronous ASCII/RS-232 format, although other more efficient protocols were also developed for network communication among terminals and computers. Included among these other protocols was the X.25 protocol, infra that currently characterizes the normal interfaces to packet-switched networks.

16. The result has been that while market and technological development created the broad variety of data terminals available today, many of them follow the established pattern of using or supporting the ASCII/RS-232 protocol. The distinction between a "terminal" and a "computer" has blurred, with terminals increasingly incorporating computing capabilities.[17] Contemporaneously, the small and relatively inexpensive personal computer was developed and deployed. These computers through the addition of a modem and appropriate software (or plug-ins containing hardware, software or firmware), can serve as (or emulate) terminals when connected with other computers or terminals. Also, since many peripheral devices that might be connected with personal computers, such as printers, use the RS-232 interface, it became very common for personal computers to support the RS-232 interface, to which a modem can also be connected. For these reasons, personal computers have generally followed the established pattern of supporting the ASCII or asynchronous protocol for data communications.

17. The result of these developments is that today there are literally millions of deployed terminals, mainframe computers and personal computers that support only ASCII/RS-232-based data communications with other such devices, or that support ASCII/RS-232-based data transmission for ubiquitous communications in addition to one or more protocols uniquely used for communications with other equipment supplied by the provider of the terminals. If there is a relatively common, non-proprietary terminal standard in use for data communications, it is this one.

18. *Packet Switched Communications.* When asynchronous data communications are carried solely on private lines or the conventional switched telephone network, the signals are passed through modems at each end of a channel to render them compatible with the carriers' transmission media. The channels simply replicate at the far end the signals received at the near end. If conventional MTS service is used, the user pays for the entire time the circuit is established, regardless of whether communications actually ensues. Thus, in a hypothetical interactive remote data access call which might last for an hour, during which actually communications might have occupied only five minutes, the user pays for an hour's communications service. If a private line is used, the user pays for full-period service, even if the line is actualy used for communications ("occupied") for a much shorter period. This pricing approach by the carriers is sensible, as their costs track the channels' availability, not the occupancy of the channels by actual communications. That is, when a channel is connected for the duration of an MTS call, or dedicated to a user full-time in private line service, it is unavailable for other use during these periods; the actual communications time is irrelevant to the costs imposed.

19. With packet switched data transmission, many users can share a single digital transmission channel. Each user's data is split up into small discrete packets. Each packet has attached to it address information indicating its destination. The packets are sent through the network separately, then re-assembled at their destination. During transmission, packets belonging to one user can be interspersed among packets belonging to other users, allowing the channel to be more fully occupied than it would be if it were dedicated to a single user.

20. Because of the technology employed, packet switched services are commonly priced differently than circuit switched and private line data transport.[18] It is common for various VANs' and enhanced service providers' packet switched offering to be priced wholly or largely based on actual communications time (occupancy) rather than connection time. In the hypothetical call lasting an hour, if actual communications occurs only during five minutes of that time the user is charged primarily or exclusively for the five minutes of usage and not for the hours of connection time.[19, 20]

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[16] In contrast, in asysnchronous protocol, procedures are used whereby this additional, time consuming transmission of electrical signals may be dispensed with, thereby improving "throughput" materially. Intermediate "buffering" (storage) is used to accumulate a block of typed information and send it forward. Memory devices to implement such storage are common and inexpensive today. But, in the 1930's when teletypewriters were first developed, such storage did not exist. Of necessity, networks and teletypewriters were designed to obviate the need for such storage.

[17] This is essentially the concept of distributed processing, where portions of processing that at one time was performed exclusively in large central computers accessed remotely by terminals with no processing capabilities have increasingly moved into the terminals themselves, and only those processes requiring accessing and updating of central data bases or greater computer capability than exists in the distributed processors, are performed centrally. An example of this might be a grocery chain's point-of-sale pricing and inventory control computing. If central processing alone were used each cash register in each store serving as a "dumb" terminal might have to communicate with the central computer to determine the price of each item read by a light pen at the register. The central computer could not only respond with the price but also keep track of the sale to determine inventory requirements. In distributed processing, the store itself would have one or more "smart" terminals or computers to generate the pricing information and inventory control for the store. These distributed processors might communicate occasionally with a central computer responsible for chain-wide ordering of stock and central price updating.

[18] They need not be. Since the offering of these largely enhanced sevices is unregulated, the vendors may price on any basis they deem appropriate including connection time pricing comparable to that used in the MTS-type alternatives. However, an important market advantage of packet switched offerings over circuit switched and private line alternatives available from the telephone companies has been the pricing discussed here. Another, discussed below, has been terminal compatibility.

[19] A large discrepancy between channel usage (occupancy) and connection time on a data call is not uncommon. In using a remote data base, for example, the use may type a few characters (usage), wait for a response (no usage while the accessed computer is processing the request), receive a response (usage), think for a while about the response (no usage), the type some more (usage) etc.

Continued

21. The X.25 interface protocol is an internationally recognized interface between packet switched networks and packet mode terminals. Some packet networks also use this protocol internally to their networks, while others merely generate the X.25 interface at their nodes. However, when vendors began to develop and deploy packet switched networks in the mid-1970's, they recognized that the majority of existing terminals and computers that might use such networks used the asynchronous interface, not the synchronous X.25 one. Thus, they built into their systems packet assembler/disassembler devices ("PADs") with inherent asynchronous/X.25 conversion capabilities, that form the signals from asynchronous terminals ito X.25 packets. Were the networks merely to perform such asynchronous to X.25 conversion at one end of a call, and perform the reverse conversion at the other end, the end-to-end service would be basic under Computer II because no net protocol conversion would occur.

22. However, many of the large computers with which asynchronous terminal users seek to communicate are able to accept and transmit data efficiently in the X.25 mode. A common configuration, therefore, has been that user terminals access the packet switched service using the asynchronous protocols they support; the PAD with which the terminal is connected converts that data to X.25 (or an internal network protocol) for transmission over the packet switched network; and at the other end the PAD with which a large computer is connected passes the data on to that large computer using the X.25 protocol. When a signal thus enters the packet network in asynchronous format and exits the network in X.25 format, a net protocol conversion occurs.

23. *The VANs' and Enhanced Service Providers' Packet Switched Services.* Most current and potential vendors of packet switched services purchase underlying transmission facilities from telephone companies, although it is possible for them to construct or use alternative transmission channels. Typically, ordinary switched exchange and long distance facilities are employed by user terminals to access the packet switched networks. Private lines connect the nodes of the packet switched networks to one another. Packet switches (which are, of course, computers) at these nodes create connections between the origination and destination nodes, a function involving protocol conversion, multiplexing, and switching. Finally, the X.25 destination node is connected to the called data equipment, often a large computer, by a leased private line.

24. As noted, most underlying transmission facilities involved are leased from telephone companies. Since the VANs and enhanced service providers have not been permitted to locate their packet switching equipment within telephone company central offices, loops are required between the central offices and the VAN nodes. To receive inputs to their packet switches from "dial up" uses, conventional switched telephone services are used.[21] Similarly, use of private lines to connect the nodes to form a network involves use of loops [22] to connect each node to a central office, where the loop is connected to inter-office private line facilities. If the VANs' packet switching equipment were located within the central offices of the telephone companies from whom they obtain transmission channels, they would not need to use all of these loops. Instead, necessary connections would be made using within-office wiring.

25. A VAN does not commonly send a bill to a terminal user who uses its packet switched network to access an information service such as, for example, Dow Jones News/Retrieval (a participant in this proceeding). Rather, the charges for that use of the packet network are billed to the information service provider. The information service provider in turn includes the communications charges within its total charges to the user for the information or central processing services offered. The only communications costs which the terminal us pays directly is the charge for the local or long distance telephone call between his premises and the VAN's access node. If this is a local call priced on a flat rate basis, or one that is otherwise not priced on a fully usage-sensitive basis, the user perceives that this call is "free."[23]

26. Therefore, from the perspective of many users of information services, there is little or no connection-time pricing associated with use of the VANs' packet switched services. A user may place a one hour call or a one minute call and if he types the same amount in both calls and receives the same information in both calls he will engender much the same charge.

B. The BOCs' Proposals To Offer Local Packet Switched Services

27. The BOCs assert that the VANs' networks use local exchange facilities inefficiently because they are designed to take maximum advantage of flat rate pricing of local calls. They say that VANs tend to locate their access nodes as close as possible to interstate private line facilities even if this means that local data calls may travel many miles through many central offices before reaching the packet network. They point out that data calls not only make inefficient use of circuit switched facilities, but also tend to last much longer than the voice calls for which the local circuit switched networks were originally designed. Increasing extensive use of local voice facilities for data transmission can thus overburden the circuit switched network, requiring new construction to avoid deterioration of service to all customers. BOCs claim that their own local packet switched networks, on the other hand, will conserve use of voice circuits by diverting local data traffic onto more efficient packet switched facilities at the earliest, rather than the latest opportunity. Thus, Pacific Northwest Bell estimates that it will spend $40 million in the next 6 years to expand the voice network to accommodate projected increases in data traffic, but that it will be able to accommodate the same increase in traffic on a local packet switched network for $22 million, for a savings to its ratepayers of $18 million.

28. The BOCs argue that they are uniquely able to bring to local data transport the efficiencies which the VANs have brought to long-haul data transportation through the use of packet

Where distributed processing is involved, processing delays (during which the channel is not used) may occur at both ends of the connection.

[20] In practice, pricing practices vary. While pricing generally follows usage, connection time elements are also commonly included, but they are not the primary ones.

[21] Thus, if a VAN wishes to handle simultaneously calls from twenty terminals in a given local calling area, it will lease a block of twenty local lines, usually in rotary so that a single number may be published. Terminal users will simply dial that number, and the call is treated as any other telephone call, involving the user's local line at the calling end, the VAN's local line at the called end, and conventional telephone facilities to connect them.

[22] A "loop" is a channel, usually a pair of wires, between the telephone company's central office and a subcriber's premises.

[23] Local calls in some areas, and most long distance calls, are priced on a fully usage-sensitive basis, under which the user pays based on the duration and the distance of the call. In other areas, local calls are priced on a partially usage-sensitive basis, for example pricing per-call without regard to duration. Finally, there is flat-rate local service pricing, where the user pays the same regardless of the number, duration or distance of calls made in the exchange service area.

switching. However, like the VANs the BOCs realize that the overwhelming majority of existing terminals and especially the personal computers which would be used by most residential and small business users of data services, use asynchronous protocols. The central computers with which those terminals would communicate, on the other hand, use the X.25 protocol. Thus the BOCs wish to include asynchronous/X.25 protocol conversion in their packet switched services to make them useful to the large number of customers with asynchronous terminals.

29. Under Computer II, the BOCs are of course, free to offer enhanced services, including such protocol conversion through a structurally separated affiliate. That affiliate would have to obtain underlying communications channel services from the carrier on a tariff basis, just as the VANs and enhanced service vendors do today. The BOCs would have to locate their protocol conversion equipment outside their central offices under the structural separation, just as the VANs or enhanced service vendors today. On the other hand, no waiver or special approval by the Commission would be required if the BOCs were seeking to offer protocol conversion in the same manner as the existing VANs and enhanced service providers.

30. The BOCs however, claim that if they must provide local data service under the same conditions which apply to the VANs, they will be forced to configure their networks like those of the VANs and to charge prices similar to those charged by the VANs. They would thus miss many benefits they see flowing from a local packet switched data network. Rather, they seek to take advantage of potential economies unavailable to the VANs and other enhanced services providers by integrating protocol conversion equipment with basic packet switching facilities located in operating company central offices. Such mingling of basic and enhanced services is not permitted to carriers subject to structural separation under Computer II.

31. In addition to seeking waiver of the requirement that they provide protocol conversion only through a separate subsidiary which complies with the conditions set out in Section 64.702(c) of the Commission's Rules, the BOCs also seek, in varying degrees, to have us treat their packet switched services, including the protocol conversion feature, as basic service. All wish to avoid the requirement that carriers using their own transmission facilities to provide enhanced services obtain those transmission facilities under tariff. Some ask, in addition, to be allowed to offer protocol conversion under tariff rather than on an unregulated basis.

III. Standards for Analysis of the Petitions

32. In this section, we describe the procedural and substantive standards we are applying to the petitions.

A. Procedural Standards

33. We are presented here with similar waiver requests from a number of operating companies. Conceivably we could have conducted a series of separate proceedings to determine the merits of each individual petition. Instead, in order to utilize more efficiently the limited resources of both the interested parties and the Commission we chose to treat all of the petitions in a single proceeding. This procedure produced a record upon which the many issues common to all of the petitions could be identified and then consistently resolved.[24] Our use of notice and comment procedures similar to those used in rulemaking, and our consolidated disposition of the common issues, do not mean that we have not given attention to the individual merits of each petition. Indeed, as the parties make the further showings required to meet the conditions we are placing on these waivers, the waivers will be particularized appropriately to each company's circumstances.

34. While this proceeding on petitions for waiver is not a rulemaking one, we have employed procedures comparable to those required for informal rulemaking. Comments and responses were solicited on the petitions. The staff sought additional information from the petitioners in part based on the comments that were filed, and comment was solicited on the responses filed by the BOCs. Many informal letters and comments were filed by interested members of the public throughout the course of the proceedings, and these have been associated with the files of this proceeding and considered in reaching its results. Finally, ex parte presentations were made to the Commission and its staff by interested members of the public, both parties and non-parties to the proceeding. We required each maker of such ex parte presentation to comply with the provisions of § 1.1201 *et seq.* of our rules as if this were an informal rulemaking proceeding, to ensure that the substance of the presentations would be available as a matter of public record. The documentation of such presentations has also been associated with the files of this proceeding, and considered in reaching its results no differently than other informal comments that were filed.

35. In sum, we have gone to great length to ensure that the procedures we have employed are fair; that the interested public would have a fair opportunity to be heard; and that the respective views of the petitioners, their supporters, and their opponents, would be fully appreciated and addressed in our resolution of the requests. The Administrative Procedures Act does not prescribe a specific procedural format for informal adjudicatory procedures such as this waiver proceeding. It is the responsibility of the agency to employ procedures which ensure creation of an adequate record to support the results it reaches, and we have done so here. All arguments made have been carefully and fully considered and are, we believe, met in the result, even though we have not mentioned explicitly each of the many thoughtful comments received, nor elaborated on every variation of each argument.[25]

B. Substantive Standards

36. In our *Protocols Decision*, we thoroughly examined the nature of protocol conversion and its relationship to the goals and requirements of Computer II. We noted that the Computer II classification of enhanced services was predicated on two different types of offerings: those that are generally thought of as processing of data (the second and third major clauses of § 64.702(a) of the rules), and those that involve relatively simple alterations of subscribers' transmitted electrical signals (the first major clause of § 64.702(a) of the rules, i.e., protocol conversion), 95 FCC 2d at 585. We acknowledged that even when the enhanced service definition was adopted,[26] we recognized that a rigid

[24] This treatment is consistent with our authority to conduct our proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice, 47 U.S.C. 154(j). See, *e.g.* United States v. Storer Broadcasting, 351 U.S. 192 (1956); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

[25] For example, much discussion in the comments filed on the BOCs' responses to the staff's information requests addressed claimed infirmities in the petitioners' proposals to allocate and account for the costs of functions sought to be performed on an unseparated basis by the telephone companies. Our decision below is not to waive the structural separation requirements for these functions unless new convincing showings are made, thereby obviating the need to address in any detail these arguments.

[26] *See* Final Decision, 77 FCC 2d at 422, n.37 ("In the near future we will consider a Notice of Inquiry

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treatment of all forms of protocol conversion as enhanced services, requiring full structural separation, could be problematic, as the structural limitations on inclusion of protocol conversion within carriers' communications facilities could impede *communications* efficiency. We noted, however, that the record of Computer II supported the inclusion of protocol conversion generally in the definition. 95 FCC 2d at 585–87.

37. In the *Protocols Decision*, we clarified that "protocol conversion" as used in the Computer II rules does not reach "network processing" in carriers' networks (setup, takedown and routing of calls or their subelements). We resolved to treat favorably carriers' requests to perform protocol conversion to maintain existing services where new technology (and different electrical signals) are employed to implement them (e.g., deployment of digital loops to implement traditional MTS).

38. The merits of retaining or dispensing with structural separation of other protocol conversions (such as those at issue herein) were less clear, however, and we adopted principles under which requests of this nature would be analyzed. 95 FCC 2d at 594–96.

39. First, we concluded that protocol conversion to create internetworking interfaces (e.g., creation of the X.75 interface for interconnection of packet switched networks) would be treated more favorably than other forms of protocol conversion, particularly where such interfaces cannot be created effectively except in integrated facilities.[27, 28]

40. Second, we resolved that waivers to permit protocol conversion in collocated facilities will be conditioned on the carriers maintaining the availability of unconverted service comparable in price, quality and conditions of service to that built into the offering to be associated with protocol conversion.[29] This unbundling requirement was intended to serve the multiple goals of ensuring: (1) That the carriers' protocol conversions would merely be an option available to users, and not a limitation on their ability to perform conversion differently or more efficiently (or to avoid it totally); (2) that general offerings of underlying services of utility to broad classes of users would remain available, and not be customized to a limited class of users' or manufacturers' equipment; and (3) that any necessary regulation of the underlying basic offering would be facilitated by ensuring that it remains priced separately from optional protocol conversion associated therewith.[30]

41. Third, we resolved to focus with particularity on specific proposals, to ensure that protocol conversion alone, and not subscriber interaction with stored information or information processing (the second and third major clauses of § 64.702(a) of the rules), is involved.[31]

42. And fourth, we indicated that we would be prepared to act more favorably on requests for waiver in circumstances where the performance of the basic network can be improved materially only by provision of protocol conversion in the network, and not where others can do so outside the network.[32] We exemplified a favorable circumstance by the X.75 to X.25 internetworking interface, which cannot be created effectively except when integrated with a packet switch; we exemplified a less favorable circumstance as conversion to facilitate communication among large numbers of users' disparate terminals.[33]

43. In sum, the *Protocols Decision* accepted the premise that led to institution of the protocols inquiry, that inflexible treatment of protocol conversion could impair communications efficiency, and it proceeded cautiously on that premise to establish a framework for analysis of specific proposed changes such as those before us.

IV. Principal Contentions of the Parties

A. The BOCs' Contentions

44. The BOCs are not contending that asynchronous/X.25 conversion cannot be performed in their own or others' facilities that are not collocated in central offices. They cannot do so. Various VANs and enhanced service providers have been providing such conversion on a separated basis, no differently than the BOCs would do if they conformed to the requirements of Computer II, for some time—in some cases for approximately ten years. Rather, the BOCs contend that through collocation the BOCs can perform such conversion materially more efficiently than the existing providers, leading to lower communications costs to the public and further development of "information age" data communications-based services. Since many such services involve fixed costs that are recovered from their users, the more users who employ them the lower the charges to each user. Thus, it is argued that promotion of the further development of markets for such services will benefit all: the existing users' charges will decline, and new users will receive the advantages of using such services.

45. All of the petitions claim that there would be collocation efficiencies. Many of them claim additional cost savings if Computer II structural separatin requirements in addition to the facilities

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to examine in detail the implications of forbidding all protocol translation . . . and whether the public interest requires some exceptions to this prohibition."] We instituted the Communications Protocols proceeding shortly thereafter. Notice of Inquiry, 83 FCC 2d 319 (1980).

[27] Protocols Decision, 95 FCC 2d at 590–94. Subsequently, we considered the merits of the requests of various BOCs to create the X75 internetworking packet switched network interface without structural separation, and granted them authority to do so. Since this interface in many circumstances would have been used only internally in Bell System facilities had there been no divestiture of the BOCs from AT&T, and would therefore have been an internal element of a basic service under the Computer II definition when it was adopted (pre-divestiture), we resolved to treat this interface as an element of basic service. Petitions for Waiver of § 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol Conversion Within Their Basic Network, FCC 2d FCC 84–561 (released November 28, 1984). See Final Decision, 77 FCC 2d at 421–22 aff'd on recon., 84 FCC 2d at 57–60; Protocols Decision, 95 FCC 2d at 585, p.2 (consistently holding that protocol conversions performed wholly within communications facilities but not manifested at the outputs, are not within the enhanced services definition).

[28] This factor is not seriously argued in the context of asynchronous/X.25 conversion requests as it is the X.75 internetworking interface, and not asynchronous conversion, that facilitates interconnection of BOC packet switched networks with those of others. As noted, the BOCs have been authorized to create the X.75 interface on networks otherwise using the X.25 protocol Id. It may be noted that in view of our treatment of the X.75 interface as part of basic service grant of waiver to allow asynchronous/X.25 conversion also permits asynchronous /X.75 conversion as well.

[29] This principle was adhered to in the context of the X.25/X.75 waiver X.25-to-X.25 service remains generally available.

[30] As will be discussed, the BOCs' showings on this point are deficient with respect to the inter-office transmission channels proposed to be used with their protocol conversion offerings (if we grant the requested waivers), and for this reason we adopt appropriate conditions to achieve the desired results.

[31] The BOCs have adequately demonstrated that they are seeking solely to include protocol conversion in their central office facilities, and not other forms of enhanced services.

[32] As is discussed below, various parties today offer asynchronous/X.25 conversion outside the network. Thus, the BOCs and their opponents argue herein about whether collocation of asynchronous/X.25 conversion in central offices will improve the communications offerings "materially."

[33] It is unclear whether this circumstance arises in the context of the BOC's request to perform asynchronous/X.25 conversion. Communications will not be facilitated "among" large numbers of users' disparate terminals, as might be the case if communications "among" large numbers of users' terminals using different protocols were to be supported. The "large numbers of terminals" involved will not be disparate; they will use the asynchronous protocol. Communications would be facilitated here from users' terminals operating on the asynchronous protocol, to a much smaller number of terminals operating on the X.25 protocol.

collocation bar were also relaxed, e.g., saving of overhead if telephone company employees could support the asynchronous/X.25 services in addition to telephone services. However, there was considerable ambiguity as to just what cost would be avoided if waivers were granted. The staff therefore requested estimates of the ultimate cost savings the BOCs would achieve if they offered packet switched services with associated asynchronous/X.25 conversion if the waivers were granted, as compared to costs they would experience if it were denied. Some petitioners did not respond explicitly to this request.[34] Those that did estimated that savings could range around forty percent.[35, 36]

46. The savings claimed were in three principle categories. First, local loops connecting a central office with separately located protocol conversion equipment (or combined conversion and packet switching equipment) would be avoided through collocation. Instead of such local loops, intra-office wiring would be used to achieve connections with the exchange facilities. Second, inter-office circuits connecting the central office-located packet switching facilities would be acquired by the BOCs at the costs reflected in their regulatory accounts, essentially at net book cost. Comparable facilities acquired by fully separate Computer II subsidiaries would be acquired at tariffed rates, which are considerably higher than net book. And third, efficiencies would result if certain functions to support an asynchronous-compatible packet switching offering were performed by telephone company employees that can perform other duties. Under the modified form of Computer II structural separation applicable to the BOCs, many of these functions would be required to be performed by separate employees of the Computer II subsidiary, absent a waiver.

47. Price benefits in addition to those resulting from pure cost avoidance were also claimed by the BOCs. A number of the petitioners argue that existing packet switched services are directed primarily towards large business communications and not towards the mainly untapped market for data communications by small business and residential users. They note that because VAN pricing has tended to be distance-insensitive, and since the VANs' networks are long distance ones, their prices for even relatively local calls made over their networks has averaged-in costs of long distance facilities that the local caller does not use.[37] Since the BOC networks will be relatively local, their prices for relatively local data communications should be lower, reflecting the absence of long distance facilities.

48. Another claim made by several BOCs is that if the waivers were granted, they would offer service in sparsely-settled areas, whereas the VANs have concentrated their offerings in major metropolitan areas and have left users in other areas unserved by affordable packet switched services.[38]

These BOCs propose to locate concentrating equipment in their central offices in the sparsely-settled areas to aggregate asynchronous digital transmissions from these areas. They would bring this aggregated traffic on inter-office circuits to more heavily-used packet switches. In essence, these access concentrators, which include PAD and statistical multiplexer devices, would be located in areas that will not have enough traffic to justify the deployment of full packet switches. They would serve as "satellites" of the more heavily used packet switches located elsewhere in the BOCs' service areas.[39] Such a technique is by no means limited to the BOCs. The VANs and other enhanced service providers can similarly deploy such satellite facilities in sparsely-settled regions. But, the BOCs claim that the VANs have not chosen to serve such markets effectively, while they will.[40]

49. Finally, the petitioners make overall claims that allowing asynchronous/X.25 conversion capabilities to be built into or collocated with central offices promotes the general objectives of the Communications Act of making services "widely available at reasonable charges", a universal service objective. These claims have two dimensions. First, it is claimed that packet switching technology is desirable for many forms of data transmission, and broader deployment and use than currently will promote communications efficiency. The ability to perform asynchronous/X.25 conversion is portrayed as an essential precondition to BOC deployment of ubiquitous local packet networks. Second, it is claimed that as we move further towards an "information age" where data communications will

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[34] For example, Pacific Bell offered no cost avoidance data on the ground that it does not plan to offer protocol conversion through a separate subsidiary, and therefore it had not developed a cost study for such an offering. Response of Pacific Bell, p. 33 (August 24, 1984) Southwestern Bell did not respond in percentage terms and offered only a preliminary estimate that the avoided costs amount to approximately $24 per customer per month. Response of Southwestern Bell, p. 47 (August 24, 1984). And Northwestern Bell failed to answer this and many other questions, averring that it had "not at this time actually architected a packet network with sufficient specificity to respond to the majority of the questions posed." Letter to Jack D. Smith, Chief, Common Carrier Bureau, from Northwestern Bell (August 24, 1984). We treat Northwestern Bell specially below, in view of its unique failure to make an effort to answer the staff's requests.

[35] *E.g.*, thirty-four percent (BellSouth) and fifty percent (Bell Atlantic). NYNEX estimated 19 percent savings without use of DOV technology (see ¶53, *infra*.) and 42% with use of DOV. Ameritech claimed a 70% savings, a third of which it attributed to use of DOV.

[36] Our disposition of the petitions in this order does not depend upon estimates or quantification of the cost savings available. Therefore, the failure of a number of petitioners to come forward with data of this nature is not fatal. Nevertheless, in view of the unique failure of Northwestern Bell to proffer *any* data, on this or other points, relief will be denied that company in this order.

[37] Several BOCs have gone further and claimed that the VANs provide primarily long distance services, and not the relatively local ones the BOCs propose to provide, and that therefore the two groups would not be competing in the same market. The VANs have responded that a significant part of their business is relatively local. We need not decide which claims are correct. Given the distance-insensitive nature of current VAN pricing, information service providers connected with their networks today can use a single centralized computer to serve the entire nation, including access by those in proximity to such a computer and those at a considerable distance from it. If the BOCs offer significantly less expensive local communications, the information service providers might deploy multiple computers around the country. Thus, portions of this "long distance" market might be readily converted into a "local" one. Conversely, such a decision might change if the VANs responded with distance-sensitive rates. In any event, it is clear that the VANs' current distance-insensitive rates of necessity cause a higher price to be charged to relatively local communications over their facilities than would be the case if distance-sensitive pricing were employed.

[38] Telenet responds that it currently offers dial-up access in 146 of 166 local access and transport areas (LATAs) in the United States while Tymnet claims to offer dial-up access in 169 LATAs. These figures, while undoubtedly correct, can be somewhat misleading. A user of a VAN service dials the VAN switch as a conventional telephone call, and pays exchange or long distance rates for such a call. If the VAN switch is located in the user's exchange, such a call will cost little, or may be treated under flat rate local service pricing. If the VAN switch is at another location in the LATA, the call might be an expensive long distance one. In addition, as explained by Tymnet in informal presentations to staff, some sparsely-settled areas are served by means of Inward WATS of FX Service. Tymnet passes on to users in those areas its additional costs for these forms of access.

[39] For the purposes of this decision, we treat such "satellites" no differently than full packet switches. They are connected with the telephone exchange no differently than packet switches, and they use inter-office channels no differently than a packet switch.

[40] One of the questions posed by the staff in its information request asked when the BOCs would propose to serve these lower traffic areas, since it appeared from the petitions that they were planning to serve primarily metropolitan areas initially, not sparsely-settled ones. The responses varied. The BOCs with service areas encompassing primarily rural areas, such as Pacific Northwest Bell, indicated that they would serve lower traffic areas earlier than did, for example, New Jersey Bell, which serves a small densely populated area.

become as common as today's voice communications, universality of data service will become as important a policy objective as universal voice service is today. Unregulated offerings of VANs and enhanced service providers need not be universally available, and may be limited to a chosen few. The BOCs, as universal voice service providers, will similarly strive to be universal data transport providers.[41]

50. *Comments of the BOCs' Supporters.* A number of current and potential information service providers made formal and informal filings supporting the BOCs. Their contentions are simple. Those that today use the VANs' offerings (and in some cases their own private lines) for remote access by customers to their services believe that these means have been more costly than might be the case if the BOCs could participate directly in establishing packet switched connections between the information service providers' customers and the information services. These commentors support the BOCs' contention that the information services markets have not been fully tapped, and that less expensive communications will lead to less expensive information services, resulting ultimately in broader availability and use of such services by the public. Companies which would like to provide or participate in local offerings of services such as home banking, meter reading, and provision of locally-oriented data bases go further, arguing that truly local data services will never be possible unless the BOCs can provide the cheap, ubiquitous services they are promising.

51. One manufacturer of packet switching equipment that is affiliated with a carrier in Canada, Northern Telecom, argues strongly in support of the BOCs.[42] It notes that somewhat analogous issues have arisen in Canada where, in the absence of a Computer II treatment of protocol conversion as an enhanced service, there is no legal obstacle to associating protocol conversion with basic services. Bell Canada has been permitted to offer unconverted and asynchronous/X.25 packet switched data communications services under tariffed prices that reflect the respective operational efficiencies of both modes of transmission on a packet switched network. Northern Telecom acknowledges that the purchase price of packet switching equipment that does and does not incorporate asynchronous/X.25 conversion capabilities is virtually the same. It goes beyond this, however, and notes that when such equipment is used it is used more efficiently if asynchronous/X.25 conversion is not being performed on a call. Thus, Bell Canada's pricing of the two types of service reflects a not-insignificant surcharge on the rates for underlying X.25./X.25 transmission if a call involves asynchronous/X.25 conversion.[43]

52. Both Northern Telecom and BellSouth argue that this Canadian approach has not impeded the evolution of terminal design from the present less efficient asynchronous communications interfaces towards more efficient synchronous ones. Users and manufacturers clearly perceive a price advantage to use of synchronous equipment because of the differential in packet switched transmission pricing of the two modes. They are continuing to develop and use synchronous terminal devices notwithstanding that ubiquitous asynchronous-compatible transport services are available in Canada because of the asynchronous/X.25 conversion capabilities of the Canadian network.

53. *BOC Responses to Information Requests on the Relationship of the Petitions to DOV and ISDN.* In its information request, the staff asked the BOCs to relate their pending petitions to two changes in exchange technology that it was informed various BOCs were considering for implementation in the relatively near future: data over voice ("DOV") technology and integrated services digital networks ("ISDN").

54. DOV technology recognizes that while conventional telephone loops are normally used for nominal 4 KHz. bandwidth voice services, the actual bandwidth of these loops is considerably greater than this. When DOV is employed on these loops, the additional bandwidth of the underlying loops is used to carry one or more data channels in addition to the conventional 4 KHz. telephone one, on a "piggyback" basis, between the subscriber's premises and the telephone company's central office. A multiplexing device at the subscriber's end creates the additional channel(s) on the loop, and a demultiplexing device at the central office end separates the additional channel(s) from the voice one. The voice channel can then be routed to the circuit switch while the data channel(s) can be connected to a packet switch. In this manner, a subscriber can use a single loop to conduct both voice and data communications at the same time.[44] Ameritech and NYNEX, which plan to use DOV with their packet switched networks, claimed in their responses to staff questions that technological limitations make it infeasible to use a DOV channel to access any packet switch other than the one in the telephone company central office.

55. Several BOCs, on the other hand, made clear that they would not seek to foreclose use of DOV channels to access others' packet switched services. Bell Atlantic proposed making available to other vendors of packet switched services dedicated access concentrators to aggregate DOV traffic, and transmit that traffic to the other vendors in concentrated form. This would allow economical access by subscribers to other vendors' services over DOV channels. BellSouth indicated that it could, through special assembly, provide DOV access to another vendor's packet switch.

56. ISDN raises somewhat similar issues. ISDN is an evolving concept being planned largely in international forums, and in various nation's national standardization forums that support these nation's contributions to the international ones. Certain ISDN planning approaches have been adopted by the CCITT in the form of recommendations. *See, Integrated Systems Digital Networks* (ISDN), FCC 83-373 (August 10, 1983); *Integrated*

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[41] This argument is made more explicitly by those BOCs that propose that we treat asynchronous/X.25 conversion as a basic service. *See, e.g.*, NYNEX Petition (April 27, 1984). If it were basic, under conventional regulatory obligations it would have to be made generally available without unreasonable or unjust discrimination, thus the offering BOCs could not pick and choose their customers as the unregulated offerors may do.

[42] Certain of Northern Telecom's principal points, as an expansion of comments previously filed, were made orally and documented in subsequent informal letters. Thereafter, they were confirmed in letters filed by BellSouth.

[43] *See*, Letters from Theodore D. Frank to William J. Tricarico, January 16 and January 17, 1985; Letter from Roger Burge to Albert Halprin, January 23, 1985; Letter from Roger Burge to Albert Halprin, February 19, 1985.

[44] One BOC, Southern Bell, is currently offering the use of DOV channels for data communications as a part of local area data transport ("LADT") service. The particular Southern Bell offering is the subject of a pending petition for declaratory ruling in which the petitioner, IBM, claims it violates the requirements of Computer II by including protocol conversion and by including as part of the regulated offering certain terminating equipment at the subscribers' premises that, it is argued, should have been offered on an unregulated basis. *See* Request of IBM for Declaratory Ruling in the Matter of Southern Bell Telephone and Telegraph Company, Revisions to Florida P.S.C. Tariff No. A29, Local Area Data Transport Service (LADT) filed June 27, 1983 (resolution pending). Although both IBM and IDCMA urge us to resolve those issues here, we decline to do so. Rather, we simply acknowledge that the offering of a DOV channel itself, exclusive of functionality that may or may not be built into its subscriber premises or central office terminations, is a basic service no different than the offering of any other channel.

Systems Digital Networks (ISDN), —— FCC 2d ——, 84–131 (April 2, 1984). ISDN planning will continue during a four year period that began with the CCITT's Plenipotentiary Meeting in September, 1984 when the current recommendations were adopted, and these recommendations may evolve further. Nevertheless, certain concepts appear to be relatively stable at this point.

57. The overall concept of ISDN is to take the DOV approach some steps further. As noted, DOV "piggybacks" an additional channel (or additional channels) on existing conventional telephone loops. ISDN integrates the conventional telephone services with additional communications capabilities in a unified framework that includes the use of three subchannels on ordinary subscriber loops.[45]

58. As noted, para. 55 *supra*, some BOCs' responses to the staff's questions on DOV indicate that there are approaches under which DOV capabilities could be used for access to other telephone companies' data communications services or to those of others, whichever the subscriber desires. It is unclear, however, whether such an approach would be feasible in an ISDN. Certainly, ISDNs implemented in telephone companies' exchanges could be used to access others' local or long distance networks *in tandem* with the ISDN facilities in the exchange, but it may not be technologically feasible for the ISDN subchannels to be connected to another service vendor's facilities except after having traversed at least some of the switching and channelization capabilities anticipated in ISDN planning to be located in the exchange carriers' exchanges. While this may be a potential competitive ramification of ISDN, neither the BOCs nor their opponents argued explicitly about this potential result, nor whether it will present a problem.

59. For example, functionality to be built into ISDN will include the ability to select circuit-switched, packet-switched or what might be deemed "channel switched" connections of one or both of the "B" channels to be created on most users' loops, through call setup signals to be exchanged over the "D" channel. Circuit-switched connections are akin to today's switched telephone service: the dialing information informs the network of the desired destination of a call, and a channel is established from origin to destination for the duration thereof through equipment that selects and dedicates to the call physical channels during its duration. Packet-switched connections establish the equivalent of such channels, but they are not dedicated: any packet to be sent during the course of a given "call" may follow a different physical path than any other. "Channel switched" connections in principle would be comparable to the circuit-switched ones, but they would be set up and maintained for longer periods than the duration of a single call. For example, traditional full-period private line services could be configured on such a basis with the channel-switched connection remaining for a service ordering period, typically one or more months. Even if it is desirable for the BOCs' and others' packet-switched services to remain competitive in such an environment circuit-switched or channel-switched access to others' packet switched services through the exchange carriers' facilities may adequately promote such competition even if packet-switched access to their services would require use of some portion of the BOCs' packet switching facilities in tandem with those of others, rather than *in lieu* of them.

60. A more difficult potential problem is raised by the fact that the "D" channel has been planned to have two capabilities. First, it is to be used to control the use of the "B" channels (i.e., to set up circuit-switched, packet switched or channel switched connections thereof); this use raises no problems not addressed in the previous paragraph. Second, it is to be used optionally itself as an end-to-end packet switched communications channel (in essence, by setting itself up as a channel, rather than the two "B" channels). In such use, the very facilities that accept and utilize the control signals will also be the packet switching facilities. Others' services could only be accessible in tandem with these packet switching facilities.

61. We need not, and will not, decide these potential competitive and policy issues raised by ISDN in the context of the petitions now before us. The potential issues raised by ISDN-like integration are not before us yet, as ISDN will not be implemented for several years. In the rulemaking proceeding that we will soon institute, we intend to address them, to ensure that an appropriate framework is in place when (and if) ISDN is proposed to be deployed.[46]

62. Another ramification perceived by the staff wass that if ISDN is to be implemented in the relatively near future, it might be undesirable for the telephone companies to engage now in significant investment in incompatible packet switching facilities that might soon be "stranded". Thus, the staff also asked whether the facilities the BOCs might implement if the waivers were granted could be used in the future if ISDN were to be implemented. Here the BOCs noted that ISDN planning has generally recognized that wholesale abandonment of existing non-ISDN facilities is not feasible in the United States or in other nations and that transitional approaches are being considered for compatible evolution toward ISDN. The BOCs are confident that while their planned packet switched networks will not be physically integrated into ISDNs, they will be needed well into the 1990s and will be fully depreciated before they are ultimately replaced by ISDNs.[47]

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[45] In ISDN, a conventional loop will carry two "B" channels of 64 kb/s bandwidth, and a "D" channel of 16 kb/s used either for communications with the network, or for end-to-end communications. The "B" channels may be used for conventional switched voice telephone services or for packet switched or dedicated services, under control of the "D" channel which is used to setup connections on the "B" channels. For example, in today's conventional telephone services the dialed number is sent on the same channel that will be used for voice communications after a call is established; in ISDN, the dialed number (called party address) is sent on the "D" channel separately from the "B" channel that will be used for voice communications after the call is established. Also, the "D" channel may be used itself as an end-to-end communications channel, typically for data communications. Alternative loop configurations have been planned for subscribers that have a multiplicity of loops to their premises, typically for private branch exchange services where multiple incoming and outgoing switched voice calls are to be handled. In such cases, high bandwidth loops that can carry 1.544 mb/s overall are configured with twenty-three "B" channels and a single "D" channel to control their use in incoming and outgoing call service.

[46] To ensure that the waivers we are granting, *infra*, will not prejudge ultimate disposition of these issues in the event that ISDN implementation proceeds more expeditiously than is currently anticipated in the United States and worldwide, we are expressly limiting these waivers to existing switching and loop technology and to the DOV technology. Asynchronous/X.25 protocol conversion is not authorized under this decision within ISDN loop facilities used for subscriber access in ISDN, without prejudice to further Commission action on this matter.

[47] In granting the waivers, *infra*., we require that the investment and expenses associated with protocol conversion be removed from regulatory accounts. Thus, even if these capabilities are "stranded" in the future, there will be no effect on rates for basic service. Conversely, while the facilities for unconverted packet switching service itself could be "stranded" the dollar involved are far lower than those invested in present exchange facilities that also would be "stranded" if there were incompatible growth of ISDN. Regulators and carriers will have to confront the major problem if it arises. Treatment of the far smaller dollar amounts potentially involved in packet switching need not drive resolution of this issue should it arise; and, based on the assurances of the BOCs that compatible evolution will occur, it likely never will arise.

B. Opponents' Contentions

63. The VANs and other existing providers of data communications services incorporating asynchronous/X.25 conversion generally oppose the BOCs' petitions. IBM also opposed the requests.[48] The opponents argue that Computer II drew the proper line between what may be collocated in the BOCs' central offices and what may not. While the *Protocols Decision* may properly have acknowledged that not all protocol conversion should be treated rigidly, it also established useful standards for evaluating what flexibility should be accorded. In their view, these standards have not been met by the BOCs in their requests to collocate asynchronous/X.25 conversion in their central offices.[49] They also oppose waiver of other Computer II structural separation requirements, and strenuously object to treating asynchronous/X.25 conversion as a basic service.

64. Telenet and others agree with the BOCs' contention that packet switched service is not a viable offering unless it includes protocol conversion. They insist, however, that the logical conclusion to be drawn from this is that packet switched services should be treated as enhanced services in their entirety. They urge us to require that the BOC packet services be offered only by the Computer II affiliates.

65. The VANs view the proposed use by the BOCs of inter-office communications channels at net book cost as wholly inconsistent with the goals of Computer II. They point out that Computer II requires *all* carriers offering enhanced services to acquire facilities at the tariffed rates which apply to the VANs and others. In the view of the opponents, the very fact that such an approach was proposed substantiates the wisdom of the Computer II separation requirements that automatically ensure that such disparate pricing is not possible.[50]

66. Furthermore, if the BOCs may collocate in their central offices asynchronous/X.25 conversion, they will use wiring in the office to connect such equipment to the exchange switches and to inter-office circuits,[51] while others that are not permitted similarly to collocate must use more costly local loops for this purpose. Initially, the VANs had argued that if waiver were granted, they too should be permitted to collocate equipment in the central office, in order to be able to acquire the same types of connections at the same prices as the BOCs. However, they also argued that the savings to be gained through collocation are far smaller than the BOCs believe them to be. Tymnet noted that the total cost of local access accounts for only nine percent of its overall costs of doing business.[52] IBM performed its own analysis of collocation savings and came up with six to nine percent.[53]

67. The staff requested information from the BOCs on whether collocation of others' equipment might be feasible. In response, the BOCs uniformly and strongly opposed making collocation available to others.[54] In the face of this strong opposition, Telenet subsequently argued that if the petitions are to be granted, transmission rate parity should be established between intraoffice wiring to be used by the BOCs and the relatively short local loops to be used for comparable purposes by the VANs, perhaps through an averaging approach. It was acknowledged, however, that this would nullify an efficiency that otherwise could flow from such collocation, namely, substitution of presumably less costly intraoffice wiring for local loops.

68. The VANs argued that the BOCs claims that lower costs would flow from a grant of the petitions, and that the public would enjoy lower data communications prices than currently, were impermissibly vague and did not constitute the type of cost/benefit analysis required for a Computer II waiver. The staff requested information from the BOCs on the particular savings that would flow from a grant of the asynchronous/X.25 petitions, and on related cost apportionment and accounting procedures that would be employed to ensure that the enhanced services would properly bear their costs, and concommitantly that subscribers to basic service would not improperly subsidize the BOCs' enhanced service offerings.

69. Telenet and Tymnet thereafter analyzed the BOCs' responses. They maintained that many of them still diclosed insufficient information to determine whether there would, or would not, be improper cost shifting. Citing an even more serious problem, they contended that those BOCs which had supplied accounting plans were proposing to underallocate significant costs to their enhanced services. In particular, they argued that marketing costs, which they say will be at least 25% of the total costs of a packet service, would be shifted disproportionately into regulated accounts under some of the accounting plans.

70. IBM's objections in formal and informal comments, while tending to support the principle ones of the VANs, were also directed to two other issues. First, IBM opposes any treatment that might reclassify asynchronous/X.25 conversion (or other protocol conversion except, perhaps, conversion to an intermediate internetworking protocol, e.g., X.25/X.75 conversion) as a basic service. In IBM's view, the existing definition draws a proper line between regulated basic services and unregulated enhanced ones, and it does not wish to see this line eroded, independent of whether structural

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[48] IBM has various interests. It is a computer and data terminal equipment manufacturer and an enhanced service provider. It manufacturers communications equipment (itself and through its affiliate, ROLM Corporation), and through its partial ownership of a specialized common carrier, Satellite Business Systems, it has a direct interest in the regulatory treatment of enhanced services generally and in the competitive and policy implications of our action on the waivers.

[49] In contrast, the petitions also requested flexibility in the treatment of X.25 to X.75 conversion, and while the opponents have opposed grant of the asynchronous/X.25 conversion requests, they did not oppose grant of the X.25/X.75 conversion request because these standards were met for the latter.

[50] In the absence of a waiver, the BOCs may only offer enhanced services, including asynchronous/X.25 conversion, through a separate affiliate that receives communications services no differently than any other subscriber, i.e., at tariffed rates. If inter-office communications channels are made available to the VANs by the BOCs, under such a structure they may be used to support the BOCs' enhanced services only on an identical basis.

[51] In the previous paragraph, they address the inter-office circuits themselves, which are used no differently regardless of whether the packet switching equipment is located in a central office or elsewhere. Here, they address the connections *between* the packet switches and those inter-office circuits and connections *between* packet service nodes and the carriers' telephone facilities. These groups of connections are different if there is collocation. The connections are relatively short wires within the office if there is collocation, while they physically are normal telephone loops that leave the office and are connected to another premises if there is no collocation.

[52] Comments of Tymnet, Inc., (Oct. 2, 1984) at 38.

[53] Comments of IBM (Oct. 2, 1984) at 20.

[54] The BOCs' responses raised a number of administrative, operational and security problems which, while not insurmountable, appear to justify our not ordering them at this time, and in the context of their asynchronous/X.25 conversion petitions, to make such an approach available. Our failure to do so in this context is without prejudice to our addressing this issue in the future. Furthermore, the BOCs' views on this may change. One of the effects of the technological revolution in telecommunications in the past two decades is that older electro-mechanical central office switches increasingly are being replaced by much smaller electronic ones, resulting in the freeing up of considerable central office space which is now unused. If collocation were permitted, presumably there would be a charge to others for use of such space, and a collocation offering potentially could become a new source of profits to exchange carriers. Thus, they may well have a motivation themselves to change long-held views against collocation, in their own self-interest.

separation of the enhanced services may be waived. Consistently with this view, it supports the Telenet position espoused here (and in other proceedings) that the entirety of packet switched services should be treated as unregulated enhanced services.

71. Second, IBM argues that the petitions should be denied as unnecessary in the long term and as disruptive of desirable terminal design evolution. In IBM's view, today's data terminals and computers can be adapted to conformance to synchronous protocols such as X.25 with relative ease, either through modification of existing software and/or hardware, or through use of external equipment. In many cases, external modems (or additional plug-in cards) are already required for such terminals to communicate using asynchronous protocols. "Smarter" modems incorporating asynchronous/X.25 conversion could be sold in the future at little more cost than modems without such conversion capabilities. The cost of including such capabilities is primarily a fixed one associated with masking new integrated circuits and developing programming for them. If many units are produced, the per-unit cost of such capabilities would be minimal. IBM acknowledges that few such devices exist today,[55] but it argues that if we hold fast on the present Computer II separation requirements, such equipment will be designed and deployed in the next few years.[56] Conversely, IBM argues that if we grant the petitions and asynchronous-compatible packet switched services are deployed ubiquitously by the BOCs, present incentives to develop such devices will be diminished, and the efficiencies of broadscale synchronous communications will not be realized.

72. More broadly, IBM argues that asynchronous/X.25 conversion can be accomplished either in centralized facilities shared by a multiplicity of terminals (e.g., by the VANs today in their packet switched network PADs, or the BOCs if they deploy similar capabilities with or without structural separation) or in data terminals, and that where such conversion is to be located should be determined competitively in the marketplace. If the existing Computer II structural separation is maintained, the BOCs' centralized conversion capabilites will be priced based on costs comparable to those sustained by others, including the VANs and other enhanced service providers. In IBM's view the "competition" between such centralized conversion and conversion at the terminals will be fair. If such separation is dispensed with, IBM argues that the BOCs' centralized conversion offerings may compete unfairly with terminal-based conversion because of potential improper cost-shifting, and the advantages of terminal-based conversion (if it otherwise were to "win" such "competition") would not be realized.

V. Discussion

A. Introduction

73. We start with several overriding principles. First, our purpose is to promote the public interest objectives of the Communications Act. The procompetitive and deregulatory policies of Computer II, and its structural and other safeguards, were not adopted for abstract purposes. They were adopted in the belief that they best would promote these objectives. We were fairly absolute in the Computer II decisions that deregulation of terminal equipment, and deregulation of information services (the second and third major clauses of § 64.702(a) of our rules), would promote these objectives. We were less absolute in our treatment of protocol conversion. Even when protocol conversion was first included in the definition, we concluded that flexibility could be required in the treatment of protocol conversion by carriers subject to structural separation to ensure that the efficiency of communications— a primary objective under the Communications Act—is not unacceptably impeded. *See*, 77 FCC 2d at 422, n.37.

74. Second, fair and effective competition best achieves the purposes of the Act in this and other areas. Others have offered asynchronous/X.25 conversion services for some time. Entry by the BOCs could enhance competition, and its benefits, in such offerings. We note that the BOCs are free to do so on a basis similar to that of these other firms today, without any Computer II waivers, but they have not chosen to do so. Rather, they have sought to offer such service on a basis that is not presently available to others, through equipment collocated in central offices that does not require loops between the central offices and remotely-located equipment, loops that are required by the existing vendors of such services. In these circumstances we must be vigilant to ensure that we do not, through a sanctioning of improper pricing or unwarranted disparate treatment by the BOCs of the loop and inter-office facilities used for their own and others' enhanced services, distort or adversely affect the competition that now exists for data communications services (and in the terminal market where, as argued by IBM, there is increasingly "competition" between terminal-implemented protocol conversion and centralized protocol conversion).

75. This is a particularly difficult matter. Clearly, the proposed treatment by the BOCs of their inter-office circuits is unwarranted, and, as is discussed below, is inconsistent with the principles adopted in the *Protocols Decision*. There are no efficiencies in the BOC's proposed use of these circuits over the existing uses of them by others. The *same* circuits are to be used. All that has been proposed is disparate pricing: net book if they are used by the BOCs, and higher tariffed rates if used for comparable purposes by others.[57]

76. However, the within-office wiring that can replace local loops if packet service nodes are collocated in the central offices may well represent a true economic efficiency. Installation, repair and use of short wires in the central office is probably less expensive than longer ones (i.e., loops) between the central office and a VAN's or enhanced service vendor's premises.[58] Denial to the BOCs of the ability to realize such efficiencies may promote the ability of others to continue to offer packet switched services at prices comparable to those of the BOCs (i.e., if these efficiencies were destroyed through an averaging technique), but it would result in BOC data communications prices to

[55] One that has been identified in informal comments costs about $695.

[56] In informal comments, IBM quantified the fixed cost of adding such X.25 conversion capabilities to a modem at approximately $10 to $15 million. If all of today's over 10 million personal computers were to purchase such devices, the additional cost would be about one dollar per-unit. Since simple low-speed 300 baud modems today cost about $50 to $150, and the simple 1200 baud modems more commonly used for business applications (and increasingly for non-business applications) today cost about $250 to $500, it can be seen that even if IBM's numbers are off by an order of magnitude, potentially the additional cost still is not very significant.

[57] We foreclose such disparate pricing *infra*.

[58] But, the reason this efficiency is not available to others is that the BOCs do not propose to allow others to collocate in their central offices, not that the BOCs propose to offer an instrinsically more efficient service. Also, it must be emphasized that within-office wiring is not without cost. The conventional telephone facilities to which such wiring is connected are used the same whether a loop leaving the building or within-office wiring is connected to them. Installation and related expenses associated with making such connections similarly do not depend on the length of the wire connected. The real differences would appear limited solely to the cost of the wires themselves, and to the fact that installers need not be dispatched to another premises, and sustain travel costs, to complete installation of the premises end of a loop elsewhere.

the public that are higher than they would be if such economies were reflected. For this reason, an approach that might average the costs of loops actually used by others with the within-office wiring to be used for comparable purposes by the BOCs is problematical. We decline to do so herein, but note that the conditions we are adopting will ensure that only true cost differences between the loops and within-office wiring will be reflected.

77. Third, the actual proposals now before us are for implementation of packet switched services within the central offices that are largely no different than those of the VANs and enhanced service vendors. The BOCs would use PADs and similar devices obtained from essentially the same suppliers as those that the VANs and enhanced service vendors use. They would functionally connect them with the telephone facilities no differently than the VANs and enhanced service vendors do (except that within-office wiring would replace certain local loops required by others, as discussed *supra*.). However, in addressing these petitions we cannot ignore the technological trends in telecommunications. Packet switching is heading rapidly for integration with facilities for conventional telephone service. We probably can treat the present proposals independently of the state and federal regulatory treatment of conventional telephone service. We cannot realistically do so when both groups of services are integrated, given that local exchange telephone service and use of local exchange facilities for interstate access presently represents a near-monopoly. *See generally*, Bypass of the Public Switched Network, FCC 84-635 (released January 18, 1985). To do so might lead to premature deregulation of conventional telephone services not because there is effective competition therefor, but because they are to be integrated with packet switching technology. DOV represents a first step towards such integration; ISDN potentially represents its culmination.

78. For this reason, we must resist in the context of addressing the pending waiver requests the Telenet approach of treating the entirety of packet switched services, including those that involve no end-to-end protocol conversion, as unregulated enhanced services. Packet switching can be used, and is used, to implement conventional switched and unswitched basic telecommunications sevices. The addition of an asynchronous/X.25 conversion option, that may or may not be selected on a given call, does not change this. Shortly after Computer II was adopted, we gave VANs and enhanced service vendors offering their services on a resale basis the option of treating both unconverted and protocol-converted offerings as unregulated enhanced services. In a subsequent Bureau order, *In the Matter of Tymnet, Inc. and GTE Telenet Communications Corp.*, #3018, released March 18, 1983,[59] we made clear that this was only an option, not a requirement. Under this order, Telenet and Tymnet were permitted to maintain tariffs on file for the unconverted offerings that might be made on their packet switched networks, notwithstanding that offerings involving protocol conversion also were made outside of these tariffs. Similarly, in our *Basic Packet Switched Service* ("BPSS") decisions [60] we squarely rejected the notion that packet switched services involving no end-to-end protocol conversion must be treated as unregulated enhanced services.

79. As is developed below, we believe that there are sound reasons not to treat unconverted X.25/X.25 packet switched services as unregulated at this time, and we treat this offering as basic; but this is not an immutable decision. We will soon adopt a notice of proposed rulemaking in which we revisit the general treatment of protocol conversion under Computer II, and this will be an issue to be addressed in that proceeding. The treatment we are adopting herein is one to be employed *pendente lite*, and is fashioned to maintain our options in the rulemaking proceeding and to ensure that certain conditions we are adopting are carried out.

80. And fourth, there is validity to the arguments of IBM, Northern Telecom and BellSouth that there are differing efficiencies associated with packet switched services involving no protocol conversion, packet switched services involving asynchronous/X.25 conversion, and alternative terminal designs implementing the asynchronous or X.25 interfaces. Given that packet switched communications overall is more efficient if the asynchronous format is not used in conjunction with such communications, we will not allow the BOCs ubiquitously to deploy asynchronous-compatible packet switched data communications services priced no differently than ones using the X.25 format. To ensure that others' protocol conversion offerings (be they in terminals, or centrally located) can be compared with those of the BOCs, we adhere to the "unbundling" principle of the *Protocols Decision* which required that protocol conversion options be priced separately from the underlying basic services, and we require the impact of protocol conversion on the basic X.25/X.25 service to be reflected in the pricing of the latter.

B. Decision on the Petitions

81. We conclude generally that the BOCs have adequately demonstrated that the public interest would be served by allowing them to provide asynchronous/X.25 conversion in facilities collocated with their central offices. In areas where the VANs and existing enhanced service providers are currently offering comparable services, the benefits to the public of additional competition by the BOCs will be enjoyed, particularly in view of the conditions we are adopting to ensure that the BOCs' competition will be fair and not at the expense of subscribers to regulated services. Moreover, the BOCs propose, if the requested waivers are granted, to offer such services in areas that are not effectively served by existing vendors. Subscribers in such areas, and those that might wish to engage in efficient data communications with them, will receive the direct benefit of receiving such service for the first time from the BOCs.

82. Provision of such services by the BOCs promises to bring to the public lower prices for asynchronous format-compatible packet switched service than are available from existing providers of such services. There are efficiencies (and concommitant lower costs) that can be translated into lower prices when certain loops involved in these services are replaced by shorter wires. In the absence of the waivers, the BOCs would have to use loops, and could not employ within-office wiring. While we discuss below how some claimed "efficiencies" are merely pricing disparities, and we condition against maintenance of this disparate pricing, other claimed efficiencies seem real. In our view, the public should not be denied their benefit.

83. More importantly, provision of such services by the BOCs at the first central office to which an end-user is connected promises real efficiencies over time in the use of exchange and interexchange facilities, and will make unnecessary additional construction of facilities, the costs of which would raise local telephone rates. "Bursty" data communications today are inefficiently carried on circuit-switched telephone facilities, whether those facilities are used for end-to-end communications, or

[59] This order is reproduced in Appendix B of this decision.

[60] AT&T (BPSS), 91 FCC 2d 1 (1982); AT&T (BPSS), 94 FCC 2d 48 (1983).

to access the packet switched facilities of a VAN or other enhanced service vendor. A circuit-switched circuit is tied up and unavailable for others' use for the entire duration of a call, even if actually used for a small percentage of the connection time. Furthermore, data calls typically have durations far longer than the average ones for voice communications. Since current facilities are designed to handle peak loads based on average call durations, the increasing volume of lengthy data calls must be met with new construction or service quality will drop for both data and voice users. The record herein demonstrates that this effect is already occurring, and will accelerate in the future.

84. The BOCs argue that this need not and should not occur. If packet switched data communications facilities are available to which this type of traffic can be diverted, far less investment in additional facilities will be needed to trasnport the data.[61] Since, however, the overwhelming majority of current data terminals are asynchronous, there will be little diversion of data communications from circuit switched to packet switched facilities, unless the BOCs can efficiently and effectively interface with asynchronous-format traffic at the first central office accessed by these terminals. The packet switched services of the VANs and others mitigate this problem only to the extent that their ports connect to the same central office as their users' terminals. In most cases, however, they have a central port in each region they serve, particularly in regions where there are large exchange service areas. Every call accessing their packet switched facilities is carried inefficiently through multiple telephone company central offices and the inter-office facilities that connect them. These inefficiencies must ultimately result in additional construction and higher local telephone service rates. We conclude that the public interest reflected in our statutory mandate would best be served by ensuring that such inefficiency is avoided.

85. An additional basis for concluding that the waivers should be granted is provided by the BOCs' argument that "information age" enhanced services have not grown because communications costs have not been sufficiently low. The BOCs argue that if the communications costs inherent in these services drop, demand for these services will grow. Since many of the costs of these services are fixed, vendors can then drop unit prices to the public while maintaining adequate profits, further stimulating demand until a new equilibrium is reached. Larger segments of the public will receive the benefit of such "information services" and existing users thereof will have lower prices. Moreover, since these services tend to be more efficient than the manual information retrieval or other services they can replace, general efficiencies that can propagate through the economy will be created and encouraged. While this agrument is speculative, common sense indicates that it is possible that it is correct, and we accordingly weigh such potentially desirable results in assessing the public interest herein.

86. In this regard, it should be noted that while we conclude that the waivers should be granted, we do so on certain conditions. One of these is that the inter-office circuits the BOCs will use to support their packet switched services must be made available to the VANs and other enhanced service vendors on the same basis as used by the BOCs. If the BOCs are correct that lower prices can stimulate market growth to the benefit of the public, they will have strong incentives to promote the growth of their own packet switched services by bringing down the prices of the circuits. Because of our requirement for equal treatment of the other service vendors, the benefits of this will be available to the other service vendors as well.

87. Whether or not the BOCs' proposed offerings are more efficient than those of the VANs and other enhanced service vendors, there is a strong likelihood that the BOCs' offerings will be less expensive than those of others because their facilities will be more local. A VAN's offering unquestionably can be used for relatively local communications. However, the VANs have constructed nationwide networks that include costly long distance circuits. Since they have generally employed distance-insensitive pricing, users of relatively local transport defray part of the costs of the long distance circuits. In contrast, the BOCs are proposing to construct relatively local networks only. Indeed, under the present constraints of the MFJ, they cannot offer interLATA services. Thus, the BOCs' facilities will be less costly, and their use for relatively local data transport can be priced lower than comparable uses of the VANs' facilities.[62] We conclude that the potential benefits to the public of this support a grant of the waivers.

88. And finally, we approach the waivers more broadly under our statutory mandate to promote the wide availability of "rapid" and "efficient" services. Under our Computer II rules and decisions, asynchronous/X.25 conversion is an enhanced service, but it has a direct and immediate nexus with communications itself. It is clear that communications efficiency, and the efficiency of many goods and services produced in our economy, can be promoted by ensuring that a technology that can be deployed to create efficiencies in communications is so deployed. The limitation in Computer II on deployment by certain carriers in their central officers of processing that implements enhanced services was not intended to foreclose overall efficiency. It was intended to promote competition that itself would create efficiencies to counter-vail those that might be lost by limiting such deployment. On balance, and in view of the record of this proceeding and the conditions we are adopting, we conclude that this broader goal of Computer II will best be served by granting the waivers as is done herein.

C. Application of Protocols Decision Principles

89. We now apply specific principles of the *Protocols Decision*, under which requests of this nature are to be analyzed, to the petitions before us. First, since an intermediate internetworking protocol is not involved here, the main portion of the first principle of the *Protocols Decision*, 95 FCC 2d at 594, is irrelevant. Conversion of user terminal protocols is not the type of protocol conversion that would ultimately be limited in use to a few other carriers or enhanced service vendors, even if the X.25-compatible terminals could be considered "few" in this context. Ultimately, there will be many more X.25 terminals than presently, and we conclude that these petitions should not be treated under the

[61] Pacific Northwest Bell, for example, estimates that it would cost $40 million to grow the circuit switched network to meet future data transmission demands, as compared to $22 million needed to accommodate those demands on packet switched network. Reply Comments (June 11, 1984) p. 25.

[62] This effect is not limited to the BOCs. Anyone is free today to offer a relatively local enhanced service that similarly uses only relatively local facilities, but we are not aware that such services are available. Existing service providers are also free to employ distance-sensitive pricing that similarly would cause relatively local transport not to sustain the costs of long distance facilities, but they presently do not do so. The BOCs argue that a market for such transport exists and can be stimulated, but is presently not served by vendors focusing on it. In part because of the MFJ restrictions, the BOCs are willing to develop such a market.

de minimis principle of the *Protocols Decision*. *Id.*, n.13. On the other hand, the second portion of the first principle, that the underlying basic offering remain a truly general one, will be satisfied. Not only do the BOCs propose to offer standard X.25/X.25 unconverted packet switched data communications services;[63] but also, via our "unbundling" conditions *infra.*, we are requiring that inter-office channels and subscribers' loop access remain available generally and unencumbered.

90. Second, the BOCs' showings under the second (unbundling) principle of the *Protocols Decision* are deficient. Underlying transparent transmission facilities that are "comparable in price, quality and conditions of service to [those] built into the offering to be associated with protocol processing" are not available generally. The BOCs propose to build into their offerings the use of inter-office channels at a preferential price that will not be available to others. They give limited, if any, assurances that subscribers accessing BOC protocol conversion capabilities and subscribers accessing those of the the VANs will do so on a comparable basis. They argue that the X.25/X.25 unconverted packet switched service is "the" underlying basic service for this purpose, and that the rates for facilities that are used to configure it should, therefore, not be unbundled any more that are other inter-office and loop facilities used to complete conventional telephone calls. For example, they note that just because inter-office channels are used to complete conventional local telephone calls between adjoining exchanges, use of these channels is not unbundled; their book costs are aggregated in the revenue requirements that determine rates for local calling. They argue for a similar treatment here.

91. This argument might have validity if the use of monopoly local exchange facilities by competing BOC and VAN packet services followed the familiar pattern set by long distance companies in their use of the local exchange. As long distance competition has evolved, most competitors have used monopoly exchange area switching and inter-office circuits *in tandem with* their long distance facilities. Under these circumstances, material concerns have not arisen about possible anticompetitive effects of allowing the BOCs to bundle the cost of inter-office circuits into their rates for basic local exchange service. All competitors receive local exchange service on the same terms, and under the MFJ, the BOCs providing that service are not themselves using the local circuits to compete in the long distance market.

92. When the existing packet service vendors began ten year ago to deploy their networks, there were no local packet networks analogous to the local exchanges used by the long distance companies for local access. The VANs therefore developed networks which included both local and long distance components. The BOCs, who until now have played the role of wholesalers supplying circuits needed to complete the VANs' networks, now wish to use those circuits to create services which would compete at the retail level with the VANs' local services. Those BOCs which appear to acknowledge the anticompetitive effects of allowing BOCs to pay lower prices for these circuits than those paid by their competitors candidly state [64] that they envision their local packet services as monopoly local data exchanges operating in tandem with the VANs and others' long distance packet services.[65]

93. We are not now prepared to acquiesce in an interpretation of our rules which allows the BOCs to use their monopoly position as the supplier of inter-office circuits to enter a currently competitive market and then unfairly eliminate local competition.[66] In analogous circumstances, when we determined not to apply structural separation to the one-way paging operations of wireline carriers, we recognized problems that could arise in areas where radio common carriers' paging services competed with those of the wireline carriers. We stated that, to avoid price squeeze effects, we would require any wireline carrier providing paging service to fix its charges to radio common carriers for wireline facilities on the identical basis that it uses to compute its own costs for its own paging service.[67]

94. Likewise, because disparate pricing of inter-office channels can directly affect competition between the BOCs and the existing packet service providers, and, importantly, with no gain in efficiency (since the *same* underlying communications channels are involved), we must require that these channels be available to others on a basis comparable in price, quality and conditions of service to that of their use by the BOCs in configuring their packet switched networks, as a condition on the grant of the requested waivers. This requirement does not depend upon whether the X.25/X.25 packet switched service is considered "the" basic one underlying the asynchronous/X.25 protocol conversion offering, or whether only the inter-office circuits themselves are so considered.[68] Because of the

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[63] The related concern, adverted to at 95 FCC 2d at 595, n.14, that protocol conversion could be tailored specifically for a given supplier's terminals, giving that supplier (or a BOC, if it were offering that supplier's terminals) an unwarranted advantage over others, does not arise here. The asynchronous protocols that the BOCs seek to support through asynchronous/X.25 conversion are the most common and ubiquitous ones available in the data communications market. It is precisely for this reason that the BOCs seek to support them.

[64] See, *e.g.*, Reply Comments of Pacific Northwest Bell (October 23, 1984) at 8; NYEX Petition for Declaratory Judgment, or Waiver (April 27, 1984) at 2.

[65] Since, under the MFJ, the BOCs may not offer interLATA communications, for interLATA data communications their local packet switched networks would have to be interconnected with services or facilities of an entity that is permitted to offer interLATA service. In many cases, such interconnection would be to a long distance packet switched network, using the X.75 intermediate internetworking protocol. In this type of service, the analogy to current forms of exchange access where local transport and switching costs are aggregated (without unbundling of inter-office circuits) in determining access rates would be more apt; here, the local exchange facilities would be used in tandem with the long distance ones. But, intraLATA end-to-end enhanced services are also possible and are provided over the networks of the VANs and other enhanced service providers. In such cases, use of the BOCs' packet switched facilities would be unnecessary, and aggregated pricing of the inter-office circuits when used in conjunction with the BOCs' packet switched services, but not those of the others, would be disparate.

[66] *See, e.g.*, United States v. Aluminum Company of America, 148 F.2d 416 (2d Cir. 1945). More recently, the Supreme Court ruled in Federal Power Commission v. Conway, 426 U.S.C. 271 (1976) that the FPC (now FERC) must consider, in setting wholesale electric rates, whether the rates it sets will interact with state-established retail rates to create price squeeze opportunities. Since that decision, price squeeze doctrine has been used by municipal utilities challenging the regulated rates charged by their suppliers. *See, e.g.*, Boroughs of Ellwood City v. FERC, 731 F.2d 959, 968–975, (D.C. Cir. 1984), and cases cited therein. FERC and the courts have evolved tests for determining whether a particular pair of wholesale and retail rates, just and reasonable in themselves, combine to create a price squeeze. *See id.* at 969. In the present context, however, we need not perform elaborate tests on proposed rates to determine whether the BOCs proposals could lead to a price squeeze. The BOCs themselves have averred that if they must acquire their inter-office circuits at the going wholesale price, that is, at the tariff price paid by the VANs, they themselves will not be able to offer packet service at the low retail prices which they propose and which they claim are necessary to stimulate the market for local data service. This is a price squeeze and, in our judgment, an inappropriate, anticompetitive use of their monopoly control of local exchange facilities.

[67] First Report and Order in Docket No. 80-183, 89 FCC 2d 1337, 1346 n.17 (May 13, 1982); *Cf.* Mobilefone of Northeastern Pennsylvania v. FCC, 682 F.2d 269, 272 (D.C. Cir. 1982).

[68] The second principle of the Protocols Decision was never so limited. It addresses "underlying transparent transmission facilities" (which these circuits undeniably are) being made available in a matter comparable to those "built into the offering to be associated with protocol processing." These circuits will be "built into" the BOCs' packet switched offerings to be associated (via the waiver) with asynchronous/X.25 conversion.

special considerations involved in the competition that will be facilitated between packet switched services of the BOCs and those of others that under present circumstances depend on the BOCs' inter-office circuits, we shall require this form of unbundling even if the X.25/X.25 unconverted packet switching service might otherwise be thought of as "the" basic one.[69]

95. An additional dimension of the unbundling requirement of the second principle of the *Protocols Decision* is that the protocol conversion itself must be priced separately. We explained that this requirement would maintain the ability of others to perform protocol conversion themselves, 95 FCC 2d at 595, and that would facilitate any necessary regulation of the underlying basic service, *Id.* at n.14. These goals are particularly important here, given IBM's assertion that unwarranted action on the petitions could arrest present trends in the terminal design towards more efficient synchronous terminals. Use of such terminals is an alternative to centralized protocol conversion, and is, therefore, a form of "competition" with both the centralized asynchronous/X.25 conversion capabilities of the existing VANs and enhanced service providers and with those the BOCs wish to provide.

96. As noted, it has been argued that if there were no price differential between the X.25/X.25 service used by a terminal communicating in the X.25 format and the asynchronous/X.25 service which would be used by most existing data terminals, neither users nor manufacturers would have significant incentives to substitute X.25 terminals for asynchronous ones. Even if the X.25 terminals are more efficient, manufacturers would have little incentive to sustain the "up front" costs of producing new terminals (or convertors for existing terminals) when they could continue to earn profits using existing designs. If they were nevertheless to produce such products, the benefits that users would perceive might be so limited that they would not choose to sustain the additional expense of purchasing such equipment. IBM's view is that widespread use of X.25 terminal equipment would rapidly bring down the pre-unit costs, since large fixed costs would be spread among the units produced. If users did not start to purchase them in large numbers, however, the per-unit costs would remain high. Were this the sole basis for a differential price, it would not be justifiable on policy grounds.

97. However, the record indicates that there is a cost basis for establishing an economic price difference between X.25/X.25 service and asynchronous/X.25 service. The additional investment cost of acquiring PADS that incorporate asynchronous/X.25 conversion capabilities, as compared with those that might not, might well be perceived by the BOCs as virtually zero, since only PADs with such capabilities are generally available in the market.[70] As was explained by Northern Telecom in informal comments herein, however, there are cost differences in the operation of a packet switched network that occur when the PADs are, or are not, used in the asynchronous/X.25 conversion mode.

98. Northern Telecom's analysis is complex, and depends upon whether or not users will accept delays in through transmission, a perception that in part depends upon the speed of transmission. The essence is that the processors implementing a packet switched network node have finite capacity, and more of that capacity is utilized by ports requiring asynchronous/X.25 protocol conversion than by ports not requiring such conversion, leaving less capacity available to handle communications at remaining ports. If asynchronous/X.25 conversion is proceeding at a port carried on that processor, less capacity remains available for handling transmissions from the other ports carried on the processor than would be the case if no asynchronous/X.25 conversion were being performed. Since the nodes have storage capabilities, and can also shut off an originating terminal when such storage is full through X-ON/X-OFF flow control (if the terminal supports flow control), transmissions from the other ports may not be lost if processing capacity is taken up by protocol conversion at other ports, but they will be delayed. The result is lower "throughput" of data on such ports than would be the case if protocol conversion were not being performed at other ones. In sum, communications efficiency is reduced for the user of all the terminals seeking to use the node simultaneously and for the packet switched network as a whole, when asynchronous/X.25 protocol conversion is being performed.

99. Specifically, Northern Telecom indicated, in a worst case analysis, that at 9600 baud its SL-10 processors could handle five asynchronous ports (i.e., with protocol conversion) as compared with thirty synchronous ones (i.e., with no protocol conversion) simultaneously.[71] Thus, in this worst case each asynchronous/X.25-converted input to the node reduces the potential communications capabilities of the node six times, a clearly less efficient result than would be the case if the node carried only synchronous (unconverted) communications. Stated another way, all other factors being equal a port used in the asynchronous/X.25 conversion mode is equivalent to six ports used in unconverted mode, worst case. This difference could conceivably justify a six-fold increase in the pricing of the switching component of a packet switched service in the protocols conversion mode, over the unconverted mode.

100. Northern Telecom indicated that this concern was weighed in by Bell Canada when it set its tariffed rates for packet switched data communications services that do and do not involve protocol conversion.[72] Its tariffed rates for asynchronous-compatible packet switched service are as much as fifty percent higher than for X.25-format service, according to an analysis submitted by BellSouth.[73] BellSouth

[69] We address in the next section of this decision how this requirement might be satisfied by the BOCs. In formulating the second principle we stated that "we will require that if any waiver is to be granted, it be granted solely on condition" [to be imposed by this agency] that the underlying capabilities be generally available. We thus did not explicitly require an affirmative showing by the petitioners, but only indicated the nature of the conditions we would adopt. Thus, the failure of the BOCs to indicate how this principle will be served is not fatal. We can and will cure this deficiency through the adoption of appropriate conditions.

[70] We do not accept the implication that therefore there is no investment cost associated with protocol conversion. Such capabilities do not exist in virtually all PADs on the market, but they did not arise at no cost. Capital was expended to create such capabilities when the PADs were designed, and a detailed cost analysis could, at least in theory, identify separately the costs of such capabilities. In treating the requirement that the costs of the PADs associated with protocol conversion be removed from regulatory accounts, *infra*, we suggest two bases for determining the proportion of the PAD investment that is related to protocol conversion. Our discussion in the next three paragraphs, however, addresses an *operational* cost difference, not an investment one.

[71] A "port" in this context is a single end-user connection to the packet switch. A "node" is the group of such ports at the location of the packet switch, the packet network's "node".

[72] In Canada, which has not adopted the Computer II treatment of protocol conversion, there is no impediment to the tariffing of protocol conversion, and it is treated there no differently than a basic service. Thus, conversion from asynchronous to X.25 protocols is treated as a separate element in Bell Canada's transport tariffs to be applied in addition to the X.25/X.25 transport element if such protocol conversion is used.

[73] Also, it should be noted that the switching cost component is but one component of the costs of providing packet switched service. Other major components would include the costs of the circuits between these switches and the overheads associated with the offering. Thus, a given percent differential in overall pricing may reasonably reflect the much higher differential in expense that could

Continued

asserted that there has been no adverse effect on the development of synchronous terminals in Canada under this pricing approach. We conclude that a similar technique is an appropriate one for us to employ here to achieve this second goal of the unbundling requirements of the *Protocols Decision.*[74]

101. The third principle of the *Protocols Decision,* 95 FCC 2d at 595, is conformed to by the petitions. The BOCs are proposing to collocate only protocol conversion capabilities in their central offices. Their proposals involve neither processing that creates, deletes or changes information itself, nor subscriber interaction with stored information.

102. And finally, we conclude that on balance, and as conditioned below, the proposals of the BOCs will be consistent with the fourth principle of the *Protocols Decision,* 95 FCC 2d at 595–96. We concluded there that requests would be treated "more favorably" in circumstances where "the performance of the basic network can be improved materially only by provision of protocol processing in the network, and not where others can do so outside the network." *Id.* Clearly, others can and do perform such conversion outside the network, seemingly placing the BOCs' petitions in the less favored category. The VANs and other enhanced service vendors do so centrally in facilities outside the network, and terminals themselves increasingly can and will do so, also outside the network. The BOCs themselves can perform asynchronous/X.25 conversion outside the network, either as an adjunct to a basic X.25/X.25 service offered on a regulated basis, or in packet switching facilities outside the network operated by a separate affiliate no differently than the VANs and other enhanced service providers.[75]

103. However, we did not conclude that proposals falling in the less favored category would or should automatically result in a denial. Rather, we established a balancing test. In the case at hand, the balance falls on the side of the improvements potentially available to the public if the BOCs are permitted to collocate asynchronous/X.25 conversion in their central offices subject to the conditions we are adopting herein.

104. Specifically, we conclude that the BOCs have shown that there will be a material improvement in local communications efficiency if data transport is shifted from inefficient circuit-switched uses of local exchange plant towards more efficient packet switched uses thereof. Only deployment of local packet switching capabilities can move towards this result.[76] Since the vast majority of terminals are not compatible with the X.25 format, local packet switching will not be used if the BOCs cannot deploy local packet switching capabilities that are compatible with the millions of asynchronous terminals now available. The conditions we are adopting herein are fashioned in part to seek to ensure that the VANs and other enhanced service vendors also can participate effectively in this movement towards communications efficiency. Denial of the petitions, however, would block such movement for the present.

105. Furthermore, we conclude that allowing the BOCs to provide local packet switched services, under the conditions we are adopting to ensure equality of treatment in the pricing of the inter-office channels and of access by end-users to such services, will create incentives for the BOCs to make available new, less expensive inter-office channel offerings and new subscriber loop service offerings that will foster the growth of data communications generally and "information age" data communications services specifically. We accept for the purposes of this decision the proposition put forth by various participants to this proceeding that such services may have been priced excessively. Overpricing may have inhibited growth that otherwise might have been possible. Our condition will promote such growth, to the public's benefit; and, it will ensure that existing and future packet switched service providers, including the BOCs, will participate in serving such growth, to their benefit.

106. In sum, under the fourth principle of the *Protocols Decision* we conclude that the public interest would be served by a grant of waivers of Computer II to permit collocation by the BOCs of asynchronous/X.25 protocol conversion in their central offices subject to the conditions detailed below.

D. Scope of the Waiver; Conditions

107. In this section, we adopt a waiver of the Computer II structural separation conditions to permit the BOCs to collocate asynchronous/X.25 protocol conversion capabilities with their central offices on three primary conditions: (1) That the BOCs treat equally the inter-office communications channels supporting their packet switching services involving the asynchronous/X.25 conversion, and those used by others; (2) that the asynchronous/X.25 conversion be priced separately in the form of a surcharge on the price for unconverted packet switched communications service; and (3) that the end-subscriber loop services that might access both groups of packet switching services [77] be available equally to users of both groups of services. We particularize this third condition for the DOV technology by requiring that any DOV services that are to be made available to the public for access to the BOCs' packet switching services be available for access to others' services on a comparably efficient basis. Each of these conditions is detailed and explained below. But first, we address the scope of the waiver we are granting, and certain information filing requirements that must additionally be conformed to prior to the waiver becoming effective.

108. *Scope of the Waiver.* Neither the *Notice of Inquiry* in the protocols proceeding nor the *Protocols Decision* itself held out the possibility of broadly dispensing with the classifications and protections of Computer II via waiver. The principles we set out therein were intended to apply to requests for waiver of the limitation on collocation at central offices of protocol conversion

be justified in pricing the operation of the switches alone (as noted, as much as six to one).

[74] In the next section of this decision, we describe the condition that we are fomulating to reach a comparable result. It should be emphasized that we are not adopting the specific percent differential used by Bell Canada, which may be based on the characteristics of products of one manufacturer, Northern Telecom. Rather, we are adopting a more general approach.

[75] The VANs argue that Computer II appears to grant the BOCs the option of removing the entirety of packet switching service, with and without protocol conversion, from regulation. We are not as sanguine as the VANs on this point, since a major policy objective of Computer II was that innovation in communications capabilities should occur in the regulated network available to all, rather than in unregulated offerings available to a chosen few. Packet switching technology is such a technological innovation, and in our Basic Packet Switched Service decisions we concluded that AT&T's decision to include it in common carrier offerings available generally was in the public interest. In any event, we need not and do not in this decision reach the policy implications of the BOCs removing the entirety of packet switching service from regulation and offering it on a wholly separated unregulated basis. They are not seeking to do so. They are seeking to commingle facilities for the undeniably enhanced service of protocol conversion with their central offices, and in most cases to offer the X.25/X.25 service as basic.

[76] As explained above, the offerings of VANs and enhanced service providers do not move towards this result; they reach the contrary one.

[77] We address here only the end subscriber loops to which the data terminals themselves are connected at subscribers' premises, not the loops used by VANs and enhanced service vendors to connect their PADs and similar equipment with central offices in lieu of the within-office wiring that would be used if such equipment were collocated in the central offices.

equipment. We contemplated neither waiver of the requirement that enhanced services be marketed by a structurally separate affiliate, nor waiver of the classification of protocol conversion as an enhanced service.

109. The BOCs, on the other hand, seek waiver of all structural separation conditions; several, indeed, go further and ask us to treat asynchronous/X.25 conversion as an element of basic service. Their showings, however, while convincing with respect to the public benefits which may flow from waiver of collocation restrictions, are wholly inadequate to justify further waivers of structural separation. We are particularly concerned with the failure of the BOCs to offer any alternative safeguards to the joint marketing prohibitions which they ask us to waive. Telenet and Tymnet, two long-standing vendors of basic and enhanced packet switched services, point out in their pleadings that marketing costs represent as much as 25–30% of the total costs of doing business for a mature packet service vendor. It seems appropriate to assume that the BOCs, who claim to be developing new markets not yet exploited by the VANs, will incur marketing costs as high as or higher than those experienced by Tymnet and Telenet. To preserve the fundamental goals of Computer II with respect to preventing cross-subsidization of enhanced services by basic service ratepayers, it is essential that marketing costs for protocol conversion, an enhanced service, be separated from marketing costs for basic services, including basic packet switching. Some BOCs have not offered any proposals for exclusion from regulated accounts of costs for marketing unregulated services.[78] Others have put forth various formulas, some of which do not appear to guard against underallocation of marketing costs to the customers whom they expect to use their services.[79] No company has made a persuasive argument that there are any public benefits to be gained from allowing joint marketing which would counterbalance loss of the safeguards of structural separation. Because of the nature of the waivers we are granting herein, we need not address further the merits of the BOCs' filed plans. In the absence of probative additional showing, *infra*, at paras. ——, structural separation of marketing will not be waived.

110. Absent such additional showings, in this order we waive only the collocation restrictions. Incidental to this waiver we also waive the ban on joint installation and maintenance, but only to the limited extent necessary to allow installation and repair of the protocol conversion equipment itself by unseparated telephone company employees.[80] Furthermore, to ensure that subscribers to basic service do not cross-subsidize such installation and repair operations on behalf of the separated affiliate's enhanced protocol conversion offerings, we shall require that a contract be entered for compensation of the telephone company for such installation and repair, and that it be filed with the Commission and accepted prior to the waiver becoming effective.

111. Furthermore, we shall require each telephone company to apportion and remove from "above the line" regulatory accounts the investment and expense associated with protocol conversion. Where protocol conversion is performed in separate equipment not used otherwise for the provision of basic service, this requirement should be relatively simple to satisfy. The record, however, indicates that in many cases protocol conversion is to be performed in the same processors that create the packed switched channels and switch traffic. Since those processors are also used in providing unconverted transmission services that we are treating herein as basic, apportionment of costs may be difficult to accomplish. If the entirety of the packet switched service were treated as enhanced, apportionment would be unnecessary; the entirety of the investment and expenses associated with the equipment would be removed from "above the line" accounts. However, there is validity to the claim of those petitioners that argue that when X.25/X.25 service is being provided, all that is being provided is a basic service.

112. We do not decide here the fundamental question, raised directly by Telenet, of whether such X.25/X.25 service provided in facilities that also support the enhanced asynchronous/X.25 service (under the waivers we are granting herein) should ultimately be treated as basic. We need not decide that question here. It is clear that such service *can* be so treated, as it falls under none of the definitions of enhanced service in § 64.702(a) of our rules. We conclude that during the pendency of the rulemaking proceeding we will soon institute, the X.25/X.25 packet switched service (and any X.75 interfaces that might be made available thereon) should be treated no differently than other basic services. This determination is without prejudice to our resolution of this issue in the rulemaking proceeding. We reach this result, which should be regarded as one *pendente lite*, for two reasons. First, it preserves the options available in the rulemaking proceeding, one of which is a proposal that the current line between enhanced and basic services be refined. And second, it provides a vehicle for making effective the conditions we are adopting on unbundling of protocol conversion. But, given this treatment, it is important that an appropriate technique be employed by the BOCs to separate from the investment and expenses associated with the PADs and other packet switching equipment a realistic portion to be removed from "above the line" regulatory accounts.

113. For this purpose, we reject the notion that the protocol conversion capabilities of the PADs were created at no cost, and that therefore their purchase prices represent no economic value for protocol conversion. It is true that PADs probably are not available for purchase by the BOCs that do not have protocol conversion capabilities. Packet switching equipment is sold and deployed in worldwide markets where protocol conversion is treated no differently than unconverted packet switching services. Manufacturers competing on the world markets in the provision of such equipment must offer the full range of capabilities that there potential customers seek, including protocol conversion to support

[78] NYNEX stated that it does not intend to utilize separate accounting procedures because protocol conversion is part of a basic service, but that it will adopt appropriate procedures if required to do so. NYNEX Responses at 11 (August 24, 1984). PNB and NWB have not offered accounting plans.

[79] Ameritech proposed to attribute to protocol conversion a portion of total operating company marketing expenses according to the ratio of protocol conversion revenues to total business and residence service revenues. Ameritech Petition, Exhibit F, p. 3 (August 8, 1984). Pacific Bell originally proposed a similar plan, then modified it in light of comments suggesting that this formula underallocated costs to protocol conversion. Pacific's revised formula applies to total packet switched service marketing costs, the ratio of protocol conversion revenues to total packet switching revenues. Pacific Bell Reply Comments, p. 23 (June 11, 1984). BellSouth proposes to track marketing costs for its packet switched services and allocate them according to the percentage of traffic which is converted or unconverted. That is, if 45% of all packets transported are converted from one protocol to another, then 45% of marketing costs will go below the line. BellSouth Accounting Plan, at 19–20 (August 27, 1984). Southwestern Bell's revised accounting plan stated that it would track costs incurred specifically for packet switching and allocate portions of common costs according to factors which it intends to identify at some future time. Southwestern Bell Reply Comments, Attachment 1, p. 9 (October 26, 1984).

[80] In view of the fact that in many cases the protocol conversion capabilities are integrated with the packet switches themselves, a contrary treatment of installation and repair would be inefficient and impracticable.

communications by the millions of asynchronous terminals available in other nations no differently than in the United States. The fact that the equipment is sold only with these capabilities does not imply, however, that protocol conversion capabilities were created or implemented without cost, or that such cost is not inherent in the purchase price of the equipment.

114. One technique for separately identifying the protocol conversion portion of the PAD might be to examine the actual resources available in the PAD, and to establish a ratio between the resources available for protocol conversion and X.25/X.25 (or X.75) transmission that can be applied to the overall investment and expenses associated with the PAD.[81] A second technique might be to establish a ratio based on an estimate of the nature of the traffic traversing the PAD.[82] We reach no decision on the particular technique to be employed. Each BOC will be required to make a submission that demonstrates acceptance of the conditions we are adopting below, and we shall require them each additionally to select and justify an appropriate technique for apportioning the investment and expenses associated with the PADs.

115. As noted, the showings heretofore made by those BOCs seeking to market asynchronous format-compatible packet switched services without structural separation are unconvincing, and we reject them. The waivers granted in this order will not permit such marketing to be done on an unseparated basis. An issue to be considered in the rulemaking proceeding we will be instituting is whether such structural separation will be required for the future, and one potential outcome is that it will not. In such event, this matter would become moot thereafter. Nevertheless, we are willing to grant the BOCs additional authority to perform marketing on an unseparated basis earlier if they make the showings required below.

116. Specifically, each BOC seeking approval of a specific marketing plan must make a probative and fully documented filing that demonstrates: (1) How the costs of marketing asynchronous format compatible packet services by unseparated telephone company personnel will be identified and excluded from "above the line" regulatory documents;[83] (2) what marketing information, if any, will be available (and on what basis) to other enhanced service vendors to give them an opportunity comparable to that of the BOCs' unseparated marketing personnel to vend asynchronous format-compatible packet switched services to the BOCs' basic telephone service subscribers; and (3) how the petitioner's marketing proposals relate to conditions #2 and #3 which we are adopting herein. Any such filings will be placed on public notice, and comment will be solicited thereupon. After an appropriate comment cycle, we anticipate that the Bureau will act expeditiously on any such filings.

117. In view of the foregoing, the concerns of the VANs and other opponents of the waiver about potential cost misallocation are satisfied. The protocol conversion equipment and its installation and maintenance will be properly apportioned under the conditions set forth herein. If any BOCs additionally wish to market these services on an unseparated basis, they will be required to demonstrate convincingly that the costs of such marketing will be separately identified, not included in revenue requirements for regulatory services, and be auditable. Finally, those cost issues not related to equipment costs or marketing are addressed in the conditions below.

118. *Condition #1: Treatment of the Inter-Office Channels.* We have already established why the BOCs must make available to other providers of asynchronous/X.25 packet switched services, the inter-office channels the BOCs will be using to support their own services, without discrimination. Under present circumstances, BOCs are monopoly or near-monopoly providers of these facilities. It appears that, in the absence of an explicit requirement of equal treatment, the BOCs may engage in a classic "price squeeze", unfairly competing at retail with those to whom they supply inter-office channels at wholesale.[84] As was emphasized previously, the same channels are to be used by the BOCs and others; all that would differ, in the absence of this condition, would be the price.

119. The vehicle for ensuring against this anticompetitive and discriminatory result is in the provisions of the Computer II decisions addressing those carriers that are not subject to structural separation under Computer II. In the *Final Decision* we stated:

> . . . an essential thrust of this proceeding has been to provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers. Because enhanced services are dependent upon the common carrier offering of basic service, a basic service is the building block upon which enhanced services are offered. Thus, *those carriers that own common carrier transmission facilities and provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms and conditions reflected in their tariffs when their own facilities are utilized.* Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.

77 FCC 2d at 475, emphasis added. Although this language was clear and unambiguous, we re-emphasized the same point on reconsideration:

> Those carriers not subject to the separate subsidiary requirement, when employing their own common carrier transmission facilities in the provision of enhanced services, *must obtain transmission capacity pursuant to the terms and conditions embodied in their tariff.*

84 FCC 2d at 75, n.19. We conclude that this Computer II treatment of carriers not subject to structural separation should apply to the inter-

[81] PADs and packet switches, like any other processors, are implemented by software. Some of this software implements the protocol conversion involved in this proceeding; the remainder implements the packet switching, handling, routing and channel creation functions necessary to provide unconverted X.25/X.25 service. While the actual software implementing these processors ultimately is in a machine language form usable by a processor, since the functions are complex it most probably was created in a form more comprehensible to programmers, either an assembler or higher-order language. Source code for this software undoubtedly exists, to document the design and to facilitate modification or revision of the PAD functions. A ratio could be established between the source code implementing protocol conversion functions and the source code implementing X.25/X.25 packet switching functions using a gross measure, perhaps through a count of lines of code or individual commands. We recognize that such source code is ordinarily proprietary, and may well be retained solely by the manufacturers of the PADs and not furnished to their purchasers. If this technique were to be employed, therefore, we would expect the BOCs to obtain the ratios—but not the code itself—from their suppliers, perhaps through appropriate contractual provisions in their purchase contracts.

[82] That is, if 80 percent of the traffic to traverse a PAD will have its protocols converted at that PAD, 80 percent of the investment and expenses would be removed from "above the line" regulatory accounts under this approach. It would be important that a common measure of the traffic traversing the PAD be employed in establishing such a ratio, and seemingly a common measure of bits per unit time of "throughput" should be employed. This approach might have the effect of excessively reducing the amounts to be included in regulatory accounts, but it would appear to be relatively simple and without burden.

[83] As an aspect of demonstrating separation of costs, any BOC seeking this additional waiver should explain fully the assumptions on which its proposed cost allocation formulae are based and show how it intends to test and verify the validity of those assumptions in practice.

[84] This could change to the extent that VANs and enhanced service providers substitute their own facilities for ones obtained from the BOCs, but at present they are not doing so in a significant way.

office transmission capacity that will be used by the BOCs when providing asynchronous/X.25 conversion in facilities that are not structurally separated.[65]

120. The BOCs have argued that paying for inter-office circuits at the same private line and DDS tariffed rates that the VANs and other enhanced service providers presently pay will unnecessarily raise the prices of the BOCs' packet switched services and undermine achievement of the benefits of their provision of such services.[66] This may be correct if it is assumed that current private line and DDS offerings are the only offerings of inter-office channels that will ever be available. But, this need not immutably be the case. The BOCs themselves have considerable control over what offerings will be available. Consistent with the goals of the Communications Act, the Commission would look favorably upon changes in such offerings, if appropriately available, that would allow the BOCs more fully to exploit the efficiencies they might have in offering this service.

121. Carrier-initiated offerings are the norm in regulated industries, and the BOCs are free to propose new offerings that are structured to promote the growth of data communications that they seek.[67] Based on their assertions during the course of this proceeding, they have positive incentives to do so. Under the condition we are adopting here, the benefits of such new offerings will be available not only to the BOCs, but also to others. We reach no conclusions and adopt no conditions on the rates they might propose. Rather, we adhere to the Computer II principle cited above that whatever rates, terms and conditions are made available to others in the BOCs' tariffs for inter-office circuits of this nature must identically govern the uses by the BOCs of such circuits to support the asynchronous protocols-compatible packet switched services that will be marketed by their structurally separated affiliates.

122. We wish to emphasize that it is the achievement of equal treatment, and not the manner in which it is achieved, that is the subject of this condition. For example, some BOCs may be permitted under governing state or Federal regulatory policies to supply inter-office circuits of this nature to the VANs and other enhanced service providers on a special assembly or special construction basis, rather than under a general tariff offering of a new service category. Availability of such supply would satisfy this condition—provided that the end result is equality of treatment. Other approaches which we do not at this time perceive may also be available. In any event, we and the public will have an opportunity to determine how a particular BOC would propose to discharge the obligation of complying with this condition. The BOCs will be required to file with us their proposed means of satisfying the condition, including sample state and federal tariffs that will offer the inter-office circuits to others on the same basis that they will be taken by the BOCs. These may be tariffs for existing or proposed services, or sample contracts if contractual approaches are available. They will also be required to file with us their proposed tariffs for X.25/X.25 packet switched service and to demonstrate that the costs of inter-office channels used in deriving those rates are based on the tariffed (or other) offerings that will be available to the VANs and other enhanced service providers. In addition, they must demonstrate that the investment and expenses related to the protocol conversion functions of the PADs (as discussed earlier) are not included in the costs underlying these rates.

123. Furthermore, we wish to clarify just what we mean when we refer to "inter-office circuits" in this context. We are referring to actual inter-office circuits implemented on wire, radio, or optical facilities (and associated equipment that terminates such circuits), not to the PADs and statistical multiplexing equipment that might be associated therewith for their use in packet switched service. The BOCs, and the VANs and other enhanced service providers, should be free to compete on how they choose to implement their packet switched services, on what mixtures of full packet switches and "satellite" access nodes might best implement their networks, and on the packet switching or related technology that they might employ. We do not wish to perturb this competition by requiring piece parts of one group of competitors' implementations thereof, the BOC's to be made available to other service vendors except through normal network-to-network interconnection.[68]

124. *Condition #2: Unbundling: Network Utilization Rate Element.* We are adopting a second condition on the waivers. If this condition is not complied with by a petitioner, its waiver will terminate automatically. Specifically, the tariffed service of X.25/X.25 transmission must include a separate network utilization rate element to be applied to the use of any port operating on an asynchronous protocol. This element will be computed as a percentage of the usage-based X.25 transmission charge, and must be additive with the rate(s) for use of a port for X.25 transmission. Based on analyses to be submitted to this Commission, we shall specify a minimum percentage for each petitioner, and that specified percentage will be a condition on the waiver granted to each such petitioner. This condition will apply regardless of whether a tariff for X.25/X.25 service is federal or state.

125. We have discussed previously why we conclude that a condition of this nature is needed. Such pricing will properly recognize that while protocol conversion capabilities in PADS when they are purchased may not carry significant additional investment costs,[69] it does affect the operation of the packet switched network facilities themselves in a manner justifying a surcharge on unconverted transmission when the protocol conversion is performed. The Northern Telecom informal submissions on this point, and the related submission s by BellSouth explaining Bell Canada's use of rate element reflecting the impact of protocol conversion on packet network performance and discussing how BellSouth would determine a surcharge for asynchronous use of its packet service, have not been analyzed in the record. Thus, while BellSouth's analysis, which leads to an approximate 19.6 percent surchage on the X.25/X.25 rate for transmission, appears to be

[65] If we were to dispense with all structural separation of enhanced services provided by the BOCs, this baseline requirement would still apply. It certainly should and must apply if we are waiving only a subset of these requirements to permit collocation of asynchronous/X.25 conversion.

[66] This argument appears overstated. As was argued by the BOCs, their offerings would include the costs only of relatively local channels, while those of the VANs and other enhanced service providers today include the costs of long distance, and in some cases nationwide, networks even when used for relatively local communications. Thus, even if the BOCs' costs were to be raised artificially, they still would probably be far lower than those of others. Of course, this result depends to some extent on the currently-common distance-insensitive pricing by the existing providers of packet switched service, which can and may change.

[67] Indeed, there is an evolving policy, at least at this Commission, that flexibility in the pricing of private line services such as nondiscriminatory bulk discount offerings is desirable, and that flexibility in this regard should be accorded dominant carriers, including the BOCs. *See generally*, Private Line Rate Structure and Volume Discount Practices, —— FCC 2d ——, FCC 84-147 (released April 24, 1984).

[68] Of course, we do not constrain the ability of the BOCs to make such capabilites available should they desire to do so, or others to take such offerings. We simply do not here *require* them to be made available.

[69] This is the case because virtually all packet switching equipment available to the BOCs already incorporates protocol conversion capabilities.

soundly based, we have no basis for concluding that the particular rate element used by Bell Canada, or the one derived by BellSouth, would be proper in all cases. Various suppliers' packet switching and protocol conversion devices may have different operational characteristics that could justify different magnitudes for this rate element. Furthermore, such a rate element might be justifiable on a distance-insensitive basis (as Bell Canada has done), but we have no reason to anticipate that the BOCs will tariff their X.25/X.25 services at distance-insensitive rates to which a simple surcharge can be applied, as suggested by BellSouth.

126. For these reasons, we are not in this decision stipulating the magnitude of the network utilization rate element. As a condition precedent to the waivers granted herein becoming effective, we shall require each BOC to make a submission to us analyzing the effect on their tariffed X.25/X.25 transmission services of performing protocol conversion at a port, and deriving an appropriate network utilization rate element based upon such analysis. We envision that such an element would be proportionate with network utilization, and that it would not be related to non-usage costs that often are recovered through fixed charges in carriers' tariffs, such as service initiation charges. By further order, we may, if necessary, establish an appropriate minimum percentage to be applied to each petitioner's X.25/X.25 tariffed transmission charges in formulating the network utilization rate element. It should be emphasized that the percentage once established will be only a minimum; each BOC will be free to set the network utilization rate element at any level it wishes so long as the level exceeds the stipulated minimum.

127. Absent additional probative showings, *supra*, at paras. 115–16, it is the structurally separated affiliate and not the telephone company that will receive underlying X.25/X.25 service from the carrier under its tariffs, and will vend asynchronous format-compatible packet transport services to end-users. The network utilization surcharge will be a component of the charges paid by the affiliate to the carrier, and one of the costs the affiliate will be including in its prices for asynchronous format-compatible packet transport service. The affiliate will also be sustaining other non-zero costs that should be included in its prices, for example the portions of investment and expenses of the collocated equipment which are allocated to protocol conversion and the repair and installation expenses associated with that equipment, none of which are to be included in "above-the-line" regulatory accounts. Therefore, it may be well that the differential in prices for asynchronous format-compatible packet transport to be vended by the affiliate, and X.25/X.25 service to be offered by the telephone company, in practice will exceed the differential established by the network utilization rate element alone.

128. If a petitioner wishes to make the showings necessary for a further waiver of the requirement that the affiliate market asynchronous format-compatible packet transport, it will be free to do so. However, it must demonstrate that the result of this condition—a result that ensures a price differential between the pricing of X.25/X.25 service and asynchronous/X.25 service—will be maintained. One technique might be that the asynchronous/X.25 service will still technically be offered to the public by the affiliate, but that the affiliate could by contract compensate the telephone company for the provision of marketing service to the affiliate. Another might be that the telephone company itself would offer asynchronous/X.25 service to the public on an unregulated basis, on condition that it agree to reflect in its prices therefore the pricing differential established under this condition. We are less concerned with form than substance; it is the result that remain important.

129. *Condition #3: Access by End Users to the Packet Switched Offerings of the BOCs and Those of Others; DOV Access.* In our third condition, we address access from end users to the protocol conversion capabilities of the BOCs and those of others. This access may not be bundled with the rates for asynchronous protocols-compatible transport. It must be available on a tariffed basis, without discrimination in access to the BOCs' protocol conversion facilities and those of others. The proposals before us for collocation in the central office of protocol conversion equipment comparable to that of the VANs and other enhanced service providers, reach this result. End-users will access these collocated facilities through the dialing of a conventional telephone call (pursuant to general telephone service tariffs) or through private line facilities (again, pursuant to tariff). But this may change in anticompetitive ways, and by this condition we foreclose such changes.

130. For example, special dialing procedures could be made available with relative ease for access by end users to the BOCs' protocol conversion facilities and not to those of others, e.g. dial "star" to access the BOCs' enhanced services but dial 7 or 10 digits (or more) to access those of others. Other forms of preferential access could also be made available including special price "packages" of local telephone and enhanced service, or higher quality or more expeditiously installed connections. As noted, we have no basis for concluding that the BOCs in fact would seek to discriminate in such manner, but we wish to establish now that it will not be permitted. We do not by this condition foreclose the use of abbreviated dialing or other potentially desirable subscriber options; we only require that they be made available without discrimination.

131. Another aspect of this potential problem relates to the basis on which the protocol conversion equipment to be collocated in the central office will receive connections to end users. As noted earlier, we reject the notion that the pricing for such connections should be based on an averaging of the costs of within-office wires and the loops that those that may not collocate equipment in the central offices must use. Such an approach would destroy an economic efficiency of collocation and minimize the benefits thereof to the public. But, even within-office wires and terminations engender costs, many of which are identical to those engendered by loops. Since it is the affiliate that will be offering asynchronous protocols-compatible packet switched service to the public (unless the marketing restrictions are waived, the affiliate will be acquiring connections to the carriers' exchange facilities for such service. Such connections to the basic service of transporting signals from end-users' premises to the central office, and through any central office circuit switching that may be involved, should be offered to and received by the affiliate on a tariffed basis that reflects the cost of such connections (including any economies arising from within-office wiring).

132. While this obviously is the preferable approach, the BOCs may wish initially to avoid preparing cost analyses of this nature. If they so choose, they may simply take such connections under the same tariffs that govern others, although this may be less efficient than otherwise. In analogous circumstances involving central office-located connections between interstate private lines and exchange switches for foreign exchange service, carriers long utilized local business rates for the exchange connection through intra-

office wiring, notwithstanding that such rates were predicated on the cost of loops that were not employed. Alternatively, if they wish to reflect any cost efficiencies that may be involved, they must file with us prior to the waiver becoming effective both sample state and Federal tariff provisions that will govern the availability of such connections and the tariff provisions that will govern comparable connections used by the VANs and enhanced service providers. These filings should be accompanied by information that identifies and justifies any differences between the two sets of rates.

133. Our concerns about potential discrimination become particularly important if and when a BOC that receives a waiver under this decision seeks to utilize DOV technology to create one or more additional channels on a "piggyback" basis on subscribers' loops. As discussed previously, there is a design option available that would foreclose effective access by subscribers using DOV facilities to the offerings of VANs and enhanced service vendors, i.e., the option of choosing to terminate the central office ends solely in the BOCs' packet switching facilities, making the DOV facilities unusable for access to VANs or other enhanced service vendors' offerings. Under the condition we are adopting here, a BOC will not have this option. End-users of DOV facilities must be able to access a VAN or other enhanced service vendor over them, at their option, on a basis comparable in price, terms and quality to their ability to access services of the BOCs' Computer II affiliates.

134. We are not by this condition foreclosing the possibility that the central office end of a DOV facility might be terminated at a BOCs' packet switch (or "satellite"). To do so would deny subscribers a potential benefit of the DOV technology. Rather, we are requiring that such termination be merely an option, and that access to others' enhanced services also be made available as a subscriber option. To ensure that VANs and other enhanced service vendors can access customers using DOV facilities for such access on an efficient basis, we are requiring not only that the connections of the BOCs' affiliates to such DOV facilities be made on a tariffed basis, but also that the offering under tariff of connections by VANs and other enhanced service vendors to subscribers' DOV facilities be comparable in price, terms, quality and efficiency to that which the BOCs' affiliates will have.

135. We believe that this result is implicit in the requirement that the BOCs' affiliates receive underlying services—in this case end users' communications over DOV-created channels—no differently than others. Since the DOV facilities will be used as an adjunct to conventional telephone service, and have not yet been deployed to any great extent, we are able to particularize our overall condition specially for DOV. Use of multiplexers and/or concentrators to bring subscribers' traffic in aggregated form to a VAN or other enhanced service provider would appear to be an appropriate way that this obligation might be discharged efficiently. Alternatively, the BOCs may simply choose to terminate all DOV facilities in circuit switching facilities, no differently than the conventional telephone channels on which they will be "piggybacked." In such case, the subscriber could access a BOC's packet switched services (or those of its Computer II affiliate) no differently than those of a VAN or other enhanced service vendor, i.e., by dialing. Multiplexing and concentrating techniques might also usefully be employed to implement efficient connections of the existing services of the VANs and other enhanced service providers to the BOCs' exchanges, but since the BOCs have not employed them, the others' networks have not been configured to interconnect on this basis, leading to our less particularized conditions for connection to current facilities.

VI. Conclusion and Ordering Clauses

136. In view of the foregoing, we conclude that the public interest would be served by our granting the subject petitions for waiver, as delineated and conditioned in this order. We are delegating authority to the Chief, Common Carrier Bureau to act on the additional filings required of the petitioners, and expect such action to occur expeditiously. Furthermore, carriers other than the petitioning ones are subject to structural separation under *Computer II* and may wish to receive authority similar to that granted herein to the petitioners. We are delegating to the Chief, Common Carrier Bureau authority to grant to other carriers, upon request, authority similar to that granted in this order, subject to the conditions adopted herein and to their making the showings required here of the petitioners.[90]

137. By our action herein we believe that we are striking an appropriate public interest balance. Subscribers will have the benefits of efficiencies promised by the petitioners (and, potentially, others similarly placed), while mere pricing disparities and other forms of unreasonably discriminatory and anticompetitive conduct will be foreclosed. We believe that such result is fully consistent with the objectives of our *Computer II* proceedings, and the statutory objectives they are grounded upon.

138. Moreover, granting the petitions should not disturb the overall goals of our *Computer II* decisions. It appears that the offerings which the BOCs contemplate may complement rather than displace the offerings of the VANs and other enhanced service providers. Therefore, a goal of *Computer II*, the promotion of vigorous competition in enhanced services, should be furthered by our decision. In addition, the conditions we are placing on the provision of protocol conversion by the BOCs should reduce their ability to use their positions as dominant providers of local exchange service to compete unfairly in providing packet switched services incorporating protocol conversion.

139. Accordingly, pursuant to sections 1, 4(i), 4(j), 201–05, 218 and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i), 154(j), 201–05, 218 and 303(r), and § 1.3 of the Commission's rules, 47 CFR Chapter I, § 1.3, it is hereby ordered, That the Petitions for Waiver filed by Pacific Bell, Southern Bell Telephone & Telegraph Company, South Central Bell Telephone Company, New York Telephone Company, New England Telephone & Telegraph Company, New Jersey Bell Telephone Company, Pacific Northwest Bell Telephone Company, and the Ameritech Operating Companies are granted to the extent indicated herein subject to the conditions and additional filing requirements established in this order, and are otherwise denied.

140. It is further ordered, pursuant section 5(c) of the Communications Act of 1934 as amended, 47 U.S.C. 155(c), That the Chief, Common Carrier Bureau is hereby delegated authority: (1) To act on the additional filings required in this decision; (2) to particularize the network utilization rate element condition based

[90] In view of Northwestern Bell's refusal to respond meaningfully to the staff's information request, its petition will be denied in its entirety. We strongly advise this company, and others, to respond in the future to requests for information. However, we do not wish to penalize Northwestern Bell's subscribers unnecessarily for the carrier's failings. Therefore, Northwestern Bell will be permitted, if it wishes, to file a properly supported new request for waiver under the procedures we are adopting herein for addressing asynchronous/X.25 waiver requests of non-petitioners.

on such filings; and (3) to act on requests by non-petitioners for asynchronous/X.25 protocol conversion waivers.

141. It is further ordered, That the Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Comments and Reply Comments To Petitions for Waiver of the Computer II Rules To Provide Protocol Conversion

Comments to the protocol waiver petitions were filed by the following parties:

Base 10 Systems, Inc.
Dow Jones and Company
Uninet Inc.
Northern Telecom Inc.
Tymnet Inc.
International Business Machines Corp. (IBM) (attachment—Central Services Organization, Inc. Technical Advisory Local Area Data Transport (LADT) Generic Requirements)
National Cable Television Association (NCTA)
International Communications Association (ICA)
American Newspaper Publishers Association (ANPA)
GTE Telenet Communications Corp.
Association of Data Processing Services Organizations (ADAPSO)
RCA Cylix Communications Network, Inc.
Access Engineering Corp.
American Telephone and Telegraph Company (AT&T)
Digital Equipment Corp. (DEC)
MCI Telecommunications Corp. (MCI)
Integrated Communications Systems, Inc. (ICS)
Independent Data Communications Manufacturers Association (IDCMA)

Reply Comments to the Protocol Waiver Petitions were filed by the following parties:

GTE Telenet Communications Corp. (TELENET)
American Telephone and Telegraph Company (AT&T)
Ameritech Operating Companies (Illinois Bell, Indiana Bell, Michigan Bell, Ohio Bell, Wisconsin Bell)
Rolm Corporation
New York Telephone and New England Telephone
Pacific Bell
Mountain States Telephone, Northwestern Bell, Pacific Northwest Bell
Tymnet, Inc.
Southwestern Bell
North American Telecommunications Association (NATA)
New Jersey Bell
Southern Bell and South Central Bell

Appendix B—Memorandum Opinion and Order

In the matter of Tymnet, Inc., Tariff F.C.C. No. 3, Transmittal Nos. 50 and 51; GTE Telenet Communications Corp., Tariff F.C.C. No. 1, Transmittal Nos. 42 and 43.

Adopted: March 16, 1983.
Released March 18, 1983.

By the Chief, Common Carrier Bureau.

1. We consider at this time the above-captioned tariff revisions filed by Tymnet, Inc. (Tymnet) and GTE Telenet Communications Corporation (Telenet). By these revisions, which are scheduled to become effective on March 17, 1983, Tymnet and Telenet would "detariff" their service offerings which they consider to be "enhanced" under the Commission's *Computer II* decision.[91] Telenet, whose own proposal is unopposed, filed a petition to reject Tymnet's filing.[92] However, by letter dated March 10, 1983, it requests permission to withdraw its petition without prejudice to addressing the issues it has raised in light of further Commission actions which may be taken in related proceedings. In this regard, Telenet states that it agrees with the suggestion of the Association of Data Processing Service Organizations, Inc., that the issues raised by Telenet's petition here should instead be resolved in the *Digital Communications Protocols Inquiry*, General Docket No. 80-756, 83 FCC 2d 318 (1980).

2. On the basis of Telenet's request and our own review of the tariff materials submitted, we have determined that that are no questions warranting rejection or suspension and investigation of the revisions at issue. Moreover, it appears that the services which Tymnet and Telenet would continue to offer under tariff are basic. For example, as we understand Tymnet's tariff, both synchronous communications and asynchronous communications between access ports would be offered separately. Moreover, as we understand it, although changes in network access transmission speed would be performed in both cases, the tariffed offering would not also include code conversions.

3. For its part, Telenet would continue to offer under tariff communications between access ports with the offering emcompassing the use of several accessing protocols.[93] However, as we understand the offering, the same terminal protocol would be employed at each end of a given connection under the tariff, with no net charge of protocol or code involved. Thus, this offering also appears to be basic and may also be offered under tariff.[94] Therefore, we will grant Telenet's request to withdraw its petition and will allow these revisions to take effect as scheduled.

4. Accordingly, it is ordered, pursuant to authority delegated under § 0.291 of the Commission's Rules, 47 CFR 0.291, That the request of GTE Telenet Communications Corporation to withdraw its petition to reject is granted.

5. It is further ordered, That this Memorandum Opinion and Order is effective upon adoption.

Federal Communications Commission.

Gary M. Epstein,

Chief, Common Carrier Bureau.

Separate Statement of Commissioner Dennis R. Patrick

In the matter of Petitions for Waiver of § 64.702 of the Commission's Rules (Computer II) filed by:

Pacific Bell
Southern Bell Telephone & Telegraph Company and South Central Bell Telephone Company
Southwestern Bell Telephone Company
New York Telephone Company and New England Telephone & Telegraph Company
Northwestern Bell Telephone Company
Pacific Northwest Bell Telephone Company
Ameritech Operating Companies

March 21, 1985.

The Bell Operating Companies listed above have requested that we waive the Computer II structural separation requirements to permit them to offer asynchronous to X.25 protocol conversion through facilities located within their central office. Today we find such a waiver, properly conditioned, will serve the public interest.

It has taken almost eleven months from the date of the first waiver request to reach this juncture.[95] The complexity

[91] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982). In addition, Tymnet's proposal would revise and add several definitions to clarify existing tariff provisions; it would also add several rates for new service offerings to points outside the continental United States.

[92] Also before us is Tymnet's reply.

[93] For example, Unbalanced or Balanced Link Access Procedures using High Level Data Link framing. See Telenet Tariff F.C.C. No. 1, Para. 3.1.1(A).

[94] Of course, in the case of both carriers' services, disparate protocols may be supported, but on an unregulated or non-tariffed basis.

[95] Pacific Bell filed this request on March 30, 1984.

of the issues raised by the waiver requests and the need to obtain additional information used to develop the analysis of these issues may have compelled such delay. The action we take today will necessarily result in further delay. The order we have adopted concludes—I believe correctly—that the BOCs must meet certain additional filing requirements before their separate subsidiaries may begin to offer asynchronous to X.25 protocol conversion through collocated facilities. I am concerned that this additional, albeit essential, step in the waiver process does not inadvertently become the vehicle for unnecessary further delay. Such a result would not be in the public interest.

There is no reason for substantial additional delay. The Order clarifies the showings and conditions we expect the BOCs to meet. The Commission's staff has committed itself to making every effort to minimize the time required to complete its review of the supplemental filings.

I have a second concern. Primary among the justifications for granting these waivers has been the promise that collocation of basic packet switched network facilities and asynchronous to X.25 protocol conversion facilities will reduce the costs associated with information services, thus bringing them within the means of a substantially larger segment of our society. I am concerned that we not lose sight of this primary goal. I urge the BOCs to identify more clearly the cost savings they hope to realize from collocation and to insure that these cost reductions are reflected in lower rates for users of their packet switched network. I shall work to insure that the Commission applies the safeguards announced today in such a way as to preclude the BOCs from realizing unfair (*i.e.*, non cost based) price advantages in the packet switching market, while simultaneously insuring that they are *allowed* to pass to the public any real efficiencies derived from collocation as expeditiously as possible.

[FR Doc. 85-8103 Filed 4-4-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket 84-279; FCC 85-96]

Amendments Authorizing Narrowband Technologies for Base and Mobile Communications in Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules which permit the use of narrowband technologies in the Private Land Mobile Radio Services in the 150 MHz band. This action is taken to stimulate interest in the development of spectrum saving technologies and, to help alleviate some of the congestion being experienced by licensees in the Private Land Mobile Radio Services.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's rules and regulations to authorize narrowband technologies for base and mobile communications in the private land mobile radio services; PR Docket No. 84-279.

Adopted: March 1, 1985.

Released: March 29, 1985.

By the Commission; Commissioner Quello concurring and issuing a statement. Commissioner Rivera concurring in the result.

Introduction

1. In recognition of the fact that some of the accelerating private land mobile frequency congestion problems might be alleviated by the use of narrowband technologies, as well as in furtherance of our overall objective to encourage the development of new technologies, the Commission initiated this proceeding in May of 1984 to explore the creation of a mechanism to permit the introduction of narrowband technologies on a regularized basis in the Private Land Mobile Radio Services.[1] While Frequency Modulation (FM) communications systems currently in use in these radio services in the 150 MHz range use nominal 30 kHz channels, some new technologies now being developed by the private radio community operate in significantly narrower radio channels.[2] Based on its several years of experience with approximately 300 developmental narrowband systems, the Commission proposed a plan which would permit the interleaving of 5 kHz narrowband channels between existing FM channel assignments. Specifically, the Commission proposed to offset the center of the narrowband emission 2.5 kHz from the center of the FM emission and establish narrowband channels every 5 kHz referenced to the 2.5 kHz offset. While the 5 kHz channel size was a reflection of the Commission's existing experience with amplitude compandored single sideband (ACSB) operations, the Commission proposed to authorize under this channelization plan any technology meeting the proposed technical standards.

2. In all private radio services except the Business Radio Service, the channeling plan proposed resulted in three narrowband channels being created between every two existing FM channels. In the Business Radio Service six narrowband channels were proposed between each pair of FM channels. Additionally, the Commission proposed to require frequency coordination on these narrowband channels in all radio services in which there is presently a frequency coordination requirement.[3] Any specific mileage separation which might be required between narrowband and FM systems was to be left up to the individual coordinator. Finally, the Commission proposed to allow mobile relay operation in the Business Radio Service on the narrowband channels and requested comment on a plan which identified nine additional frequencies which provide sufficient separation for repeater operation.[4] In addition to the above proposals, the Commission requested comment on ways to ensure that the introduction of narrowband technologies would not disrupt existing systems.

Summary of Comments

3. The parties who filed comments or reply comments in response to the *Notice* in this proceeding are listed in Appendix A. In addition, the Land Mobile Communications Council (LMCC) submitted a study of narrowband technologies conducted by

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[1] *Notice of Proposed Rule Making*, PR Docket No. 84-279, 49 FR 19074, May 4, 1984.

[2] In the 150 MHz private radio band, channels are generally spaced every 15 kHz. Because the FM emission commonly used in this band occupies somewhat more than 15 kHz, a mileage separation is required between adjacent channel assignments to prevent interference.

[3] In services where there currently is no frequency coordination, the Commission a sked for comments on ways to minimize the potential disruption of existing users that could occur if narrowband systems were licensed too close to FM systems.

[4] The nine additional channels would be reserved for mobile operations and limited to a maximum output power of 25 watts peak envelope power.

Sachs/Freeman Associates, Inc.[5] [6] This report is considered a part of LMCC's comments.

4. All of the parties filing comments in this proceeding supported, in principle, the Commission's efforts to encourage the use of more efficient technologies in the Private Land Mobile Radio Services. There was general opposition, however, to the channel structure and licensing plan proposed in the *Notice*. In brief, parties (1) questioned whether reducing the channel spacing would significantly increase private land mobile communications capacity and, if so, whether 5 kHz was the optimum channel spacing; (2) maintained that the channel spacing proposed was incompatible with other narrowband technologies and, therefore, restricted rather than promoted the overall development of narrowband technologies; (3) questioned whether sufficient field testing had been done to propose a narrowband channel plan at this time; and (4) argued that the proposed channel spacing focused on voice communications to the detriment of digital communications.

5. To amplify, the LMCC, for example, questioned the actual amount of spectrum relief which would result from authorizing narrowband technologies under the Commission's proposal. They contended that it is necessary to take into account geographic spacing as well as frequency spacing when determining efficiency gains. Furthermore, it questioned whether 5 kHz is the optimum channel spacing. In this regard it stated that "[w]hile additional channels are created by the 5 kHz separation, fewer of these channels would actually be useable than if assignments were spaced further apart because of the necessity for maintaining adequate mileage separation between stations." LMCC claimed that a 7.5 kHz channelization plan could be expected to "produce greater urban-area channel availability than the 5 kHz plan." Furthermore, according to LMCC, a 7.5 kHz spacing plan has several advantages not available under a 5 kHz plan. The wider spacing would permit the use of a greater variety of narrowband technologies and permit the transmission of higher data rates, in addition to providing more useable channels in the urban areas.

6. NTIA also opposed the proposed 5 kHz narrowband channel spacing. It contended that 5 kHz was not the optimum channel spacing. According to NTIA, "[a] 6.25 kHz channel spacing for narrowband application provides increased adjacent channel protection. Indeed our analysis indicated that a 5 kHz channel spacing plan will result in fewer usable channels than a 6.25 kHz plan." Furthermore, NTIA argued that a wider channel spacing would more readily accommodate other narrowband technologies and faster digital transmission rates. NTIA maintained that "narrowband technologies other than ACSB cannot be efficiently accommodated by the proposed 5 kHz spacing. Although 5 kHz spacing seems appropriate for ACSB, its adoption may restrict, not promote, development of other narrowband technologies such as narrowband FM." In addition to these arguments, it emphasized the need for compatibility between federal government and non-government plans. It urged the Commission to adopt a 6.25 kHz channel spacing.[7]

7. Many organizations representing private land mobile users supported, in general, the introduction of spectrum saving technologies. They expressed the same concerns as LMCC, however, with regard to the Commission's proposed 5 kHz narrowband channeling plan. They were particularly concerned with the potential reduction in the adjacent channel interference protection and the corresponding potential for increased interference.[8] In general these organizations supported our proposal to require frequency coordination of the narrowband channels. However, they urged the Commission to adopt a 7.5 kHz channeling plan and to develop appropriate geographic mileage separation criteria for coordinators.

8. EIA also filed comments opposing the Commission's 5 kHz channel plan.[9] It questioned the number of useable channels provided under the proposed plan, and the plan's suitability for digital communications. It urged the Commission to proceed with caution due to the reduced level of adjacent channel interference protection resulting from reducing channel spacings and the lack of actual field tests to support such reductions. In EIA's view narrowband operations should be permitted only on the present FM channels and channel spacings less than 15 kHz should be permitted only on a developmental basis.[10] EIA argued its plan is superior to the Commission's proposal since it "provides full and orderly implementation of new technology, while offering appropriate and necessary safeguards for existing licensees."

9. A number of parties filed comments supporting the proposed 5 kHz channel spacing.[11] They argued, in general, that 5 kHz spacing results in the most spectrum efficient channel plan and that it is supported by the results of field tests of ACSB developmental systems over the past two years. Stephens stated that "[c]hannel spacings wider than 5 kHz are demonstrably unnecessary and inherently wasteful. It has been demonstrated beyond dispute that techniques such as ACSB provide superior communications in a 5 kHz channel."

10. Supporters of 5 kHz spacing also took exception with the argument that the proposed channel spacing precludes other narrowband technologies and that it is insufficient to accommodate digital communication. Stephens and STI argued that narrowband FM (NBFM) was not a narrowband technology in the same context as ACSB. They stated that ACSB technology only requires 5 kHz wide channels while NBFM requires spacings on the order of 12.5 kHz. Furthermore, they contended that there has been no testing of NBFM and no

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[5] *Final Report for Evaluation of the Use of New Narrowband Technologies in the Existing Private Land Mobile Radio Frequency Allocations*, Stanley I. Cohn and Ernest R. Freeman, Sachs/Freeman Associates, Inc. (August 31, 1984).

[6] The Notice in this proceeding was released April 4, 1984, with comments and reply comments due June 11, 1984 and July 11, 1984, respectively. At the request of LMCC, the Commission extended the comment period to August 10, 1984, and the reply period to September 10, 1984. Later, again at the request of LMCC, the Commission extended the reply comment period to October 1, 1984. Subsequently, on December 21, 1984, LMCC filed a motion to accept an additional pleading that it termed "Response to Reply Comments on Use of Narrowband Technology in the Private Land Mobile Radio Service." Due to the long period provided for comment on the *Notice*, we are hereby denying LMCC's request to accept that submission as a late filed comment. We believe there has been sufficient time allotted for filing comments in this proceeding, and that it would be unfair to those parties who had no opportunity to respond to the LMCC to accept this submission.

[7] Channel separation in the federal government VHF land mobile band is 25 kHz rather than the 15 kHz separation used in most private land mobile radio services.

[8] UTC's comments were typical of those received on this matter. UTC stated that its "concern is based on the absence of any conclusive evidence that the implementation of the Commission's proposal will alleviate the frequency congestion being experienced by UTC members, especially in large urban areas. While UTC members are interested in deploying narrowband technology, there is apprehension that the narrowband channelization plan outlined in the Commission's Notice will jeopardize the interference protection currently afforded land mobile licensees and thereby disrupt existing land mobile operations."

[9] GE and E.F. Johnson filed comments supporting EIA's position.

[10] EIA stated that "[t]he Section realizes that its plan does not appear to offer substantial opportunity for increase in spectral efficiency. It must point out, however, that the Commission's plan in reality offers no significant benefit over the Section's plan, as the Commission's 'additional' channels are all, for the most part, only co-channel to existing channels."

[11] Supporting comments were received from Stevenson, STI, IMM, Skylink, FIT, Stephens, LAOAD, and TIL.

demonstration that it offers communications service sufficient for private radio licensees. While neither party opposed the use of NBFM as a modulation technique, they contend it should not be used as the basis for a narrowband regulatory structure.[12] As for the ability of 5 kHz channels to accommodate data transmissions, Stephens stated that "(s)ince analog voice systems will continue to be in greater demand than alternate digital-based techniques for the foreseeable future, channel spacing at 150 MHz must be predicated on the most spectrally efficient analog voice radio equipment. As previously discussed, this in no way precludes the transmission of data at very respectable throughput bit rates."[13] STI advanced similar arguments. IMM, stated that "[v]ery spectural-efficient radio systems using digitized voice combined with high level digital modulation are in current use with the United States Air Force using contiguous 5 kHz channels."

11. Most parties agreed that 5 kHz spacing does not at present provide sufficient adjacent channel protection for same area operation of narrowband systems. Proponents of the 5 kHz channel plan, however, argued narrowband equipment available today is first generation equipment and as refinements are made the interference protection between adjacent channel narrowband systems will improve to the point where same area operation is achievable. They pointed out that until equipment is available which will permit same area operation on adjacent channels, potential interference problems can be controlled through coordination. According to STI, "[n]o more coordination will be required for ACSB 5 kHz channels than is currently required in the coordinated services for 15 kHz FM channels, and spacing will be much smaller (one to two miles as opposed to 10 miles for FM)."

12. In its comments STI argued that the ACSB to FM adjacent channel protection ratios advanced by EIA and LMCC were "worst case" and therefore misleading. According to STI, protection ratios vary considerably depending on the ACSB and FM equipment tested. STI maintained the Commission should develop standards based on the average interference rejection of FM receivers in use in the private radio services. Telesciences also argued that the concerns expressed by opponents of 5 kHz channels are based on "worst case scenarios." In addition to supporting STI's position on receiver selectivity, Telesciences argued that ambient R.F. noise should be considered in determining separation requirements.[14]

Decision

13. We have carefully analyzed the comments and replies filed in this proceeding and have decided, for the reasons discussed below, to adopt the 5 kHz channel plan substantially as proposed.

14. As an initial point, we note that we received a number of comments addressing the issue of spectrum savings. It was apparent from these comments that many parties were under the impression that in the Commission's view authorizing narrowband operations in the 150 MHz band offered the potential for significant relief from congestion in the near future. The primary near term objective of our *Notice*, however, was to stimulate new spectrum efficient technologies. We anticipate only minimal relief from congestion in the near term as a result of authorizing narrowband technologies at 150 MHz. However, if substantial numbers of private land mobile licensees give up their present systems in favor of narrowband technology, significant relief could occur in the long term.[15]

15. Our proposed 5 kHz channel plan drew widespread opposition from the industry. Basically, those opposed to the channel plan favored a wider channel spacing. The major arguments advanced for wider spacing were that it would (1) permit the use of a greater variety of narrowband technologies, (2) increase digital communication capabilities, (3) reduce the potential for interference with existing FM users, and (4) increase channel availability. Each of these issues, as well as other matters of interest, are discussed below.

A. Other Narrowband Technologies

16. Several parties argued that the narrowband channel plan proposed in the *Notice* restricted use to ACSB and foreclosed other narrowband technologies, in particular narrowband FM. They contended that increasing the channel spacing would allow for NBFM as well as other narrowband technologies. Those supporting a 5 kHz channel spacing pointed out that the comments did not specify any technologies that were precluded other than NBFM. In regard to NBFM they maintained that there has been no testing of NBFM nor demonstration that it offers adequate communications service and therefore little reason to use this technology as a basis for a narrowband regulatory structure.

17. We have considered this matter in light of the comments and do not find the arguments advanced for a larger channel spacing convincing. First of all, the narrowband channel plan proposed does not restrict use to ACSB as some argued.[16] As stated in the *Notice*,

> [a]lthough we have based our channeling plan on compandored single sideband because it is the most prominent narrowband technology in use in the Private Land Mobile Radio Services to date, we do not intend to limit access to our new narrowband channels to these types of systems. We expect that the availability of narrowband channels in the Private Radio Services will stimulate interests in other narrowband technologies. To this end, our technical standards are designed to limit the interference potential of narrowband systems while allowing licensees maximum flexibility within their authorized channels. We will authorize any technology that complies with these technical standards.

See Notice of Proposed Rule Making, supra, at paragraph 20. Narrowband technologies which require channels greater than 5 kHz can be accommodated on the regularly assignable 15 kHz FM channels. The channel structure proposed in this proceeding will overlay 5 kHz channels on the existing FM channels, not eliminate them. Consequently, NBFM which cannot meet 5 kHz technical standards will still be permitted in the private radio 150 MHz band.[17]

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[12] Stephens stated that "proponents of [NBFM] have offered, at best, a speculation possibility that it may be a useful narrowband technique. What has been offered is not a basis on which to formulate allocation policy."

[13] Current ACSB equipment is capable of data rates of approximately 1500 bits per second using frequency shift keying.

[14] In this regard Telesciences stated that "[f]or example, at 150 MC/s, in urban areas, ambient R.F. noise, from such sources as automotive ignition and electrical machinery, results in a significant decrease in detection system sensitivity, thereby effectively limiting a system's dynamic range and raising its noise floor. This means that interferor signal powers at levels equal to or below the effective detection system noise floor will not affect system performance."

[15] As discussed later in this *Report and Order*, mileage separations are needed to compensate for the reduced level of adjacent channel interference protection between narrowband and FM assignments. Consequently, in areas where there is a high concentration of FM transmitters, such as in large urban centers, narrowband use will be necessarily limited.

[16] Comments filed by Carl R. Stevenson state that a new technique, "Digitally Processed Multi-Mode Modulation" (DPMM), generates a sideband signal that fits the proposed 5 kHz channel plan. Also IEEE, Telesciences, and SEA filed comments indicating the existence of other technologies which could operate within 5 kHz channels.

[17] NBFM meets the technical requirements for operating on the present FM channels and therefore could be licensed on those channels today. Depending upon the level of adjacent channel interference protection provided by NBFM

Continued

B. Data Capacity

18. Several parties argued that the channel plan proposed emphasizes the transmission of speech, not data, and therefore ignores the spectrum efficiency of data transmissions. They questioned the suitability of adopting a narrowband channel plan which is built on the transmission of voice at a time when the use of digital modulation techniques by land mobile licensees is fast increasing. Those in favor of 5 kHz channels responded that land mobile users predominantly use their systems for voice dispatch operations and the channel plan should be based on the most common use. Further, they maintained that 5 kHz spacing does not preclude the transmission of data at reasonable bit rates.

19. We are aware of the advantages of non-voice communications in many land mobile applications and that use of such systems by private land mobile licensees is likely to continue to increase in the future. We are not convinced, however, that we should increase channel spacing in this instance to handle additional data capacity. Most private land mobile users employ voice dispatch systems and will continue to do so in the 150 MHz band in the immediate future. Current narrowband equipment (ACSB) is capable of data rates of approximately 1500 bits per second using frequency shift keying. Data rates of 2400–3000 bps appear possible if more complex techniques are used. This data capacity should accommodate the majority of private land mobile data requirements. In cases where additional data capacity is needed, users are free to choose the FM channels which have larger bandwidths and can accommodate higher data rates. The existence of a 5 kHz channel plan will offer users more flexibility in their choice of a communications system, not stifle the development of digital communications.

C. Channel Availability

20. EIA, GE, and E.F. Johnson recommended the Commission proceed with caution in adopting a narrowband channel plan because of the reduced interference protection between adjacent channel ACSB and FM operations and the lack of adequate field tests on ACSB in congested environments. They argued that allowing narrowband operations only on regular FM channels would minimize the interference potential while still realizing the same number of useable channels provided by the Commission's 5 kHz plan.

21. We are not persuaded that it is necessary to limit narrowband operations to regularly assignable FM channels. We agree that the level of interference protection between narrowband assignments and adjacent channel FM assignments is significantly less than that provided between FM operations separated by 30 kHz.[18] We are convinced, however, that narrowband assignments can be made in accordance with our proposed plan without significantly affecting existing operations. We currently make FM assignments at 15 kHz spacings with a mileage separation between adjacent channels to compensate for the increased potential of interference. Experience has demonstrated that with careful planning such assignments can be made without destructive interference to other users. We expect coordinators to provide mileage separations to compensate for the reduction in interference protection between narrowband and FM systems.[19]

22. We have issued more than 300 developmental licenses for ACSB systems and believe this to be sufficient field testing of this narrowband technology. Developmental licensees, including large corporations, have independently conducted tests of ACSB equipment to determine its suitability for land mobile communications. These licensees have renewed their authorizations consistently and, in developmental reports, have indicated their satisfaction with ACSB in meeting their communication needs.

23. LMCC, MRFAC, UTC, API, SIRSA, and NABER claimed that increasing the spacing between narrowband assignments results in additional useable channels. They argued that there was no significant difference in channel availability between the 5 kHz and 7.5 kHz channel plans when considering the impact on conventional FM systems. However, due to the greater mileage separation needed between adjacent channel narrowband assignments under a 5 kHz plan as opposed to that needed when narrowband systems are spaced every 7.5 kHz, they argued that the 7.5 kHz plan would produce more useable channels. NTIA also argued that increasing spacing will result in additional useable channels but they urged a channel spacing of 6.25 kHz. Supporters of the 5 kHz plan argued that the proposed channel spacing provides more channels. As for the argument that a greater mileage separation is needed between adjacent channel narrowband assignments under a 5 kHz plan, they contended that the present narrowband equipment is "first generation." As improvements are made the amount of interference protection between adjacent channel narrowband assignments will increase, thereby permitting additional use. In the long term, they maintained a 5 kHz plan will provide more useable channels.

24. In the *Notice* we recognized that a narrowband channel spacing wider than 5 kHz would be required to maintain the level of interference protection presently afforded adjacent channel (30 kHz) co-located FM users. We assumed, however, that equipment design would improve and make 5 kHZ achievable.[20] The question, therefore, is whether we should base our channel plan on equipment which is available today or on equipment which we believe will be available in the near future. We believe the public interest would be best served by the latter, especially since we do not anticipate a significant number of interference problems even with equipment available today. To control interference between adjacent narrowband assignments, we expect coordinators to use mileage separations to compensate for the reduced interference protection.

25. We believe that it is necessary to provide 5 kHz channel spacing in the 150 MHz band to allow the potential for spectrum savings. We recognize that this action will provide minimum additional communications opportunities in the major markets where additional spectrum is necessary. We further recognize that additional narrowband equipment is necessary in these lower bands before off-the-shelf equipment is readily available at comparable cost to FM equipment. We are also concerned that data transmission may be limited with narrowband technologies. This action will allow us the opportunity to review the results of narrowband systems operating in congested land mobile spectrum.

equipment, the geographic separation requirements on 15 kHz adjacent channel operation could be reduced.

[18] The interference protection levels between narrowband assignments and FM assignments are largely a function of broad FM receiver selectivity.

[19] The issue of mileage separations is further discussed in Subpart E.

[20] The level of protection provided between narrowband assignments is determined largely by equipment design rather than by modulation. As improvements are made in transmitter linearity and receiver selectivity the level of protection can be expected to increase.

D. 2.5 kHz Offset Plan

26. Our *Notice* proposed to offset the 5 kHz channel plan by 2.5 kHz from regularly assignable FM channels. Arguments against the proposal were centered around the potential for increasing the cost and complexity of frequency synthesis in narrowband equipment. Supporters of the offset plan contended that it maximizes the number of "drop in" channels available.

27. We have examined the arguments closely and it appears both plans have merit. On balance, however, we believe the public interest is best served by adopting the channel plan proposed. Offsetting the channel appears to offer an additional incentive for existing FM users to convert to more spectrum efficient narrowband operations. For example, if we do not offset, the narrowband plan 150 MHz FM licensees operating in areas where there are a large number of users would, in most instances, obtain only a one to one return if they chose to convert from FM to narrowband. That is because narrowband channels 5 kHz offset from the FM channel are only 10 kHz removed from an adjacent FM channel. In heavily congested areas these channels could not be used due to the mileage separation needed to minimize interference. By offsetting the channels 2.5 kHz from the FM assignment, however, licensees could use at a minimum two narrowband channels because they are at least 12.5 kHz removed from the adjacent FM channels. The geographic separation suggested in this case is 10 miles. The rules require FM stations operating on frequencies 15 kHz removed to be at least 10 miles separated. The offset plan is also comparable to the narrowband plan adopted for the broadcast remote pickup services. Adopting the same plan for private radio licensees would allow manufacturers to produce narrowband equipment for a larger market which should result in lower costs to the end user.[21]

E. Frequency Coordination

28. The amount of adjacent channel interference protection realized between radio systems is directly related to the frequency separation and geographical separation between them. The selectivity of present FM equipment separated by 30 kHz is sufficient to permit same area adjacent channel operation.[22] As previously discussed, however, the level of interference protection provided by the frequency separation between adjacent narrowband assignments and between narrowband and FM assignments is generally not sufficient to permit same area operation. In these cases geographic separation is needed in order not to degrade communications quality below that presently afforded land mobile licensees.[23] In our opinion, the best method to ensure that there is sufficient geographic separation between systems is frequency coordination. This has been an effective means of fitting in tertiary assignments. Accordingly, we are requiring frequency coordination of all narrowband channels. There are four private land mobile radio services, however, where there is currently no frequency coordinator. Without coordination the potential for seriously degrading the quality of service presently afforded existing FM users is too great to begin authorizing narrowband systems in these services. Therefore, pending the outcome of Docket 83-737, we will not authorize narrowband assignments on a regular basis in radio services where there is no frequency coordinator.[24] [25] In the interim, until a frequency coordinator has been appointed in these services, narrowband assignments will be made only on a developmental basis.

29. The exact mileage separation needed between transmitters depends upon a number of system parameters, such as power, antenna height, frequency separation, terrain, and the desired communications quality. These factors may vary substantially between systems just as the communications quality needed may vary between users. We believe coordinators, with their knowledge of user requirements and local conditions, are in a better position to determine the separation needed in each case. This approach, we believe will minimize the potential for interference and allow maximum spectrum efficiency. Consequently, we are not adopting any specific mileage separation requirements. We have, however, listed in Appendix B what we calculate as generally appropriate mileage separations for typical systems. Coordinators may use these as guidelines, but we expect coordinators to exercise their own judgement on a case-by-case basis.[26]

30. Under the rules we are adopting here, licensees have the option of satisfying their communication requirements by continuing to use FM equipment, converting their FM assignment to one of more narrowband channels, or supplementing their present FM communication system with a narrowband system. All new assignments will be subject to frequency coordination and we have provided coordinators the flexibility to engineer in systems. For example, while the table in Appendix B recommends a 5 to 8 mile separation between adjacent channel narrowband systems, coordinators are free to recommend closer distances if, in their opinion, the proposed system would not increase the interference potential or if the affected adjacent channel licensees agree to the assignment. As the characteristics of narrowband equipment improve, we expect closer spacings between adjacent channel narrowband systems to be realized. We believe that over time private land mobile users will make use of the closest feasible channel spacings and geographical separations in order to maximize their use of the limited spectrum available in the major metropolitan centers.

F. Mobile Relay Frequencies

31. The *Notice* proposed allowing mobile relay operations in the Business Radio Service on the narrowband channels. Further, it proposed to allocate nine frequencies to the Business Radio Service specifically for mobile relay operation.[27] A number of parties expressed concern that the frequencies were too close in frequency to other channels and would cause interference. They were particularly concerned about the six frequencies adjacent to channels set aside for one way paging operations. For example, EIA argued because of the samll size and low cost of paging receivers, they are relatively simple in design and exhibit poor selectivity resulting in greater susceptibility to interference than is found in traditional base and mobile transceivers.

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[21] *Report and Order*, Docket 84-280, 49 FR 45155, November 15, 1984.

[22] The protection provided is approximately 75-85 dB.

[23] Frequency modulation is the dominant technology employed in the private land mobile services today. As stated in the *Notice*, it provides a good quality of service and we expect the widespread use of FM to continue. Little would be gained by the land mobile community if we were to authorize narrowband technologies at the expense of present FM users.

[24] There is presently no coordinator in the Special Emergency, Relay Press, Business (150 MHz band), and Motion Picture Radio Services.

[25] *Notice of Proposed Rule Making*, Docket 83-737, 49 FR 45454, November 16, 1984. In this proceeding we proposed to require frequency coordination on all private land mobile frequencies and to appoint a frequency coordinator in each radio service.

[26] We will disregard geographic separations when affected licensees agree in writing to a proposed assignment. This will allow the development of short-spaced sites as demand increases in an area, if applicants feel that such use is technically and economically feasible.

[27] These frequencies were needed in order to provide channels with sufficient frequency separation between base and mobile transmit frequencies for repeater operation. Operation on these frequencies was limited to mobiles with an output power of 25 watts peak envelope power.

32. In recognition of the potential for adjacent channel interference with the use of these frequencies, we proposed to allow only mobile operations on them and to limit mobile output power to 25 watts. Based on the record before us, however, it appears that additional safeguards may be necessary to protect paging receivers. It is not clear at this time, however, what extra precautions may be required. Therefore, we are not allocating the six frequencies adjacent to frequencies available for paging operations at this time. We are, however, allocating the frequencies 154.5025, 154.5275, and 154.5525 MHz to the Business Radio Service for low power (25 watts) mobile and control station operation. We are also allowing mobile relay operations in the Business Radio Service on narrowband channels.

G. Technical Standards

33. Those opposed to the 5 kHz channel plan contended that insufficient information exists to determine the suitability of ACSB or other technologies for type acceptance. Some also expressed concern that the Commission's proposed frequency tolerance was inadequate for narrow channels. EIA argued that because of the basic differences between ACSB and other technologies, type acceptance of ACSB equipment should be delayed until measurement procedures and detailed technical standards are developed.

34. ACSB technology employs well-known radio techniques combined to generate a narrowed radio signal with communications quality and operational characteristics similar to more conventional communications systems. We do not intend to regulate the specifics of the ACSB signal, such as the degree of companding or the location of the pilot tone and carrier. We have proposed in the *Notice* an emission envelope which ACSB and any other technology that would be type accepted for the narrowband channels must meet. This should be sufficient to control adjacent channel interference. Therefore, we believe the technical standards we have proposed are adequate for purposes of type acceptance. Accordingly, we are adopting the narrowband technical rules as proposed.

H. Other Matters

35. AMST and NAB filed comments supporting the Commission's proposal to create additional channels in the 150 MHz land mobile band. In addition AMST and NAB urged the Commission to adopt what it termed advanced spectrum management techniques in order to ensure that the efficiency of narrowband technologies is maximized. They suggest that public safety 150 MHz FM operations be phased out and 5 kHz narrowband channels be used as replacement.[28] We are not willing to take such action at this time. However, since these proposals deal, in general, with satisfying public safety communications requirements, we will consider them further within the context of Docket 84-232.[29]

36. A number of comments urged the Commission to authorize narrowband technologies in other land mobile bands. Others suggested the Commission allocate virgin spectrum for narrowband operations. LAOAD, in its comments, recommended using 12.5 kHz offsets from Marine VHF frequencies for the mobile half of the repeater operations in the Business Radio Service. However, since this proceeding was initiated to authorize narrowband technologies in the 150 MHz band, we concluded these proposals are beyond the scope of this *Report and Order*.

37. We realize that some developmental licensees use equipment which will not meet the technical standards adopted herein and therefore cannot be type-accepted. Others may not be operating on the narrowband channels specified or in the service in which they are actually eligible. We are waiving the type-acceptance rules for licensees using this equipment, provided the station was authorized prior to the effective date of this *Report and Order*. We are also waiving the requirement that these licensees operate on the frequencies specified in § 90.271. These stations may continue to operate as licensed and with non type accepted equipment until March 1, 1995. We believe this provides sufficient time over which to amortize their equipment.

38. As a consequence of this rule making decision, applications to operate ACSB systems will no longer be granted developmental status, except in the Business, Special Emergency, Relay Press, and Motion Picture Radio Services until a coordinator is appointed. Therefore, current ACSB licensees wishing to renew at the time of the expiration of their developmental authorizations must apply for a regular license unless developmental status is justified for some other reason. Except for developmental licensees, all licensees of ACSB stations authorized on 5 kHz channels after the effective date of this decision must employ type-accepted equipment.

Final Regulatory Flexibility Analysis

39. This proceeding authorizes the use of narrowband technologies in the private land mobile radio services in the 150 MHz band. No comments were received which specifically addressed the Regulatory Flexibility Analysis put forth in the *Notice*. Further, no significant alternatives which would accomplish our stated objective were suggested nor are we aware of any. The rules adopted in this proceeding are intended to foster new technologies to help accommodate the ever increasing number of private land mobile users without significantly affecting the grade of service presently realized by existing licensees.

Paperwork Reduction Act Statement

40. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

41. Accordingly, it is ordered, effective May 6, 1985, that Part 90 of the Commission's Rules (47 CFR Part 90) is amended as set forth in Appendix C attached hereto. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). It is further ordered that this proceeding is terminated.

42. Further information on this matter may be obtained by contacting Herb Zeiler, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634-2443.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments Filed In PR Docket No. 84-279

American Association of State Highway and Transportation Officials, Special Commission on Communications, AASHTO

Arkansas Louisiana Gas Co., ARKLA

Association of American Railroads, AAR

[28] The specific techniques are outlined in "A Plan For Meeting Public Safety Community Mobile Communications Requirements Through New Technologies And Advanced Spectrum Management Techniques" (Hatfield II). Hatfield II was filed as a petition for rule making by a consortium of broadcasters (Joint) and submitted as comments in this proceeding.

[29] *Notice of Inquiry*, Docket 84-232, 49 FR 9754, March 15, 1984.

Association of Maximum Service Telecasters, AMST
Bell Telephone Co. of Pennsylvania et al., Penna. Bell
California Public-Safety Radio Association, Inc., CPRA
Central Committee on Telecommunications of the American Petroleum Institute, API
E.F. Johnson Co., EF Johnson
Forest Industries Telecommunications, FIT
General Electric Co., GE
International Mobile Machines Corporation, IMM
Joint Advance Comments, Joint
Kahn Communications, Inc., Kahn
Land Mobile Communications Council, LMCC
Land Mobile Section of the Telecommunications Group, Electronics Industries Association, EIA
Los Angeles County Sheriff's Department, LA County
Manufacturers Radio Frequency Advisory Committee, MRFAC
National Association of Broadcasters, NAB
National Association of Business and Educational Radio, NABER
National Telecommunications and Information Administration, NTIA
Operating Telephone Companies, OTC's
Sideband Technology, Inc., STI
Skylink Corporation, Skylink
Special Industrial Radio Service Association, SIRSA
Stevens Engineering Associates, SEA
Carl R. Stevenson, Stevenson
Utilities Telecommunications Council, UTC

Reply Comments Filed in PR Docket No. 84-279

Central Committee on Telecommunications of the American Petroleum Institute, API
Association of American Railroads, AAR
Association of Maximum Service Telecasters, AMST
Association of Public-Safety Communications Officers, APCO
Land Mobile Section of the Telecommunications Group, Electronics Industries Association, EIA
E.F. Johnson, EF Johnson
Technical Activities Board/United States Activities Board of the Institute of Electrical and Electronics Engineers, Inc., IEEE
LAOAD Radio and Microwave Communications Consultants, LAOAD
Los Angeles Sheriff, LA Sheriff
Manufacturers Radio Frequency Advisory Committee, MRFAC
National Telecommunications and Information Administration, NTIA
Sideband Technology, Inc., STI
Special Industrial Radio Services Association, SIRSA
Stevens Engineering Associates, SEA
Carl R. Stevenson, Stevenson
T-Com, Inc., T-Com
Telesciences International Limited, TIL
Utilities Telecommunications Council, UTC

Appendix B

In the private land mobile 150 MHz band the majority of systems operate in the single frequency simplex mode, that is, base and mobile transmitters operate on the same frequency. In such systems, base to base interference in the mobile talk back mode is the limiting factor in coordinating close channel spacings.

There are a number of methods available to calculate the minimum geographical separation needed between base stations in order to compensate for the reduction in the level of adjacent channel interference protection. The separation distances outlined here are based on a desired mobile signal level at the existing base station (the station to be protected). This method eliminated complicated area contour and terrain considerations which occur when the separations are based on mobile service range. A mobile signal level of −125 dbW at the existing (protected) base station was assumed to be desirable.[30] An antenna height of 100 feet and an ERP of 150 watts were assumed for the proposed (potential interfering) station. For the existing base station we also assumed an antenna height of 100 feet. The propagation model used was plane earth except in the case of 7.5 kHz separation. In that case, a smooth earth model was used.

The following table shows the minimum separation calculated in order to reduce interference potential to acceptable levels between a proposed base station and an existing base station at various frequency spacings. These values are intended only to be guidelines. Depending on the exact operating parameters, the area of operation (urban, rural, etc.), and communications quality needed these values can be increased or decreased. There is no value listed for frequencies ±2.5 kHz removed since such frequencies are considered co-channel.

Also listed in the table are the levels of adjacent channel protection used to calculate the separations. The values here are derived from the Commission's lab tests.[31] They are an average of the D/U ratios obtained in measuring the upper undesired and lower undesired for the disruptive category.

	Frequency separation (kHz)	Protection (dB)	Distance separation (miles)
Narrowband/Narrowband [1]	5	−46	8
	5	−56	5
Narrowband/FM	7.5	−12	33
	12.5	−41	10
	17.5	−65	3

[1] In case of adjacent channel narrowband assignments we have listed two different protection values. The first is based on measurements done by the Commission. The second is based on alleged improvements in ACSB transmitters since the Commission conducted its tests.

Appendix C

PART 90—[AMENDED]

Part 90 of the Commission's Rules and Regulations is amended as follows:

1. Section 90.17(b) is amended by adding the band 150–170 MHz.

§ 90.17 Local government radio service.

* * * * *

(b) *Frequencies available.*

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LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * *	* * *	*
72.00 to 76.00	Operational fixed	6
150–170	Base or mobile	24
153.740	Mobile	
* * *	* * *	*

2. Section 90.17(c) is amended by adding a new paragraph, limitation (24).

§ 90.17 Local government radio service.

* * * * *

(c) * * *

(24) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

3. Section 90.19(d) is amended by adding the band 150–170 MHz.

§ 90.19 Police radio service.

* * * * *

(d) *Frequencies available.*

* * * * *

POLICE RADIO SERVICE FREQUENCY TABLE

* * * * *

Frequency or band	Class of station(s)	Limitations
* * *	* * *	*
72.00 to 76.00	Operational fixed	13
150–170	Base or mobile	26
154.650	Mobile	
* * *	* * *	*

[30] A −125 dBw received signal was selected because we believe it reflects a realistic mobile reception level in a noisy urban location.

[31] *Amplitude Compandored Sideband Compared to Conventional Frequency Modulation for VHF Mobile Radio, Laboratory and Field Testing Results*, Ralph Haller and Hank Van Deursen, Federal Communications Commission, Office of Science and Technology, Washington, D.C. 20554, October 1983, FCC/OST TM 83-7. The numbers in the table come from additional tests performed at the Commission's Laurel laboratory using the EIA recommended measurement procedures for FM receiver performance. A report of this work is included in the docket file for public reference.

4. Section 90.19(e) is amended by adding a new paragraph, limitation (26).

§ 90.19 Police radio service.

* * * * *

(e) * * *

(26) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

5. Section 90.21(b) is amended by adding the band 150–170 MHz.

§ 90.21 Fire radio services.

* * * * *

(b) *Frequencies available.*

* * * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	16
153.77	Mobile	
*	*	*

6. Section 90.21(c) is amended by adding a new paragraph, limitation (16).

§ 90.21 Fire radio service.

* * * * *

(c) * * *

(16) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

7. Section 90.23(b) is amended by adding the band 150–170 MHz.

§ 90.23 Highway maintenance radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	18
150.995	Base or Mobile	4
*	*	*

8. Section 90.23(c) is amended by adding a new paragraph, limitation (18).

§ 90.23 Highway maintenance radio service.

* * * * *

(c) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

9. Section 90.25(b) is amended by adding the band 150–170 MHz.

§ 90.25 Forestry-conservation radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

FORESTRY-CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	5
150–170	Base or mobile	22
151.145	Base or Mobile	6
*	*	*

10. Section 90.25(c) is amended by adding a new paragraph, limitation (22).

§ 90.25 Forestry-conservation radio service.

* * * * *

(c) * * *

(22) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

11. Section 90.53(a) is amended by adding the band 150–170 MHz.

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	6
150–170 MHz	Base or mobile	30
150.775	Mobile	7
*	*	*

12. Section 90.53(b) is amended by adding a new paragraph, limitation (30).

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(30) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

13. Section 90.63(c) is amended by adding the band 150–170 MHz.

§ 90.63 Power radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	24
150.980	Base or mobile	
*	*	*

14. Section 90.63(d) is amended by adding a new paragraph, limitation (24).

§ 90.63 Power radio service.

* * * * *

(d) * * *

(24) Rules concerning the use of this band of narrowband operations are set forth in § 90.271.

* * * * *

15. Section 90.65(b) is amended by adding the band 150–170 MHz.

§ 90.65 Petroleum radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	11
150–170	Base or mobile	41
150.980	Base or mobile	6
*	*	*

16. Section 90.65(c) is amended by adding a new paragraph, limitation (41).

§ 90.65 Petroleum radio service.

* * * * *

(c) * * *

(41) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

17. Section 90.67(b) is amended by adding the band 150–170 MHz.

§ 90.67 Forest products radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	4
150–170	Base or mobile	36
152.465	Base or mobile	29
*	*	*

18. Section 90.67(c) is amended by adding a new paragraph, limitation (36).

§ 90.67 Forest products radio service.

* * * * *

(c) * * *

(36) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

19. Section 90.69(b) is amended by adding the band 150–170 MHz.

§ 90.69 Motion picture radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72.00 to 76.00	Operational fixed	2
150–170	Base or mobile	12
152.87	Base or mobile	3
*	*	*

20. Section 90.69(c) is amended by adding a new paragraph, limitation (12).

§ 90.69 Motion picture radio service.

* * * * *

(c) * * *

(12) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

21. Section 90.73(c) is amended by adding the band 150–170 MHz.

§ 90.73 Special industrial radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
75.60	do	7
150–170	Base or mobile	35
151.490	Base or mobile	2, 8
*	*	*

22. Section 90.73(d) is amended by adding a new paragraph, limitation (35).

§ 90.73 Special industrial radio service.

* * * * *

(d) * * *

(35) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

23. Section 90.75(b) is amended by adding the band 150–170 MHz.

§ 90.75 Business radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72 to 76	Operational fixed	7
150–170	Base or mobile	41
150.815	Base or mobile	8
*	*	*

24. Section 90.75(c) is amended by adding a new paragraph, limitation (41).

§ 90.75 Business radio service.

* * * * *

(c) * * *

(41) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

25. Section 90.79(c) is amended by adding the band 150–170 MHz.

§ 90.79 Manufacturers radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
75–60	do	2, 4
150–170	Base or mobile	23
153.050	Base or mobile	5, 21, 22
*	*	*

26. Section 90.79(d) is amended by adding a new paragraph, limitation (23).

§ 90.79 Manufacturers radio service.

* * * * *

(d) * * *

(23) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

27. Section 90.81(c) is amended by adding the band 150–170 MHz.

§ 90.81 Telephone maintenance radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72–76	Operational fixed	13
150–170	Base or mobile	11
151.985	Base or mobile	1
*	*	*

28. Section 90.81(d) is amended by adding a new paragraph, limitation (11).

§ 90.81 Telephone maintenance radio service.

* * * * *

(d) * * *

(11) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

29. Section 90.89(b) is amended by adding the band 150–170 MHz.

§ 90.89 Motor carrier radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72–76	Operational fixed	7
150–170	Base or mobile	21
159.495	Base or mobile	9
*	*	*

30. Section 90.89(c) is amended by adding a new paragraph, limitation (21).

§ 90.89 Motor carrier radio service.

* * * * *

(c) * * *

(21) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

31. Section 90.91(b) is amended by adding the band 150–170 MHz.

§ 90.91 Railroad radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
75.60	do	2
150–170	Base or mobile	18
160.215	Base or mobile	3, 4
*	*	*

32. Section 90.91(c) is amended by adding a new paragraph, limitation (18).

§ 90.91 Railroad radio service.

* * * * *

(c) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

33. Section 90.93(b) is amended by adding the band 150–170 MHz.

§ 90.93 Taxicab radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72–76	Operational fixed	14
150–170	Base or mobile	15
152.270	Base or mobile	*
*	*	*

34. Section 90.93(c) is amended by adding a new paragraph, limitation (15).

§ 90.93 Taxicab radio service.

* * * * *

(c) * * *

(15) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

35. Section 90.95(c) is amended by adding the band 150–170 MHz.

§ 90.95 Automobile emergency radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
*	*	*
72–76	Operational fixed	16
150–170	Base or mobile	18
150.815	Base or mobile	1, 2, 3
*	*	*

36. Section 90.95(d) is amended by adding a new paragraph, limitation (18).

§ 90.95 Automobile emergency radio service.

* * * * *

(d) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

37. Section 90.173 is amended by revising paragraph (f) as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(f) In the 150–170 MHz band, except in the Taxicab Radio Service and for narrowband operations authorized under § 90.271, applications will not ordinarily be granted in situations in which the proposed base station is located less than 16 km (10 miles) from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 16 km (10 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment. In the Taxicab Radio Service, applications will not ordinarily be granted in situations in which the proposed base station is located less than 12 km (7 miles from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 12 km (7 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment.

38. Section 90.175 is amended by revising paragraph (a) as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) For frequencies below 470 MHz: (1) A report based on field study indicating the degree of probable interference to all existing stations operating less than 5 kHz from the proposed station within 120 km (75 miles) of the proposed station, together with a statement that all such licensees have been notified of the applicant's intention to apply. In addition, for frequencies in the range 150–170 MHz, a report based on a field study indicating the degree of probable interference to existing stations located within 56 km (35 miles) of the proposed station operating on a frequency 17.5 kHz or less removed and a statement that the licensees of such stations have been notified of the applicant's intention to apply. The field study report required by this section need not address the degree of probable interference to existing stations 17.5 kHz or less removed within the prescribed mileage limits when evidence of consent set forth in § 90.173(f) is included with the application; however, all other provisions of the field study requirement must be satisfied. This second report is not needed, however, for narrowband stations proposed to operate more than 5 kHz removed from other narrowband stations; or,

(2) A statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area. The committee's recommendation may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. Except for narrowband operations, the committee shall not recommend any adjacent channel frequency 15 kHz removed to existing stations which would result in a separation of less than 10 miles, 7 miles in the Taxicab Radio Service. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities in the service concerned in the area the committee purports to serve. The functions of such committees are purely advisory in character, and their recommendations cannot be considered as binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–170 MHz band, is 17.5 kHz or less removed from a frequency which is available to another radio service, and is assignable only after coordination, the committee's statement shall affirmatively show that coordination with a similar committee for the other service has been accomplished. Coordination with another service is not required, however, for narrowband assignments as applied to other narrowband assignments more than 5 kHz removed.

* * * * *

39. Section 90.176 is amended by revising paragraphs (a)(3) and (b)(3) as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) * * *

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a

statement from all users operating less than 5 kHz from the proposed station within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 17.5 kHz or less removed that they concur in the assignment of the requested frequency; and

* * * * *

(b) * * *

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a statement from all users operating less than 5 kHz from the proposed station within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 17.5 kHz or less removed that they concur in the assignment of the requested frequency (this statement is not needed for narrowband assignments proposed to operate more than 5 kHz removed from other narrowband assignments); and

* * * * *

40. Section 90.203(b) is amended by adding a new paragraph (6).

§ 90.203 Type acceptance required.

* * * * *

(b) * * *

(6) Until March 1, 1995 transmitters used in narrowband stations authorized prior to (effective date of rules) if they continue to be used at those stations.

* * * * *

41. In § 90.205, paragraph (b), the maximum authorized power table is amended by adding footnote 11 to the frequency range 100–216 MHz to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

[11] Stations with suppressed carrier emissions may be authorized up to 350 W peak envelope power.

* * * * *

42. Section 90.207 is amended by adding new paragraph (l) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(l) For narrowband operations in a 3.6 kHz maximum authorized bandwith, any modulation type may be used which complies with the emission limitations of § 90.209.

43. In § 90.209, redesignate paragraph (b)(7), as (b)(8), add new paragraph (b)(7), revise paragraph (c) and add new paragraph (h) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

* * * * *

(7) For narrowband operations granted on 5 kHz channels, the maximum authorized bandwidth shall be 3.6 kHz.

* * * * *

(c) Except as noted in paragraphs (d), (f), (g), and (h) of this section, the mean power of any emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

(h) For transmitters that operate on channels spaced 5 kHz apart (See § 90.271) the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kilohertz) of more than 2 kHz up to and including 5 kHz: At least 29 Log_{10} ((25/11) fd^2) decibels or 50 decibels, whichever is the lesser attenuation;

(2) On any frequency removed from the center of the authorized bandwidth by more than 5 kHz: At least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

§ 90.211 [Amended]

44. Section 90.211(d)(2) is amended in the first and second sentences by revising "paragraphs (f) and (g)" to read "paragraphs (f), (g), and (h)".

45. Section 90.213(a) is amended in the Frequency Tolerance table by adding footnote 16 to the frequency range 50 to 450 to read:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

*	*	*	*	*
50 to 450	[16] .0005	[16] .0005	[16] .0005	[16] .005

[16] In the 150–170 MHz band, stations operating on 5 kHz channels shall maintain the carrier frequency to within .0002 per cent.

* * * * *

46. Section 90.243 is amended by revising paragraph (b)(2) as follows:

§ 90.243 Mobile relay stations.

* * * * *

(b) * * *

(2) In the Business Radio Service, mobile relay stations may be authorized on frequencies below 450 MHz when those frequencies are reserved for low power operation (2 watts or less) or for narrowband operation. (See § 90.271) For systems using low power frequencies the maximum output power shall not exceed 1 watt and the mobile relay antenna system shall not be more than 13 m (40 ft) above ground.

* * * * *

47. A new § 90.271 is added to read as follows:

§ 90.271 Narrowband operations.

(a) In all radio services except the Business Radio Service, frequencies removed by 2.5 or 7.5 kHz from regularly assignable frequencies in the 150–170 MHz band listed in the radio service's allocation table may be assigned to eligible users for narrowband operations in accordance with the following:

(1) Applications for narrowband operations must be accompanied by evidence of frequency coordination (§ 90.175). In the case of frequencies 7.5 kHz removed from FM channels the interference analysis should consider existing stations located within 60 miles.

(2) Operations on frequencies removed by 2.5 kHz from a frequency listed in a radio service's allocation table shall be licensed as the same class as that frequency and comply with any limitations on that frequency.

(3) Operations on frequencies removed by 7.5 kHz from a frequency listed in a radio service's allocation table are reserved for base or mobile operation.

(4) Frequencies 7.5 kHz removed from frequencies allocated to different radio services shall be available in both radio services.

(b) Frequencies removed by 2.5, 7.5, or 12.5 kHz from regularly assignable frequencies in the Business Radio Service 150 MHz band may be assigned to eligible users in that service in accordance with the following:

(1) Meets the provisions of paragraphs (a)(1) and (2) of this section.

(2) Frequencies 7.5 and 12.5 kHz removed from frequencies listed in the allocation table are reserved for base or mobile operations.

(3) Channels located between frequencies listed in the allocation table bound by limitation (8) also must comply with that limitation.

(4) The following frequencies may be used for mobile for control station

operation. Output power is limited to 25 watts peak envelope power. Operation must comply with the technical standards for narrowband operation.

154.5025
154.5275
154.5525

(c) Assignable frequencies represent the center of the authorized bandwidth.

(d) Until further notice narrowband operations will not be permitted on a regular basis in the Business, Special Emergency, Motion Picture, and Relay Press Radio Services.

Concurring Statement of Commissioner James H. Quello

In the matter of: Report and Order to authorize narrowband technologies for base and mobile communications in the Private Land Mobile Radio Services in the 150 MHz band.

March 1, 1985.

The past two presidential elections popularized the phrase "There you go again." Today, that phrase can be applied to Commission rules governing Private Land Mobile Radio Service in the 150 MHz band.

The Report and Order adopted today is a positive step to the extent that it presents a new channel plan to accommodate narrowband technologies. However, the Report and Order requires geographic spacing to compensate for the reduced level of adjacent channel interference protection, and thus many of the narrowband systems will have to be placed outside urban centers. This will greatly diminsh the potential for these systems to alleviate urban land mobile congestion. Accordingly, I question the significance of today's action in terms of providing an impetus for introducing narrowband technologies because such technologies will be essentially relegated to non-urban, non-congested areas where the need for efficient spectrum use is the least.

In my view, it is time for the Commission to make a bold move to announce a date on which base and mobile communications in the Private Land Mobile Radio Services in the 150 MHz band will be required to switch from the current inefficient FM technology to more spectrum efficient narrowband technologies. Clearly, a lengthy period is necessary, and the Commission should seek reasonable suggestions as to a specific date. Nevertheless, to allow for an orderly transition to the essential spectrum efficient technology permitted, it is necessary now to establish a date after which FM transmissions would be permitted only on a secondary basis.

While the prospect of a transition to any new technology is not without costs, in ten years we may expect that the demand for spectrum in the Private Land Mobile Radio Services will have reached crisis proportions and the costs of delaying change are far greater than providing for an orderly change. Failure to act now to remedy this clear problem is shirking our public interest responsibility.

The only alternative to maximizing the use of existing Private Land Mobile Radio frequencies is to permit encroachment upon the UHF or other spectrum, an approach that will impose serious interference problems with existing service as well as limit new video options to the public. A far better approach would be to recognize that the time is now for spectrum efficient technologies to be implemented in the Private Land Mobile Radio Services and to require switching from FM technologies to narrowband technologies under a reasonable time schedule. The Report and Order adopted by the Commission today lends some encouragement to spectrum efficiency and the use of narrowband technologies; however, here we go again missing the opportunity to implement efficient spectrum planning.

[FR Doc. 85-8075 Filed 4-4-85; 8:45 am]

BILLING CODE 6712-10-M

Proposed Rules

Federal Register
Vol. 50, No. 66
Friday, April 5, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Coordination of Public and Private Enforcement of Environmental Laws

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on coordination of public and private enforcement of environmental laws. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Monday, April 22, 1985.

ADDRESS: Send comments to: David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202-254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on coordination of public and private enforcement of environmental laws. The draft recommendation is based on a study prepared for the Administrative Conference by Professors Barry B. Boyer and Errol E. Meidinger of the State University of New York at Buffalo. Copies of the report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202-254-7065).

The Clean Air Act, the Clean Water Act, and certain other environmental statutes contain provisions authorizing parties to bring enforcement actions in the Federal courts. The number of these "citizen suits" has been growing in recent years. Professors Boyer and Meidlinger have described and analyzed this phenomenon in their report to the Administrative Conference. The draft recommendation that follows notes the importance of a basic consistency between private and public enforcement activities. It suggests administrative steps that the Environmental Protection Agency can take to achieve better coordination and to provide better guidance to persons involved in the enforcement process.

The Committee on Governmental Processes invites comments on the proposed recommendation, and requests that they be submitted to the address given above, not later than Monday, April 22, 1985.

Draft Recommendation: Coordination of Public and Private Enforcement of Environmental Laws

Introduction

Congress has incorporated into the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and numerous other Federal environmental statutes provisions authorizing private parties to bring enforcement actions in the Federal courts. These "citizen suit" provisions generally permit any person or organization to seek injunctions abating activities that violate agency rules, standards, or permits. In addition, the Clean Water Act and the Hazardous and Solid Waste Amendments of 1984 permit plaintiffs to seek civil penalties in a private enforcement action.

As use of private enforcement actions has grown, issues related to coordinating public and private enforcement activities have arisen. Coordination, in the sense of maintaining basic consistency in the bringing of cases and the imposition of penalties, is important for several reasons. Inconsistencies in case selection or penalty policy may create actual and perceived unfairness to the regulated, as similarly situated parties receive varying treatment. Uncertainties about the likelihood or outcome of enforcement actions may increase litigation and decrease voluntary compliance. Lack of coordination may also make it difficult for the Environmental Protection Agency and cooperating state agencies to deploy their limited enforcement resources in the most efficient and effective manner. The recommendation that follows proposes administrative steps which the Environmental Protection Agency can take to provide better guidance to those involved in the enforcement process, and to achieve better coordination between public and private enforcement.

Recommendation

1. Articulation of Enforcement Policy

The Environmental Protection Agency should give high priority to clarifying its policies for selecting cases for enforcement, for calculating penalties, and for settling contested cases. Since these policies are likely to have a significant impact on the public and on the agency's performance of its mission, EPA should, consistently with Recommendation 76-5,[1] provide opportunities for public participation in the formulation of such policies whenever feasible. These policies should be published in the **Federal Register** and otherwise made freely available to interested persons, as the agency has begun to do in developing its Clean Water Act "significant noncompliance" regulations.

2. Improvement of Information Systems

The availability of accurate, complete, and current information about the compliance status of regulated persons and firms is essential both for the formulation and implementation of agency enforcement strategies, and for the effective use of private enforcement actions. When designing management information systems and reporting requirements, the Environmental Protection Agency should consider improving the quality of such information and its availability for private enforcement. The Office of Management and Budget should give similar consideration to the role of compliance information when reviewing EPA data-gathering proposals.

3. Notice of Private Actions

When the Environmental Protection Agency receives notice of an alleged violation from a private party, and the agency is not a party to a private enforcement action relating to that alleged violation, the EPA should request that the party giving the notice also provide the agency with copies of

[1] Interpretive Rules of General Applicability and Statements of General Policy, 4 ACUS Recommendations and Reports 62 (1979), 1 CFR 305.76-5.

all complaints [2] and other significant pleadings, settlement agreements, and judicial decrees relating to the alleged violation, which are subsequently filed in court.[3]

List of Subjects in 1 CFR Ch. III

Environmental protection.

(5 U.S.C. 574)

Dated: April 2, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85-7916 Filed 4-4-85; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported Into the United States; Proposed Grade, Size, Quality, and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal which would, during the period May 1 through August 15 of each year, establish minimum requirements for shipments of table grapes grown in southeastern California, and for table grapes imported into the United States, except for the Emperor, Calmeria, Almeria, and Ribier varieties which are not grown in the production area in southeastern California. Such grapes would be required to meet the minimum grade and size requirements for U.S. No. 1 Table grade, as defined in the United States Standards for Grades of Table Grapes (European or Vinifera Type), and minimum maturity standards as defined in the California Administrative Code. For table grapes grown in southeastern California additional requirements would be effective, including container and pack, container marking, packing holidays, and a requirement to provide adequate facilities for inspection. These actions are designed to assure the shipment of ample supplies of table grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

DATES: California Desert Grape Regulation 5 and Table Grape Import Regulation 3 would be effective from May 1 through August 15 of each year. Comments must be submitted by April 22, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The California Desert Grape Administrative Committee met December 12, 1984, and unanimously recommended grade, size, maturity, container, pack, and other requirements for 1985 season table grapes grown in southeastern California, to be effective for the period May 1-August 15, 1985. The committee has projected that shipments of grapes regulated under the Federal marketing order will begin on or about May 1, 1985, and that the California desert grape regulation should become effective by that date. The Department proposes to make these dates effective each year during this time period. Grape producers vary their cultural practices early in the grape growing season in order to meet necessary requirements for grade and size at harvest time. This action would afford domestic producers and importers of table grapes with ample notice of such seasonal regulations. Similar requirements have been in effect for the past two marketing seasons.

The proposed California Desert Grape Regulation would require shipments of table grapes grown in the production area in southeastern California to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Type), except that grapes of the Flame Seedless variety would be required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch). In addition, fresh shipments of grapes would be required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties would be exempted from regulation as they are not grown in the production area. The regulation would also establish certain container and pack requirements as well as container marking requirements in order to standardize packing practices. Experimental containers approved by the committee could also be used. A minimum of 22 pounds of grapes would be required to be packed in each of the authorized containers, except for certain packs and experimental containers. Containers would also be required to bear the minimum net weight of the grapes in the container, the name of the grape variety, the name of the shipper, and the lot stamp inspection number on the outside of the container. Such requirements are designed to facilitate identification of shipments and promote orderly marketing of these grapes. Packing holidays on Saturdays and Sundays and certain holidays during the regulation period would also be established and are designed to prevent an accumulation of excessive supplies of table grapes at distribution points during periods of reduced demand or market inactivity. The regulation would exempt "organically-grown" table grapes from the minimum individual berry size requirement. Table grapes for processing would be exempt from regulation if certain conditions and safeguards were met.

Also proposed are requirements for persons desiring inspection of grapes in the production area. All persons requesting such inspections would be required to provide adequate facilities, access to the grapes, and standard equipment and incidental supplies necessary for such inspections to be performed.

The proposed California Desert Grapes Regulation would be issued under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

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[2] The Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, section 401 (to be codified at 42 U.S.C. 6972(b)(2)(F)), provide that a plaintiff bringing an action under the citizen suit provision of the Resource Conservation and Recovery Act must serve a copy of the complaint on the Attorney General and the Administrator of the EPA.

[3] Nothing in this recommendation is intended to suggest that a request for or receipt of any such notice or other information or document has or should have any preclusive effect upon the federal government's ability to take enforcement action against the alleged violator.

The proposed Table Grapes Import Regulation would require imports of table grapes to meet the same minimum grade, size, and maturity requirements as specified in the proposed California Desert Grape Regulation. The effective period of the import regulation would also be May 1 through August 15 of each year. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties would be exempt from import requirements as they would not be regulated under the California Desert Grape Regulation. The Table Grape Import Regulation is issued under section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 8e requires that when specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

List of Subjects

7 CFR Part 925

Marketing agreement and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PARTS 925 AND 944—[AMENDED]

Therefore, new §§ 925.304 and 944.503 are proposed to be added to read as follows:

§925.304

California Desert Grape Regulation 5.

During the period May 1 through August 15 of each year, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided*, That no person shall pack any such grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e) of this section.

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in §51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.8870 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and which otherwise meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3):

(i) Sawdust pack with inside dimensions of 7¾ x 14 1/16 x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅝ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ × 11½ × 18⅛ inches, specified as container 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) × 15¾ (outside) × 19 1/16 (outside), specified as container 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) of this section if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with producers and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(g) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes grown in the production area. The inspection and certification services will be available upon

application in accordance with the rules and regulations governing inspections and certification of fresh fruits, vegetables, and other products (7 CFR Part 51): *Provided*, That all persons who request such inspection and certification must provide: Adequate facilities in which the inspections may be conducted and: The necessary equipment and incidental supplies that are considered as standard requirements for providing fresh inspection under Federal or Federal-State inspection procedures.

§ 944.503 Table Grape Import Regulation 3.

(a) *Application to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 1 through August 15 of each year, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code of California (Title 3).

Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(b) The Federal or Federal-State Inspections Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

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

Dated: April 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service

[FR Doc. 85-8222 Filed 4-4-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-117-AD]

Airworthiness Directive; Dassault-Breguet Mystere Falcon 50 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Falcon 50 airplanes. The AD is prompted by a report of improper installation of the passenger oxygen mask presentation boxes in this airplane, which could cause the lanyard to hang up when pulled to initiate the flow of oxygen into the mask.

DATES: Comments must be received no later than May 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM-173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536-6388. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified, above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

It was reported that improperly installed passenger oxygen mask presentation boxes were discovered in one Falcon 50 aircraft with an interior

installed at AiResearch Aviation Company and field-approved (FAA Form 337). The problem occurred with boxes not mounted on the fuselage vertical center line.

These boxes were incorrectly installed in a manner where the lanyard, when pulled to initiate the flow of oxygen to the mask, could catch on the box lid tab and prevent the initiation of the oxygen flow. Since this condition is likely to exist on other Mystere Falcon 50 airplanes with the same installation, an airworthiness directive (AD) is being proposed which would require inspection of the passenger oxygen mask presentation box installation, and proper reorientation if necessary.

Cost Estimate

It is estimated that 20 U.S. registered airplanes would be affected by this proposed AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total economic impact of this AD on the U.S. fleet is estimated to be $2,000.

For these reasons, the FAA has determined that this document (1) involves a proposed reuglation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Dassault-Breguet Mystere Falcon 50 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Dassault-Breguet: Applies to Mystere Falcon 50 airplanes, serial numbers as follows: 014, 028, 035, 038, 039, 041, 045, 051, 053, 059, 069, 079, 081, 086, 087, 099, 105, 108, 124, 125; certificated in all categories. Compliance required within 90 days from the effective date of this AD, unless previously accomplished.

To prevent a lanyard hang-up when the lanyard is pulled to initiate the flow of oxygen into the oxygen mask, accomplish the following:

A. Each passenger emergency oxygen mask presentation box not located on the fuselage vertical center line must be inspected for orientation. Accomplish by manually opening the presentation box cover lids and inspecting to ensure that the presentation boxes are installed with the oxygen inlet fitting in the side of the oxygen box in the inboard position (pointed toward the fuselage center line). Any box not installed with this orientation must be removed and reinstalled in such a way that it is rotated 180° so that the inlet fitting is in the inboard position.

Note.—AiResearch Aviation Service Bulletin No. 9.1 pertains to this subject.

B. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, CA.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and CFR 11.85)

Issued in Seattle, Washington, on March 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8110 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21901; 40-14438; File No. S7-13-85]

Facilitating Shareholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to its shareholder communications rules which govern the process by which registrants communicate with the beneficial owners of securities registered in the name of a broker or other nominee. The proposed amendments are intended to allow for the most advantageous implementation of the system of direct communication provided under those rules.

DATE: Comments should be received on or before May 15, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-13-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller or JoAnn L. Zuercher, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to Rules 14b-1 [1] and 14c-7 [2] and a new proposed Rule 14a-13. These proposals are a direct result of the one-year deferral of the effective date (from January 1, 1985 to January 1, 1986) of Rule 14b-1(c) agreed to by industry representatives and authorized by the Commission in August 1984.[3] The deferral was intended to provide more time for the determination of reasonable costs and the implementation of a system to provide registrants with security holder information in an efficient, timely and effective manner. At the time it authorized the deferral, the Commission agreed to undertake certain steps to clarify the respective functions of brokers and registrants and to ensure the effective implementation of the system of direct communication. Accordingly, these proposed amendments delineate, in two separate rules, the respective obligations of brokers and registrants. In addition, the proposed amendments would provide, among other things, that: (1) If a registrant requests the list of non-objecting security holders, it must request the list from all brokers having customers who are beneficial owners of the registrant's securities; (2) a broker must provide the beneficial owner lists to registrants as often as they request the information, rather than only once a

[1] 17 CFR 240.14b-1.

[2] 17 CFR 240.14c-7.

[3] Release No. 34-21339 (September 21, 1984) [49 FR 38096].

year; and (3) a registrant may mail its annual report to security holders to its beneficial owners so long as the registrant notifies the broker at the time it submits a search card requesting beneficial owner information.

I. Background

Rule 14b-1 was revised substantially in 1983 pursuant to recommendations of the Advisory Committee on Shareholder Communications, contained in its report, *Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities*. Paragraph (c) was adopted to provide a means of direct communication between registrants and their beneficial owners by requiring brokers to provide registrants upon request with the names, addresses and securities positions of its customers who are beneficial owners of the registrant's securities and who have not objected to such disclosure.[4] In August 1984, the Commission deferred the effective date of paragraph (c) until January 1, 1986.[5] Representatives from the securities industry and the registrant community agreed that during this deferral period they would develop and establish both an efficient means of furnishing beneficial owner information to registrants and an appropriate schedule of reimbursement.

In September 1984, the Ad Hoc Committee on Identification of Beneficial Owners was appointed by the New York Stock Exchange (NYSE). The Committee, composed of members of both the securities industry and registrant community, was formed to resolve the cost issues and to develop a workable and effective system that would be of maximum use to registrants and not burdensome to brokers. The Committee has now largely resolved the problems which initially led to the deferral of the effective date of Rule 14b-1(c). First, the reimbursement of start-up costs issue has been resolved through NYSE rule changes that permit brokers to assess a $.20 per proxy surcharge for the first annual meeting proxy solicitation occurring subsequent to adoption of the NYSE's rule changes. This surcharge, together with an additional surcharge for the next annual meeting proxy solicitation, will fund the start-up costs associated with furnishing the beneficial owner information to registrants. The second surcharge will fund the balance of the costs not funded by the first, $.20, surcharge and will be the subject ot a separate NYSE rule change. The $.20 rule change was filed with the Commission in January 1985, published in the **Federal Register** on February 8, 1985,[6] and approved by the Commission on March 28, 1985.[7] It is anticipated that other self-regulatory organizations soon will adopt the surcharge as part of their proxy rules. The other cost issue—determination of reasonable costs for maintaining beneficial owner lists—is being addressed by the Ad Hoc Committee and also will be the subject of a separate NYSE rule change.

To make the system work and to ensure that registrants find the beneficial owner lists useful and meaningful, the Ad Hoc Committee also determined that an intermediary was necessary. By employing an intermediary to compile and to supply beneficial owner lists, registrants will be assured that the lists are compiled in a standardized manner. Moreover, brokers will be assured that the source of the lists will be kept confidential. In addition, economies of scale will be realized by maximizing cost savings while minimizing burdens on brokers by permitting them to delegate this function to an intermediary . The Ad Hoc Committee requested proposals and selected Independent Election Corporation of America (IECA) to serve as the intermediary between registrants and brokers in supplying lists of beneficial owners. IECA will be governed by a user board consisting of registrants, brokers and other industry representatives.

At the time of the deferral of the effective date of Rule 14b-1(c), the Commission agreed to clarify certain aspects of the shareholder communication rules and take certain additional steps which are the subject of this release.

Ultimate effectiveness and utility of the shareholder communications rules will require enactment of legislation authorizing the Commission to regulate the proxy processing activities of banks, associations and other entities. During the 98th Congress, legislation, entitled the Shareholder Communications Act of 1984, was introduced in both houses of Congress. The legislation was reported out of the House Energy and Commerce Committee on August 2, 1984. No other action was taken in either the House or Senate with respect to the legislation. On March 20, 1985, Representatives Wirth and Rinaldo introduced in the House of Representatives the Shareholder Communications Act of 1985 (H.R. 1603). It is anticipated that the legislation shortly will be reintroduced in the Senate.

II. Overview of Proposals

Currently, Rule 14a-3(d) requires registrants whose securities are held by beneficial owners to take certain steps to ensure proxy solicitation material is forwarded by brokers to beneficial owners. These steps include requesting, by the use of search cards, the number of proxies and other proxy soliciting material needed by record holders to forward the material to beneficial owners. The registrant must request this information 20 calendar days prior to the record date of the annual meeting.[8] The broker is required to respond to this request within seven business days of receipt of the request.[9] Upon receipt of the proxy, proxy soliciting material or annual reports, the broker is required to forward these materials to its customers who are beneficial owners within five business days of receipt.[10] Further, brokers are required to provide a requesting registrant with a list of its customers who are non-objecting beneficial owners of the registrant's securities. That list, which is to be compiled as of the registrant's record date for its latest annual meeting, must be provided to registrants only one time per year.

For simplicity, the Commission has set forth the registrant's obligations in proposed Rule 14a-13, and the proposed revisions to Rule 14b-1 would pertain only to brokers' obligations in connection with communicating information to beneficial owners. The system, as proposed to be changed, would require that, if the registrant requests a list of beneficial owners who do not object to the disclosure of their identity, it must make the request of all brokers having customers who are beneficial owners of the registrant's securities. Further, a registrant could request the beneficial owner information more often than once a year and the broker would be required to comply with any such request. The lists would be compiled at least as often as the record date for the registrant's latest annual or special meeting. If no meeting is scheduled and the registrant requests a list of beneficial owners from record holders, that list would be compiled as of a date not earlier than ten business days after the broker receives the registrant's request. For example, if no annual or special meeting is scheduled

[4] Release No. 34-20021 (July 26, 1983) [48 FR 35082].

[5] Release No. 34-21339 (September 21, 1984) [49 FR 38096].

[6] Release No. 34-21702 (February 1, 1985) [50 FR 5460].

[7] Release No. 34-21909 (March 28, 1985).

[8] 17 CFR 240.14a-3(d).

[9] 17 CFR 240.14b-1(a).

[10] 17 CFR 240.14b-1(b).

and the broker receives a registrant's request for the list of beneficial owners on April 10, 1983, the list would be compiled as of a date no earlier than ten business days later or April 24, 1985. This last requirement is necessitated by the fact that brokers' back office systems do not permit the retroactive establishment of beneficial owner lists, but rather, allow those lists to be established prospectively.

The proposed amendments further provide that, if it chooses, the registrant may mail annual reports directly to beneficial owners so long as the registrant notifies the broker when making its initial request for beneficial owner information that the registrant intends to mail the annual report directly to its non-objecting beneficial owners. The registrant would notify the broker of its intention at the time it submits a search card requesting the beneficial owner information. If so notified by the registrant, a broker would have no obligation in connection with that mailing to forward the annual report to non-objecting beneficial owners but would have, of course, the obligation to forward reports to those beneficial owners who objected to the disclosure of their identities.

Finally, the proposed amendments would provide that, without assurances of reimbursement of reasonable expenses associated with satisfying its obligations with respect to communications with the beneficial owners, a broker has no obligation to perform its obligations under Rule 14b-1. The registrant would have a corresponding obligation to pay a broker's reasonable expenses associated with providing beneficial owner information.

III. Discussion of Proposals

A. *Obligation of registrants in communicating with beneficial owners.* Proposed Rule 14a-13, a registrant-related corollary to Rule 14b-1, delineates a registrant's obligations in communicating with its beneficial owners and would work in tandem with present Rule 14b-1.

First, provisions of present Rule 14a-3(d) would be moved to new Rule 14a-13(a) in order to place all of the registrant-related provisions together. Paragraph (d) of Rule 14a-3(d) would become paragraph (a) of proposed Rule 14a-13 and would be amended to require registrants to request and to provide record holders with the number of copies of proxy, proxy soliciting material and annual reports to security holders necessary to supply beneficial owners. These proposed amendments recognize that record holders need not forward the annual report to those non-objecting beneficial owners with whom the registrant intends to communicate directly. Thus, if a registrant has indicated to the record holder that it wishes to communicate directly with non-objecting beneficial owners, then the record holder need only inform the registrant how many copies of the proxy soliciting material and annual reports are needed for forwarding to objecting beneficial owners. Similarly, if a registrant does not indicate that it intends to communicate directly with beneficial owners, the record holder then will inform the registrant of the number of copies needed for all beneficial owners.

Proposed paragraph (b)(1) would require a registrant to request the list of non-objecting beneficial owners from all brokers having customers who are beneficial owners of the registrant's securities. This requirement would ensure that registrants do not request the security holder lists only from the largest brokers thereby leaving the smaller brokers with no means of recouping expenses associated with maintaining the required information.

Proposed Rule 14a-13(b)(2) would continue unchanged the statement in present Rule 14b-1(c) regarding a registrant's exclusive use of the beneficial ownership lists for purposes of corporate communications. The Commission believes that this provision adequately addresses the securities industry's concerns regarding the issue of confidentiality. Moreover, the Commission notes that the identity of the individual brokers who provide the information to be compiled in the beneficial owner lists will be kept confidential by the intermediary's excision of all information identifying specific brokers.

In connection with registrants' use of beneficial owner lists for purposes of forwarding to security holders certain other corporate communications such as quarterly reports, the Commission wishes to encourage voluntary communication with security holders. In this regard, the Commission believes it would be desirable that, where registrants use the non-objecting beneficial owner lists to mail such communications directly to non-objecting beneficial owners, they also deliver to brokers for forwarding a sufficient number of copies of the corporate communication in order not to disadvantage those security holders who object to disclosure of their identities to registrants.

Finally, proposed paragraph (b)(3) would place on the registrant the obligation to pay the reasonable expenses of brokers associated with providing beneficial owner information.

Proposed paragraph (c) would allow registrants to mail directly the annual reports to security holders to those beneficial owners that have been identified to them. Any registrant choosing to do its own annual report mailing, however, would be required to so inform the broker at the time it submitted, pursuant to paragraph (a), a search card to the broker requesting the beneficial owner information, and, further, would have the responsibility of ensuring that the annual report precede the proxy statement.

The Commission is aware that, for reasons of economy, registrants may wish to engage in split mailing, *i.e.*, forwarding the annual report by bulk mail and mailing the proxies and other proxy soliciting material by first class mail. In this connection, questions have arisen concerning compliance with Rule 14a-3(b) which requires annual reports to accompany or precede the proxy statement.[11] The Commission does not wish to discourage the practice of split mailing which will result in savings to the registrant and ultimately redound to the benefit of security holders. Accordingly, compliance with the rule depends upon whether registrants take steps reasonably calculated [12] to guarantee that the annual report to security holders accompanies or precedes the proxy statement.[13] In this connection, the Commission solicits specific comment as to whether Rule 14a-5 [14] should be amended to provide that when annual reports to security holders are mailed separately from proxy material, all proxy statements shall disclose the date the mailing of the annual report to security holders was commended and shall contain instructions on how to obtain a copy of that annual report.

B. *14b-1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.* The Commission

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[11] In *Ash* v. *GAF Corp.*, 723 F.2d 1090, 1094 (3d Cir. 1983), the Third Circuit held that sending the annual report by third class mail 4 to 5 days prior to mailing the proxy statement by first class mail "did not reasonably guarantee that shareholders would receive the annual report at the same time or before the proxy materials. In fact, the procedure made it highly probable that shareholders would receive the annual report after they had received the proxy materials."

[12] The Commission is aware that, depending on the geographic location of specific post offices, the length of time in which it takes bulk mail to reach its intended destination may vary greatly.

[13] Registrants who request record holders to engage in split mailing retain responsibility for ensuring compliance with Rule 14a-3(b).

[14] 17 CFR 240.14a-5.

proposes to amend Rule 14b-1 in several respects. First, as noted above, registrant-related provisions have been moved to proposed Rule 14a-13. Second, proposed revisions to paragraph (c) relate to how often the broker's obligation to provide beneficial owner information to registrants arises. Under the present rule, a broker will be obligated to provide registrants only once a year a list of beneficial owners compiled as of the registrant's record date for its latest annual meeting of security holders.[15] As proposed, a registrant could request the beneficial owner list whenever it wants and the broker, in response to that request, would respond to the request. In light of this change, paragraph (c) also would provide, in addition to stating that the list of beneficial owners is to be compiled as of the registrant's record date for its latest annual or special meeting of security holders, that if the request is not made in connection with a meeting, the list is to be compiled as of a date no earlier than ten days after receipt of the registrant's request. In connection with a broker's obligation to provide beneficial owner lists to a registrant, the Commission solicits specific comment on whether a time limit should be specified within which a broker is to provide the registrant with the requested list.

Proposed paragraph (d) contains provisions relieving a broker of his obligations in two instances. The first instance relates to reimbursement. As the rule presently stands, brokers are neither obligated to forward proxy soliciting material and annual reports to beneficial owners nor to provide registrants with beneficial owner lists without assurances of reimbursement of reasonable expenses. At present, the reimbursement provisions are placed separately in paragraphs (b) and (c). Because all obligations pursuant to the Rule relate to brokers' obligations to aid registrants to communicate with beneficial owners of their securities, the Commission proposes to place the separate reimbursement provisions in one paragraph.[16] Accordingly, under proposed paragraph (d)(1), a broker's obligations under this Rule are contingent on assurances of reimbursement from the registrant of all reasonable expenses incurred in connection with the performance of those obligations.

[15] Release No. 34-20021 (July 23, 1983) (48 FR 35082).

[16] In this regard, see discussion on pp. 4-5, *supra*, concerning the NYSE proposed rule change permitting brokers to fund start-up costs by assessing a surcharge per proxy solicitation.

The second instance in which a broker would be relieved of his obligation relates to a broker's duty to deliver annual reports to security holders to beneficial owners. Proposed paragraph (d)(2) would relieve a broker of his obligation to mail the annual report to security holders identified by the broker and delivered in a list to the registrant so long as the registrant notifies the broker at the time it submits a search card, in accordance with Rule 14a-13(a), that it intends to mail the annual report directly to those beneficial owners whose identity is disclosed.

C. *14c-7 Providing copies of material for certain beneficial owners.* The Commission also proposes to amend, in several respects, Rule 14c-7, which governs the forwarding of information statements to security holders. First, obligations imposed by the Rule on the registrant would be separated into separate paragraphs similar to those contained in proposed Rule 14a-13(a). Paragraph (a) involves the registrant's obligation to inquire of record holders the number of copies of the information statement and annual report to security holders needed to forward the material to beneficial owners. Paragraph (b) concerns the registrant's obligation to supply sufficient quantities of the information statement and annual report to security holders. Paragraphs (a) and (b) and note 3 would be amended further to recognize that record holders need not forward material to those non-objecting beneficial owners with whom the registrant intends to communicate directly.

IV. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions to the shareholder communication rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[17]

V. Statutory Basis and Text of Proposed Amendments

These amendments are being proposed pursuant to section 12, 14, 17 and 23(a) of the Securities Exchange Act of 1934.[18]

[17] 15 U.S.C. 78w(a)(2).

[18] 15 U.S.C. 78*l*, 78n, 78g, and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements Securities.

VI. Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a-3(d) [Amended]

1. By removing paragraph (d) including Notes 1 and 2 and redesignating paragraphs (e) and (f) as paragraphs (d) and (e) of § 240.14a-3(d).

2. By adding § 240.14a-13 to read as follows:

§ 240.14a-13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting with respect to which the registrant intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material necessary to supply such material to beneficial owners; and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners if such reports are to be distributed by the broker, dealer, bank, voting trustee or their nominees;

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or (ii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(3) Shall supply the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders if such report is to be distributed by the broker, dealer, bank, voting trustee or their

nominees, in a timely manner, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to record holders to whom the material is sent.

Note 1.— If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, the registrant shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant.

Note 2.— The attention of registrants is called to the fact that broker-dealers have an obligation pursuant to § 240.14b–1 and applicable self-regulatory requirements to obtain and forward (a) proxy soliciting materials, and (b) when requested by the registrant, annual reports to record holders, to beneficial owners to whom such brokers hold securities.

(b) Any registrant requesting pursuant to § 240.14b–1(c) a list of names, addresses and securities positions of beneficial owners of its securities who have not objected to disclosure of such information shall:

(1) Request such list from all brokers having customers who are beneficial owners of the registrant's securities;

(2) Use the information so furnished exclusively for purposes of corporate communications; and

(3) Upon the request of such brokers, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by brokers holders pursuant to § 240.14b–1(c), provided that such registrant notifies the brokers, at the time a search card requesting the beneficial owner information in compliance with paragraph (a) of this section is sent that the registrant will mail the annual report to security holders to the beneficial owners so identified.

3. By revising § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.

A broker registered under section 15 of the Act shall:

(a) Respond no later than seven business days after receipt of an inquiry made in accordance with § 240.14a–13(a) by or on behalf of a registrant soliciting proxies, consents or authorization by indicating, by means of a search card or otherwise, the approximate number of its customers who are beneficial owners of the registrant's securities that are held of record by the broker or its nominees;

(b) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after the receipt of the proxy material or annual reports; and

(c) Provide the registrant, upon its request, with the names, addresses and securities positions, compiled at least as often as of the registrant's record date for its latest annual or special meeting of security holders, or, if not in connection with a meeting, no earlier than ten business days after receipt of the registrant's request of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information.

(d) A broker need not satisfy (1) its obligations under this section if a registrant does not provide assurance of reimbursement of the broker's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by this section section; or (2) its obligation under paragraph (b) of this section to forward annual reports to beneficial owners if a registrant notifies the broker pursuant to § 240.14a–13(c) that the registrant will mail the annual report to non-objecting beneficial owners, identified by the broker and delivered in a list to the registrant pursuant to paragraph (c) of this section.

4. By revising § 240.14c–7 to read as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners.

If the registrant knows that securities of any class entitled to vote at a meeting are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(a) Inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to beneficial owners and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners for whom proxy material has not been and is not to be made available if such reports are to be distributed by the brokers, dealer, bank, voting trustee or their nominees; and

(b) Supply such record holder with additional copies of the information statement and the annual report to security holders, if such report is to be distributed by the broker, dealer, bank, voting trustee or their nominees, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

Note 1.—If the registrant's list of security holders indicates that some of its securities are registered in the name of "Cede & Co.", a nominee for the Depository Trust Company, or in the name of a nominee for any central certificate depository system, a registrant shall make appropriate inquiry of the central depository system and thereafter of the participants in such a system whom may hold on behalf of a beneficial owner, and to comply with the above rule with respect to any such participant.

Note 2.—The requirement for sending and annual report to security holders of record having the same address will be satisfied by sending a least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to registrants, however, where banks, broker-dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

Note 3.— The attention of registrants is called to the fact that brokers have an obligation pursuant to § 240.14b–1 and applicable self-regulatory requirements to obtain and forward, in a timely manner, (a) information statements, and (b) when requested by the registrant, annual reports to security holders to beneficial owners for whom such brokers hold securities.

(Secs. 3, 12, 14, 15(d), 17, 23(a), 48 Stat. 882, 892, 894, 895, 897, 901; secs. 6, 7, 8, 10, 19a, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 5, 52 Stat. 1076; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 10, 78 Stat. 565–68, 569, 570–74, 580; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28c, 84 Stat. 1435, 1497; sec 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 14, 18, 89 Stat. 117, 118, 119, 121, 137, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c, 78*l*, 78m, 78n, 78g, 78w(a))

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

March 28, 1985.

Securities and Exchange Commission

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Rules 14a-13 and proposed amendments to Rule 14b-1 and 14c-7, if promulgated, will not have a significant impact on a substantial number of small entities. The reasons for this certification are as follows: Proposed Rule 14a-13 provides guidance to, and establishes obligations of, registrants who wish to communicate directly with beneficial owners. Proposed Rule 14a-13(a), (present Rule 14a-13(d)), and Rule 14c-7 require a registrant to inquire of its record holders the number of proxies, other proxy soliciting material, or information statements necessary to forward to beneficial owners and to supply its record holders with the appropriate number of copies. This amendment neither increases nor decreases the cost or burden on a small entity registrant associated with complying with these obligations. Compliance with Rule 14a-13 (b) and (c) is voluntary in the sense that only registrants who choose to communicate directly with beneficial owners need comply with the Rule's requirements to request security holder lists from all brokers and to pay the reasonable expenses of brokers associated with providing beneficial owner lists. Accordingly, only those small entities who wish to communicate directly with their beneficial owners need incur the direct costs associated with Rule 14a-13 (b) and (c). Small entity registrants will be required, however, to reimburse brokers for start-up costs associated with furnishing the beneficial owner informaiton, at the rate of $.20 per proxy for this year's annual proxy solicitation and at a rate sufficient to cover the remaining start-up costs for next year's annual meeting proxy solicitation.

Rule 14b-1 establishes the obligations of brokers in connection with forwarding communications to beneficial owners. Proposed amendments to paragraph (c) would require a broker, at the registrant's request, to compile the list of beneficial owners more often than one time per year. This amendment will impose no additional cost on small entities. Proposed paragraph (d) provides that a broker's performance of obligations imposed by the Rule is contingent on assurances of reimbursement from the registrant of all reasonable expenses incurred in connection with performing the obligations imposed by the Rule. Proposed paragraph (d) which also specifies that a broker has no obligation to mail the annual report to security holders if the registrant notifies the broker that it intends to mail the annual report directly to those beneficial owners whose identity is disclosed to the registrant, will impose no additional cost on small brokers subject to the Rule.

Dated: March 28, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85-7954 Filed 4-4-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comments.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding its advance notice of proposed rulemaking concerning criteria and procedures for identifying mines with a pattern of violations.

DATE: Written comments should be submitted by May 10, 1985.

ADDRESS: Comments should be sent to: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION: On February 8, 1985, MSHA published an advanced notice of proposed rulemaking (50 FR 5470) inviting public participation in the Agency's formulation of criteria and procedures to be used for the issuance of a pattern of violations notice. In that notice, the Agency also withdrew an August 15, 1980 (45 FR 54656) proposal regarding pattern of violations. The comment period was scheduled to end on April 9, 1985.

Due to requests from the public, MSHA is extending the period for public comment to May 10, 1985. The Agency would like to emphasize that anyone submitting comments by the April 9, 1985 date may file additional comments by May 10, 1985, if they so desire. All interested members of the mining community are encouraged to submit comments by May 10, 1985.

Dated: April 2, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85-8223 Filed 4-4-85; 8:45 am]

BILLING CODE 4510-43-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 516, 560 and 572

[Docket No. 85-10]

Marine Terminal Agreements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking.

SUMMARY: This proposes the exemption of certain classes of marine terminal agreements from the filing and/or waiting period requirements of the Shipping Act of 1984 and from the filing and/or approval requirements of the Shipping Act, 1916. Two types of exemptions are proposed. An exemption from both acts' filing requirements would be granted to landlord-tenant marine terminal facility leases, agreements relating to marine terminal facilities or services used in connection with the handling of proprietary cargo, agreements relating to the financing or construction of marine terminal facilities and agreements relating to off-dock container freight station facilities or services. All other classes of marine terminal agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, would be exempted from applicable waiting period/approval requirements, on condition that they be filed for informational purposes and **Federal Register** publication.

DATE: Comments on or before June 4, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission,

Washington, D.C. 20573, (202) 523-5787

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5860.

SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, (1984 Act) (46 U.S.C. app. 1701-1720) and the Shipping Act, 1916, (1916 Act) (46 U.S.C. app. 801 et seq.), together, set forth the regulatory regime governing certain agreements by or among common carriers and marine terminal operators subject to the 1984 and 1916 Acts in the foreign and domestic offshore commerce of the United States, including agreements relating to marine terminal facilities and services.

Insofar as agreements relating to the foreign oceanborne commerce of the United States are concerned, section 3 of the 1984 Act (46 U.S.C. app. 1702) defines an "agreement" and certain other terms; section 4 (46 U.S.C. app. 1703) sets forth those types of agreements that are within the scope of that Act; section 5 (46 U.S.C. app. 1704) requires parties to an agreement to file a true copy of the agreement together with relevant information; section 6 (46 U.S.C. app. 1705) sets forth procedures under which the Commission reviews and takes action upon an agreement; and section 16 (46 U.S.C. app. 1715) sets forth the authority of the Commission to exempt any class of agreements from any requirement of the 1984 Act. Under section 7 of the 1984 Act (46 U.S.C. app. 1706), agreements which have been filed and become effective, or which are exempt from filing, are not subject to the United States antitrust laws. The Commission's rules implementing those provisions of the 1984 Act which govern ocean common carrier agreements and marine terminal operator agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) are set forth in 46 CFR Part 572, *Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984* (49 FR 45320 (November 15, 1984); 49 FR 48927 (December 17, 1984)).

Insofar as agreements relating to domestic offshore commerce are concerned, section 1 of the 1916 Act (46 U.S.C. app. 801) defines "common carrier by water in interstate commerce", "other person" and certain other terms; section 15 (46 U.S.C. app. 814 defines the term "agreement"; sets forth those types of agreements that are within the scope of the 1916 Act; requires parties to an agreement to file a true copy of the agreement; requires Commission approval of such agreements prior to implementation; and, excepts agreements which are lawful thereunder from the antitrust laws. Section 35 of the 1916 Act (46 U.S.C. app. 833a) sets forth authority for the Commission to exempt any class of agreements from any requirement of the 1916 Act. The Commission's rules implementing those provisions of the 1916 Act which govern agreements involving common carriers by water in interstate commerce and marine terminal operator agreements (to the extent the agreements involve ocean transportation in the domestic offshore commerce of the United States) are set forth in 46 CFR Part 560, *Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916* (49 FR 38836 (October 1, 1984); 49 FR 42924 (October 25, 1984)).

This proceeding proposes the exemption of marine terminal agreements, other than marine terminal conference, marine terminal interconference and marine terminal discussion agreements, from the filing and/or waiting period requirements of the 1984 Act and from the filing and/or approval requirements of the 1916 Act, depending on which act applies to the agreement in question. This proposal implements recommendations made by Commissioner Robert Setrakian, the Inquiry Officer in Federal Maritime Commission Docket No. 83-38, *Notice of Inquiry and Intent to Review Regulation of Ports and Marine Terminal Operators*, which was instituted on September 14, 1983 (48 FR 41199) for the purpose of identifying and soliciting public comment on a number of issues in this area, including the filing and approval of marine terminal agreements. A wide variety of commentators from industry, labor, government, academia and the press filed written submissions on these issues, and oral hearings were held in New Orleans, San Francisco and New York City. The *Report of Inquiry Officer—Part I*, which was served September 26, 1984 (49 FR 38987), recommends the exemption of certain marine terminal agreements.

The Commission's rules governing agreements set forth the procedures to be followed by the Commission in exempting agreements falling within the scope of the 1984 Act from filing or other requirements pursuant to section 16 of that Act (46 CFR 572.301). This proceeding is being conducted under those procedures insofar as the exemption of marine terminal agreements involving foreign commerce is concerned.[1] This proceeding is also being conducted pursuant to the exemption authority set forth under section 35 of the 1916 Act with regard to marine terminal agreements involving transportation in the domestic offshore commerce of the United States.[2]

Since this proceeding proposes exemptions under both the 1916 and 1984 Acts and primarily impacts on marine terminal operations, the exemptions will be located in a new Part 516 in Subchapter B of 46 CFR *(Regulations Affecting Ocean Freight Forwarders, Terminal Operations and Passenger Vessels)*, with appropriate cross-references in Part 560 of Subchapter C *(Regulations Affecting Maritime Carriers and Related Activities in Domestic Offshore Commerce)* and Part 572 of Subchapter D *(Regulations Affecting Maritime Carriers and Related Activities in Foreign Commerce)*.

The Inquiry Officer in Docket No. 83-38 recommended two types of exemptions for terminal agreements, differentiated on the basis of the likely anticompetitive impact of the class of agreements involved.

The first is a full exemption from all filing requirements for any class of terminal agreements which historically was not found to have anticompetitive consequences. Specifically, Commissioner Setrakian recommended the exemption of: (1) Leases of on-dock or off-dock facilities which are strictly "landlord-tenant" in nature (e.g., in which the lessor maintains no control either over property for which the user rights are conferred to the lessee or over charges to be assessed by the lessee); and (2) agreements detailing arrangements limited to facilities and services used in connection with the handling of proprietary cargo (e.g., facilities and services provided by a manufacturer or distributor which operates a terminal handling cargo solely for its own business and not for others).[3]

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[1] These procedures include a requirement that exempted agreements shall be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

[2] Similarly, the Commission will require that such agreements exempted under this part shall be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

[3] Subsequent to the publication of Part I of the Inquiry Officer's Report, the Commission's Final Rule under Part 572, published November 15, 1984 (49 FR 45320), clarified the definition of the term "marine terminal operator" under § 572.104 (p) to conform it with the definition of the term in the 1984

Continued

The Inquiry Officer also suggested that the Commission identify other possible classes of marine terminal agreements which might not have anticompetitive consequences for inclusion in an exemption from all filing requirements. In this connection, the Commission believes that such an exemption would also be appropriate for agreements which relate solely to the financing and/or construction of marine terminal facilities and for agreements which relate to off-dock container freight station facilities and/or services.

The second type of exemption recommended by Commissioner Setrakian would apply to all other classes of marine terminal agreements (with the exception of terminal conference and terminal interconference agreements,[4] which would be exempted from the 45-day waiting period of the 1984 Act on condition that they be filed for informational purposes and **Federal Register** publication.

Although the Inquiry Officer's exemption recommendations were framed in the context of 1984 Act filing and effectiveness requirements, marine terminal agreements involving solely transportation in the interstate commerce of the United States remain within the scope of the 1916 Act, and are required to be filed for approval pursuant to section 15 of the 1916 Act. The considerations prompting the exemption of certain classes of terminal agreements falling under the 1984 Act are equally applicable to similar agreements falling under the 1916 Act. It should be noted, however, that exemptions under section 16 of the 1984 Act do differ somewhat from exemptions under section 35 of the 1916 Act in terms of the findings that have to be made by the Commission to support the adoption of such exemptions and in terms of the effect that such exemptions may have on an agreement's status under the antitrust laws. Under the 1984 Act, the Commission is required to find that an exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. Agreements that are exempted from filing under the 1984 Act are not subject to the antitrust laws. Under the 1916 Act, on the other hand, the Commission is required to make the same findings as under the 1984 Act, with the exception of the finding concerning substantial reduction in competition. Moreover, a 1916 Act exemption does not carry with it immunity from the antitrust laws.[5]

The exemptions contained in Part 516 are intended to implement Commissioner Setrakian's recommendations with regard to future Commission policy and procedures concerning agreements in the marine terminal area. Approximately 140 marine terminal agreements were filed with the Commission in Fiscal Year 1984 and the exemptions proposed herein would apply to the vast majority of such filings.

In short, classes of marine terminal agreements which historically have not had anticompetitive or other adverse consequences, such as landlord-tenant leases, proprietary arrangements, financing/construction agreements and off-dock container freight station facilities and services agreements, would be fully exempted under § 516.5(a) and (b), respectively, from all filing requirements under the 1984 and 1916 Acts. Such an approach would relieve the Commission of laborious processing of such agreements and relieve the industry of the delays concomitant with such processing, yet would not cause loss to the Commission or other parties of relevant information. However, as an alternative to the procedure proposed in § 516.5(a), the Commission will give consideration to exempting these classes of agreements from only the waiting period/approval requirements, on condition that they be filed for informational purposes and **Federal Register** publication. The Commission invites comment on this alternative.

The exemption from the waiting period/approval requirements under § 516.5(d) affords interested parties the opportunity to learn of the existence of agreements which might affect them, yet permits such agreements to take effect without significant delay to the parties and without the need for the burdens of nonproductive review and processing by the Commission. Should an agreement raise valid concerns under the general standard (section 6(g)) or the prohibited acts (section 10) provisions of the 1984 Act (46 U.S.C. app. 1705, 1709) or under any of the applicable provisions of the 1916 Act, the informational filing and **Federal Register** publication procedure would allow the Commission an opportunity for *sua sponte* review, if necessary, and provide interested parties with the information necessary for filing a 1984 Act complaint or a 1916 Act protest or complaint with the Commission.

As an alternaitve to the procedure proposed in § 516.5(b), the Commission will give consideration to subjecting this class of agreements to a substantive pre-effectiveness review procedure to ensure conformity with the standards discussed in the following paragraph before an exemption takes effect. This alternative would involve a procedure whereby, to afford it an adequate opportunity to review agreements filed for exemption pursuant to § 516.5(d) for conformity with these standards, the exemption would take effect on the earlier of (1) twenty-one days after the filing of the agreement; or (2) the date of the letter from the Commission advising that the agreement has been accepted for exemption. Under this alternative, an agreement that is not accepted for exemption pursuant to § 516.5(d) would be instead processed for effectiveness or approval under Part 572 or 560, as appropriate for the class of agreement involved. Comments on the desirability of such an alternative exemption procedure are requested.

To ensure that the exemptions do not substantially impair effective regulation by the Commission or sanction activities which would otherwise be unlawful, the exemptions are applicable only to agreements that are limited to prospective, future activity between the parties involved. They do not apply to agreement provisions that relate back to activity or events, or cover a time period, occurring prior to the agreement's execution. Also, agreements entitled to these exemptions are relieved only from the filing and/or waiting period/approval requirements (depending on the class of agreement involved) of 1984 and 1916 Acts. All other requirements of these Acts and the Commission's rules will continue to apply to such agreements, and parties entering into such agreements should be particularly mindful of the Commission's requirements on clarity, completeness and interstitial authority set forth in §§ 572.103(g) and 572.406. Implementation of agreements which are entered into or filed for exemption which do not fully meet the foregoing standards is at the parties' peril.

Act and to make it clear that shippers, or consignees, as well as their facilities, are not made subject to Part 572 and the Commission's jurisdiction merely because the shippers' or consignees' facilities are used to tender or receive proprietary cargo. Therefore, there is no need to exempt proprietary arrangements under the 1984 Act. This rulemaking does, however, propose the exemption of this class of agreements from the filing and approval requirements of the 1916 Act.

[4] These would continue to be filed and processed under the 1984 Act, as would agreements authorizing the *discussion* of marine terminal rates, charges and competitive practices.

[5] Parties to 1916 Act marine terminal agreements who are concerned about possible antitrust implications are free, however, to continue to file such agreements for approval pursuant to section 15 of the 1916 Act and 46 CFR Part 560.

The Commission agrees with Commissioner Setrakian that marine terminal conference and marine terminal interconference agreements (together with related marine terminal discussion agreements) should not be exempted for the reasons cited in his Report, i.e.: (1) They are the most likely to have substantive anticompetitive consequences, therefore, processing under the requirements and standards of sections 5 and 6 of the 1984 Act (or section 15 of the 1916 Act, if applicable) is appropriate; (2) the 45-day review period under the 1984 Act (which applies to all such agreements currently on file or likely to be filed in the forseeable future) should not ordinarily be a burden to the agreements' proponents, as time does not appear to be of the essence in these types of agreements; and (3) there are few enough of these agreements that pre-implementation review (or approval) will not constitute a drain on the Commission's resources.

In light of the foregoing, and based on information now before the Commission, it appears that these proposed exemptions would not substantially impair effective regulation by the Commission, be unjustly discriminatory or be detrimental to commerce within the meaning of section 16 of the 1984 Act and section 35 of the 1916 Act; nor result in a substantial reduction in competition within the meaning of section 16 of the 1984 Act.

II. Section-by-Section Discussion of Part 516

Section 516.1 Authority

This section recites the statutory authority for Part 516.

Section 516.2 Purpose

This section states the purpose of this part, namely to exempt certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act and from the filing and/or approval requirements of the 1916 Act.

Section 516.3 Policy

The policy underlying this part is set forth in this section.

Section 516.4 Definitions

This section includes definitions of the terms used in the Act and this part which are relevant to the exemption of certain classes of marine terminal agreements.

Section 516.4(a) Agreement

The definition of the term "agreement" is based on the definition contained in section 3(1) of the 1984 Act, modified to include common carriers by water in interstate commerce and to reflect the exception from the scope of the 1984 Act of agreements among ocean common carriers to establish, operate or maintain a marine terminal in the United States under section 5(a) of the 1984 Act. To ensure that the exemptions in this part do not substantially impair effective regulation by the Commission, the definition of the term "agreement" is limited to prospective, future activity between the parties involved.

Section 516.4(b) Assessment Agreement

The term "assessment agreement" is defined in section 3(3) of the 1984 Act.

Section 516.4(c) Common Carrier

The term "common carrier", for the limited purposes of this part, is new. It is derived from a combination of the definition of "ocean comon carrier" in section 3(6) of the 1984 Act with the difinition of "common carrier by water in interstate commerce" in section 1 of the 1916 Act.

Section 516.4(d) Common Carrier by Water in Interstate Commerce

The term "common carrier by water in interstate commerce" is defined in section 1 of the 1916 Act.

Section 516.4(e) Marine Terminal Agreement

The term "marine terminal agreement" is new.

Section 516.4(f) Marine Terminal Conference Agreement

The term "marine terminal conference agreement" is new, and is based on and further clarifies the definition of "conference" contained in section 3(7) of the 1984 Act.

Section 516.4(g) Marine Terminal Discussion Agreement

The definition of the term "marine terminal discussion agreement" is new

Section 516.4(h) Marine Terminal Interconference Agreement

The definition of the term "marine terminal interconference agreement" is new.

Section 516.4(i) Marine Terminal Facilities

The definition of the term "marine terminal facilities" is taken from 46 CFR 572.104(o), modified as appropriate to include the term "common carrier by water in interstate commerce."

Section 516.4(j) Marine terminal Lease

The definition of the term "marine terminal lease" is new.

Section 516.4(k) Marine Terminal Operator

The term "marine terminal operator" is defined in section 3(15) of the 1984 Act and under 46 CFR 572.104 (p) and also partially incorporates the definition of "other person subject to this act" set forth in section 1 of the 1916 Act. The term includes any person, firm, company, corporation or government subdivision furnishing marine terminal facilities or marine terminal services, or which owns, leases or operates property used as a marine terminal facility. The term "marine terminal operator" includes but is not limited, to:

(i) Ports;

(ii) Commercial operators of public general cargo marine terminal facilities;

(iii) Operators of shipside grain elevators, bulk loaders, tank farms and lumberyard facilities handling cargo in connection with common carriers;

(iv) Stevedores when engaged in performing any of the duties of a marine terminal operator;

(v) Operators of off-dock container freight stations handling cargo in connection with common carriers, even when such facilities are not located at or proximate to the waterfront;

(vi) Carloaders and unloadings truckloaders and unloaders, when furnishing equipment or labor;

(vii) Railroads which provide marine terminal facilities; and

(viii) Any other person subject to the Commission's marine terminal tariff filing requirements under Part 515.

The term marine terminal operator does not include persons engaged solely in the business of stevedoring and which furnish no marine terminal facilities or services, nor does it include, insofar as the 1984 Act is concerned, shippers or consignees which exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from an ocean common carrier.

Section 516.4(l) Maritime Labor Agreement

The term "maritime labor agreement" is defined in section 3(16) of the 1984 Act.

Section 516.4(m) Ocean Common Carrier

The term "ocean common carrier" is defined in section 3(18) of the 1984 Act.

Section 516.4(n) Person

The term "person" is defined in section 3(20) of the 1984 Act.

Section 516.4(o) Proprietary Marine Terminal Agreement

The definition of the term "proprietary marine terminal agreement" is new.

Section 516.5 Marine Terminal Agreements—Exemption

This section contains the rules exempting certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, or from the filing and/or approval requirements of the 1916 Act, depending on which Act applies to the agreement in question.

Section 516.5(a)

This section exempts marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services from the filing and effectiveness/approval requirements of both the 1984 and 1916 Acts and 46 CFR Parts 572 and 560.

Section 516.5(b)

This section exempts proprietary marine terminal agreements from the filing and approval requirements of the 1916 Act and 46 CFR Part 560.

Section 516.5(c)

This section requires that agreements exempted under 46 CFR 516.5 (a) and (b) be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

Section 516.5(d)

This section exempts all other marine terminal agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, from the waiting period requirements of the 1984 Act and 46 CFR Part 572 and the approval requirements of the 1916 Act and 46 CFR Part 560, on condition that they be filed for information purposes and **Federal Register** publication. This section also sets forth the procedures governing the filing of such agreements for exemption.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that his rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of these rules would be on marine terminal operators and common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities but that impact is not considered to be significant.

The collection of information requirements in these rules have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on the information collection aspects of the rules should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20573, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 516, 560 and 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

Therefore, in order to exempt certain marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, and the filing and/or approval requirements of the 1916 Act, the Commission, pursuant to 5 U.S.C. 553, sections 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1715, 1716) and sections 35 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 833a and 841a), hereby proposes to amend Title 46 of the Code of Federal Regulations as follows:

1. A new Part 516 to Subchapter B is added to read as follows:

PART 516—MARINE TERMINAL AGREEMENTS

Sec.
516.1 Authority.
516.2 Purpose.
516.3 Policy and scope.
516.4 Definitions.
516.5 Marine terminal agreements—exemptions.

Authority: 5 U.S.C. 553; 46 U.S.C. app. 801, 814, 833a, 841a 1701-1706, 1715 and 1716.

§ 516.1 Authority.

This part is issued pursuant to the authority of section 4 of 5 U.S.C. 553, sections 2, 3, 4, 5, 6, 7, 16, and 17 of the Shipping Act of 1984 (1984 Act) and sections 1, 15, 35, and 43 of the Shipping Act, 1916 (1916 Act).

§ 516.2 Purpose.

This part exempts certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act or from the filing and/or approval requirements of the 1916 Act, depending on the act applying to the agreement in question. To ensure that the exemptions do not substantially impair effective regulation by the Commission or sanction activities which would otherwise be unlawful, the exemptions are applicable only to agreements that are limited to prospective, future activity between the parties involved. Neither the exemption nor the antitrust immunity that is applicable to exempted agreements applies to provisions that relate back to activity or events that occurred prior to the agreement's execution.

§ 516.3 Policy and scope.

(a) The 1984 and 1916 Acts authorize the Commission to exempt any class of agreements from any requirement of either act. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of marine terminal facility and service agreements from the filing and/or effectiveness requirements of the 1984 Act (see Part 572 of this chapter) and the filing and/or approval requirements of the 1916 Act (see Part 560 of this chapter).

(b) The exemptions in this part apply only to prospective activity of the parties, and only to agreements to the extent they are included within the classes of agreements described in § 516.5.

(c) Agreements entitled to these exemptions are relieved only from the filing and/or waiting period/approval requirements (depending on the class of agreement involved) of the 1984 and 1916 Acts. All other requirements of these Acts and the Commission's rules will continue to apply to such agreements, including, but not limited to,

the Commission's requirements on clarity, completeness and interstitial authority set forth in §§ 572.103(g) and 572.406.

(d) Implementation of agreements which are entered into or filed for exemption pursuant to this part which do not fully meet the foregoing standards is at the parties' peril.

(e) The exemptions in this part do not in any way exempt marine terminal operators from the tariff filing and content requirements of Part 515 of this chapter.

§ 516.4 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that relates exclusively to activities subsequent to its execution, entered into by or among common carriers and marine terminal operators, but does not include a maritime labor agreement or any agreement among ocean common carriers to establish, operate or maintain a marine terminal in the United States. The term excludes any provisions of an agreement that relate back to activity or events that occurred prior to the agreement's execution.

(b) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

(c) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(1) (i) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(ii) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; or

(2) A common carrier by water in interstate commerce.

(d) *Common carrier by water in interstate commerce* means a person engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession.

(e) *Marine terminal agreement* means an agreement relating solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers.

(f) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the foreign and/or domestic offshore commerce of the United States and which:

(1)(i) Provides solely for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides solely for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(g) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(h) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(i) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to, docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers and/or common carriers by water in interstate commerce, or between two ocean common carriers in foreign commerce and/or common carriers by water in interstate commerce. This term is not limited to waterfront port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to consignees or at which outbound cargo may be received from shippers for vessel or container loading.

(j) *Marine terminal lease* means an agreement which excludes arrangements authorizing the use of marine terminal facilities on a license, assignment, permit or franchise basis and arrangements for marine terminal services, but which provides for the lease of on-dock or off-dock marine terminal facilities between or among marine terminal operators and/or common carriers on a strictly "landlord-tenant" basis, in which:

(1) The lessor leases the facility outright to the lessee and maintains no control whatsoever over the leased property, such as:

(i) The lessor's retention of preferential/non-preferential secondary or tertiary assignment rights;

(ii) The exclusion of certain carriers or shippers or classes of carriers or shippers from being handled at the facility;

(iii) Obligating the lessee to discriminate against one carrier or shipper in favor of another; or

(iv) Restricting or limiting the lessee's right to handle cargo;

(2) The lessee is not conveyed any preferential or exclusive right to operate within an area beyond the leased area, to the exclusion of competitors; and

(3) The lessor retains no control over the lessee's rates, charges or competitive practices.

(k) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier.

(l) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the 1935 or 1984 Act or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(m) *Ocean common carrier* means a vessel-operating common carrier that

operates between the United States and a foreign country; but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(n) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(o) *Proprietary marine terminal agreement* means a marine terminal facility and/or services agreement under which a shipper or consignee exclusively furnishes marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier, such as a manufacturer or distributor which operates a terminal that handles cargo solely for its own business and not for others.

§ 516.5 Marine terminal agreements-exemptions.

(a) *Exemption from filing.* (1) Marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services are exempt from the filing and effectiveness requirements of section 5 of the 1984 Act (46 U.S.C. app. 1704) and Part 572 of this chapter and from the filing and approval requirements of section 15 of the 1916 Act (46 U.S.C. app. 814) and Part 560 of this chapter.

(2) Proprietary marine terminal agreements are exempt from the filing and approval requirements of section 15 of the 1916 Act and Part 560 of this chapter.

(3) Agreements exempted under paragraphs (a)(1) and (a)(2) of this section shall be retained by the parties and shall be furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

(b) *Exemption from waiting period or approval requirements.* (1) All marine terminal agreements, other than those described in paragraph (a) of this section and with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, are exempt from the waiting period requirements of section 6 of the 1984 Act and Part 572 of this chapter and the approval requirements of section 15 of the 1916 Act and Part 560 of this chapter, on condition that they be filed for informational purposes. Notice of the filing of such agreements will be published in the **Federal Register.**

(2) Agreements (including oral agreements reduced to writing in accordance with the 1984 and 1916 Acts) filed for exemption under this paragraph shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(i) A true copy and 15 additional copies of the filed agreement;

(ii) A letter of transmittal, which shall:

(A) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

(B) Identify all of the documents being transmitted including, in the instance of a modification to an effective, approved or exempted agreement, the full name of the effective, approved or exempted agreement; the Commission-assigned agreement number of the effective, approved or exempted agreement and the revision, page and/or appendix number of the modification being filed;

(C) Provide a concise summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(D) Clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and

(E) Be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(iii) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(3) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period/approval requirements effective on the date of their filing with the Commission.

PART 560—[AMENDED]

2. The authority citation to Part 560 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 820, 821 and 841a.

3. A new § 560.9 to Part 560 in Subchapter C, *Exemption of Certain Marine Terminal Agreements*, is added to read as follows:

§ 560.9 Exemption of certain marine terminal agreements.

Part 516 of this chapter exempts certain marine terminal agreements from the filing and/or approval requirements of section 15, Shipping Act, 1916.

PART 572—[AMENDED]

4. The authority citation to Part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710; 1712; 1714–1717.

5. A new § 572.308 to Part 572 in Subpart C of Subchapter D, *Marine Terminal Agreements-Exemption*, is added to read as follows:

§ 572.308 Marine terminal agreements-exemption.

Part 516 of this chapter exempts certain marine terminal agreements from the filing and/or waiting period requirements of this part.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8184 Filed 4-4-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 81-343; FCC 85-121]

Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Pacific Telecommunications Needs During the Period 1981-95

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On March 14, 1985, the Commission adopted a Further Notice of Proposed Rulemaking for facility requirements for the Pacific Basin region for the 1987–1995 period. This action taken to provide U.S. carriers with guidelines for their facility construction activities for the Pacific Region for the 1987–1995 time period; previous phases of this docket focused on 1981–1986 time period. In the Further Notice the Commission analyzes demand, existing facilities, costs, technological risks, correspondent acceptance, U.S. industrial interests, promotion of intermodal and intramodal competition, development of new technology, service quality and national security factors. The Commission tentatively concludes in the Further Notice that a fiber optic transPacific cable as early as 1988 would be in the public interest.

DATES: Updated traffic forecasts due April 12, 1985. Circuit distribution plans due April 22, 1985. Analysis and comments due May 6, 1985. Replies due May 17, 1985.

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Chief, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

Further Notice of Proposed Rulemaking

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet pacific telecommunications need during the period 1981-1995; CC Docket No. 81-343.

Adopted: March 14, 1985.
Released: March 28, 1985.

By the Commission:

I. Introduction

1. On November 21, 1983, we released a Notice of Inquiry (NOI) which initiated the second phase (Phase II) of the comprehensive facilities planning process in the Pacific Ocean Region (POR).[1] The first phase of this process focused on facilities needs in the POR for the 1982-1986 time period and was concluded in December, 1982.[2] Phase II of this process focuses on facilities needs in the POR during the 1987-1995 time frame.

2. In the NOI initiating Phase II of the planning process, we stated that the proceeding would include an assessment of capacities and design lives of currently operating and proposed facilities in the region. We also indicated that we would consider a full range of facilities alternatives capable of meeting forecasted demand in the region during the planning period. We further stated that we would consider all available transmission media and viable technological designs as well as techniques for circuit multiplication. The issues of facilities use and restoration of service were also identified for consideration. Finally, the need, timing and configuration for the proposed fiber optic TRANSPAC-3 (TPC-3) cable were particularly raised.[3]

3. After release of the NOI, comments and reply comments were filed and a series of public meetings were held between members of the bureau staff and interested parties for the purpose of obtaining the necessary planning information and compiling a comprehensive record. Alternative facilities plans and traffic forecasts have been submitted and evaluated by the United States International Service Carriers (USISCs)[4] and Comsat. The task of assembling a comprehensive planning data base along the lines outlined in the NOI is complete. Therefore, in accordance with the procedures outlined in the NOI we are hereby entering the rulemaking stage of this proceeding.

4. The purpose of this Further Notice of Proposed Rulemaking (FNPRM or Further Notice) is to: (a) Evaluate facilities alternatives available for service in the POR during the 1987-1995 time period; (b) issue tentative findings regarding the acquisition and use of such facilities; and (c) request public comment on these tentative findings and the record compiled. In this Further Notice, we describe in Section II the facilities that now provide service in the POR and identify the major markets. In Section III the comments and replies received in response to the NOI are summarized. We then outline in Section IV the record compiled including basic planning data and information, the alternative plans submitted by the USISCs and Comsat, and the parties' evaluation of these plans. Finally, in Sections V and VI, we will discuss and evaluate the record before us and issue tentative findings (or identify options) governing future facilities alternatives during the 1987-1995 time period.

II. Major Markets and Current Facilities

5. Commercial communications between the United States and countries in the POR are transmitted via satellite and submarine cable. Seven jurisdictions, namely Japan, Australia, Philippines, Korea, Taiwan, Hong Kong and Singapore account for approximately 85% of total U.S.-POR traffic. Three of these countries, Japan, Australia and the Philippines account for over 50% of this traffic.

6. Satellite capacity in the POR is currently provided by an INTELSAT IV-A Primary satellite and an INTELSAT IV-A Operational Spare.[5] In 1986 the two INTELSAT IV-A's will be replaced by an INTELSAT V Primary satellite and an INTELSAT V Operational Spare. In 1987 the INTELSAT V Primary will be replaced by an INTELSAT V-A satellite. Also in 1987 the INTELSAT V Operational Spare will become solely a spare satellite and an INTELSAT V-A satellite will be introduced into the region as the Major Path satellite. In 1991 the Primary and Spare are scheduled to be replaced by INTELSAT VI (or INTELSAT VI follow-on) satellites. The Major Path satellite is scheduled to be replaced by an INTELSAT VI (or INTELSAT VI follow-on) satellite in 1993.[6] Currently, approximately 70% of U.S. traffic in the POR is routed over satellite. Ten POR countries[7] are currently served solely by satellite for U.S. traffic.

7. Two transpacific cable systems (TPC-1 and TPC-2) together with various regional cable systems connect the U.S. Mainland/Hawaii with twenty-eight POR jurisdictions. (See Appendix 1 for diagram of existing POR cables.)[8] Hawaii and the U.S. Mainland are connected by three major cables (HAW 1, 2 and 3). Cable circuits providing voice service to all major markets with the exception of U.S.-Australia, Fiji, and New Zealand via the ANZCAN cable are currently saturated. Limited growth

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[1] Pacific Planning (Notice of Inquiry, Phase II), FCC No. 83-515 (released November 21, 1983).

[2] Pacific Planning (Report and Order, Phase I) 47 FR 57040 (December 22, 1982). The first phase focused on the issue of the Australia-New Zealand-Canada submarine cable (ANZCAN). ANZCAN is a joint venture of the communications entities of eight foreign governments linking Vancouver, Canada to Australia and New Zealand, with intermediate landing points in Hawaii, Norfolk Island and Fiji. We approved U.S. carrier participation in ANZCAN with a mix of both permanent (ownership) and temporary indefeasible right of user (IRU) interests. In the *Report and Order*, we contemplated based on existing demand forecast that the temporary interests (short term IRUs) held by U.S. carriers in ANZCAN North (Canada to Hawaii segment) would terminate in the late 1980's and the traffic routed over those IRU-owned circuits would be rerouted over a fiber optic HAW-4 cable. We stated that authorizing a combination of permanent and temporary interests in ANZCAN North rather than authorizing the same number of permanent interests would encourage the introduction of fiber optic cables into the POR at the earliest purdent date. The *Report and Order* found that the construction of analog HAW-4 and TPC-3 cables in the late 1980's was not in the public interest.

[3] During the first phase, the Department of Defense (DoD) and the National Telecommunications and Information Agency (NTIA) strongly supported the introduction of a fiber optic TPC-3 cable which would be routed from Hawaii to Guam and then to Japan. Both parties asserted that the national security and commercial interests of the United States would best be served by the routing of the TPC-3 cable system through Guam.

[4] The USISCs include AT&T and the International Record Carriers (IRCs).

[5] In an operational spare configuration, both the primary and spare satellites are used to carry traffic. However, the sum of the traffic on the primary and operational spare does not exceed the capacity of either satellite. The advantage of splitting traffic between two satellites is that path diversity is increased.

[6] We previously authorized Comsat to participate in an INTELSAT procurement program for nine INTELSAT V, six INTELSAT V-A, and five INTELSAT VI satellites.

[7] The ten countries served solely by satellite are Brunei, Peoples Republic of China, French Polynesia, Marshall Island, Micronesia, New Caledonia, Tonga, American Samoa, Saipan, and Western Samoa.

[8] Direct cable service is provided to twelve POR countries. The remaining sixteen countries are served by transiting those countries served directly

remains for cable circuits providing non-voice traffic over these routes. Furthermore, many of the major cable systems in the POR will reach the end of their design life during the planning period.[9] Cables carry approximately 30% of the U.S.-Pacific Basin traffic.

III. Summary of Comments and Replies

8. Comments to our NOI were filed on January 4, 1984 by State of Hawaii, GTE Sprint and Comsat. Joint comments were filed by the following USISCs: American Telephone and Telegraph Co. (AT&T), Hawaiian Telephone Co. (HTC), FTC Communications, Inc. (FTCC), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCA), TRT Telecommunications Corporation (TRT), The Western Union Telegraph Company (WU), and Western Union International, Inc. (WUI).[10] Reply comments were filed on January 18, 1984 by AT&T, Comsat, State of Hawaii, GTE Sprint, RCA, ITTWC, and the Department of Defense (DoD).

9. *Comments.* All the commenters supported our commencement of the second phase of the planning process in the POR. In joint comments filed on behalf of itself and seven other USICs, AT&T indicated that the USICs and their foreign correspondents view a fiber optic TPC-3 cable with a ready for service (RFS) date of 1988 as desirable. AT&T also noted the comments of NTIA and DoD during Phase I of the planning process urging that any such cable system include a Guam landing point and stated that some of the alternative facility plans being discussed and evaluated by the USICs and their foreign correspondents include a Guam landing point.

10. In its comments, Comsat stated that the first priority in Phase II should be a demonstration of the need for, and attendant timing of, additional facilities during the 1987–1995 planning period. In this regard, Comsat stated that the possible introduction of a fiber optic TPC-3 cable later than in 1988 must be considered and evaluated against forecasted demand and capacity available on other existing and planned facilities. Comsat also stated that a Master Plan for facilities utilization should be developed even if such a plan only has the status of a "guideline." Comsat further suggested that in Phase II the Commission should only consider facilities deployed through 1991 although forecasts should be provided through 1995. Comsat believes that we do not have sufficient information to recommend facilities alternatives beyond 1991.

11. The State of Hawaii urged us to require a "showing of full, effective, and efficient utilization of available and authorized facilities before authorizing additional facilities," noting that it believes there is a "serious question" about whether the U.S. carriers and their foreign correspondents are fully using modern circuit multiplication technology. Hawaii said the U.S. carriers' own information filed with the Commission "shows the very significant difference in revenue requirements of submarine cable and satellite facilities; the cost of satellite facilities is dramatically lower." Hawaii requests that we consider the revenue requirements which may be imposed upon users through the authorization of additional facilities that may not be required. Hawaii desires that we carefully examine the revenue requirements of the carriers and not authorize acquisition of a new facility out of considerations of international comity—that is, because the U.S. carriers' foreign correspondents desire it—unless such facilities are actually needed.

12. GTE Sprint supported the construction of a fiber optic TPC-3 cable system in 1988 and said it plans to offer "international voice and other services" in the Pacific region in the near future. GTE Sprint supplied estimated circuit needs for countries with which it desires to obtain operating agreements for the provision of voice and other services over the next 10-year period.

13. *Replies.* In its reply comments, AT&T stated that it believed it appropriate to examine in Phase II all facilities to be deployed through 1995. AT&T also stated, in response to the State of Hawaii, that full utilization of existing facilities and the most up-to-date technologies will be considered in the development of the alternative plans. AT&T further stated its belief that the concept of a Master Plan should not be permitted to frustrate the Commission's intent to permit market forces to regulate circuit activations. AT&T stated that it would supply implementation schedules with its alternative plans disclosing proposed facility utilization. AT&T indicated that the facilities utilization information supporting each plan would be sufficient to allow the Commission to evaluate the plans and to monitor facilities usage without adopting a detailed Master Plan. AT&T strongly disagreed with Hawaii's position that we should disregard international comity in developing policies and guidelines for POR facilities planning. AT&T stated that international comity should be an essential element in the development of policies and guidelines for POR facilities.

14. GTE Sprint, in its reply, stated that the TPC-3 cable should be introduced in 1988. GTE Sprint indicated that a new facility is critical because of the size of the USISC circuit forecasts and the possibility of additional carriers entering the market. GTE Sprint further stated that circuit forecasts supplied by the carriers in the instant proceeding be viewed as a rough gauge rather than an exact determination of future circuit needs. GTE Sprint indicated some apprehension that a limitation of authorized circuits strictly to the number proposed by those participants in the planning process could constrain the ability of new carriers to acquire circuits. GTE Sprint also agreed with Comsat that the planning process should only consider facilities that are to be deployed in the 1987–1991 timeframe because it would be difficult to gauge what facilities will be needed in the years 1922–1995.

15. RCA replied that the State of Hawaii is misguided in suggesting that we include revenue requirements as part of our analysis. Such an approach, argued RCA, "disregards the Commission policy which considers factors such as diversity, redundancy, restoration and economy to assure that future requirements for communications services are met." According to RCA, we have looked at only "historical and/or projected investment and operating expenses as opposed to tariff rates as proposed by the State of Hawaii." RCA further states that a requirement to show full and efficient use of existing facilities as proposed by Hawaii would limit competition and competitive options.

16. In its reply, the State of Hawaii reiterated its position regarding revenue requirements and full, efficient use of existing facilities. The State maintained that more specific information was required from the USISCs and Comsat so that the public would not be saddled with additional and unnecessary revenue requirements. The State declared that the information heretofore submitted by the USISCs in their comments did not provide a sufficient showing of the extent to which all

[9] The following cables have reached the end of their design life or will reach the end of their design life during the planning period. COMPAC-1984 (81 basic voice grade circuits); HAW-1-1984 (51 basic voice grade circuits, 37 derived); HAW-2-1989 (143 basic voice grade circuits, 37 derived); SEACOM-1-1987 (82 basic voice grade circuits); SEACOM-2-1990 (166 basic voice grade circuits); TPC-1-1989 (142 basic and 29 derived voice-grade circuits between Hawaii and Guam and 138 basic voice-grade circuits between Guam and Japan.

[10] The parties filing joint comments also plan to be joint owners of the proposed cable system.

current and authorized facilities are projected to be fully, effectively, and efficiently utilized during the 1987–1995 period.

17. ITT stated in its reply that a Master Plan is at best a planning tool which provides a mechanism for evaluating whether a need exists for additional facilities. ITT believes that such a plan should not be used to specify loading criteria. However, ITT agreed with Comsat that the Commission should focus only on those facilities planned for deployment through the end of 1991 because of the uncertainty as to what facilities will be needed from 1992 to 1995.

18. In its reply, Comsat reiterated the position presented in its initial comments that sufficient capacity exists in the POR to handle forecasted demand at least through 1991 and that construction of TPC–3 prior to this date unnecessarily burdens ratepayers. Comsat further stated that the April, 1983 traffic forecast submitted by the USISCs in their comments be reviewd as a first step in the process to make certain it is not outdated. Comsat also expressed its concern that the alternative plans which have been developed by the USISCs and their foreign correspondents do not represent the full range of alternatives which should be addressed. Comsat believes that we are engaged in a process which should concern itself with the furtherance of the U.S. public interest as opposed to the interests of our foreign correspondents. Comsat does not want the interests of our foreign correspondents to be applied "a priori" to screen alternative plans.

19. DoD's reply stressed that national defense and security interests require a fiber optic TPC–3 cable linking the U.S. mainland with Guam and Japan. DoD maintains that the diversity and redundancy provided by such a cable system is necessary for critical U.S. government and private sector communications. DoD believes that cost and technology are not the only significant concerns in assessing the quality of service of any facilities plans. DoD further believes that from a national defense and security standpoint service reliability during the period after a facility failure is an extremely important factor in considering the deployment of a fiber optic cable in 1988.

IV. Summary of the Record Compiled

20. The record compiled contains three major segments: (a) Basic planning data and information (i.e., demand forecasts, facility data, and cost elements); (b) alternative facilities plans; and (c) carrier analysis and evaluation of plans. The basic planning data is used by the carriers and Comsat to generate alternative plans designed to meet traffic demands throughout the planning period. The plans consist of various combinations of new facilities introduced in the Pacific region at various times.

A. Basic Planning Data and Information

21. *Demand.* The demand forecasts for voice and non-voice traffic used in the preparation and evaluation of all the alternative plans were prepared by AT&T and the IRCs. A March 1984 traffic forecast was submitted by the USISCs to update their April 1983 forecast. The updated forecast reflects the base information available using individual country econometric models and historical growth trends in traffic. Comsat independently forecasts international television traffic demand but does not do any forecasting of message telephone and record service. The forecast of traffic demand on international satellites is obtained by Comsat and INTELSAT directly from the carriers and their foreign correspondents annually at the INTELSAT global traffic meeting. The March 1984 forecast shows an average annual growth rate of approximately 16% during the 1985–1995 time period from 5800 circuits in 1985 to approximately 26,000 circuits by 1995.[11] The four alternative plans proposed different ways of accommodating this growth.

22. *Facility capacity data.* Comsat submitted data regarding facility capacity available for U.S. Mainland/Hawaii-Pacific basin traffic for the three INTELSAT spacecraft series that are proposed to be deployed during the planning period. The capacity estimates are given in 6/4-GHz band with various modulation/access techniques including FDMA/FDM/FM, CFDM with 32 or 64 Kbps TDMA/DSI,[12] and ACSSB with 32 or 64 Kbps TDMA/DSI.

The facility capacities for the satellites are as follows:

	FM (no circuit multiplication)	CFDM + 64 Kbps TDMA/DSI	CFDM + 32 Kbps TDMA/DSI	ACSSB + 64 Kbps TDMA/DSI	ACSSB + 32 Kbps TDMA/DSI
INTELSAT V Primary (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1986)	4,350	7,880	N/A	N/A	N/A
INTELSAT V-A Primary (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1987)	4,950	8,910	11,280	13,920	16,290
INTELSAT V-A Major Path (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1987)	4,840	8,590	11,010	13,310	15,720
INTELSAT VI (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1991)	7,450	15,800	25,280	20,640	30,120

23. Two major cable systems (TPC–1 and TPC–2) currently carry traffic in an east-west direction across the Pacific Ocean. TPC–1, which is scheduled to be retired in 1989, has 171 voice grade circuits from Hawaii to Guam and 138 voice grade circuits from Guam to Japan. TPC–2, which is scheduled to be retired in 2000, has 845 basic voice grade circuits from Hawaii to Guam and 845 basic voice grade circuits from Guam to Okinawa. Circuits in TPC–1 and TPC–2 which are used to provide voice services are presently multiplexed with TASI equipment which doubles the capacity of these circuits. The USISCs submitted data regarding the assumptions used to evaluate existing and projected cable capacities during the planning period. Anticipating the use of circuit multiplication equipment, the USISCs utilized a 2:1 ratio on analog cables and a 5:1 ratio for voice circuits on fiber optic cables. Fiber optic cable capacity was estimated as follows: a 140 mb/s cable is assumed to be equal to 10,000

[11] This forecast does not include international television or domestic transponder requirements. It appears that the demand for occasional use international television services in the POR during the planning period is relatively small and can be carried by the two designated TV transponders on the Primary satellite. At the present time INTELSAT leases on a pre-emptible basis 4.5 (36 MHz bandwidth) transponders in the POR. While the number of transponder leases for the POR for the 1985–1995 period may increase, the pre-emptible nature of these leases makes their inclusion into a demand forecast problematic.

[12] TDMA and DSI are acronyms for time division multiple access and digital speech interpolation, respectively. Use of TDMA, rather than the frequency division multiple access currently used will increase the number of circuits on a given satellite transponder by 50–60 percent. DSI equipment operates in much the same fashion as circuit multiplication equipment used on cables and approximately doubles the number of circuits used for message telephone services. TDMA/DSI should be available in the POR in 1987–88.

equivalent voice circuits (with digital circuit multiplication equipment) and a 280 mb/s cable is assumed to be equal to 20,000 equivalent voice circuits (with digital circuit multiplication equipment).[13]

24. *Cost Elements.* The fiber optic cable systems costs are based on the TAT-8 cable costs [14] (adjusted to 1983 dollars) and include the cost of Dynamic Bit Compression Multiplex (DBCM) equipment. Depending on the particular plan, these costs range from about $500 million to nearly $800 million.

25. Unbundled space segment and earth station charges are currently found in Comsat's tariff. The unbundled space segment rate is $655 per half circuit per month. The unbundled earth station rate is $405 per circuit month.[15]

26. Comsat submitted the following cost elements for satellite facilities during the 1987–1995 period: each INTELSAT VI spacecraft is estimated to cost $69 million (in year-end 1983 dollars). Comsat estimates the launch cost to be $50.7 million per spacecraft. The capital cost of each TDMA reference station entering service in the POR after January 1, 1987 is expected to cost $1.45 million. Comsat believes that existing U.S. earth stations and antennas are sufficient to meet forecasted traffic. If another Standard A earth station were added, its cost is estimated at $4.0 million.

B. Alternative Plans

27. Four alternative plans were presented by the parties, two submitted by the USISCs and two submitted by Comsat. All the plans submitted take into account: (a) Currently operating facilities in the region; (b) available transmission media, including techniques for circuit multiplication [16]; (c) a comparison of actual use relative to available capacity and design life; and (d) criteria for maintenance of service reliability. All four plans assume that INTELSAT V-A satellites will be deployed in the POR as the primary and major path satellites in 1987. The third and fourth INTELSAT VI spacecraft successfully placed in orbit will be deployed to the Indian Ocean Region to replace the INTELSAT V-A spacecraft serving as the Indian Primary and Spare satellites.[17] It is these INTELSAT V-A spacecraft that are currently planned to be relocated to the POR in 1987. The plans also assume that an INTELSAT VI or follow-on satellite will be deployed as a Primary Path and Spare satellites in the POR in 1991.[18] Following is a description of plans submitted.

1. USISCs Plans

28. The USISCs and their foreign correspondents in the Pacific have engaged in a planning effort and have evaluated various facilities alternatives for the 1987–1995 time period. The USISCs and their foreign correspondents developed ten facility plans [19] based on a bilaterally negotiated forecast obtained from the April 1983 Data Gathering Meeting. Further analysis and meetings reduced the number of plans to two: Plan II-A (Mod. 4) and Plan III Modified. (See Appendices 2 and 3 for diagrams of the proposed plans.)

Plan II-A(Mod.4) [20]

29. This plan introduces fiber optic cable systems in the POR starting in 1988 linking the U.S. Mainland and Hawaii to Japan and Guam via an underwater branching unit located near Guam. Additional cable systems would then be deployed west of Guam and Japan to Korea, Hong Kong, Taiwan and the Philippines. These cables would form a ring from Japan to Korea to Hong Kong to the Philippines to Guam and back to Japan. According to the record submitted, this plan is preferred by the USISCs and their foreign correspondents.

30. The total first cost of this proposed cable system is approximately $733 million.[21] The U.S. share is approximately $320 million.[22] The total first cost of landing in Guam is $67 million.[23]

The following cable systems comprise Plan II-A(Mod. 4):

From-to	Cable name	Service date	Capacity	
			Mbit/s	Mauo[24]
Mainland-Hawaii	MA-HA (HAW-4)	1988	2 x 280	7,560
Hawaii-Japan*	HA-JA	1988	1 x 280	3,780
Hawaii-Guam*	GU-HA	1988	1 x 280	3,780
Guam-Philippines	GU-PH	1988	1 x 140	1,890
Japan-Korea*	JA-KO	1990	1 x 140	1,890
Japan-Hong Kong*	JA-HK	1990	1 x 140	1,890
Hong Kong-Philippines	HK-PH	1990	1 x 140	1,890
Philippines-Taiwan	PH-TA	1994	1 x 140	1,890
Guam-Japan	GU-JA	1988	1 x 280	3,780

*Indicates fiber in a Branching Unit cable.

[24] A MAUO represents the unit of measure for ownership purposes similar to the single circuit of analog cables.

31. According to the USISCs, Plan II-A(Mod 4) allows greater flexibility for routing and the ability to restore via digital cables most links in the network. According to the USISCs, this configuration also promotes service reliability in terms of improved media and route diversity. The USISCs further maintain that this plan provides for a network which can easily be expanded at minimal cost to connect Australia and Singapore in the mid 1990's. This plan also reflects the increased participation of Hong Kong in the overall project.

Plan III Modified

32. Plan III Modified introduces fiber optic cable systems starting in 1988 linking the U.S. Mainland with Hawaii and Japan. Additional cable systems would then be deployed west of Japan to Korea, Hong Kong, Taiwan and the Philippines. This "non-ring plan" does not provide for a Guam landing point. The total first cost of this plan is $588 million.

The following cable systems comprise Plan III-Modified:

[13] These figures are based upon the TAT-8 project. A maximum of two working fiber pairs has been assumed for planning purposes. It should be noted that capacity employed for the transmission of record/data cannot be multiplied in the same manner or to the same extent as capacity used for voice services.

[14] American Telephone and Telegraph Co., FCC 84-240 (released June 8, 1984).

[15] *See* Comsat Tariff F.C.C. No. 101.

[16] Circuit multiplication equipment exploits the fact that pauses occur in normal conversation between persons. This equipment senses these pauses and routes portions of other calls to the momentarily idle circuits so as to derive the most efficient use of all available circuits.

[17] The first two INTELSAT VI spacecraft are scheduled to be deployed in the North Atlantic in 1986/87.

[18] We have authorized Comsat to participate in the procurement of five INTELSAT VI satellites. However, it is not clear that these particular satellites will be the ones used in the POR or if a VI follow-on will be used. *See*, Communications Satellite Corporation, FCC 84-236 (released May 25, 1984). Several satellite configurations are under consideration by INTELSAT as INTELSAT VI follow-on spacecrafts.

[19] There were six plans and four variations of these plans.

[20] Plan II-A (Mod 4) has undergone two major changes. The USISCs first submitted as part of the record a similar plan, Plan II-A (Mod.) This plan differed from the present plan in two respects: First, the entire plan was more expensive ($786 million as opposed to $733 million). Second, the Hong Kong-Philippines cable was planned for 1988 (not 1990). The USISCs withdrew this plan and submitted a new plan, Plan II-A (Mod. 2) which connected Japan with the Philippines in a self-protecting ring. This plan cost $719 million. On November 15, 1984, the USISCs submitted the present Plan II-A (Mod. 4) which reflects the increased participation of Hong Kong and will be discussed in detail below. *See*, letter of J.A. McEntee, Deputy Director, International Long Range Planning ATT — Communications to Stuart Z. Chiron, Chief, International Policy Division, November 15, 1984.

[21] First cost is the capital investment associated with a new facility. The USISCs computed first cost in 1983 dollars.

[22] The cost to Japan is approximately $129 million (in 1983 dollars).

[23] That is, it would cost approximately $67 million less to deploy a ring configuration with a Guam landing point.

From-to	Cable name	Service date	Capacity	
			Mbit/s	Mauo
Mainland-Hawaii	HA-MA (HAW-4).	1988	2 x 280	7,560
Hawaii-Japan	HA-JA	1988	2 x 280	7,560
Japan-Philippines*	JA-PH	1988	1 x 280	3,780
Japan-Korea*	JA-KO	1988	1 x 280	3,780
Philippines-Taiwan	PH-TA	1994	1 x 140	1,890
Philippines-Hong Kong	PH-HK	1988	1 x 140	1,890

*Indicates fiber in a Branching Unit cable

33. According to the record, Plan III Modified is acceptable but not preferred by the USISCs or their foreign correspondents. Although cheaper than Plan II-A(Mod 4) the USISCs maintain that this plan does not provide comparable flexibility in routing. It also does not offer the ability to restore via digital cables any portion of the network.

2. Comsat's Plans

34. Comsat submitted two plans. Comsat Plan 1A is based on the lightguide network proposed by the USISCs in Plan II-A(Mod 4).[25] Comsat Plan 2A is based on the lightguide network proposed by the USISC in Plan III Modified. Comsat proposes to defer implementation of the fiber optic cable systems proposed in both plans for three years until 1991. Comsat maintains that existing cables and satellites will provide sufficient capacity to accommodate growth from 1988–1991. Comsat states that a three year delay would keep TPC-3 out of AT&T's rate base for three years and would save ratepayers $120 million (in 1983 dollars).

35. In its filings, Comsat argues that more than adequate satellite capacity will exist in the planning period to accommodate expected traffic growth. Comsat submitted data to show that existing and proposed satellite configurations for the region can provide sufficient capacity at least through 1991 and may provide an aggregate capacity of over 60,000 U.S. Mainland/Hawaii Pacific channels by 1995.[26] Comsat also maintains that quality of service will not suffer if the cable system is delayed for three years and that services that can be provided over digital cables can also be provided over satellites.

C. The Parties Evaluation of the Alternative Plans

36. The U.S. International Service Carriers and Comsat analyzed the four alternative plans from the standpoint of forecasted demand, facility capacity and demand flexibility, service quality, costs, technological risk, and correspondent acceptance. The USISCs prefer Plan II-A (Mod. 4) and state that this plan best accommodates forecasted traffic in the region during the planning period. On the other hand, Comsat believes that existing cable and satellite facilities can accommodate growth in the region until at least 1991. Comsat asserts that its plans, which defer the USISCs plans for three years are the preferred way to accommodate traffic in the POR during the planning period.

1. Forecasted Demand, Capacity and Demand Flexibility

37. The USISCs and Comsat agree on the traffic forecasts compiled by the USISCs and Comsat as well as the capacities of existing and proposed facilities. They also agree that an abundance of satellite capacity will exist throughout the planning period.[27] Comsat calculates that there is adequate capacity on the primary and major path satellites to accommodate all forecasted traffic during the planning period without the deployment of circuit multiplication techniques such as TDMA/DSI. Comsat also states that with the deployment of TDMA/DSI there is the potential for at least twice and perhaps three times the capacity needed to accommodate growth in the region.

38. Demand flexibility means that capacity is available or could be derived to accommodate unforeseen changes in demand. Both the USISCs and Comsat conclude that under any of the four alternative plans, there will be more than ample capacity to accommodate projected traffic requirements and any unforeseen changes in demand throughout the planning period.

39. The USISCs state that this excess satellite capacity demonstrates that the satellite planning engaged in by Comsat and INTELSAT is deficient. The USISCs also state that since so much excess satellite capacity is projected during the planning period, a relatively low traffic forecast and demand flexibility are essentially meaningless and should not be reasons for delaying the implementation of the cable system. On the other hand, Comsat argues that if the USISCs' preferred plan is approved in 1988, satellite capacity would be "underutilized and lie fallow."

2. Service Quality

40. The USISCs and Comsat analyzed the service quality provided by the plans in terms of media (cable and satellite) diversity, path diversity restoration and loading. Media diversity is provided by the use of more than one transmission medium to carry a correspondent's traffic. Media diversity protects against the systemic failure of one medium. Path diversity is obtained through the use of a number of independent routes to carry traffic to a given correspondent and is one means to maintain an adequate grade of service if any one path fails.

41. The USISCs maintain that their preferred Plan II-A (Mod. 4) significantly enhances both media and path diversity. The USISCs state that a new cable route will increase path diversity regardless of the satellite configuration in Comsat's plans. The USISCs also maintain that the cable/satellite radio of its plans is 61/39 in 1995 if the countries served solely by satellite are excluded from the analysis. If the countries served solely by satellite are included, then the satellite share in the mid-to-late 90's is 48 percent. Comsat claims that the path diversity provided in the USISC plans is no better than the path diversity provided in its own plans and that the media diversity in the USISC preferred plan is unacceptable because the satellite ratio in this plan declines from 70% to 30%.

42. The USISCs and Comsat also analyzed the plans in terms of their ability to restore circuits in case of a facility outage. The USISCs state that the preferred Plan II-A (Mod. 4) is best able to restore failed circuits since it provides for a self-restoring ring from the branching unit to Japan, Hong Kong, the Philippines, Guam and back to the branching unit. The USISCs maintain that their non-ring Plan III-Mod. has no inherent restoration capabilities and must rely solely on restoration by satellites in case of a facilities outage. Under the USISC plans, satellite facility outages can be restored via the operational spare satellite and for the first time by digital cables, although coverage is limited. Comsat maintains that its plan provide the same ability as the USISC plans to restore circuits in case of a facilities failure because of the

[25] Comsat Plan 1A is actually based on the originally submitted USISC Plan II-A (Mod.) Since this plan is closely related to the USISC Plan II-A (Mod. 4), Comsat's comments on Plan II-A (Mod.) will be considered as applying to Plan II-A (Mod. 4).

[26] Comsat's plan show that the INTELSAT V satellite will function as a Primary Path and Operational Spare in 1986. In 1987, the INTELSAT V Primary Path will be replaced by the INTELSAT V-A. In addition, a V-A will also serve as a Major Path satellite. This configuration remains intact until 1991, when INTELSAT VI or follow-on satellites are planned to be deployed as the Primary Path and Spare satellites.

[27] The carriers estimate that if all POR traffic were to be placed on satellites, including the off-loading of all existing cables, satellite utilization would never exceed 36% through 1991.

presence in the region of an operational spare satellite throughout the planning period. Comsat also states that such capability is necessary to restore service to countries not served by the proposed fiber optic network.

43. Loading is the manner by which circuits are distributed among available transmission paths, both cable and satellite. A balanced loading methodology is now used in the Pacific Region and Comsat supports the continued use of this loading policy. Under a balanced loading approach, circuits are distributed among satellite and cable facilities in a manner which results in non-saturated facilities carrying equal numbers of circuits.[28] The USISCs propose using a loading methodology based on a mix of satellite and cable circuits bilaterally negotiated between the USISCs and their foreign correspondents. Comsat objects to the loading approach proposed by the USISCs. Comsat believes that such a cable/satellite mix will be formulated without consideration of relative economics and without its participation. Comsat also is concerned that the market power of the USISCs, particularly AT&T, will work to Comsat's disadvantage. In response, the USISCs state that the bilaterally negotiated loading scheme they propose is based upon economic criteria that look at each correspondent pair's relative costs of satellite and cable. The USISCs further maintain that the process they will employ with their foreign correspondents is similar to that employed at the INTELSAT Global Traffic Meeting in which all signatories meet and decide the number of circuits to be placed on satellite for five or more years in the future.

3. Cost Analysis

44. The cost of each of the alternative facilities plans was estimated by AT&T and Comsat. Both parties express the individual cost of a plan in terms of the discounted present worth of expenditures.[29] However, the parties employ different methods and assumptions for estimating the cost of the various plans. AT&T uses two methods for estimating cost—a "use" and an "investment" method. The AT&T "use" method includes the USISC portion of the total investment and operating cost outlays for new cable systems introduced during the planning period, together with the estimated annual per circuit Comsat lease (tariff) charge for international satellite circuits. The AT&T "investment" method also includes the USISC portion of total investment and operating cost outlay for new cable systems. For satellites, an allocated portion of the total investment and operating cost associated with all the satellites of the various satellite series introduced into the region during the plannning period is included. The portion of total INTELSAT satellite costs allocated to the U.S. in the Pacific region is determined by the planned use of a given satellite facility by the U.S. carriers in the Pacific region relative to its use by the foreign entities in the Pacific and its use in other ocean basin regions. Both the use and investment method employed by AT&T include all cable costs associated with providing U.S. Mainland/Hawaii service for those cable systems that are newly introduced into the Pacific Ocean Region during the planning period.

45. Comsat's cost estimates for the plans are based upon a single investment related methodology. The Comsat approach includes the USISC portion of total investment and operating costs for new cable systems in a similar manner to that employed by AT&T in both its methods. In calculating the satellite portion of the cost associated with an individual facility plan, Comsat includes an allocated portion of only the total incremental investment and operating costs associated with satellite facilities serving the Pacific region. Comsat assumes that the only relevant incremental satellite costs are those associated with satellite facilities for which investment decisions by INTELSAT have not already been made as of the beginning of the planning period. This means that any satellite series prior to the INTELSAT VI (scheduled to be introduced in the Pacific region in 1991) is not included in the Comsat cost analysis. This differs significantly from the AT&T investment method approach in that AT&T includes an allocated portion of INTELSAT satellite costs (based upon relative use) for the INTELSAT series, V, VA, and VI in its analysis. For the INTELSAT VI satellite series that is included in the Comsat analysis, an allocation mechanism based upon relative use of the satellite by U.S. carriers in the Pacific region is employed by Comsat to allocate a portion of the overall satellite system cost to the Pacific plan.[30]

46. As a result of these different cost methodologies, the USISC cost of the plans and the Comsat cost of the same plans are very different. The AT&T and Comsat cost analyses for the USISCs' preferred plan are presented in the following table. The costs shown are the U.S. carriers' share of the total costs of the proposed cable system.

	Cable	Satellite	Total
Comsat investment related method:			
Comsat plan 1A	$138.75M	$99.32M	$238.07M
Plan IIA modified	$260.00M	$94.63M	$354.63M
USISC investment related method with residuals:[31]			
Comsat plan 1A	$66.6M	$100.8M	$167.4M
USISC plan IIA modified	$155.2M	$44.9M	$200.1M
USISC use related method with residuals:			
Comsat plan 1A	$66.6M	$155.6M	$222.2M
USISC plan IIA modified	$155.2M	$52.9M	$208.1M

[31] Residuals are costs allocated to facilities beyond the end of the planning period (i.e.—after 1995).

47. Utilizing Comsat's investment related method the USISC preferred plan costs $354.63M (net present value of incremental expenditures) while Comsat's Plan 1A (the USISC preferred plan deferred by three years) costs $238.07M. Utilizing the USISC investment method, their preferred plan costs $200.1M (incremental investment with residuals) while Comsat's Plan 1A costs $167.4M. In both Comsat's "investment" analyses and the USISC "investment" analysis, Comsat's plan is cheaper. However, according to the USISC "use related" method, the USISC preferred plan is cheaper than Comsat's Plan 1A. (The USISC preferred plan cost is $208.1M and Comsat's Plan 1A is $222.2M).

4. Technological Risk

48. The carriers assessed the alternative plans with respect to the risks arising from utilizing a new technology. The major risks arising from plans which incorporate new technology are that: (a) The technology will not be

[28] The policy was developed in Docket 18875 planning proceedings as a result of negotiations between the U.S. and European PTT's. The policy expires by its own terms at year-end 1985 in the North Atlantic. *See*, Policies for Overseas Common Carriers, 82 FCC 2d 407, 431 n. 18 (1980).

[29] In the USISC analysis, the Present Worth of Expenditures (PWE) represents the sum of the present worth of future capital investments (PWFC) and the present worth of future annual expenses (lease costs are used for satellites, capital investments are used for new cables). PWFC represents the worth of some future capital investment adjusted back to 1983 dollars. The discount rate (the percentage used to discount expenses) is stated in real terms. A real discount rate of 4% is used to calculate PWE. In Comsat's analysis, the PWE also includes the net present value of incremental costs for cable and satellite facilities of associated operational and maintenance charges (O & M), incremental purchases of IRUs in foreign cables, appropriate transit charges and O & M on existing facilities.

[30] Other minor differences in cost assumptions also exist between the AT&T and Comsat methods. See the respective cost submissions of the carriers in the record for details.

available when required; and (b) the technology will not perform as specified. The USISCs state that any unforeseen delay in the service date of the HAW-4/TPC-3 cable will not affect the customer because existing satellite capacity is sufficient to accommodate traffic growth up to 1991 and beyond. Thus, the USISCs see no technological risk associated with their preferred plan.

49. Comsat believes that the USISC plans are technologically risky. Unforeseen delay could arise because TAT-8, the first major transoceanic lightguide cable, is to be constructed and placed in operation in the North Atlantic in 1988, the same year as the proposed HAW-4/TPC-3 cable. If a problem is uncovered during the construction, testing or implementation of TAT-8 necessitating a delay in the service date of that cable, such a delay would affect the design, construction, price and service date of the HAW-4/TPC-3 cable as well. Comsat also notes that the lightguide cable proposed for the POR spans more nautical miles than TAT-8. Comsat thus suggests that a delay until 1991 would permit the co-owners to gain important service, design and construction experience.

50. Comsat sees no technological risk associated with the deployment of INTELSAT V, V-A, VI or follow-on spacecraft in the region in 1991. Comsat states that modifications in the INTELSAT VI follow-on program currently under consideration are relatively simple extensions of current technology and should not interfere with the timely delivery of modified spacecraft to the region. According to Comsat, the INTELSAT VI program is continuing on schedule calling for the availability of two INTELSAT VI's in late 1986/early 1987 in the North Atlantic. Launch vehicle availability for the first three INTELSAT VI spacecraft is also assured. Negotiations are currently underway for the launch of the fourth and fifth INTELSAT VI spacecraft. Comsat believes there is no reason to question the viability of the new technologies associated with the INTELSAT VI: dynamic satellite switch and a high performance multi-beam antenna.

5. Correspondent Acceptance (International Comity)

51. Correspondent acceptance is a factor which has traditionally been taken into account in the planning process when evaluating alternative plans. The USISCs emphasize that they have been involved in a planning effort with their foreign correspondents in the POR for the past several years and that this effort has included the periodic updating of traffic forecasts, the review of available technology and cost elements, and the analysis and evaluation of facility alternatives which would satisfy traffic demand in a timely and economic maner. The USISC pleadings recount in detail the various meetings, the development of various plans and the analysis that these plans have received by all interested parties and administrations. The USISCs state that the two plans they have submitted (particularly their preferred plan) are the ones that were found to be acceptable to their foreign correspondents. The USISCs generally conclude that international comity is an important factor and that the results of a negotiated process should be given substantial consideration.

52. Comsat states that our foreign correspondents have individual interests in expanding the cable network and avers that correspondent acceptance cannot be the sole basis for either eliminating plans or selecting a preferred facilities plan. Comsat argues that this is an internal U.S. proceeding and that we must evaluate facilities authorization from the perspective of the U.S. ratepayer. Comsat further states that there is no information to indicate that the foreign correspondents have been able to consider delaying the lightguide system by three years.

6. Evaluation by DoD, NTIA and Simplex

53. DoD, NTIA and Simplex filed comments relating the the particular plans. Both NTIA and DoD support AT&T's Plan II-A (Mod. 4) which introduces a fiber optic TPC-3 cable in 1988 that is routed through Guam via an underwater branch. DoD believes that this plan best meets the defense and security interests of the United States. NTIA also supports a Guam landing point for defense and commercial reasons. NTIA further believes that the need for competition between the cable and satellite media outweighs any short run overcapacity which may develop; that delay in implementing a fiber optic cable plan will give foreign manufacturers the opportunity to produce a greater number of fiber optic cables and improve their competitive position; and that by deferring the cable until 1991, competitive incentives for lowering satellite rates will be deferred.

54. Simplex Wire and Cable Company, a cable manufacture, also supports the AT&T preferred plan. Simplex avers that the protection of U.S. ratepayers' interests demands that indirect pressures be brought to bear on INTELSAT to assure that in the future its construction program is more moderate and prudent. Simplex believes that to delay cable construction in the Pacific to help bail INTELSAT out of its substantial excess capacity problem can only have the effect of encouraging INTELSAT's continued overly optimistic construction plans. Thus, a U.S. decision to implement a new fiber optic system by 1988 would send a clear signal that INTELSAT must become more cost and demand conscious in its construction plans.

55. NTIA also proposed that we initiate consideration of a new loading methodology which would be characterized by greater reliance on market forces. It stated that such a policy would promote both cable and satellite technologies, increase intermodal competition and encourage the efficient provision of international telecommunications services. Under the broad NTIA approach, which would apply only to incremental or growth traffic, the facilities which are shown to be the most cost effective on a per circuit basis would receive a proportionally greater share of the traffic. Calculations would be made periodically and traffic would be allocated between the two mediums accordingly.

V. Discussion

56. We shall evaluate the alternative plans in terms of the traditional five criteria discussed above and used by the parties in their evaluation of the plans. We shall also assess these plans in terms of other factors such as the promotion of a new technology and U.S. industrial capability, augmenting intermodal and intramodal competition, and defense and commercial considerations. We shall also address the questions raised in the comments to our NOI such as the need for a Master Plan for facilities utilization and the bifurcation of this phase of the process to include only those facilities to be utilized until 1991. We shall then issue tentative findings and request additional information from the parties. While we tentatively conclude here that a fiber optic TPC-3 as early as 1988 will be in the public interest and that this cable should reflect the Plan II-A (Mod. 4) configuration, we emphasize that this is only a tentative decision reached after weighing all the relevant factors. As the following discussion and analysis indicates, most but not all relevant factors favor a fiber optic cable as early as 1988.

A. Forecasted Demand, Capacity and Demand Flexibility

57. Traditionally, demand forecasts drive the entire planning process and establish the parameters of viable facilities alternatives. The demand forecast determines the capacity needed and the time period in which facilities that provide that capacity must be introduced into the region. It appears from the filings of the parties that total capacity exceeds demand without a TPC-3 cable through the use of existing cables and already procured satellites at least until 1991. If we look at overall capacity for U.S./Hawaii to Pacific Basin countries, there is little question that satellites committed to the region for East-West traffic when equipped with circuit multiplication techniques can handle the projected traffic and any unanticipated increase in traffic volume without the introduction of a lightguide cable system until at least 1991. The capacity of the INTELSAT V-A primary satellite transponders used for U.S./Hawaii to Pacific Basin countries in 1989 utilizing TDMA/DSI in 8910 circuits,[32] more than enough capacity to accommodate total demand and provide for demand flexibility. If INTELSAT deploys an "extra" INTELSAT V-A satellite into the POR as a major path satellite, as it is now scheduled to do, then total capacity will increase substantially to about 17,500 circuits while demand, according to the submitted forecasts, remains constant at 7965 circuits. Even AT&T acknowledges that if all Pacific traffic were to be placed on satellites, assuming a major path satellite in 1987, including the offloading of all existing cables, satellite utilization would never exceed 36% through 1991.

58. However, the question of whether demand exists for a lightguide system in 1988 depends on how much importance is attached to overall gross capacity in the POR as opposed to replacing saturated and expired cable systems with new cable systems. TPC-1 and TPC-2 circuits providing voice service are currently saturated and several major cables in the region will reach the end of their design life during the planning period. All new growth in the region is being carried on satellite with 70% of services provided over satellite at this time. This figure will only increase over the next several years. The cable systems proposed by the USISCs will replace these saturated and expired cables in the region so that new growth could be placed on cables as well as on satellites.

59. Thus, we reach two tentative findings as to whether demand exists for a lightguide cable system. First, we tentatively find that projected gross capacity in the region without TPC-3 substantially exceeds demand at least until 1991 and provides for adequate demand flexibility. Second, we tentatively find that a dearth of cable capacity currently exists in the POR. However, since satellite and cable facilities are generally fungible, we tentatively conclude that purely on a demand analysis the TPC-3 cable could be deferred until at least 1991.

B. Introduction of a New Technology

60. One of the goals of the planning processes in general has been the promotion of new technologies, both cable and satellite.[33] The introduction of a lightguide cable system in the region in 1988 means the introduction of digital fiber optic technology with its attendant service benefits. A lightguide cable system in the POR will become an integral part of a globally interconnected digital network. With the authorization of the first transatlantic fiber optic cable in May, 1984 (TAT-8), we have begun the move toward an era of fiber optic cable systems in all regions of the world. Fiber optic cable circuits may be cheaper and can provide more and different services than the traditional analog cables. For example, a digital fiber optic system has low noise levels, low data error rates and can provide services previously provided only by satellite such as wideband data and video services.[34] By accommodating these new services, international digital capability will spur the development of domestic digital systems in all the POR countries interconnected by this lightguide system as well as in countries in other regions of the world. The development and demand for these new digital services could stimulate circuit demand beyond that projected in the traffic forecasts submitted by the USISCs. Consideration of this factor would support the introduction of a fiber optic TPC-3 cable at the earliest practical date, i.e., 1988.

C. Intermodal and Intramodal Competition

61. We believe that the lower circuit costs of a lightguide cable system relative to conventional analog systems will exert a beneficial pressure on INTELSAT to be more cost conscious in its construction plans and to continue its efforts to shape its service offerings to meet user requirements. Thus, within certain parameters which recognize existing biases in facility selection and the lead times necessary to deploy new facilities, we tentatively conclude that introduction and use of a fiber optic TPC-3 in 1988 will promote intermodal competition. To the extent that carriers prefer cables to satellite, for operational or other reasons, we tentatively conclude that a fiber optic TPC-3 will also promote intramodal competition. That is, carriers employing cable technology will have additional capacity over which they may provide competing services.

D. Service Quality

62. We tentatively find that the plans submitted by the USISCs for a 1988 fiber optic cable are more advantageous from a service reliability standpoint than Comsat's plans to defer the cables until 1991. Furthermore, we believe that the USISC preferred plan (Plan II-A (Mod. 4)) is more advantageous from a service reliability standpoint than the USISC Plan III Modified. This is particularly true with respect to its restoration capabilities. Our tentative findings on these issues are discussed in detail below.

63. *Path Diversity.* Path diversity is obtained through the use of a number of independent routes to carry traffic to a given correspondent. Path diversity is closely related to the ability of a facility to restore circuits in case of a facilites failure. From an operational perspective, if any one path fails it is desirable to have additional paths available to provide routing options and prevent loss of service. At the present time there are two (primary and operational spare/major path) satellites and three cables (TPC 1 and 2 and ANZCAN) providing east-west service in the POR. While we would not characterize this arrangement as deficient, it is clear that another cable, particularly one with a ring configuration and substantial capacity, would augment path diversity. Thus, path diversity is enhanced by the USISCs proposal to introduce lightguide cables in 1988 and maximized by the construction of Plan IIA (Mod. 4).

[32] The capacity of the INTELSAT V-A satellite allocated for U.S/Hawaii to Pacific Basin countries without the utilization of circuit multiplication techniques is 4350 circuits.

[33] In Docket No. 18875, we released a Statement of Policies and Guidelines which set forth general policies in our licensing of facilities in the North Atlantic. These guidelines have also been applied to our planning processes in the Pacific and Caribbean regions. The first guideline states that "the public interest requires that we promote the continued development of both cable and satellite technologies and their most effective and timely applications to meet future requirements for international communications services." *See* Overseas Communications, 30 FCC 2d 571 (1971).

[34] *See*, Policies for Overseas Common Carriers, 84 FCC 2d 760, 766-768 (1981).

64. *Restoration.* The ability to maintain service in case of a facilities outrage is crucial to the success of any facilities plan. We are presented with two questions regarding the restoration abilities of the facilities alternatives presented. The first question is whether a fiber optic TPC–3 would enhance the restoration of existing facilities. The answer to this question is clearly "yes". A TPC–3 would be able to restore TPC–1 and TPC–2 traffic. Further, digital cables such as TPC–3 have the ability to restore satellite services, although the coverage is geographically limited. Depending on traffic flows within the region and on TPC–3, it would appear that the Plan IIA (Mod. 4) ring configuration would provide better restoration capabilities than the non-ring Plan III Modified configuration.

65. The second question relates to how a fiber optic TPC–3 would be restored. It would appear that Plan III Modified, the non-ring proposal, would be restored entirely by satellite while restoration of Plan IIA (Mod. 4) would be provided by satellite (east of the branching unit) and the TPC–3 cable or satellite (west of the branching unit). We can therefore tentatively conclude that the introduction of a fiber optic TPC–3 would enhance the restoration options available in the POR for existing facilities. We can also tentatively conclude that a ring design which permits partial self-restoration provides an additional restoration option although 100% satellite restoration of either alternative would be satisfactory. However, we shall require the USISCs in their comments to this FNPRM to present specific plans as to how TPC–3 (both plans) would be restored. We are particularly concerned whether satellite restoration via the POR Spare satellite will be employed, in part or in whole, or whether the carriers anticipate a fourth transpacific cable. In other words, will a future TPC–4 be substantially justified on restoration grounds?

66. *Media Diversity.* A dearth of cable capacity exists in the region and approximately 70% of all POR traffic including all new growth is currently routed over satellite. Under the USISC plans, these percentages would eventually be reversed so that a greater percentage of all traffic in the region would be routed over cable. While we take no position here on whether any particular cable/satellite ratio is desirable, we do believe that media diversity would be generally enhanced by the introduction of a fiber optic TPC–3. This is particularly so because, for the first time, users of high speed data and other wideband services in the POR would have the option of using cable.

67. *Loading.* Comsat and the USISCs used different loading approaches in analyzing their plans. AT&T and the other USISCs used a loading approach bilaterally negotiated with their foreign correspondents, while Comsat used a traditional balanced loading approach. In our *Report and Order* in the first phase of the process, we found a Master Plan for circuit activation proposed by AT&T and Comsat reasonable.[35] This Master Plan governs the activation of circuits from 1982–1986 and is based upon the principle of balanced loading.

68. We are now faced with deciding how to efficiently utilize facilities for the 1987–1995 period. As competition develops internationally we hope to move away from specifying any loading criteria. However, we are not yet at a point where we can totally rely on market forces to govern circuit activation decisions. Until such time that effective carrier and facility competition exists, we still must monitor circuit activation decisions to assure that both media are reasonably used. We also believe that the carriers who invest in this cable system have the right to know under what criteria it will be loaded, if any. The same holds true for those who will plan and invest in the next INTELSAT series of satellites. For this reason, we support the notion of a Master Plan as a useful means of arraying projected circuit requirements. A Master Plan also assists us in monitoring the international market in facilities planning and in considering section 214 applications.

69. In considering what loading criteria shall be used in the POR, we note that several options exist. Balanced loading could be continued. Loading could be left up to the USISCs and their foreign correspondents. A phased-in plan, moving away from balanced loading, with yearly or planning period caps could also be developed.[36] Since the parties analyzed their plans using different loading approaches, we will require the USISCs to submit more detailed information regarding their loading preferences. We would also like the parties to submit other loading options for our consideration.[37] We also request that the parties submit a master plan with each loading option for our consideration. Finally, we specifically request interested parties to comment on NTIA's broad proposal. This proposal attempts to simulate a market free from existing facility biases and to eventually lessen the need for government involvement in facilities planning. To this extent we find it to be a useful proposal. On the other hand, this proposal may require continued Commission involvement in loading activities as the arbiter of formula-cost disagreements and may not be well received by our carriers' foreign correspondents.[38] We shall reach no tentative conclusion on loading, although we shall require the carriers to submit forecasts and AT&T to submit distribution for the two major facility options for both 1988 and 1991.[39] However, we will look favorably on those options which move away from a rigid methodology and rely on market forces while recognizing the existing realities of the market place.[40]

E. Cost Analysis

70. The number of different cost estimates supplied by AT&T and Comsat, and the range over which these estimates vary, reflect unresolved methodology controversies concerning the appropriate way to measure cost. In addition, comments filed on behalf of the State of Hawaii suggest use of yet another method for comparing the costs of the alternative plans.

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[35] Although we found this plan reasonable, we did not authorize a specfic Master Plan because we believed it would frustrate our decision to rely upon the carriers and market forces to efficiently activate circuits.

[36] *See* Joint submission of AT&T and Comsat to the North Atlantic Consultative Working Group meeting, CC Docket 79–184, January, 1985.

[37] We are currently involved in an investigation of future loading policies in the North Atlantic. Parties have submitted a series of loading options in that docket for our consideration. *See* CC Docket 79–184.

[38] We note NTIA's general proposal was not particularly favored by European administrations at the recent North Atlantic Consultative Working Group meeting in Orlando, Florida, in January, 1985.

[39] Carriers should analyze the circuit methodologies they submit in terms of: (a) their cost to users; (b) effect on service quality; (c) the predictability of circuit distribution in the event actual circuit demand varies from the level forecast; and (d) the cost to users and the effect on service quality in the event actual circuit demand varies from the level forecast. The results of the analyses of their preferred distribution methodology should be compared with that for the balanced loading circuit distribution they submit.

[40] While we have not yet received these options, we would anticipate continuing the existing exemption from any methodology for providers of record services and extending this exemption to new entrants as well as IMTS providers other than AT&T. Thus, any methodology might apply only to AT&T's provision of IMTS. New entrants and IMTS providers other than AT&T use relatively few circuits and total flexibility would facilitate their economic provision of service. As to record service providers, we note that the vast majority of their circuits are used for private line service (a service where users generally select the medium), several carriers now compete for customers, and, again relatively few circuits are involved. Thus, it is arguable that market forces already determine loading for these services and carriers.

71. One of the major differences in approach is the method used to measure the cost of satellite facilites to be incorporated in the plans. AT&T uses two methods to estimate satellite costs: a use related approach, which estimates annual Comsat lease (tariff) rate charges for the use of international satellite circuits; and an investment related method, which allocates a portion of the total investment and operating cost for satellite facilities to the Pacific region plans.

72. Comsat's cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. Comsat defines as new satellite facilities only those satellites for which INTELSAT has not made a final investment commitment. The costs associated with all other satellites are treated as sunk costs and not included in Comsat's cost analysis.

73. None of these methodologies accurately reflects costs. First, Comsat views the INTELSAT VI satellites being the first satellites projected for use in the Pacific Ocean region for which INTELSAT has not made a final investment decision and thus the only satellite the cost of which would be computed into its costing equation. However, other satellites (INTELSAT V and VA) will be used in the region. Second, AT&T's investment based cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. In so doing, AT&T accounts for the fact that Comsat's investment in INTELSAT satellites varies with use by including an allocated portion of the investment and operating costs for all INTELSAT satellites used in the Pacific Ocean region during the planning period. While including all satellites used in the POR during the planning period may be appropriate, AT&T allocates Comsat's share of the costs of these facilities according to Comsat's regional use. This results in a higher figure than if just Comsat's overall percentage of ownership in the INTELSAT system is used.

74. Third, AT&T's use related cost analysis also uses the investment and operating costs of new cable facilities to compare cost of the alternative plans. However, AT&T uses its projections of Comsat's future tariff charges to the U.S. carriers for lease of satellite circuits as the measure of satellite costs for the plans. Use of projected Comsat tariff charges is based on the fact that it is these costs which carriers must pay for service. This method has a fundamental inconsistency in that it compares investment and operating costs for new cable facilities (which does not include return on investment or taxes for cable facilities) with Comsat's tariff rates (which does include return on investment and taxes). Thus, AT&T's approach may make satellite use appear more costly in relation to cable use. Fourth, neither AT&T nor Comsat has attempted to take into consideration the costs of terrestrial hauls or transiting facilities.[41]

75. The State of Hawaii asserts that cost comparisons of the alternative plans should be based on revenue requirements at a stated rate of return for both cables and satellite facilities. Such cost comparisons would include revenue requirements for both existing and new facilities. Under this analysis, the most important factors are facility costs and forecasted demand and facility would not be constructed (and a revenue requirement not increased) unless a proposed facility was required to meet demand requirements.

76. There is no question that TPC–3 is an expensive facility and that deferral would delay an increase to AT&T's rate base. Comsat calculates that a three year deferral would save ratepayers $120 million while the USISC costs estimates show a savings of $33 million for a similar deferral. Because there is no agreement as to a costing methodology, and because we have never prescribed a particular methodology, we can each no tentative conclusion as to exactly how much ratepayers would save by a deferral of TPC–3. In this regard, the State of Hawaii's approach has a certain appeal: forget past investments as simply sunk and look only to revenue requirements which ratepayers must support. Using any approach, however, we can tentatively conclude that deferral would delay an increase in the overall (Comsat plus AT&T) rate base that users must support. Thus, deferral would, under a rate base regulation approach, lead to lower international rates for users. Of course, the savings of any deferral would partially be offset by the continued ownership expenses of several hundred circuits in the ANZCAN North cable between Hawaii and Canada.[42] We estimate these expenses to approximately $11 million dollars per year. Additionally, the savings of any deferral would be partially offset by transiting fees paid by foreign administrations employing the domestic facilities of U.S. carriers to carry traffic to or from TPC-3.

F. Technological Risk

77. The plans proposed by the USISCs and Comsat both introduce a new technology into the region. The USISC plans provide for the introduction of a lightguide cable system in 1988 and an INTELSAT VI series satellite in 1991. Comsat's plans provide for both these new systems to be introduced in 1991. The question that we must consider is whether the introduction of these new technologies in the region presents a risk to continuation of service if the technology is not available when required or if the technology will not perform as specified.

78. We believe, based on the record before us, that service to the customer will not be interrupted regardless of the plan chosen because of the amount of existing satellite capacity present in all of the proposed plans. The satellite capacity to be deployed beginning in 1986 can provide service in the region even if the lightguide cable system were delayed for more than three years or if the system did not perform as expected. The INTELSAT VI satellite planned for introduction in the POR in the early 1990's will be introduced in other regions of the world at earlier dates so that any problems associated with the new technologies it offers should be ironed out before its introduction in the POR. On the other hand, a delay in the TPC–3 would enable the owners to gain what could be valuable experience from TAT–8's introduction in 1988. Additionally, as frequently occurs with a new technology, a delay could result in a lower price to carriers and a lower revenue requirement to users. Thus, while we tentatively find that none of the proposed plans poses a technological risk to the continuation of service, we note that deferral of TPC–3 does have some potential benefits.

G. Correspondent Acceptance

79. International comity is a factor which should and must be taken into account when assessing facility plans submitted in the planning process. Although international comity must be balanced against our public interest mandate, it would be short-sighted to view U.S. participation in any cable

[41] AT&T indicates that it did not include taxes or the effects of inflation in its projection of future Comsat tariff charges. Additionally, Comsat's recent unbundling of its tariff and estimates on cost overruns for both cables and satellites would also impact a cost comparison.

[42] Traditionally, investments are placed in a carrier's ratebase pursuant to our uniform system of accounts. In view of the relationship here between forecasted demand and cost, interested parties may wish to comment on the appropriateness of the carriers phasing their investment in TPC–3 into their ratebases over a specific period of time, perhaps two or three years.

system without taking into account the effect our decision will have on relations with international telecommunications entities in the region. Although there have been no Consultative meetings similar to the multilateral carrier/government meetings held in conjunction with North Atlantic facilities planning, it appears that various alternatives have been subjected to long and extensive analysis by both the USISCs and their foreign correspondents. A TPC-3 in 1988 as described in Plan IIA (Mod. 4) was found to be preferable by the USISCs and their foreign correspondents. It appears that our foreign correspondents are also very anxious to implement the new digital technology as soon as possible. The record before us gives no indication as to whether any support exists among our foreign correspondents for delaying the construction of the cable system until 1991. We tentatively find, therefore, that the USISC Plan II-A (Mod-4) is the plan preferred by our foreign correspondents and that international comity would be furthered by the construction of this cable as early as 1988.

H. Other Issues

80. *National Defense Security and Commercial Considerations.* DoD desires that for defense and security considerations, a fiber optic cable system routed through Guam be constructed in 1988. NTIA emphasizes both national security and commercial reasons for constructing such a system in 1988. Although not reason alone to support a particular facilities alternative, we must give national security considerations weight in arriving at a facilities plan.[43] Thus, from the perspective of DoD and NTIA, the USISC Plan II-A (Mod. 4) which is routed through Guam is the preferred alternative. However, we must note that a Guam landing point necessitates the expenditure of approximately 67 million additional dollars. In view of the small number of circuits that DoD requires to Guam, we must inquire as to whether it is appropriate for the general ratepayer to subsidize service to Guam.[44] Parties are asked to comment on whether construction of the Guam route will result in an unnecessary burden on ratepayers and, if so, whether the burden is justified by national security considerations. Parties may also wish to comment on whether a special rate designed to recover the cost of the Guam route should be imposed as a condition on the cable authorization.

81. *Further Bifurcation of the Process.* In their comments and reply comments to the NOI, Comsat, GTE and ITT proposed that we should only consider facilities that are to be deployed from 1987-1991. However, these parties state that forecasts should be submitted through 1995. The parties believe that insufficient information exists to recommend facilities beyond 1991. AT&T believes that the record is sufficient for this proceeding to cover facilities through 1995. We find that the plans and traffic forecasts submitted by the parties are comprehensive and give us sufficient information to recommend facilities alternatives for the entire planning period. Thus, we tentatively conclude that Phase II of the process shall include facilities to be deployed for the 1987-1995 time period and that the facilities discussed herein, the INTELSAT V, V-A and VI satellites and a fiber optic TPC-3, are the appropriate facilities for the POR for the 1987-1995 time period.

82. *U.S. Industrial Capability.* NTIA espouses the view that if the cable plan is implemented in 1988, U.S. firms would be in an excellent position to construct at least 50% of the TPC-3 cable and construct a large share of the other cables extending the system to Far East points. Delay, according to NTIA, could compromise the lead of the U.S. in the international telecommunications industry. NTIA's point is a valid one to the extent that portions of the cable system would be put out for bids. However, to the extent that the construction of the cable system is a negotiated arrangement between U.S. firms and their foreign correspondents, this view would not be entirely correct.

83. The recently initialed draft Construction and Maintenance Agreement reflects a negotiated construction agreement. Pursuant to this draft agreement, U.S. companies will construct the HAW-4 cable (2246 miles) as well as the portion of TPC-3 from Hawaii to the branching unit (2869 miles). Japan, through KDD, will construct the branching unit as well as branches to Guam (833 miles) and Japan (1201 miles). The remaining cables in the TPC-3 system have not yet been procured. The total length of the cable system contracted for is therefore 7149 miles, of which 5115 miles (71.5%) will be constructed by U.S. companies. The construction contract is allocated by approximately the same percentages: 72.5% ($430 million of $593 million total) allocated to U.S. firms and 29.5% ($163 million) allocated to KDD. These percentages are comparable to those derived for TAT-8 and do substantially exceed 50%. Although we cannot predict what a negotiated contract would look like if TPC-3 were to be delayed, we tentatively conclude that the present arrangement is of considerable value and importance to U.S. manufacturers.

VI. Summary and Tentative Conclusions

84. Although overall gross capacity exceeds demand in the POR without the introduction of a lightguide cable system at least until 1991, and although any TPC is an expensive undertaking, there are several countervailing considerations favoring introduction of a cable system in 1988. First, although excess satellite capacity exists throughout the time period, cable circuits providing voice service to all major markets with the exception of U.S.-Australia, New Zealand and Fiji are currently saturated. Second, the introduction of a lightguide cable system in the region in 1988 means the introduction of digital fiber optic technology with its attendant service benefits. Fiber optic cable circuits can provide services that could previously be provided only over satellite. Third, sevice quality, correspondent acceptance, U.S. industrial interests, the promotion of intermodal and intramodal competition, and national security considerations all argue for a 1988 fiber optic TPC-3. Further, the factors of service quality, correspondent acceptance and national security argue for Plan IIA (Mod. 4) and appear to outweigh the lower cost of Plan III Modified. For these reasons we tentatively conclude that a lightguide cable system should be constructed in 1988 and should reflect the configuration found in Plan IIA (Mod. 4).

85. We request interested parties to comment on our various tentative conclusions and the alternative considered by us in reaching these tentative conclusions. We also request interested parties to provide the additional information requested herein and any other data or views which they deem useful to our deliberations.

86. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication

[43] *See* National Security Decision Directive 97, National Security Telecommunications Policy.

[44] See Communications Satellite Corporation, 80 FCC 2d 170, 180 (1980), and 97 FCC 2d 82 (1984).

(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 parte* presentation addressing matters not fully covered in any previously-file 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 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, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

VI. Ordering Clauses

87. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1970), and pursuant to section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1970), that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Pacific Ocean region during the 1987–1995 period is hereby instituted.

88. It is further ordered that:

A. Updated country-by-country traffic forecasts for the Pacific Ocean Region for the period 1987–1995 shall be filed by all carriers on April 12, 1985;

B. AT&T shall file four circuit distributions based on the balanced loading methodology and on the circuit distributions negotiated with its correspondents for Plan II–A (Mod. 4) and Plan III Modified on April 22, 1985 assuming Plan II–A (Mod. 4) and Plan III Modified in 1988 as well as in 1991;

C. Any other interested party may file proposed circuit distributions for Plan II–A (Mod. 4) and Plan III Modified on April 22, 1985;

D. Interested persons may file analyses of the submitted circuit distributions and comments on the tentative conclusions reached herein on May 6, 1985; and

E. Reply Comments shall be filed on May 17, 1985.

In reaching its decisions, 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.

89. It is hereby certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that section 603 and 604 of that Act do not apply to this rulemaking since the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary economic impact of these rules, if promulgated, will be on the U.S. international carriers and the Communications Satellite Corporation.

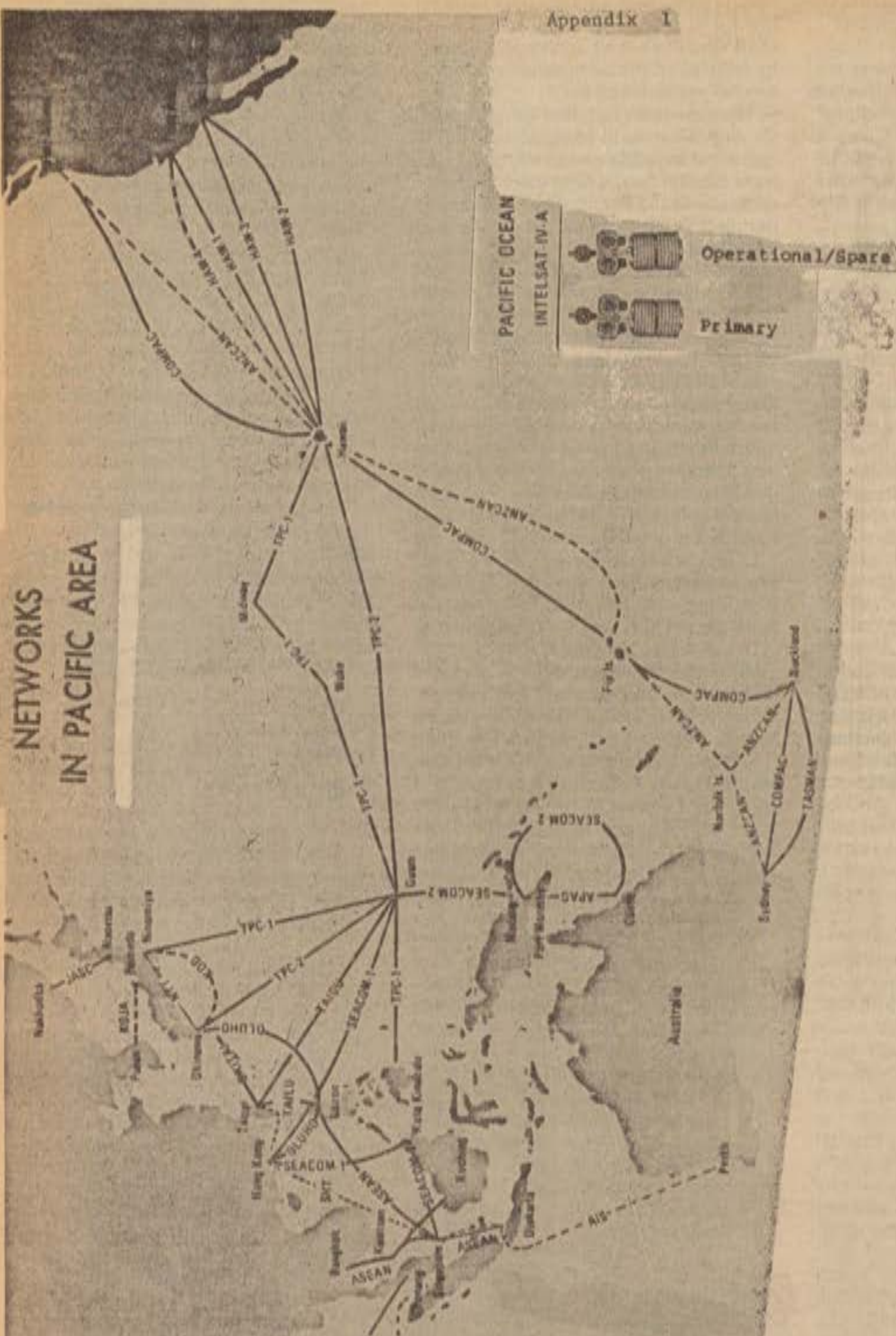
90. It is further ordered that the Secretary shall provide a copy of the above certification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the **Federal Register.**

Federal Communications Commission.

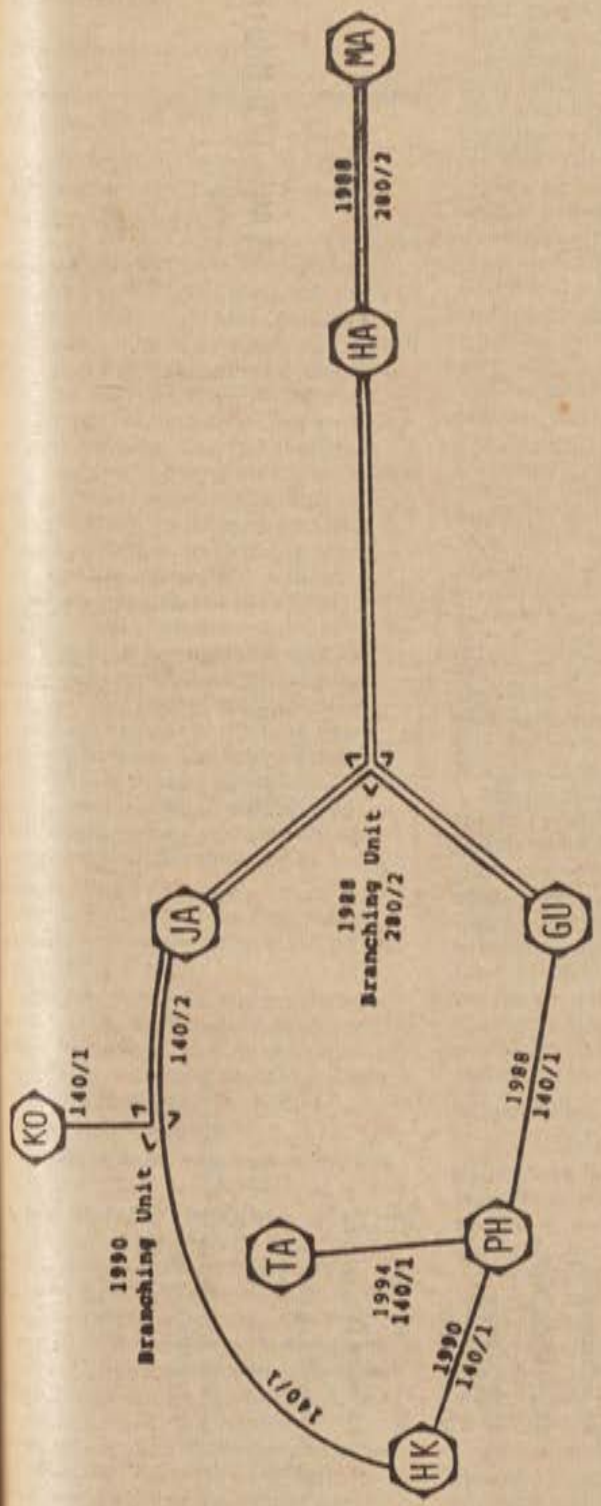
William J. Tricarico,

Secretary.

BILLING CODE 6712-01-M


Appendix I
NETWORKS
IN PACIFIC AREA
PACIFIC OCEAN
INTELSAT-IV-A
Operational/Spare
Primary
INDIAN OCEAN
ANZCAN
COMPAC
TPC-1
TPC-2
SEACOM 1
SEACOM 2
TASMAN
ASEAN
APAC
AIS

Appendix 2

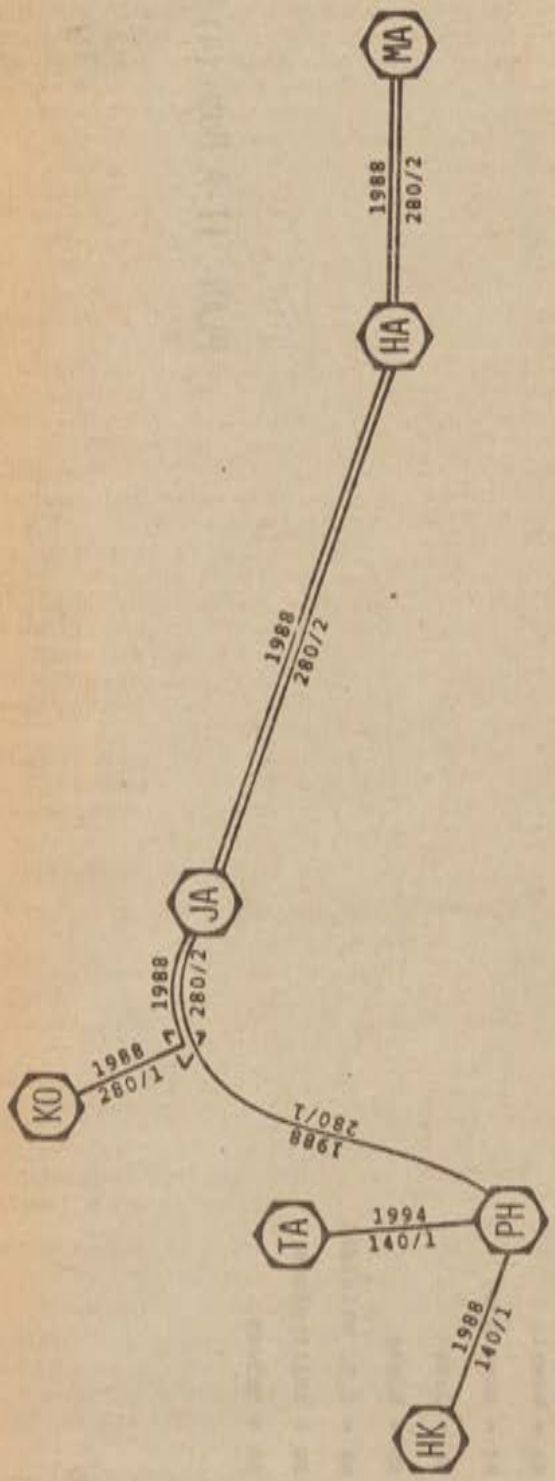


LEGEND

GU - Guam
HA - Hawaii
HK - Hong Kong
JA - Japan
KO - Korea
MA - U.S. Mainland
PH - Philippines
TA - Taiwan

PLAN II-A MOD (4)

Appendix 3



PLAN III MODIFIED

LEGEND

HA = Hawaii

HK = Hong Kong

JA = Japan

KO = Korea

MA = U.S. Mainland

PH = Philippines

TA = Taiwan

[FR Doc. 85-8076 Filed 4-4-85; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 50330-5030]

Snapper-Grouper Fishery of the South Atlantic

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

ACTION: Proposed rule.

SUMMARY: The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) contains a management measure requiring that fish traps and fish trap buoys be identified with the boat or vessel fishing them. Regulations to implement this provision of the FMP were reserved pending development of the identification system by NMFS and approval by the South Atlantic Fishery Management Council. The identification system has been developed and approved, and this regulation is proposed to implement it. This rule also includes requirements for fish trap buoy lines used in specific areas and identifies materials which must be used in the construction of degradable panels or door fastening devices on traps. The intent of this regulation is to enhance enforcement of measures designed to prevent trap poaching and theft, and provide for escapement of fish from lost or abandoned traps.

DATE: Comments on the FMP and proposed rule must be received on or before May 3, 1985.

ADDRESS: Comments and requests for copies of the FMP and the supplemental regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was approved on July 28, 1983, under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The FMP contains a provision for identifying traps and trap buoys with the boat or vessel fishing the traps except for black sea bass traps. Final regulations implementing the FMP were published on August 31, 1983 (48 FR 39466); however, §646.5 of the regulations pertaining to gear identification was reserved pending development of the identification system. NMFS has now developed and the Council has approved the gear and vessel identification system.

Implementation of this identification system is necessary to deter trap poaching and theft, and to enhance enforcement of fish trap measures. Serious theft problems have been experienced in other trap fisheries, e.g., spiny lobster, where traps are left unattended, but gear marking systems have proven beneficial in minimizing the problem. The proposed system would require all owners or operators of vessels fishing snapper-grouper fish traps in the fishery conservation zone to apply to the Regional Director for a vessel and gear identification number and color code. The Regional Director will issue numbered tags which must be permanently attached to each fish trap. The corresponding number must be permanently displayed on the vessels fishing those traps. Use of buoys to mark traps is not required. However, if buoys are used, they must display the number and color code assigned by the Regional Director. Since traps are not left unattended when fishing black sea bass, poaching and theft problems do not occur in this sector of the fishery, therefore, the Council has determined that the trap fishery for black sea bass should be excluded from the vessel and gear requirements. A definition for this trap fishery is included to differentiate this gear from other fish traps.

The proposed rule specifies materials for the construction of degradable panels or door fastening devices on fish traps as required at §646.22. This specification aids enforcement of the degradable panel requirements and assures compliance with the intent of the Council that fish will be able to escape from lost or abandoned traps. Line limitations for trap buoys used in a particular area are also included to aid enforcement.

Classification

The Assistant Administrator has determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) that rules to implement the FMP are not major under Executive Order 12291 (see 48 FR 39466, August 31, 1983). The RIR/RFA was summarized in the preamble to the final rules for the FMP (see 48 FR 39466). A supplemental regulatory impact review for this proposed rule was prepared, and it indicated that the anticipated benefits exceed the compliance cost to the public.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed rule simply adds gear and vessel identification, and gear construction requirements resulting in minimal economic impacts. Cost to fishermen for color coding and numbering buoys and vessels is not expected to exceed $10.00 per vessel. The cost of requiring degradable materials for fish traps is estimated to be approximately $0.65 per trap per year. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

It was determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 646

Fish, Fisheries, Fishing.

Dated: April 3, 1985.

Carmen J. Blondin,

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

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 reads as follows:

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

2. In Part 646, the Table of Contents is amended by revising the heading for § 646.5 from "Gear identification [Reserved]" to read as follows: "Vessel and gear identification."

3. In § 646.2 the definitions of "Black sea bass trap" and "Official number" are added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Black sea bass trap means a fish trap that harvests or contains at any time no more than 25 percent by number of fishes in the management unit other than black sea bass.

* * * * *

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

* * * * *

4. A new § 646.5 is added to read as follows:

§ 646.5 Vessel and gear identification.

(a) *Applicability.* Fishing vessels from which fish traps, other than black sea bass traps, are deployed in the FCZ are required to obtain a vessel and gear identification number and color code from the Regional Director.

(b) *Application.* (1) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. Fishermen who have an existing number and color code from another fishery may indicate on the application their preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single digit prefix to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(2) Applicants must provide all of the following information:

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing gross tonnage, radio call sign, and length of the vessel.

(v) Engine horsepower and year the vessel was built;

(vi) Number dimensions and estimated cubic volume of the fish traps that will be fished

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(viii) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in this paragraph must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(d) *Display.* Vessels from which fish traps, other than black sea bass traps, are fished, fish traps and buoys must display the identification number and color code designated by the Regional Director.

(1) *Vessels.* Vessels must permanently and conspicuously display the identification number and color code designated by the Regional Director under paragraph (c) of this section in a manner as to be readily identifiable from the air and water.

(i) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches in diameter, and the area surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches in height and must be affixed adjacent to the 20-inch diameter circle.

(ii) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidship. The color code must be in the form of a circle at least 8 inches in diameter, and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches in height and must be affixed adjacent to the 8-inch diameter circle.

(2) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(3) *Buoys.* The use of buoys to identify fish traps is not required. If buoys are used, they must display the identification number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches in height and affixed to each buoy

(e) Fish traps fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(f) Unmarked fish traps deployed in the FCZ, other than black sea bass traps, are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked trap can be ascertained, those owners remain subject to appropriate civil penalties.

5. In § 646.6, paragraphs (b) through (i) and (j) through (p) are redesignated as (c) through (j), and (l) through (r), respectively, and new paragraphs (b) and (k) are added to read as follows:

§ 646.6 Prohibitions

* * * * *

(b) Fish with fish traps, except black sea bass traps, without an assigned vessel and gear identification number and color code, as specified in § 646.5; possess aboard a fishing vessel unmarked fish traps or buoys, except black sea bass traps; or falsify or fail to affix and maintain vessel or gear markings as required by § 646.5;

* * * * *

(k) Possess fish traps shoreward of the outer boundary of the FCZ and south of 25°35.5'N. latitude (Fowey Rocks Light, Florida) except as specified in § 646.22(b)(5);

* * * * *

6. In § 646.22 paragraph (b)(1) is revised and a new paragraph (b)(5) is added to read as follows:

§ 646.22 Gear limitations.

* * * * *

(b)(1) Fish traps are required to have panels or door-hinging devices or door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, time float releases (pop-up devices), or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(iv) The diameter of the panel opening must be at least equal to or larger than the interior axis of the trap's throat (funnel).

* * * * *

(5) Buoy lines attached to fish traps possessed or fished shoreward of the outer boundary of the FCZ and south of 25°35.5'N. latitude must be a minimum of 125 feet in length.

* * * * *

[FR Doc. 85-8351 Filed 4-3-85; 3:57 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 66
Friday, April 5, 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

Federal Grain Inspection Service

Voluntary Cancellation; Interim Assignment of Designation to Denver Grain Exchange Association, and Request for Designation Applicants (CO)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Denver Grain Exchange Association is voluntarily cancelling its designation effective April 1, 1985. A new corporation with the same name will be incorporated and will request that a designation be granted to that agency. That agency will provide official inspection services on an interim basis in the geographic area specified below, from April 1, 1985, until a final decision is made in this matter. This notice also requests designation applicants.

DATE: Applications to be postmarked on or before May 6, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The November 1, 1984, issue of the **Federal Register** (49 FR 43980) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Denver Grain Exchange Association's (Exchange) designation terminates on April 30, 1985, and requesting applications for designation as the agency to provide official services within its specified geographic area. Applications were to be postmarked by December 3, 1984; the Exchange was the only applicant for designation.

FGIS announced that the Exchange had applied for designation renewal and requested comments on same in the January 1, 1985, issue of the **Federal Register** (50 FR 135). Comments were to be postmarked by February 19, 1985; one favorable comment was received.

The Exchange subsequently notified us that it will not seek a designation renewal and requested voluntary cancellation of its designation effective April 1, 1985. The Exchange's designation will be cancelled effective April 1, 1985. William Hutchings, Manager and Chief Inspector of the Exchange, will form a new corporation with the same name, Denver Grain Exchange Association (Denver), and has requested that a designation be granted to that agency. Denver will purchase the Exchange's assets and will provide official inspection services on an interim basis, in the geographic area specified below, from April 1, 1985, until a final decision is made in this matter.

The Administrator of the Federal Grain Inspection Service (FGIS) has determined that interim assignment of this geographic area to Denver is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this action will facilitate providing official inspection services in the specified geographic area.

Section 7(F)(1) of the Act (7 U.S.C. 71 *et seq.*) specifies that the FGIS Administrator is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in Colorado, Nebraska, and Wyoming, to be provided service by Denver, on an interim basis, and which is available to the applicant selected for the new designation is as follows:

In Colorado, the entire State.

In Nebraska, the area shall be:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

In Wyoming, Goshen and Platte Counties.

The following locations, outside of the foregoing contiguous geographic area will be serviced by Denver and are part of this geographic area assignment: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs; all in Laramie County, Wyoming.

Exceptions to the described geographic area are the following locations situated inside Denver's area which have been and will continue to be serviced by Hastings Grain Inspection, Inc.: Farmers Coop and Dayton Dorn Grain Company, Big Springs, Deuel County, Nebraska.

Interested parties, including Denver, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning October 1, 1985, and ending August 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in the specified geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 29, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-8058 Filed 4-4-85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk; Income Eligibility Guidelines

Correction

In FR Doc 85-7328 beginning on page 12351, in the issue of Thursday, March 28, 1985, make the following corrections:

1. On page 12352, in the table, under the heading "48 Contiguous United States, District of Columbia, Guam and Territories", ninth column, the sixth line now reading "1,197" should read "2,197". The eighth line now reading "2,725" should read "2,752", in the tenth column, the sixth line now reading "506" should read "507".

2. Under the heading "Alaska" ninth column, the fifth line now reading "2,339" should read "2,399".

BILLING CODE 1505-01-M

CIVIL RIGHTS COMMISSION

Florida Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon on April 26, 1985, at the Biscayne Marriott Hotel, 1633 North Bayshore Drive, the Hibiscus Room, Miami, Florida. The purpose of the meeting is to orientate the newly rechartered committee and to plan SAC projects for 1985-86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Porter, or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8187 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m. on April 26, 1985, at the Tapadera Motor Inn, 1325 Main Street, Lewiston, Idaho. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Rudy Pena or Susan McDuffie in the Northwestern Regional Office (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8188 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convenue at 8:00 p.m. and will end at 9:30 p.m., on May 20, 1985 and on May 21, 1985, at 9:00 a.m. and will end at 6:00 p.m. at the Hyatt Regency Lexington, 400 West Vine Street, Lexington, Kentucky. The purpose of the meeting is to conduct a SAC briefing session for a housing forum and to hold a public housing forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Oberst or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8189 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:30 p.m. and will end at 4:00 p.m. on April 26, 1985, at the William J. Green Federal Building, 600 Arch Street, Room 2428-A, Philadephia, Pennsylvania. The purpose of the meeting is to provide an orientation for new Committee members and review suggested topics for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Murray Friedman or Edward Rutledge in the Mid-Atlantic Regional Office (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8190 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 4-85]

Proposed Zone—South Bend, IN; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, a municipal corporation, to establish a general-purpose foreign-trade zone in South Bend, adjacent to the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 27, 1985. The applicant is authorized to make this proposal under Section 8-10-3-2 of the Indiana Code.

The proposed foreign-trade zone involves two sites totalling 103 acres at the Michiana Regional Airport and planned Multi-Modal Transportation Complex. Site 1 covers 7 acres at 2809 North Foundation Drive within the Airport Industrial Park. It has an existing warehouse and space available for additional structures. The facility is owned by Material Trans Action, Inc., the proposed zone operator. Site 2 is a

95-acre parcel of airport property which is available for future zone development.

The application contains evidence of the need for zone services in the South Bend area. A number of firms have indicated an interest in using zone procedures for warehouse/distribution and manipulation of products such as auto components and parts, jet engine castings, hardware, plumbing supplies, valves, computer printers, temperature controls and electronic products. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

As part of its investigation, the examiners committee will hold a public hearing on May 1, 1985, beginning at 10:00 a.m., in the St. Joseph County Airport Authority Hearing Room, 2nd Floor, Michiana Regional Airport, 4535 Terminal Drive, South Bend.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by April 25, 1985. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 31, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

St. Joseph County Airport Authority Offices, Michiana Regional Airport, 4535 Terminal Drive, 2nd Floor, South Bend, IN 46628

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: April 1, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-8196 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 26, 1985, 12:00 p.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advise the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Chairman's report on 1565 definitions.
4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Licensing Procedures,
   c. Software, and
   d. Hardware.
5. New Business.
6. Action items underway.
7. Action items due at next meeting.

The General Session of the meeting will be open to the public and a limited number of seats will be available. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85-8220 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DT-M

Closed Joint Meeting of the Computer Systems Technical Advisory Committee, Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee, Electronic Instrumentation Technical Advisory Committee, and Automated Manufacturing Equipment Technical Advisory Committee

A joint meeting of the Electronic Instrumentation Technical Advisory Committee, the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; the Automated Manufacturing Equipment Technical Advisory Committe and the Computer Systems Technical Advisory Committee will be held April 25, 1985, 3:00 p.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington, D.C. The Committees advise the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to electronic instrumentation, computer systems, computer peripherals components and related test equipment, automated manufacturing equipment or technology.

The Committees will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

Copies of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85-8221 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DT-M

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held April 26, 1985, 10:00 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington , D.C. The Foreign Availability Subcommittee was formed

to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentaiton of papers or comments by the public.
4. Discussion of the proposed foreign availability regulations.
5. Discussion of the 1985 annual plan.
6. New Business.
7. Action items underway.
8. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting

For further information or copies of the minutes contact Margaret A. Cornejo, 202-377-2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-8219 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-409]

12-Hydroxystearic Acid From Brazil; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving 12-hydroxysteanic acid from Brazil is being postponed until not later than July 25, 1985.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of an antidumping investigation to determine whether 12-hydroxystearic acid from Brazil is being, or is likely to be, sold in the United States at less than fair value (49 FR 47076). The notice stated that we would issue a preliminary determination by May 9, 1985. The notice should have stated that we would issue a preliminary determination by June 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of 12-hydroxystearic acid are being, or are likely to be, sold in the United States at less than fair value.

On March 13, 1985, counsel for petitioner, Union Camp, requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than July 25, 1985.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

April 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-8215 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-410]

Hydrogenated Castor Oil From Brazil; Postponement Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving hydrogenated castor oil from Brazil is being postponed until not later than July 25, 1985.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1776.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of an antidumping investigation to determine whether hydrogenated castor oil from Brazil is being, or is likely to be, sold in the United States at less than fair value. The notice stated that we would issue a preliminary determination by May 9, 1985. The notice should have stated that we would issue a preliminary determination by June 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of hydrogenated castor oil are being, or are likely to be, sold in the United States at less than fair value.

On March 13, 1985, counsel for petitioner, Union Camp, requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than July 25, 1985.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

April 1, 1985

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-8216 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DS-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held April 25, 1985, 1:30 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. The Software subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of new Commodity Control List item 1566, software.
5. Establishment of tasks and issues to be addressed.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202-377-2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-8218 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 25, 1985, 9:00 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. The Hardware Subcommittee was formed to focus on manufacturing and performance characteristics of main frames and other computer hardware.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Plans to develop a new measure of computer horsepower.
4. Discussion of possible decontrol of lower-end technology items.
5. Discussion of compressed critical technical data list for 1565.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statement may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202-377-2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-8217 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Ocean and Atmosphere; Meeting Change

April 2, 1985.

Changes have been made to the agenda for the April 17-18, 1985 National Advisory Committee on Oceans and Atmosphere (NACOA) meeting published Monday, April 1, 1985 (50 FR 12844-12845). The revised tenative agenda is as follows:

Wednesday, April 17, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC

9:00 a.m.-10:30 a.m. PLENARY
Room 416
- Introductory Remarks
- Guest Speaker: Congressman Mike Lowry

10:30 a.m.-12:30 p.m. PANEL MEETING
- Federal/State Relationship, Chairman: John Norton Moore, Room 416

Topic: Work Session on CZMA, Reauthorization/Consistency
Speakers: None

12:30 p.m.-1:30 p.m. LUNCH

1:30 p.m.-4:00 p.m. PANEL MEETINGS
- Exclusive Economic Zone, Chairman: Lee Gerhard, Room 416

Topic: Elements of a National Plan
Speakers:
Harris B. Stewart, Jr., Professor of Marine Studies, Director, Center of Marine Studies, Old Dominion University
George Zahn, President, Deep Sea Ventures, Inc.
Juan Carlos Torres, President, Sea Pharm
- Atomospheric Affairs, Chairman: S. Fred Singer, Room B-100

Topic: Acid Rain
Speakers: TBA

4:00 p.m.-5:00 p.m. PLENARY
- Federal/State Relationships
Topic: CZMA Reauthorization/Consistency

5:00 p.m. RECESS

Thursday, April 18, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

8:30 a.m.-10:00 a.m. PLENARY
Room 416
- Shipbuilding Presentation by Panel Chairman

10:30 a.m.-12:30 p.m. PLENARY
Intelligence Commission Headquarters, 1724 F Street, NW., Washington, DC
- Closed Session, Presentation by the Department of Defense on Data Protection

12:30 p.m.-1:30 p.m. LUNCH
2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

2:00 p.m.-4:00 p.m. PLENARY
Room 416
- Panel Reports
- Other Business

4:00 p.m. ADJOURN

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653-7818.

Dated: April 2, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-8166 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Request for Verification of Birth

Title 10, section 505, US Code restricts enlistment into the US Armed Services, to able bodied persons not less than 17 years of age and not more than 35 years of age. If an applicant is unable to provide a birth certificate the "Verification of Birth" form is dispatched to the respective bureaus of vital statistics. This occurs for approximately 1 of every 2 applicants for enlistment into the US Armed Services.

State and local governments
Responses: 265,000
Burden hours: 22,000 hours

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jeferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L (PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1985.

[FR Doc. 85-8229 Filed 4-4-85; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet in closed session April 18, 1985 in the Pentagon, Arlington, Virginia.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effect Special Operations Forces.

A meeting of the SOPAG has been scheduled for April 18, 1985 to discuss sensitive, classified topics.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1985.

[FR Doc. 85-8230 Filed 4-4-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Sensors and Signatures Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets; Meeting

March 26, 1985.

The USAF Scientific Advisory Board Sensors and Signatures Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on April 26, 1985 from 9:00 a.m. to 4:00 p.m.

The purpose of the meeting will be to receive classified briefings and hold classified discussions on ways in which existing and programmed systems may be effectively applied to attack of mobile ballistic missiles. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8250 Filed 4-4-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting; Ad Hoc Subgroup on Nondevelopmental C³I Items

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday and Friday, April 25, 26, 1985.

Times of meeting: 0830-1700 hours on both days (Closed).

Place: Science and Technology Associates, Inc.—Arlington, VA.

AGENDA

The Army Science Board Ad Hoc Subgroup on Nondevelopmental C³I Items will meet in an Executive Session for finalizing the draft report. The study purpose is to effect an increase in "off the shelf" equipment purchases for the Army. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-8227 Filed 4-4-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting; Functional Subgroup on Planning, Concepts and Management Support

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday and Thursday, April 24 and 25, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: The Pentagon, Washington, D.C.

Agenda

The Army Science Board Functional Subgroup on Planning, Concepts, and Management Support will meet for classified briefings and discussions on the functional responsibilities and programs of the Army Corps of Engineers and the Office of the Surgeon General. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8225 Filed 4–4–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting; Ad Hoc Subgroup on U.S. Army Training and Doctrine Command Operations Research Activity

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday and Thursday, April 24 and 25, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: Fort Leavenworth, Kansas.

Agenda

The Army Science Board Ad Hoc Subgroup on U.S. Army TRADOC (U.S. Army Training and Doctrine Command) Operations Research Activity (TORA) will meet for classified briefings and discussions with the Commander of the Combined Arms Operations Research Activity (CAORA) and TRADOC center commanders. Also, CAORA study efforts will be examined in depth. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8226 Filed 4–4–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting; Functional Subgroup on Weapons Systems

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday and Wednesday, April 30, and May 1, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: Aberdeen Proving Ground, Maryland.

Agenda

The ASB Functional Subgroup on Weapons Systems will meet for weapons systems demonstrations, small arms member participation demonstration and briefings by Ballistic Research Lab, US Army Material Systems Analysis Activity, US Army Test and Evaluation Command, and Human Engineering Lab on subjects including smart munitions, materiel analysis, anti-armor, vulnerability, and precision aiming techniques. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8228 Filed 4–4–85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Makaha Beach Erosion Control, Makaha, Oahu, HI

AGENCY: US Army Corps of Engineers, POD Honolulu District, Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. The US Army Corps of Engineers, Honolulu District is studying the feasibility of providing beach erosion control measures for Makaha Beach, Makaha, Oahu, Hawaii.

2. The study is investigating alternative structural measures such as a revetment, groins, concrete rubble masonry seawall, reinforced concrete seawall and beach restoration. Nonstructural alternatives and measures include relocating Farrington Highway.

3. On 27 October 1983, a public meeting was held at Waianae Library to discuss the proposed action. Another meeting is planned for June 1985. Local, State and Federal agencies will be contacted as well as local interest groups and private organizations and parties. At this time, the draft EIS will address the impacts of the project on fish and wildlife resources, historic sites, water resources, recreation, cultural resources, social resources, aesthetic values and lifestyles. Coordination with the US Fish and Wildlife Service, National Marine Fisheries Service, US Environmental Protection Agency, State Department of Health, State Department of Land and Natural Resources, State Department of Planning and Economic Development, State Department of Transportation and other local agencies will be done.

4. A scoping meeting is not planned at this time.

If there are any questions regarding the draft EIS, please contract: Dr. James E. Maragos, Chief, Environmental Resources Section, US Army Engineer District, Honolulu, Building T–1, Fort Shafter, Hawaii 96858–5440, Telephone: (808) 438–2263/2264.

Michael M. Jenks,

Colonel, Corps of Engineers, District Engineers.

[FR Doc. 85–8156 Filed 4–4–85; 8:45 am]

BILLING CODE 3710-NN-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

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

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a current approved information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition and Regulatory Policy, 202-523-4799.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers recordkeeping requirements and the collection of information from architect-engineer (A-E) firms interested in a specific project, in accordance with 40 U.S.C. 541-555. The Standard Form (SF) 255 is designed to provide a uniform method of submitting information regarding experience, personnel, and capabilities of A-E firms.

b. Annual reporting burden

This is estimated as follows: Respondents, 5,000; responses, 20,000; and reporting and recordkeeping hours, 22,000.

Obtaining Copies of Proposals

Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405, telephone 202-523-4755. Please cite OMB Control No. 9000-0005.

Dated: April 1, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85-8129 Filed 4-4-85; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

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

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition and Regulatory Policy, 202-523-4799.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers recordkeeping requirements and the collection of information regarding data by which private architect-engineer firms obtain government contracts for procurement of architectural and/or engineering services. The Standard Form (SF) 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A-E) projects. The form is submitted annually as required by 40 U.S.C. 541-544 by firms wishing to be considered for government A-E contracts.

b. Annual Reporting Burden

This is estimated as follows: Respondents, 5,000; responses, 35,000; and reporting and recordkeeping hours, 35,000.

Obtaining Copies of Proposals

Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405, telephone 202-523-4755. Please cite OMB Control No. 9000-0004.

Dated: April 1, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85-8130 Filed 4-4-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and time:
Wednesday, April 24, 1985, 1:30 p.m.-5:00 p.m.
Thursday, April 25, 1985, 8:00 a.m.-5:00 p.m.
Friday, April 26, 1985, 8:00 a.m.-2:00 p.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue, NW, Washington, DC 20001.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202-252-8292.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative Agenda

Wednesday, April 24, 1985

- Energy Extension Service Overview.
- Review of State Energy Conservation Program.
- Presentation of Energy Extension Service Projects.
- Public Comment (10 minute rule).

Thursday, April 25, 1985

- Review of State Programs Branch Budget.
- Overview of Low Income Home Energy Assistance.

Program, Weatherization Assistance Program, and Petroleum Violation Escrow.

- Review Draft of Sixth Annual Report.
- Public Comment (10 minute rule).

Friday, April 26, 1985

- Review and finalize Sixth Annual Report.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statement pertaining to agenda items should contact Susan D. Heard at 202-252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, D.C., on April 2, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-8191 Filed 4-4-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time:

Thursday, April 25, 1985, 1:30 p.m.-5:00 p.m.
Friday, April 26, 1985, 9:00 a.m.-3:30 p.m.

Place: Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact: Dr. Morris Gold, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72, Washington, DC 20585, Telephone: (202) 252-8312.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 25, 1985

A. Opening Remarks
B. Major Topics:
1. Estimating Additions to Capacity of Coal-Fired Power Plants
2. Update: Supply and Disposition of Natural Gas Distributors, EIA-176
3. The Status of Exploration Statistics
4. Update: Confidentiality Issues (Public Comments)

Friday, April 26, 1985

5. Graphical Estimation of Strippable Coal Reserves
6. The Annual Quality Control Plan
7. Preparing the Annual Operating Plan
8. Long Range Planning for the Office of Energy Markets and End Use
9. Professional Audit Review Team (PART) Objectives and Methodologies
10. Summarizing Contract Information
11. Cumulative Sums (CUSUMs) and Their Relevance to EIA (Public Comments)

C. Topics for Future Meetings

Public Participation

The meeting is open to the public. The chairperson of the panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Morris S. Gold, EIA Committee Liaison, at the address or telephone number listed above. Requests must be received at least five days prior to the meeting. Reasonable provisions will be made to include such presentations on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room (Room 1E-190), 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6460, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, D.C. on April 2, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-8192 Filed 4-4-85; 8:45 am]

BILLING CODE 6450-01-M

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office; (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, February 26, 1985 (50 FR 7814).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., April 1, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response to obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-194	Monthly alternate Fuel/Incremental Price Monitoring Report.	Extension	Monthly	Mandatory	120 firms which sell No. 2 and No. 6 fuel oil.	120	18,000	This form is required to collect data necessary for the publication of alternate fuel costs as mandated by Congress in the Natural Gas Policy Act of 1978 (Title II).

[FR Doc. 85-8244 Filed 4-4-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-383-000, et al.]

Indiana & Michigan Electric Co., et al.; Electric Rate and Corporate Regulation Filings

April 1, 1985.

Take notice that the following filings have been made with the Commission:

1. Indiana & Michigan Electric Company

[Docket No. ER85-383-000]

Take notice that American Electric Power Service Corporation (AEP) on March 22, 1985, tendered for filing on behalf of its affiliates Indiana & Michigan Electric Company (I&M), which is an AEP affiliated operating subsidiary, Amendment No. 26 dated January 30, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit) sometimes collectively referred to as the Michigan Companies, and I&ME. The Commission has previously designated the 1966 Agreement as I&ME's Rate Schedule FERC No. 68 and Michigan Companies Rate Schedule FERC No. 12.

Section 1 and Section 2 of Amendment No. 26 provides for an increase in the transmission demand rate for Short Term Power, when I&ME is the supplying party, to $0.46 per kilowatt per week and to $0.92 per kilowatt per day. Section 3 increases the Limited Term Power transmission demand rate, when I&ME is the supplying party, to $2.00 per kilowatt per month. The proposed rates included in this Amendment No. 26 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 I&ME. 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 this Commission's Notice requirements.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Public Service Commission.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. ER85-386-000]

Take notice that Kansas Gas and Electric Company (KG&E) on March 25, 1985, tendered for filing a Lease Agreement between the Company and Kansas City Power & Light Company (KCP&L).

Kansas Gas and Electric Company states that the filing represents the result of negotiations with KCP&L toward a lease of a KG&E transmission line between jointly owned facilities for KCP&L's use. This filing will provide KCP&L the necessary transmission path to deliver its share of power and energy generated at the Wolf Creek Generating Station to its transmission system.

Copies of the filing were served upon KCP&L and the Utilities Division of the Kansas Corporation Commission.

KG&E requests waiver of the Commission's notice requirements in order to allow an effective date to be determined under the Lease Agreement.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER85-388-000]

Take notice that on March 26, 1985, Minnesota Power & Light Company tendered for filing a Capacity and Energy Sales Agreement between Minnesota Power & Light Company and Northern States Power Company. Under this Agreement, Minnesota Power & Light Company will sell peaking capacity energy to Northern States Power Company on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1985 through October 31, 1985 inclusive. Therefore, the parties request an effective date of not later than May 1, 1985 for this Agreement.

Comment date: April 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER85-390-000]

Take notice that on March 26, 1985, Montaup Electric Company filed a service agreement for the transmission of energy through Montaup's system to Braintree, Massachusetts, under Montaup's non-firm transmission tariff (Original Volume No. II). Montaup also filed an Exhibit A to the service agreement for transmission of a life-of-unit entitlement from Taunton to Braintree. The amount of the entitlement can range from 0–10,000 KW. At present, EUA is wheeling 4,000 KW from November 1, 1984 through April 30, 1985, and this amount is expected to continue through October 31, 1985.

Montaup requests waiver of the 60-day notice requirement in order to permit the enclosed service agreement to become effective on November 1, 1984 when the Taunton and Braintree transaction commenced. Montaup did not receive notice of the transactions until too late to comply with that requirement.

Montaup has indicated that it has served copies of the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER85-391-000]

Take notice that on March 26, 1985, Montaup Electric Company filed an Exhibit A designated Series No. II, Newport No. 3, specifying electric power to be transmitted under the Service Agreement with Newport dated September 30, 1980.

Newport began purchasing 8 MW from the McNeil Woodburning Facility, located in Burlington, Vermont, on March 1, 1985. The purchases are under a Life-of-Unit contract.

Montaup requests waiver of the 60-day notice requirement to permit the service to begin on March 1, 1985. Montaup was not notified by the parties to the transaction until too late to comply with that requirement.

Montaup indicates that it has served copies of the filing on Newport Electric Corporation and the Massachusetts and Rhode Island Commissions.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Power Company

[Docket No. ER85-384-000]

Take notice that American Electric Power Service Corporation (AEP) on March 22, 1985, tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) Supplement No. 9 dated January 30, 1985 to the Agreement dated April 1, 1974 between American Municipal Popwer-Ohio, Inc. (AMPO) and OPCO. The Commission has previously designated this Agreement as

OPCO Rate Schedule FERC No. 74 and AMPO Rate Schedule FERC No. 1.

Section 1 of Supplement No. 9 replaces Service Schedule C—Short Term Power to make provision for the sale of Daily Short Term Power and provides for an increase in the transmission demand rate for Short Term Power to $0.46 per kilowatt per week and $0.092 per kilowatt per day. Sections 2 and 3 increases the Limited Term Power and Transmission Service transmission demand rates to $2.00 per kilowatt per month. The proposed rates included in this Supplement No. 9 are the same as the rates for the transmission of Short Term Power, Limited Term Power, and Transmission Service which have filed with the Commission on behalf of the AEP System.

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 the previous AEP filings, and therefore requests waiver of this Commission's Notice requirements.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER85-385-000]

Take notice that on March 22, 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 February 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: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER85-382-000]

Take notice that on March 21, 1985, San Diego Gas & Electric ("SDG&E") tendered for filing Service Schedule B of the Interchange Agreement between San Diego Gas & Electric and City of Anaheim, California, (Anaheim).

Service Schedule B provides for the terms and conditions for the exchange of short term firm capacity and associated energy.

Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment date: April 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER85-389-000]

Take notice that on March 26, 1985, Southwestern Electric Power Company ("SWEPCO") tendered for filing a Letter Agreement between SWEPCO and the City of Lafayette, Louisiana ("Lafayette"), dated December 21, 1984, which provides for SWEPCO to furnish transmission service through its system for up to 26 megawatts of capacity and associated energy from the Southwestern Power Administration ("SWPA") to SWEPCO's interconnections with Central Louisiana Electric Company and with Gulf States Utilities Company for the benefit of Lafayette. The term of the agreement is from January 1, 1985 through December 31, 1988.

SWEPCO requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, Central Louisiana Electric Company, Gulf States Utilities Company, the Southwestern Power Administration and the City of Lafayette, Louisiana.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8128 Filed 4-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-53-002]

Ozark Gas Transmission System; Filing

April 1, 1985.

Take notice that on March 29, 1985, Ozark Gas Transmission System (Ozark) tendered for filing supplemental materials supporting its February 6, 1985 request to reduce its then effective, subject to refund, gas transportation rate under Rate Schedule T-1. Ozark proposes to place its reduced rate into effect retroactively as of March 1, 1984, and to collect said reduced rate, subject to refund, pending issuance of a final Commission decision in this docket.

Copies of the filing were served upon Ozark's jurisdictional customers, parties to this proceeding and the appropriate state regulatory commissions.

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 April 8, 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. 85-8127 Filed 4-4-85; 8:45am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51565; TSH-FRL 2812-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture

or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-five PMNs and provides a summary of each.

DATES:

Close of Review Period:

P 85-699, 85-700, 85-701, 85-702, 85-703, 85-704, 85-705, 85-706, 85-707, 85-708 and 85-709—June 19, 1985.

P 85-710—June 22, 1985.

P 85-711, 85-712, 85-713, 85-714 and 85-715—June 23, 1985

P 85-716, 85-717 and 85-718—June 24, 1985.

P 85-719, 85-720, 85-721, 85-722 and 85-723—June 25, 1985.

Written comments by:

P 85-699, 85-700, 85-701, 85-702, 85-703, 85-704, 85-705, 85-706, 85-707, 85-708 and 85-709—May 20, 1985.

P 85-710—May 23, 1985.

P 85-711, 85-712 85-713, 85-714 and 85-715—May 24, 1985.

P 85-716, 85-717, and 85-718—May 25, 1985.

P 85-719, 85-720, 85-721, 85-722 and 85-723—May 26, 1985.

ADDRESS: Written comments, identified by the Document control number "[OPTS-51565]" and the specific PMN number should be sent to: document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Divsions (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-699

Manufacturer. Confidential.
Chemical. (G) Polymer of styrene with acrylate and methacrylates.
Use/Production. (G) Paint additive. Prod. range: 150,000-256,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 59 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2 to 45 kg/batch released to land. Disposal by incineration and landfill.

P 85-700

Manufacturer. Confidential.
Chemical. (G) Mixed acrylate/methacrylate polymer.
Use/Production. (G) Polymeric component of paint. Prod. range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 36 workers, up to 8 hrs/da, up to 150 da/yr.
Environmental Release/Disposal. 1 to 31 kg/batch released to land. Disposal by incineration and landfill.

P 85-701

Manufacturer. Confidential.
Chemical. (G) Polyester derivative.
Use/Production. (G) Industrial polymer. Prod. range: 50,000-303,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 32 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2 to 120 kg/batch released to land. Disposal by incineration and landfill.

P 85-702

Manufacturer. Confidential.
Chemical. (G) Acrylic terpolymer resin.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-703

Manufacturer. Confidential.
Chemical. (S) Polymer of hydroxy ethyl acrylate, isophorone diisocyanate and melpol 125.
Use/Production. (G) Used in a closed system. Prod. range: 250-12,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Minimal released to air. Disposal by biological treatment system and licensed landfill.

P 85-704

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified trisphenol novolac.
Use/Production. (S) Site-limited intermediate for epoxy resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and use: Dermal, a total of 5 workers.
Environmental Release/Disposal. Up to 1 lb sample batch released to air and land with 0.01 kg/batch to water. Disposal by incineration, landfill and navigable waterway after treatment.

P 85-705

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted polyglycol.
Use/Production. (S) Industrial polyol for use in polyurethane resins. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 48 workers.
Environmental Release/Disposal. Estimate of less than 100 parts per million (ppm) of the PMN chemical in 2 kg H_2O batch released to air. Disposal by incineration.

P 85-706

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Irritation: Skin—Slight, Eye—Slight.
Exposure. Confidential.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-707

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Saturated polyester.
Use/Production. (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coatings. Prod range: 65,000-90,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2.5 hrs/da, up to 55 da/yr.

Environmental Release/Disposal. .30 to 1.5 kg/batch released to air with 1 to 10 kg/batch to land. Disposal by landfill.

P 85-708

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Saturated polyester, silicone modified.
Use/Production. (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coatings. Prod. range: 20,000-80,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. .3 to 1.35 kg/batch released to air with 1 to 9.4 kg/batch to land. Disposal by landfill.

P 85-709

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Styrene-acrylic modified oil.
Use/Production. (S) Industrial and commercial vehicle for use in pigmented synthetic coatings. Prod. range: 50,000-60,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 29 da/yr.
Environmental Release/Disposal. .3 to 1.35 kg/batch released to air with 1 to 9.4 kg/batch to land. Disposal by landfill.

P 85-710

Manufacturer. Confidential.
Chemical. (G) Poly acrylate/methacrylate ester.
Use/Production. (G) Component of a coating formulation. Prod. range: 100,000-600,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 60 workers, up to 8 hrs/da, up to 63 da/yr.
Environmental Release/Disposal. 3 to 104 kg/batch released to land. Disposal by landfill.

P 85-711

Manufacturer. Confidential.
Chemical. (G) Metal alkoxide.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 12 workers, up to 8 hrs/da, up to 150 da/yr.
Environmental Release/Disposal. 0.8 kg/batch released to water. Disposal by industrial waste water treatment facility.

P 85-712

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polymer substituted amine reaction product.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. No release. Disposal by EPA approved incineration and approved landfill.

P 85-713

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker.
Environmental Release/Disposal. Release to land. Disposal by EPA approved landfill.

P 85-714

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstituted urea.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 5 workers.
Environmental Release/Disposal. No release. Disposal by EPA approved incineration.

P 85-715

Manufacturer. The Upjohn Company.
Chemical. Polycarbodiimide.
Use/Production. (S) Stabilizer for polyurethanes (castable polyurethanes, thermoplastics etc.) and polyesters. Prod. range: 600-1,250 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. 14 kg/batch released to land. Disposal at an area approved for hazardous waste.

P 85-716

Importer. CDF Chimie North America Inc.
Chemical. (S) Poly(ethylene-butyl acrylate-maleic anhydride).
Use/Import. (S) Industrial bonding layer in coextrusion and coating adhesive polymer in manufacture of hot-melts, thermal adhesive film for bonding tissues and other non-extrudable materials and an additive in synthetic rubber and plastic material as processing aid or impact modifier. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing and use: Dermal, a total of 1,000 workers.
Environmental Release/Disposal. No release.

P 85-717

Importer. Nagase America Corporation.
Chemical. (S) Polyglycidyl ether of polyglycerol.
Use/Import. (G) Pre-treat agent for polyester and polyamide yarn. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-718

Manufacturer. Confidential.
Chemical. (G) Polyol polyacrylate.
Use/Production. (S) Commercial inks and coatings. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 gm/kg; Irritation: Skin—Slight, Eye—Slight; Ames Test: Negative.
Exposure. Manufacture: Dermal, a total of 8 workers, up to 6 hrs/da, up to 95 da/yr.
Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

P 85-719

Manufacturer. Confidential.
Chemical. (G) Polymer of styrene and methacrylates.
Use/Production. (G) Industrial paint ingredient. Prod. range: 212,000-250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 40 workers, up to 8 hrs/da, up to 71 da/yr.
Environmental Release/Disposal. 6 to 104 kg/batch released to land. Disposal by incineration and landfill.

P 85-720

Manufacturer. National Starch and Chemical Corporation.
Chemical. (G) Polyacrylate.
Use/Production. (G) Printing vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 85-721

Manufacturer. Formica Corporation.

Chemical. (G) Melamine, hydroxypropylmelamine polymer with formaldehyde.
Use/Production. (S) Site-limited thermosetting laminating resin for decorative heat and pressure consolidated laminates. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 gm/kg; Acute dermal: >2 gm/kg; Irritation: Skin—Minimal, Eye—Non-irritant; Ames Test: Not active.
Exposure. Manufacture, processing and use: Dermal.
Environmental Release/Disposal. No release.

P 85-722

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (S) C_{18} and C_{18} unsaturated alkyl nitriles.
Use/Production. (S) Site-limited fatty amine precursor. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 21 workers, up to 1 hr/da, up to 300 da/yr.
Environmental Release/Disposal. Confidential.

P 85-723

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (S) Distillation residue from C_{18}-C_{18} unsaturated alkyl nitriles.
Use/Production. (S) Industrial burn for fuel. Prod. range: 800,000–1,400,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 21 workers, up to 1 hr/da, up to 300 da/yr.
Environmental Release/Disposal. No release.

Dated: March 29, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc 85-8022 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59189; TSH-FPC 2812-2]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 22, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59189]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-33

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Phosphonic acid.
Use/Production. (G) Used as an industrial cooling system. Prod. range: 200 lbs/day for 120-180 days.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 18 workers.
Environmental Release/Disposal. Release to water. Disposal by an external waste treatment system.

T 85-34

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Phosphonic acid.
Use/Production. (G) Used as an industrial cooling system. Prod. range: 200 lbs/day for 120-180 days.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 18 workers.
Environmental Release/Disposal. Release to water. Disposal by an external waste treatment system.

T 85-35

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Cycloaliphatic amine adducted with an epoxy resin.
Use/Production. (S) Casting and potting compound. Prod. range: Confidential.
Toxicity Data. Acute oral: >10,000 mg/kg; Acute dermal: >6,000 mg/kg; Irritation: Skin—Moderate, Eye—Slight.
Exposure. Manufacture: Dermal and inhalation, a total of 20 workers, up to 1 hr/da.
Environmental Release/Disposal. No data submitted.

T 85-36

Close of Review Period. May 10, 1985.
Manufacturer. Confidential.
Chemical. (G) Polyol polyacrylate.
Use/Production. (S) Commercial inks and coating. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 mg/kg; Irritation: Skin—Slight, Eye—Slight; Ames Test: Negative.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 6 hrs/da, up to 95 da/yr.
Environmental Release/Disposal. 1 kg/batch to 1 liter/batch released to air. Disposal by publicly owned treatment works (POTW).

Dated: March 29, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-8021 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2813-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 18, 1985 through March 22, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DS-AFS-J65132-WY, Rating LO, Bighorn Nat'l Forest Land and Resource Mgmt. Plan, WY.

Summary: EPA concurs with the revisions to the proposed forest plan and DEIS.

Final EISs

ERP No. F-BLM-J03008-00, Rangely Carbon Dioxide Pipeline, Construction and Operation, Approval and Right-of-Way Permits, CO and UT and WY. SUMMARY: EPA made no formal comments. EPA feels the proposed pipeline route is environmentally acceptable with proper construction mitigation measures.

ERP No. F-COE-F36119-WI, Wisconsin R. Flood Control Plan, WI. SUMMARY: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FB-COE-K35013-CA, Sacramento R. Bank Protection Project, Construction, CA. SUMMARY: EPA noted that this document is an improvement over the previous Supplemental EIS, however, it expressed these concerns: (1) Adequate mitigation must be provided to protect the Sacramento River's designated beneficial uses such as fish/wildlife habitat and fish migration/spawning; and (2) other uses besides agricultural conversion displace riparian habitat (housing and commercial/recreational developments) but were not fully considered in the FSupp. II.

ERP No. F-FHW-E40202-AL, Lakeshore Drive Extension, Green Springs Highway to Osmoor Rd. AL. SUMMARY: EPA has some concerns regarding noise assessment and abatement. It is not clear if all affected noise receptors were assessed. EPA believes that feasible forms of abatement should be reconsidered for those receptor sites that will experience a 13 dBA increase.

Regulations.

ERP No. R-FHW-A59006-00, 23 CFR Part 650, Erosion and Sediment Control on Highway Construction Projects (FHWA Docket No. 84-12) (50 FR 2694). SUMMARY: EPA does not object to the adoption of the AASHTO Specifications.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-8241 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2813-1]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed March 25, 1985 through March 29, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850093, Final, FHW, KY, US 27/ Nicholasville Bypass Construction, Jessamine County, Due: May 6, 1985, Contact: Robert Johnson, (502) 227-7321.

EIS No. 850115, Draft, AFS, MT, Gallatin National Forest, Land and Resource Management Plan, Due: July 15, 1985, Contact: Robert Breazeale, (406) 587-6700.

EIS No. 850116, Report, COE, NY, Ogdensburg Harbor Navigation Improvements, Ogdensburg Bridge and Port Terminal, 1985 Spring Dredging Operation, St. Lawrence County, Tod Smith, (716) 876-5454.

EIS No. 850117, Draft, COE, HI, Waikoloa Beach Resort Anchialine Ponds Construction and Development, Permit, Due: May 20, 1985, Contact: Michael Lee, (808) 438-9258.

EIS No. 850118, Draft, AFS, MO, Mark Twain National Forest, Land and Resource Management Plan, Due: July 7, 1985, Contact: Leon Cambre, (314) 364-4621.

EIS No. 850119, Final, COE, LA, Louisiana Coastal Area, Freshwater Diversion to Barataria and Brenton Sound Basins, Due: May 6, 1985, Contact: Dennis Chen, (504) 838-2523.

EIS No. 850120, Draft, BLM, NM, Rio Puerco Resource Area, Land and Resource Management Plan, Due: July 1, 1985, Contact: Herrick Hanks, (505) 766-3114.

EIS No. 850121, Draft, AFS, CA, Cleveland National Forest, Land and Resource Management Plan, San Diego, Riverside, and Orange Counties, Due: July 5, 1985, Contact: Ralph Cisco (619) 293-5050.

EIS No. 850122, Draft, SCS, TN, MS, Wolf and Loosahatchie River Basins Multipurpose Water Management, Due: May 20, 1985, Contact: Donald Bivens, (615) 251-5471.

EIS No. 850123, Draft, EPA, MO, Eastern St. Charles County Wastewater Treatment Facilities Improvements, Grant, St. Charles County, Due: May 20, 1985, Contact: Thomas Lorenz, (913) 236-2823.

EIS No. 850124, Draft, BLM, CA, Chemise Mountain and King Range Wilderness Study Areas, Designation, Arcata Resource Area, Humboldt and Mendocino Counties, Due: July 1, 1985, Contact: Van Manning, (707) 462-3873.

EIS No. 850125, FSuppl, FHW, IA, I-380 Extension, US 218 to US 20, Waterloo and Cedar Falls, New Alignment Alternative, Black Hawk County, Due: May 6, 1985, Contact: H.A. Willard, (515) 233-1664.

EIS No. 850126, Final, BLM, WY, North Fork Well Oil and Gas Exploration, Permit, Shoshone National Forest, Park County, Due: May 6, 1985, Contact: John Thompson, (307) 347-9871.

EIS No. 850127, Draft, BLM, CO, Grand Junction Resource Area, Resource Management Plan, Garfield and Mesa Counties, Due: July 3, 1985, Contact: Forest Litterell, (303) 243-6552.

EIS No. 850128, Final, FHW, MI, US 27 Freeway Construction, Lansing to Ithica, Clinton and Gratiot Counties, Due: May 6, 1985, Contact: Ronald Jones, (518) 377-1838.

Amended Notices

EIS No. 850057, DSuppl, BLM, PRO, MT, ND, WY, CO, UT, NM, AL, Federal Coal Management Progam, Continuation or Implementation of a New Program, Due: May 9, 1985, Published FR 2-15-85—Review extended.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-8240 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2812-8]

Intent To Prepare an Environmental Impact Statement

Responsible Office: U.S. Environmental Protection Agency, Region IV, Atlanta, Georgia.

Action: Preparation of Environmental Impact Statement (EIS) on Gulf Shores, Alabama 201 Plan.

Purpose: In accordance with section 511(c) of the Clean Water Act and section 102(2)(C) of the National Environmental Policy Act, EPA is notifying government agencies and the public that an EIS will be prepared to address wastewater management in the Gulf Shores area of coastal Alabama.

For Further Information Contact: Mr. Ted Bisterfeld, Environmental Assessment Branch, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone (404) 881-3776, (FTS) 257-3776.

Summary

1. Description of Proposed Action

EPA and the Alabama Department of Environmental Management (ADEM) have determined a need to assess future wastewater management options in the Gulf Shores area. Application for EPA administered 201 construction grant funds is anticipated. This coastal area is experiencing accelerated development which has taxed the local utility infrastructure. EPA's Regional Administrator has determined that granting of funds in this area would be a major federal action significantly affecting the quality of the human environment.

All feasible alternatives for long-term wastewater management will be considered in the EIS, including discharges to surface waters (including the Gulf of Mexico), land application, deep well injection and wastewater reuse.

Collection of information on the nearshore Gulf environment will be a major effort of the EIS. The suitability of a Gulf outfall cannot be determined at this time.

Wastewater management evaluations in the EIS will consider the entire coastal area from Fort Morgan eastward to and including Orange Beach.

2. Significant Issues

- Suitability of a Gulf outfall.
- Maintenance of estuarine water quality.
- Secondary environmental impacts related to accelerated barrier island development.
- Water quality standards.

3. Public Participation Program

Participation in the EIS process is invited from individuals, organizations and government agencies. Project scoping has begun to involve key government agencies and to obtain initial input from interested parties.

A public scoping meeting will be held jointly with the Alabama Department of Environmental Management on May 13 at 7:30 p.m. in the Galaxy Room of the Gulf State Park Resort, Highway 182 east from Gulf Shores, Alabama. Input to the EIS may also be given by writing the EPA Regional Office. Persons wishing to be included on the draft EIS mailing list should also write to the Regional Office.

4. EIS Schedule

A draft EIS is projected to be available in December of 1986.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85-8242 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Productivity Review List and Schedule

ACTION: Notice of productivity review list and schedule.

SUMMARY: In compliance with the Office of Management and Budget (OMB) Circular Number A-76, subject, "Performance of Commercial Activities," and its Supplement, Part I, Chapter 1, paragraph C1b, the Equal Employment Opportunity Commission hereby publishes its productivity review list and schedule (all located at the Headquarters, 2401 E Street, NW., Washington, D.C.) as follows:

Organization	Function	Review start date
Office of Management.	Personal Property, Office Supplies, Directives, Forms, and Publications Stockage and Distribution.[1]	May 1985.
Do.	Real Property Plans, Designs, and Acquisitions.[1]	May 1985
Office of Public Affairs.	Audiovisual and Graphic Services.[2]	Fiscal Year 1986.
Office of Management.	Automated Data Processing Operations.[2]	Do.
Do.	Library Services [1]	Do.
Do.	Mail Room Operations [1]	Do.
Do.	Records and Forms Analysis and Design and Office Equipment Evaluation Operations.[1]	Do.
Do.	Training Operations [2]	Do.

[1] Less than 10 FTEs.
[2] More than 10 FTEs.

This announcement is *not* a solicitation for bid but rather is an advance notification to alert interested persons and businesses of our plans. More specific information relating to this announcement will *not* be furnished until the solicitation for bid is synopsized in the Commercial Business Daily.

FOR FURTHER INFORMATION CONTACT: Robert P. Hill (202) 634-6971 or Natalie Werber, (202) 634-7661, Equal Employment Opportunity Commission, Office of Managment, Performance Management Division, Room 210, 2401 E Street, NW., Washington, D.C. 20507.

John Seal,

Management Director.

April 1, 1985.

[FR Doc. 8200 Filed 4-4-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Proposed Form Revision

AGENCY: Federal Financial Institutions Examination Council (Examination Council).

ACTION: Proposed revisions to annual report of trust assets (FFIEC Form 001).

SUMMARY: The Examination Council is proposing to revise FFIEC Form 001 for reporting year 1985. The form has been used to gather information on the trust services of depository institutions and trust companies.

DATE: Comments must be received by May 20, 1985.

ADDRESS: Comments may be mailed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., Suite 701, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Donald R. Vinnedge, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202/452-2717); William L. Granovsky, Office of the Comptroller of the Currency, Washington, DC 20219, (202/447-1731); John F. Harvey, Federal Deposit Insurance Corporation, Washington, DC 20429, (202/389-4295); Cynthia N. Grase, Federal Home Loan Bank Board, Washington, DC 20552, (202/377-6886).

SUPPLEMENTARY INFORMATION: The Examination Council, pursuant to section 1006(c) of Title 10 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3305), proposes that the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and Office of the Comptroller of the Currency adopt revisions to the Annual Report of Trust Assets (FFIEC Form 001) to become effective with the December 31, 1985 report date. Since 1979, the FFIEC Form 001 has been used by the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation. The

Federal Home Loan Bank Board also used the form during 1984. All insured commercial banks, savings banks, and savings and loan associations that exercise fiduciary powers, or have been authorized to exercise fiduciary powers, are required to complete FFIEC 001. Also required to complete the form are trust companies that, while not insured by the Federal Deposit Insurance Corporation, are member of the Federal Reserve System, are subsidiaries of bank holding companies, or are affiliated with savings and loan associations.

The above institutions currently are required to report the following:

1. Market value of certain trust assets over which they exercise investment discretion, as defined in the instructions accompaning the form, further broken down into five categories of accounts and thirteen categories of assets;

2. The number of accounts administered in each of the five account categories; and

3. The value of collective investment funds administered in a fiduciary capacity.

For reporting year 1985, it is proposed that the Annual Report of Trust Assests be modified to give a more comprehensive overview of an institution's fiduciary activities and to enhance off-site analysis. The data obtained would be the minimum amount considered necesary for monitoring the nature and volume of trust services each institution provides. The items listed below are proposed for addition to the form.

1. Schedule A, items 17 and 18: Nondiscretionary assets and accounts, respectively. The addition of nondiscretionary asset and account information to the form is proposed to present more accurately the volume and character of fiduciary assets under administration and for supervisory and liquidation purposes.

2. *Schedule C:* Corporate Trust Schedule. This schedule is proposed in order to allow for more accurate monitoring and analysis of the volume and types of corporate trust business being performed by supervised trust institutions.

3. *Schedule D:* Investment Advisor Schedule. The addition of this schedule is proposed in view of the recent trend in some large institutions to use investment advisor affiliates to manage the investment portfolios of certain discretionary accounts, such as employee benefit plans, for which banks and other institutions have fiduciary responsibility. It is believed necessary for supervisory purposes to obtain information concerning the extent of such portfolio management.

In addition to soliciting comments on the proposed revisions noted above, comments are also specifically solicited on two related reporting issues. First, the Examination Council is asking for comments on whether consideration should be given to establishing a cut-off size (i.e., discretionary assets with a total market value of some amount) below which less detailed reporting would be required and, if so, what such minimum reporting size and information should be. Second, comments are sought on whether asset categories should be added to reflect investments in money market mutual funds, other mutual funds, and securities issued by foreign companies and governments, or whether certain of the existing asset categories should be deleted.

Copies of the proposed report form and instructions are being mailed to all affected institutions. Copies may also be requested from Robert J. Lawrence, the Examination Council's Executive Secretary.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and 5 CFR 1320.12, the proposed Annual Report of Trust Assets (FFIEC Form 001) will be submitted to the Office of Management and Budget for review by each agency that requires submission of the report, if the proposed report is adopted by the Examination Council after consideration of comments received during the 45-day comment period.

Dated: April 2, 1985.

Robert J. Lawrence,

Executive Secretary, FFIEC.

[FR Doc. 85-8199 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-428]

Final Action Approval of Conversion Application; Progressive Federal Savings Bank, Natchitoches, LA

Dated: March 29, 1985.

Notice is hereby given that on March 8, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Progressive Federal Savings Bank, Natchitoches, Louisiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, Post Office Box 619026, Dallas, Texas 75261-9026.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85-8213 Filed 4-4-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-010737.

Title: Italia/Trasatlantica Joint Service Agreement.

Parties:

"ITALIA" di Navigazione, S.p.A.

Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed agreement would establish a joint service between the parties in the trade between the Atlantic Coast of the United States (from Eastport, Maine to, but not including, Jacksonville, Florida) and Canada, and ports on the Mediterranean Sea, the Iberian Peninsula, the Atlantic Coast of Africa, India and Pakistan. The parties' operations in the trade would initially be conducted under the name of Med America Express Service.

By Order of the Federal Maritime Commission.

Dated: April 2, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8232 Filed 4-4-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003967-003.

Title: New Orleans Terminal.

Parties:

Board of Commissioners of the Port of New Orleans (Board)

The Ryan-Walsh Stevedoring Co., Inc. (Ryan-Walsh)

Synopsis: This agreement amends the basic agreement between the Board and Ryan-Walsh which provides for the lease of the bulk terminal facility in the Mississippi River-Gulf Outlet, New Orleans. The amendment provides that Ryan-Walsh shall receive a credit of $1,189,260.59, to be applied against the annual rent of the facility and in consideration thereof Ryan-Walsh agrees to continue to operate the facility until June 22, 1986. In addition, Ryan-Walsh agrees to return 27.55 acres comprising Tract II of the premises to the Board for other public uses. The parties requested a shortened review period for the agreement.

Agreement No.: 224-004093-001.

Title: Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (City)

Metropolitan Stevedore Company (Metropolitan)

Synopsis: This agreement amends the basic agreement in which the City grants to Metropolitan use of Berths 142-146 in the Port of Los Angeles, and provides that the City shall perform wharf modifications to said berths necessary to Metropolitan's operation. During the modification Berths 142-146 will be unavailable for use. This amendment grants Metropolitan a Secondary Berth Assignment to Berths 130-131 currently covered in FMC Agreement No. T-3071-3. This arrangement will provide temporary replacememt space needed for Metropolitan's operations while modifications are being made to Berths 142-146.

Agreement No.: 202-009474-012.

Title: Thailand/North America Conference Agreement.

Parties:

American President Lines, Ltd.

A.P. Moller-Maersk Line

Sea-Land Service, Inc.

United States Lines, Inc.

Synopsis: The proposed amendment would delete United States Lines, Inc. as a party to the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 212-010027-014.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

United States Lines (S.A.) Inc.

Companhia de Navegacao Lloyd Brasileiro

Companhia de Navegacao Maritima Netumar

A/S Iverans Rederi

Empresa Lineas Maritimas Argentinas S.A.

A. Bottacchi S.A. de Navegacion C.F.I.I.

Van Nievelt, Goudriaan and Co., B.V

Cylanco S.A.

Synopsis: The proposed amendment would modify and partially reformat the agreement to comply with earlier Commission requests. The parties have requested a shortened review period.

Agreement No.: 202-010636-007.

Title: U.S. Atlantic-North Europe Conference Agreement.

Parties:

Atlantic Container Line (G.I.E.)

Compagnie Generale Maritime (CGM)

Dart-ML Limited

Double Eagle Lines, Inc.

Hapag-Lloyd AG

Intercontinental Transport (ICT)

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States Lines, Inc.

Synopsis: The proposed amendment would more precisely express the intent of the parties to include cargo moving in shipper provided container equipment, as well as that moving in carrier provided equipment, within the scope of the agreement. The parties have requested a shortened review period.

Agreement No.: 213-010703-001.

Title: Korea Marine Transport Co., Ltd./Hanjin Container Lines, Ltd., Space Charter and Sailing Agreement.

Parties:

Hanjin Container Lines, Ltd. (HCL)

Korea Marine Transport Co., Ltd.

Synopsis: The proposed amendment would authorize the parties to coordinate and integrate their vessel schedules in addition to their present authorization to cross-charter vessel slots. This proposed new authority necessitates changing the agreement's three digit prefix from 217, designating it as a chartering agreement, to 213, the Commission's designation for sailing agreements. The parties also propose to make allocated, but unbooked space available to third party carriers should the occasion arise. Further the parties state that HCL's Korea/Japan TEU commitment of 3669 slots is "estimated" because the third vessel of its fleet on this route has not been definitely selected. The parties have requested a shortened review period.

Agreement No.: 2176-010738.

Title: Barber Blue Sea/Open Bulk Carriers Chartering Agreement.

Parties:

Barber Blue Sea (BBS)

Open Bulk Carriers Limited (OBC)

Synopsis: The proposed agreement would establish a chartering arrangement authorizing BBS to charter vessels to OBC in the trade from United States Atlantic and Gulf ports and East Canada ports to ports in the United Kingdom and North Europe. It would also permit the chartering of deck space on the vessels.

Agreement No.: 213-010739

Title: Nedlloyd/Barber Blue Sea North America-Middle East Reciprocal Space Charter and Coordinated Sailing Agreeement

Parties:

Nedlloyd Lijnen BV

Barber Blue Sea Line

Synopsis: The proposed agreement would permit the parties to schedule sailings and port rotations, charter space on each other's vessels and jointly charter vessels, in the trade from United States Atlantic and Gulf ports and Eastern Canada ports to ports in Portugal, the Mediterranean, the Red Sea, Gulf of Aden, Arabian Gulf, India, Pakistan and Sri Lanka including U.S. and foreign inland and coastal points.

By Order of the Federal Maritime Commission.

Dated: April 2, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8231 Filed 4-4-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankamerica Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank

Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activities that have been approved by Board Order, but are not on the list of permissible activities in Regulation Y. Unles otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application have been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, orgains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **BankAmerica Corporation**, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in providing futures commission merchant and futures advisory services to non-affiliates with respect to municipal bond index futures contracts and stock index futures contracts and options.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8160 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

First Bank Shares of the South East, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Bank Shares of the South East, Inc.*, Alma, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Alma, Alma, Georgia.

2. *The Nashville Holding Company*, Nashville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Nashville, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FCN Banc Corp.*, Brookville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of the Franklin County National Bank of Brookville, Brookville, Indiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Independent Investment Group, Inc.*, Vancouver, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Independent Bank, Vancouver, Washington.

2. *Republic National Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Republic National Bank, Phoenix, Arizona, in organization.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8161 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

Mansura Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *do novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permisssible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, commented regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than April 27, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georiga 30303:

1. *Mansura Bancshares, Inc.*, Mansura, Louisiana; to engage *de novo* through its subsidiary, Cypress Data Processing Co., Mansura, Louisiana, in data processing activities in the State of Louisiana.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *North Valley Bancorp*, Redding, California; to engage *de novo* through its subsidiary North Valley Consulting Services, Redding, California, in providing management consulting services to depository institutions.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8162 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

Rainier National Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for the notice. 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than April 29, 1985.

A. **Board of Governors of the Federal Reserve System,** (Willian W. Wiles, Secretary) Washington, D.C. 20551:

Rainier National Bank, Seattle, Washington: to establish a corporation to be known as Rainier Bank International, New York, New York. Rainier Bank International would operate as a subsidiary of Rainier National Bank. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8163 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 29, 1985.

Public Health Services

Health Resources and Service Administration

Subject: Collection of Information Under the Health Education Assistance Loan Program (HEAL)—Existing Collection
Respondents: Individuals, businesses, non-profit institutions

National Institutes of Health

Subject: Individual National Research Service Award Application—Revision (0925-0002)
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Product License Application the Manufacturing of Human T-Lymphotropic Virus for In-Vitro Diagnostic Use—new
Respondents: Businesses, small businesses, non-profit institutions
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Recalculation of Case Mix Index Based on Total Medicare Discharges—HCFA 9043—Extension (0938-0312)
Respondents: State/local governments, businesses, or other for-profit, non-profit institutions
Subject: Statistical Report on Medical Care: (Eligibles, Recipients, Payments and Services) HCFA—2082—Extension (0938-0345)
Respondents: State/local governments, Medicaid agents
Subject: Preclearance: Design and Evaluation of the Home Health Agency Prospective Payment Demonstration—New
Respondents: Businesses, for-profit, non-profit institutions
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: April 1, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-8203 Filed 4-4-85; 8:45 a.m.]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Rape Prevention and Control Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory body scheduled to assemble during the month of April 1985.

Rape Prevention and Control Advisory Committee

April 15-16; 9:00 a.m., Parklawn Building, Conference Rooms "O" and "H", 5600 Fishers Lane, Rockville, Maryland 20857

Open

Contact: Ann Maney, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, 5600 Fishers Lane, Room 6C-12, Rockville, Maryland 20857, (301) 443-1910

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include discussions of

emergency service training materials by NCPCR, the state-of-the-art in research in emergency services to rape victims, and strategies for dissemination of existing materials as well as for the development of future studies.

Substantive program information may be obtained from the contact person listed above. Summaries of the meetings and roster of Committee members may be obtained from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: April 1, 1985.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Heath Administration.

[FR Doc. 85–8134 Filed 4–4–85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85N-0139]

Riker Laboratories, Inc., et al; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 72 new drug applications (NDAs) based on the written request of the applicants.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics, Product Information Coordination Staff (HFN–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDAs listed below have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the NDAs. The applicants have also, by their request, waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
16-A	Isophrin	Riker Laboratories, Inc., 270-3A 3M Center, St. Paul, MN 55144.
3-234	Neo-Hombreol (M) Tablets.	Organon, Inc., West Orange, NJ 07052.
4-508	Tedral Enteric Coated Tablets.	Parke-Davis, 201 Tabor Rd., Morris Plains, NJ 07950.
5-237	Glysennid Tablets	Dorsey Laboratories, Division of Sandoz, Inc., Box 83288, Lincoln, NE 68501.
5-509	Dicumarol Capsules	Eli Lilly Co., 307 East McCarty St., Indianapolis, IN 46285.
6-374	Glyniazan (Theophylline Sodium Glycinate) Tablets and Elixir.	Scherer Laboratories, Inc., 14335 Gillis Rd., Dallas, TX 75234.
6-432	Nordihydroguaiaretic Acid.	Abbott Laboratories, North Chicago, IL 60064.
6-544	Johnson's Baby Lotion with Hexachlorophene.	Johnson & Johnson, New Brunswick, NJ 08903.
6-726	CPH Protein Hydrolysate Injection.	Cutter Laboratories, Inc., Div. Miles Labs, Inc., 2200 Powell St., Emeryville, CA 94608.
6-937	Gustamine Powder	USV Laboratories, Inc., USV Pharmaceutical Corp., 1 Scansdale Rd., Tuckahoe, NY 10707.
7-018	Thenfadil HCl Tablets and Synephricol Syrup.	Sterling Drugs, Inc., 90 Park Ave., New York, NY 10016.
7-071	Kriptin Tablets	Whitehall Laboratories, 685 Third Ave., New York, NY 10017.
7-103	Afko-Hist Tablets and Pyrilamine Maleate Tablets.	American Pharm. Co., 245 Fourth St., Passaic, NJ 07055.
7-111	Antihistamine Tablets.	Rexall Corp., 3901 North Kingshighway Blvd., St. Louis, MO 63115.
7-150	Co-Salt	USV Laboratories.
7-336	Veriloid Tablets	Riker Laboratories, Inc.
7-735	Turicum Gel	A. H. Robins Co., 1211 Sherwood Ave., Richmond, VA 23220.
8-091	Banthine Injection	Searle, Division of G. D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.
8-135	Tryptar Powder for Inhalation.	Armour Pharm. Co., Box 511, Kankakee, IL 60901.
8-500	Isoniazid Tablets	American Pharm. Co.
8-579	Vallestril Tablets	Searle.
8-700	Danilone Tablets	Almay, Inc., Apex, NC 27502.
8-955	Clistin Elixir	McNeil Pharm., Spring House, PA 19477.
8-977	Sel-O-Rinse Cream	USV Laboratories, Inc.
9-159	Rauwolfia Serpentina Tablets.	Do.
9-244	Cortisone Acetane Tablets.	USV Laboratories, Inc.
9-269	Brompheniramine Maleate Bulk.	Schering Corp., 60 Orange St., Bloomfield, NJ 07003.
9-304	Ambodryl HCl Injection.	Parke-Davis.
9-573	Reserpine Alkaloid Tablets.	USV Laboratories, Inc.
9-587	Protoveratrine A & B Maleate Tablets.	D.
9-661	Alkaran Tablets	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
9-675	Astrofer Injection	Astra Pharmaceutical Products, Inc., 7 Neponset St., Worcester, MA 01606.
9-694	Depo-ACTH Sterile Solution.	The Upjohn Co., Kalamazoo, MI 49001.
9-726	Sertabs Tablets	Bell Pharmarmacol Corp., Box 1968, Greenville, SC 29602.
9-760	Cytellin Suspension	Eli Lilly & Co.
9-784	Toclase Tablets	Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
9-850	Reserpoid Elixir	The Upjohn Co.
9-872	Pyrilamine Maleate Sustained Release Capsules.	USV Laboratories, Inc.
10-385	Neomycin Sulfate Capsules and Tablets.	USV Laboratories, Inc.
10-579	Terpin Hydrate and Methorate Hydrobromide.	The Upjohn Co.
10-759	Sintrom Tablets	Ciba-Geigy Corp., Summit, NJ 07901.
10-766	Ultra Feminine Estrogenic Hormone Cream with Progesterone.	Helena Rubenstein, 55 Hartz Way, Secaucus, NJ 07094.
10-789	Phenylpropanolamine HCl Sustained Release Capsules.	USV Laboratories, Inc.
10-801	Ferrous Fumarate Tablets.	Do.
11-020	Dartal Tablets	Searle.
11-424	Ultandren Tablets	Ciba-Geigy Corp.
11-560	Candettes Cough Lozenges.	Pfizer Inc.
11-561	Candettes Cough Syrup.	Do.
11-814	Disomer Syrup and Tablets.	Shering Corp.
11-874	Carbetapentane Citrate Tablets.	USV Laboratories, Inc.
11-922	Carbetapentane Citrate Capsules.	Do.
12-207	Quadrin Tablets	Norwich Eaton Pharm., Inc., P.O. Box 191, Norwich, NY 13815.
12-233	Micrin Mouthwash and Gargle.	Johnson & Johnson.
12-459	Nactone Tablets	McNeil Pharm.
12-519	Corodyl Forte Capsules.	Bock Pharmacol Co., 5435 Highland Park Dr., St. Louis, MO 63110.
13-303	Tetrate 80 Capsules.	Pasadena Research Laboratories, Inc., 2107 East Villa, Pasadena, CA 91107.
13-644	Asthmanefrin/ Vaponefrin Automatic Aerosol Mist.	USV Laboratories, Inc.
13-992	First Aid Spray (Formula No. 511).	Johnson & Johnson.
14-162	Naponefrin Metermatic/ Asthmanefrin Automatic Aerosol Mist.	USV Laboratories, Inc.
14-766	Metraspray Aerosol	Riker Laboratories, Inc.
15-844	Betaline 12 Tablets	Eli Lilly & Co.
16-053	Betapred Tablets	Schering Corp.
16-064	Intersept Antiseptic Foam.	Johnson & Johnson.
16-066	Chemestrogen	T.E. Watson Co., P.O. Box 3829, Sarasota, Fl, 33578.
16-531	Tybatran Capsules	A.H. Robins Co.
16-665	Rose Bengal Sodium I 131 Injection.	Mallinckrodt, Inc., P.O. Box 5840, St. Louis, MO 63134.
16-814	Norisodrine Aerotrol	Abbott Laboratories.
16-991	Aarane Capsules	Fisons Corp., Two Preston Ct., Bedford, MA 01730.
17-278	Sodium Iodide I 125 Solution.	Mallinckrodt, Inc.
17-359	2% Sodium Chloride for Therapeutic Abortion.	Cutter Laboratories, Inc.
17-846	Radio-Iodinated (I 125) Human Serum Albumins.	Miles Laboratories, Inc., P.O. Box 40, Elkhart, IN 46515.
17-847	Radio-Iodinated (I 131) Human Serum Albumins.	Do.

The agency has determined that, in accordance with 21 CFR 25.24(d)(2) (proposed in the **Federal Register** of December 11, 1979 (44 FR 71742)), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e))), and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above, and supplements thereto, is hereby withdrawn.

This order becomes effective on May 6, 1985.

Dated: March 28, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85-8137 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Maternal and Child Health Research Grants Review Committee; 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 June 1985:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 12-14, 1985, 9:00 a.m.-5:00 p.m.

Place: Conference Room M, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; open on June 12, 1985, 9:00 a.m. to 10:00 a.m.; closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 12, 1985, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant of Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-2190.

Agenda items are subject to change as priorities dictate.

Dated: April 1, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-8132 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-15-M

Advisory Committee; Meeting; Task Force on Organ Transplantation

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 bodies scheduled to meet during the month of April 1985:

Name: Task Force on Organ Transplantation.

Date and Time: April 23, 1985 8:00 a.m.-4:00 p.m.

Place: Shoreham Hotel, 2500 Calvert Street and Connecticut Avenue NW., Washington, D.C. 20008; the entire meeting is open to the public

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: During the morning session, the Task Force will discuss data collection efforts relating to immunosuppressive therapies, networking, organ donation/procurement, research and reimbursement. The afternoon session will be devoted to discussion of issues relating to access to organ transplantation procedures.

The entire meeting is open to the public. Anyone wishing to make a statement may do so between 3:00-4:00 p.m. Please notify Linda D. Sheaffer, Acting Executive Director, if you wish to be scheduled during this session.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Acting Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17-60, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443-5911.

* * * * *

Name: National Council on Health Planning and Development.

Date and Time: April 25-26, 1985, 9:00 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201; the entire meeting is open.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93-641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: The Council will continue its discussion of the public policy issues of providing health care for those unable to pay for such services. The focus of this meeting, entitled "Uncompensated Care: Identifying Viable Short and Long-Term Strategies," will be on feasible ideas to address the immediate problem as well as on the most efficient and effective alternative strategies over the long-term. Keynote speaker is Senator David Durenberger, Chairman of the Senate Finance Subcommittee on Health.

A public comment period will be held each day. A detailed agenda may be obtained after April 5 by writing or telephoning Mrs. Diane A. McMenamin.

Anyone requiring information regarding the subject Council should contact Ms. Diane McMenamin, Executive Secretary, National Council on Health Planning and Development, Bureau of Health Maintenance Organizations and Resources Development, Room 9A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6377.

Agenda items are subject to change as priorities dictate.

Dated: April 1, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-8133 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, May 29, 1985, at the National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland. This meeting will be open to the public on May 29, from 9:00 a.m. to 11:00 a.m. for concept review of proposed DCBD research projects. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 29, from 11:00 a.m. to 12 noon, for the review, discussion, and evaluation of individual programs and projects conducted by DCBD, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A–04, National Institutes of Health, Bethesda, Maryland 20205 (301/496–4345) will furnish substantive program information.

Dated: March 25, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8176 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institutes; Cancer Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, May 16–17, 1985, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. This meeting will be open to the public on May 16, from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 16 from approximately 9:00 a.m. to recess; and on May 17 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Leon J. Niemiec, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 832, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7978) will furnish substantive program information.

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8171 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, April 29–30, and May 1, 1985, to be held at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. The meeting will be open to the public from 8:30 a.m. on Monday, April 29 until approximately 4:00 p.m. and will again be open to the public from 8:30 a.m. on Tuesday, April 30 until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 29 from 4:00 p.m. until recess, and again on April 30 from 4:00 p.m. until adjournment on May 1 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and peformance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20205, (telephone: 301/496–5898) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: March 25, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–8175 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on May 24, 1985, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Friday, May 24, from 9:00 a.m. until 10:30 a.m. for a status report by the Director, National Institute on Aging, and administrative details relating to Council business. Attendance by the public will be limb ited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on May 24 from 10:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you

contact Mrs. June C. McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland, 20205 (301/496-5898), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: March 26, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-8167 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; National Advisory Dental Research Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on May 14-15, 1985, in Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to recess on May 14 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on May 15 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Susan Woo, Council Secretary for the National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20205, (phone 301 496-7723) will furnish roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: March 26, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-8173 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Advisory General Medical Sciences Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 22, 23, and 24, 1985, Building 1, Wilson Hall, Bethesda, Maryland.

This meeting will be open to the public on May 22, 1985, from 12:30 p.m. to 5:00 p.m. for opening remarks; report of the Director, NIGMS; a scientific presentation; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 23 from 8:30 a.m. to 6:00 p.m., and on May 24, 1985, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496-7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20205, Telephone: 301, 496-7891 will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13-821, Physiology and Biomedical Engineering; 13-859, Pharmacology-Toxicology Research; 13-862, Genetics Research; 13-863, Cellular and Molecular Basis of Disease Research; and 13-880, Minority Access to Research Careers [MARC])

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-8170 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on April 29-May 1, 1985, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on April 29 and from 9:00 a.m. to 12:00 Noon on April 30, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1:00 p.m. to recess on April 30 and from 9:00 a.m. to adjournment on May 1 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Acting Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20205, (telephone 301 496-1483) will provide summary of the meeting, roster of committee members and substantive program information.

Dated: March 25, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-8174 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 93-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Dates: May 15-17, 1985.

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20205.

Open: May 15, 1:00 p.m.-3:00 p.m. (Planning Subcommittee). May 16, 9:00 a.m.-3:00 p.m. (Council).

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: May 15, 3:00 p.m.-5:00 p.m. (Planning Subcommittee). May 16, 3:00 p.m.-4:00 p.m. (Council). May 17, 8:30 a.m.-adjournment (Council).

Closure reason: For review of grant applications.

Executive secretary: John C. Dalton, Ph.D, Director, NINCDS-EAP, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496-9248.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: May 29-June 1, 1985.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007.

Open: May 29, 8:00 p.m.-8:30 p.m.

Closed: May 29, 8:30 p.m.-recess. May 30, 8:30 a.m.-recess. May 31, 8:30 a.m.-recess. June 1, 8:00 a.m.-adjournment.

Closure reason: To review grant applications.

Executive secretary: Dr. Leon Jack Greenbaum, Jr., Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496-9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: June 20-22, 1985.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007.

Open: June 20, 8:30 a.m.-9:00 a.m.

Closed: June 20, 9:00 a.m.-recess. June 21, 8:30 a.m.-recess. June 22, 8:00 a.m.-adjournment.

Closure reason: To review grant applications.

Acting executive secretary: Dr. A. Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496-9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: June 6-7, 1985.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open: June 6, 8:00 a.m.-8:30 a.m.

Closed: June 6, 8:30 a.m.-recess. June 7, 8:00 a.m.-adjournment.

Closure reason: To review grant applications.

Executive secretary: Dr. Marilyn Semmes, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-8172 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Smoking and Health Interagency Committee; Establishment of Advisory Committee

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix I), the Office of the Assistant Secretary for Health announces the establishment by the Secretary, Health and Human Services, of the Interagency Committee on Smoking and Health, pursuant to Pub. L. 98-474, the Comprehensive Smoking Education Act.

Designation: Interagency Committee on Smoking and Health.

Purpose: The Committee shall advise the Secretary and the Assistant Secretary for Health on (a) coordination of research, and educational programs and other activities within DHHS, and coordination of such activities with other Federal, State, local, and private agencies, (b) establishment and maintenance of liaison with appropriate private entities, other Federal agencies, and State and local public health agencies, respecting the dangers of smoking on health, and (c) development of materials for biennial reports by the Secretary to Congress.

Expiration Date: Authority for the Interagency Committee on Smoking and Health will expire March 20, 1987, unless the Secretary formally determines that continuance is in the public interest.

Dated: April 1, 1985.

John L. Bagrosky,

Associate Director for Program Operations, Office on Smoking and Health.

[FR Doc. 85-8201 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on April 30 and May 1, 1985.

The meeting will be open to the public on April 30 and May 1. The preliminary agenda with *approximate* times are:

April 30

9:00 a.m.-12:00 p.m., 1:00 p.m.-3:00 p.m.—NTP Response to Recommendation in the Report of the NTP Board of Scientific Counselor's *Ad Hoc* Panel on Chemical Carcinogenesis Testing and Evaluation.

3:15 p.m.-4:15 p.m.—Status Reports on NIEHS/NTP Research Projects:

(1) Current Collaborative Studies on Oncogene Activation and Expression.

(2) Applications of Nuclear Magnetic Resonance Imaging in Toxicologic Testing.

May 1

8:30 a.m.-8:45 a.m.—Report of the Director, NTP

8:45 a.m.-10:15 a.m.—NIEHS/NTP Concept Reviews

10:30 a.m.-12:30 p.m.—Peer Review and Priority Ranking of Chemicals Nominated for NTP Testing. These four chemicals to be reviewed by the Board were listed in the **Federal Register**, Volume 49, No. 72, pp. 14589-14590, April 1984: (1) Atrazine; (2) Ordram; (3) 2,3,4,6-Tetrachlorophenol; and (4) p-Chloro-alpha, alpha, alpha-trifluorotoluene. These eight additional chemicals to be reveiwed were listed in the **Federal Register**, Volume 49, No. 242, pp. 48807-48808, December 14, 1984: (1) Carbenoxolone; (2) Dimethylheptylpyran; (3) Emodin; (4) 5-Methoxypsoralen; (5) Phencyclidine; (6) 2,6-Xylidine; (7) Malathion; and (8) Picloram. Further, the Board will review the mononitrotoluene class study which was reviewed by the NTP Chemical Evaluation Committee at their meeting on February 5, 1985.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will furnish a roster of Board members and other program informatoin prior to the meeting, and summary minutes subsequent to the meeting.

Dated: March 25, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-7479 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Chemicals (8) Nominated for Toxicological Testing; Request for Comments

Summary: On February 5, 1985, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eight chemicals nominated for toxicology testing and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the eight chemicals listed herein.

For further information and submission of comments, contact: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-3511.

Supplementary information: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register.** This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decisionmaking about testing. The NTP chemical selection process is summarized in the **Federal Register,** April 14, 1981 (46 FR 21818), and also in the NTP FY 1984 *Annual Plan,* pages 185-186.

Chemical	CAS No	Committee recommendation
1. Ellagic acid	476-66-4	*In vitro* cytogenetics assay
2. Kaempferol	520-18-3	Deferred.
3. Lapachol	84-79-7	No testing.
4. α-Terpineol	98-55-5	Carcinogenicity. Mouse skin tumor initiation-promotion assay.
5. m-Nitrotoluene	88-72-2	Carcinogenicity.
6. o-Nitrotoluene	99-08-1	Carcinogenicity.
7. p-Nitrotoluene	99-99-0	Carcinogenicity.
8. 2-Butoxyethanol	111-76-2	Genotoxicity. Teratology. Chemical disposition. Subchronic studies, including immunotoxicity. Carcinogenicity.

Four of the eight compounds have been previously selected for some type of toxicological testing by the NTP. The three mononitrotoluenes, which were considered as a class study, gave negative results in *Salmonella* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activation. In the *in vitro* cytogenetics assay using Chinese hamster ovary cells, o-nitrotoluene was negative for chromosomal aberrations and sister chromatid exchanges; m-nitrotoluene was negative for chromosomal aberrations and weakly positive for sister chromatid exchanges; p-nitrotoluene was positive for both chromosomal aberrations and sister chromatid exchanges. p-Nitrotoluene gave negative results in the BALB/c-3T3 cell transformation assay, and is currently being tested in the mouse lymphoma assay by the NTP.

In a short-term *in vitro* reproductive study in CD-1 mice, 2-butoxyethanol caused an increase in intrauterine mortality, and produced twenty percent maternal mortality. In a conventional teratology study, 2-butoxyethanol produced negative results when applied to the skin of Sprague-Dawley rats at a dose of 432 mg/kg/day for ten days. A fertility assessment by continuous breeding using CD-1 mice is being performed on 2-butoxyethanol by the NTP.

In action on chemicals proposed to the NTP for genotoxicity testing, the CEC selected 6-methylquinoline, 7-methylquinoline, and 8-methylquinoline for testing in the *in vitro* cytogenetics assays in Chinese hamster ovary cells. These methylquinoline compounds were nominated by the EPA. The CEC also approved a proposal to test in the *Salmonella* assay 121 chemicals that have been identified as being associated with waste dump sites.

Interested parties are requested to submit pertinent information.

The following types of data are of particular relevance:

(1) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and, results in the case of completed studies.

(2) Modes of production, present production levels, and occupational exposure potential.

(3) Uses and resulting exposure levels, where known.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by May 6, 1985. Any submissions received after the above date will be accepted and utilized where possible.

Dated: April 1, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-8177 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

Office of the Assistant Secretary for Health

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 49 FR 50478, December 28, 1984), is amended to reflect a reorganization within the National Center for Health Services Research and Health Care Technology Assessment, Office of the Assistant Secretary for Health. Specifically: grants review activities are transferred to the Division of Extramural Research, the Division of Academic and External Liaison is retitled Division of Research Dissemination and External Liaison, and grants administration and contract liaison activities are transferred to the newly titled Division of Research Dissemination and External Liaison.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-20 Functions, under the heading for the *National Center for Health Services Research and Health Care Technology Assessment (HAR),* revise the functional statement for the *Office of Program Support (HAR13)* by deleting the words "grants and contracts processes" on the eleventh line of statement; delete item (6) and renumber item (7) as item (6).

Delete the title and statement for the *Division of Academic and External Liaison (HAR2)* and insert the following:

Division of Research Dissemination and External Liaison (HAR2) provides leadership and direction for the activities designed to disseminate the results of research supported by the Center, and supervises the general effort to coordinate the program of the Center, with the programs and concerns of other Governmental, private, and academic

institutions. Specifically: (1) Administers and sets policies for the program to publish and disseminate research findings prepared by or with the support of the Center; (2) participates with the Office of Program Development and Health Technology Assessment in coordinating the research programs of the Center with the research programs being conducted in other parts of PHS and the Department; (3) serves as the principal liaison with academic institutions, private foundations, and other organizations conducting or supporting health services research programs; (4) maintains a computerized system of Center grants and contracts for information retrieval and dissemination; (5) directs and conducts the Center's grants and contracts process; (6) implements the award processes of grants and contracts proposals; (7) informs the Center Director of general administrative policy and program concerns which exist in the research institutions, private foundations, the Department and other government agencies; and (8) assists in developing policies for and overseas activities of the Center pertaining to the Regional Offices.

Revise the functional statement for the *Division of Extramural Research (HAR3)* by deleting item (4) and inserting the following: (4) Manages operations responsible for an effective peer review system.

Effective Date: March 28, 1985.

Dated: April 1, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8202 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D-85-796; FR-2099]

Redelegation of Authority To Execute Legal Instruments in the Name of the Secretary

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amendment of notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development, on July 26, 1982 redelegated authority to execute written instruments relating to section 312 Rehabilitation Loans to certain officials, 47 FR 33324, August 2, 1982. This amendment adds the Deputy Director of the Office of Urban Rehabilitation to those officials.

FOR FURTHER INFORMATION CONTACT: Michael Ehrmann, Deputy Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5685 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 312 of the Housing Act of 1964, 42 U.S.C. 1452b, the authority to execute legal instruments under the section 312 loan program has been delegated to the Assistant Secretary for Community Planning and Development, except for those legal instruments which relate to property management and disposition functions delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980). In order to expedite property foreclosures and judgments against section 312 borrowers in default, the General Deputy Assistant Secretary, currently acting as Assistant Secretary for Community Planning and Development, has determined that his authority to execute legal instruments should be redelegated to the Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director, and the Deputy Director, Office of Urban Rehabilitation; and the Director, Relocation and Real Estate Division.

Accordingly, the Assistant Secretary's delegation of July 26, 1982, 47 FR 33324, is amended as follows:

A. Authority Redelegated

The Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director and the Deputy Director of the Office of Urban Rehabilitation; and the Director of the Relocation and Real Estate Division, are each hereby redelegated the authority to execute in the name of the Secretary written instruments relating to section 312 Rehabilitation Loans, including deeds of release, substitutions of trustees, assignments, and satisfactions of mortgages and deeds of trust. However, this redelegation does not cover the execution of written instruments that relate to certain section 312 loan-related property management and disposition functions that have been delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980).

B. Effect

This redelegation adds to, and does not modify or supersede, the redelegation of authority to field officials at 46 FR 21244 (April 9, 1981).

Authority: Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b.

Dated: March 19, 1985.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85-8233 Filed 4-4-85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Draft Environmental Impact Statement for the Preliminary Wilderness Recommendations for the King Range and Chemise Mountain Wilderness Study Areas, CA; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement on the preliminary wilderness recommendations for the King Range Wilderness Study Area (WSA) (CA-050-112) and the Chemise Mountain WSA (CA-050-111), in Humboldt and Mendocino Counties, California.

Alternatives analyzed were (1) All Wilderness, (2) No Action, which is continuation of present management, and for King Range, several partial wilderness alternatives. The preliminary recommendation for King Range is a partial wilderness of 21,200 acres; the preliminary recommendation for Chemise Mountain is continued management as a primative area.

DATES: Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and organizations. Written comments should be submitted by July 3, 1985 to the Ukiah District Manager, P.O. Box 940, Ukiah, California, 95482, in order to be considered in the final impact statement. The following public hearings on the adequacy of the EIS and on the preliminary wilderness recommendations are scheduled: (1) Red Lion Inn, 1929 4th Street, Eureka, California on May 8, 1985, beginning 7:00 pm, and (2) Redway School Auditorium, 344 Humboldt Avenue, Redway, California on May 9, 1985, beginning 7:00 pm.

ADDRESSES: Copies of the statement are available for review at all local libraries, and a limited number of copies can be obtained from the District Office in Ukiah, the Arcata Resource Area Office, 1585 J Street, Arcata, California, the California State Office, 2800 Cottage Way, Sacramento, California, and the Washington Office, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, Planning and Environmental Coordinator, Ukiah District Office, P.O. Box 940, 555 Leslie Street, Ukiah, California, 95482, telephone (707) 462-3873.

Dated: March 22, 1985.

Edwin Katlas,

Acting District Manager.

[FR Doc. 7894 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Availability of Draft Resource Management Plan and Environmental Impact Statement; Two Rivers Planning Area, Prineville District, OR

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the availability of the Draft Two Rivers Resource Management Plan/Environmental Impact Statement (RMP/EIS) for 324,705 acres of public land administered by BLM within Crook, Gilliam, Hood River, Jefferson, Sherman, Wasco and Wheeler Counties in North Central Oregon.

SUPPLEMENTARY INFORMATION: The issues and concerns addressed in the RMP/EIS are: riparian management, wildlife habital management, livestock grazing management, forestry, minerals management, land tenure and access, recreation management (excluding recreation river use and wilderness), and designation of special management areas.

The preferred alternative emphasizes the management, production and use of renewable resources on the majority of the public lands in the Two Rivers Planning Area. Management would be directed toward providing a flow of renewable resources from the public lands on a sustained yield basis while protecting or enhancing natural values. Management under the preferred alternative would resolve the identified issues as follows: (1) All riparian area along the Deschutes and John Day rivers and their major tributaries would be managed to full potential with a minimum of 60% of the vegetative potential to be achieved in 20 years. High mid-seral to low late-seral ecological condition would be managed for on upland vegetation except when wildlife needs would dictate otherwise; (2) forage requirements for deer and elk on public lands would be met. Upland vegetation would be managed to achieve maximum wildlife habitat diversity. All streams with fisheries or fisheries potential would be managed to achieve a good to excellent aquatic habitat condition; (3) forage available for livestock would remain at 17,778 AUMs in the short term and would be increased to 19,920 AUMs in the long term. Projects would be implemented as necessary to maintain current livestock grazing levels and to meet riparian and upland vegetation management objectives; (4) a total of 33,600 acres would receive additional study to determine whether they should be sold or otherwise disposed of. Approximately 1,000 acres of land would be sold annually; (5) there would be 10,715 acres of commercial forest land on which 1.41 million board feet per year sustained timber harvest level would be based; (6) public lands would remain open for exploration and development of mineral resources. No surface occupancy stipulations for oil and gas exploration and development would remain in effect on 132,000 acreas of public land to protect areas with high visual quality; (7) approximately 20,000 acres would be limited or closed to off road vehicle use.

Thirteen special management areas have been identified. They are as follows: The Island in the Cove Palisades State Park, The Deschute and John Day river canyons, the John Day River State Wildlife Refuge, the Horn Butte curlew area, the White River Wildlife Area, The Dalles Watershed, the Historic Spanish Gulch Mining District, the Governor Tom McCall Preserve at Rowena, two botanical/scenic areas within the Columbia Gorge, the Oregon Trail Historic Sites at Fourmile Canyon and McDonald, and the Macks Canyon Archaeological Site. Under the preferred alternative, five areas with identified outstanding natural or cultural values would be designated as research natural areas, areas of critical environmental concern or outstanding natural areas. Other unique wildlife or ecological values would be maintained or enhanced. Designation of these special management areas under the Preferred Alternative would be as follows: The Island in the Cove Palisades State Park would be designated as a research natural area (250 acreas); the Horn Butte curlew area would be designated as an area of critical environmental concern (4,300 acres); the 12.5 acres of public land within the Governor Tom McCall Preserve at Rowena would be designated as a research natural area; the two botanical/scenic areas within the Columbia Gorge would be designated as outstanding natural areas (76 acres); the Historic Spanish Gulch Mining District would be designated as an area of critical environmental concern (335 acres).

Four alternatives are considered in addition to the preferred alternative. They are: Emphasize Commodity Production and Enhancement of Economic Benefits; Continue Existing Management-No Action; Emphasize Natural Values While Accommodating Commodity Production and Emphasize Natural Values. A discussion of the affected environment is summarized and the environmental consequences occurring from the preferred alternatives and each of the other alternatives are documented in the EIS.

DATES AND ADDRESSES: The public comment period will end July 1, 1985. Written comments may be submitted at any time during the comment period to the Prineville District Manager located at 185 E. Fourth Street, P.O. Box 550, Prineville, Oregon 97754.

Two informal public meetings have been scheduled to receive comments on the Draft RMP/EIS. They will be held at Condon, Oregon, on May 21, 1985, at 7:00 PM at the Gilliam County Courthouse and at Grass Valley, Oregon, on May 22, 1985, at 7:00 PM at the South Sherman Elementary School for individuals wishing to ask questions or to present comments.

All comments received during the comment period will be considered in preparation of the Proposed RMP/Final EIS.

FOR FURTHER INFORMATION CONTRACT: Brian Cunninghame, Team Leader, Bureau of Land Management, Prineville District, telephone (503) 447-4115.

Dated: April 1, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85-8120 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

[OR 38000 (WA)]

Realty Action; Sale; Public Land in Okanogan County, WA

The following described land has been identified as suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976. (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713).

at no less than the appraised fair market value:

WILLAMETTE MERIDIAN, OKANOGAN COUNTY, WASHINGTON

Parcel No.	Legal Description	Acreage	Value
1	T. 36 N., R. 27 E., Sec. 5; Lot 4, and	4.55	$7,000
	Sec. 6, Lot 9	2.55	

Except for the provisions of section 203 of the FLPMA, the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

The isolated parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another federal agency. There are no significant resource values which will be affected by this disposal. Legal access is available to the parcel by State Highway and country road. The sale is consistent with the BLM's planning for the land involved and the public interest would be served by offering this land for sale.

The patent issued will be subject to:

1. A reservation to the United States for ditches and canals (43 U.S.C. 945).

2. A reservation to the United States for all mineral rights (43 U.S.C. 1719).

3. Road and Powerline right-of-way OR 24275 (WA) granted to the Bonneville Power Administration.

4. Road rights-of-way for State Route 97 and Okanogan County Road No. 9437 authorized under R.S. 2477, (43 U.S.C. 932).

5. All other easements, encumbrances, reservations, and rights of record.

The parcel will be offered for sale, by non-competitive bid, to SAFECO Title Insurance Company on June 19, 1985. Direct Sale of the parcel is necessary to resolve boundary and title problems of adjacent landowners. Sale to the title company will facilitate the equitable disposition of the property among the several adjacent landowners involved.

The designated purchaser will be required to submit payment in the amount of 30% of the appraised value within 30 days of the offer; and, must pay the balance of the sale price within 180 days. Failure to submit payments within the time frames specified, shall constitute a waiver of the preference consideration and shall cancel the sale.

Detailed information concerning the sale, including the planning documents, environmental assessment, land report, and fair market appraisal, is available for review at the BLM, at the above address.

For a period of 45 days after the date of issuance of this notice, the public and interested parties amy submit comments to the Spokane District Manager, at the above address. Any adverse comments received will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of Issue: March 28, 1985.

Lee V. Larson,

Acting District Manager.

[FR Doc. 85-8149 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-33-M

[Group 704; 4-19952-ILM-940]

Filing of Plat of Survey; California

March 28, 1985.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Kern County

T. 30 S., R. 34 E.
T. 31 S., R. 34 E.
T. 32 S., R. 34 E.
T. 30 S., R. 35 E.
T. 31 S., R. 35 E.
T. 32 S., R. 35 E.

2. The following plats, under Group 704, California, were accepted February 12, 1985:

(a) Representing the dependent resurvey of the south and east boundaries, a portion of the west and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 2, 6, 20, 24, 26, and 32, Township 30 South, Range 34 East, Mount Diablo Meridian;

(b) Representing the dependent resurvey of a portion of the south, east, and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 2, 10, 14, and 28, Township 30 South, Range 35 East, Mount Diablo Meridian;

(c) Representing the dependent resurvey of the north boundary, Township 32 South, Range 35 East, a portion of the east boundary, Township 31 South, Range 34 East, a portion of the east boundary, a portion of the subdivisional lines, Township 31 South, Range 35 East, and the survey of the subdivision of section 30, Township 31 South, Range 35 East, Mount Diablo Meridian;

(d) Representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 14, 22, and 24, Township 32 South, Range 34 East, Mount Diablo Meridian.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-8158 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 804; 4-19952-ILM-940]

Filing of Plat of Survey; California

March 28, 1985.

1. This Plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 33 N., R. 7 W.

2. This plat, representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, and certain boundaries of mineral surveys, Township 33 North, Range 7 West, Mount Diablo Meridian, California, under Group No. 804, California, was accepted February 26, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-8159 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-40-M

Availability of Planning Criteria for an Amendment to the East Mendocino Planning Unit Management Framework Plan, CA

AGENCY: Bureau of Land Management: Interior Department.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2 notice is given that draft planning criteria for the amendment to the East Mendocino Management Framework Plan (MFP) are available for public review and comment.

DATES: Comments will be accepted from the public on or before May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Earle G. Curran, Wilderness Coordinator, Ukiah District Office, P.O. Box 940, Ukiah, California, 95482. Telephone (707) 462-3873.

SUPPLEMENTARY INFORMATION: This amendment to the East Mendocino MFP will evaluate wilderness suitablity of the Eden Valley Wilderness Study Area (WSA) (CA-050-214) and the Thatcher Ridge WSA (CA-050-212). The planning amendment will be done according to the study criteria specified in the Bureau of Land Management's Wilderness Study Policy.

Dated: March 25, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85-8150 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

Notice of Realty Action—Sale CA 16504, Public Lands in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 40 U.S.C. 1713), at no less than the appraised fair market value.

Legal Description

T. 32 N., R. 5 W., Mount Diablo Meridian
Sec. 15, Lot 19
Containing 0.89 Acre.

The above described land is being offered as a direct, noncompetitive sale to Annabell Pettis, owner of contiguous land and improvements inadvertently located on this tract. The improvements have been used as a principal place of residence by the family since the late 1950's. The parcel has been examined and found suitable for disposal under the criteria of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1740). Sale of this difficult and uneconomic remnant tract would serve public objectives and the land is not suitable for management by another Federal department or agency. This action is consistent with Bureau and local plans.

It has been determined that Lot 19 contains no known mineral values, however, it does contain mining claims. Therefore, as a condition of sale, a $50.00 nonrefundable filing fee for conveyance of the mineral estate is required. The prospective surface and subsurface patentee is willing to accept defeasible title and this tract would be subject to existing mining claims. The miners would have the right to continue to prospect for, mine, and remove locatable minerals under applicable laws; and the right to obtain mineral patent to both the surface and mineral estates within the mining claims if valid discovery was made prior to the date of FLPMA patent, or the right to obtain patent to the mineral estate only if discovery is made subsequent to the date of FLPMA patent. Affected mining claims include: CAMC 129149, 129156, plus unserialized claim "XT-7".

Sixty (60) days after publication of this notice the subject parcel will be offered by direct sale to Annabell Pettis for the fair market value. Failure to accept this offer of sale within 15 days shall constitute a waiver of this preference consideration. The lands would then be offered for competitive sale until sold pursuant to 43 CFR 2711.3-1 procedures. An appraisal for this tract will be available prior to sale, in the Redding BLM office.

The patent, when issued, will be subject to the following reservations:

1. A right-of-way shall be reserved for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All valid existing rights and reservations of record.

3. The following mining claims of record: CAMC 129149, 129156, plus unserialized claim "XT-7".

4. Excepting and reserving to the United States S 3668, a right-of-way for transmission powerline and all appurtenances thereto, constructed by the United States, Bureau of Reclamation pursuant to Section 4 of subsection P of the Act of December 5, 1924, through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

Publication of this Notice of Realty Action in the **Federal Register** shall segregate the subject lands from the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the Area Manager, at the address below, or call (916) 246-5325.

ADDRESS: Detailed information concerning this Sale Notice including the land report, environmental documentation, and mineral report is available for review at the below listed address: Bureau of Land Management, Redding Area Office, 355 Hemsted Drive, Redding, California 96002.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85-8153 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

[I-20390; I-20595; 4-20452-ILM]

Realty Action; Public Lands in Blaine County ID; Competitive Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reality action, I-20390 and I-20595, competitive sales of public lands in Blaine County, Idaho.

SUMMARY: The following described lands have been examined, and through land use planning and public input have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date. Only sealed bids will be accepted.

Parcel	Case file	Legal description	Acres
3	I-20390	T. 2 N., R. 18 E., Sec. 23: SW¼ NE¼	40.00
26	I-20595	T. 1 N., R. 22 E., Sec. 34: Lots 1,2	73.32

The lands when patented will be subject to the following reservations to the United States:

Parcel 3

1. Ditches and canals.
2. All minerals.

3. All valid existing rights and reservations of record.

Parcel 26

1. Ditches and canals.
2. Oil and Gas and Geothermal Resources.
3. All valid existing rights and reservations of record.

The lands are hereby segregated from all appropriation under the public land laws including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 10:00 A.M. on July 26, 1985. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value for Parcel 26 only. A $50 nonreturnable filing fee for processing such conveyance, along with one fifth of the full bid price must accompany each bid.

If neither parcel is sold at this time, the parcel will be offered the fourth Friday of each month at the same time and place until sold or sale is suspended.

DATE AND ADDRESSES: The sale offering will be held on July 26, 1985 at 10:00 A.M. in the Shoshone District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, bidding procedures, and other details can be obtained by contacting Mike Austin at (208) 886-2206 or writing to BLM, P.O. Box 2B, Shoshone, ID 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: March 29, 1985.

Charles J. Haszier,

District Manager.

[FR Doc. 85-8154 Filed 4-4-85 8:45 am]

BILLING CODE 4310-84-M

Sale of Public Lands; Power County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Lands in Power County, Idaho—Amendment.

SUMMARY: This publication will amend the original Notice of Realty Action published June 1, 1984 (49 FR 22869) and January 6, 1984 (49 FR 943) to reflect recent amendments to the 43 CFR Part 2710 Sale Regulations (49 FR 29112) and modifications to the bidding procedures for this sale.

The following described land will again be offered for sale using competitive (43 CFR 2711.3-1) or modified competitive bidding procedures (43 CFR 2711.3-2). These lands are hereby segregated from appropriation under the public land laws including the mining laws as provided by 43 CFR 2711.1-2(d).

BOISE MERIDIAN, IDAHO

Name	Legal description	Acres	Appraised fair market value	Type of bidding
Boundary (I-19670)	T. 7 S., R. 32 E., Sec. 29: Lot 4, Sec. 32: Lot 1	65.66	$4,900.00	Competitive
G.K. (I-19675)	T. 8 S., R. 32 E., Sec. 8: NE¼NW¼	40.00	3,000.00	Modified
Sunbeam (I-20613)	T. 8 S., R. 31 E., Sec. 12: W½E½, E½W½	320.00	16,000	Competitive

The patent when issued will contain the following reservations to the United States.

1. A right-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas rights (43 U.S.C. 1719).

In addition, the patents will be subject to the following reservations.

1. All valid existing rights and reservations of record.

2. For parcel I-19670, a 60 foot (30 feet each side of center) road right-of-way to Power County for the County road crossing lot 1 of section 32, T. 7 S., R. 32 E., B.M. as shown on the 1971 Wheatgrass Bench, Idaho 7.5 minute Quadrangle map published by the U.S. Geological Survey.

Bidding Procedures: The designated or preference right bidder on parcel I-19675 will be George Kopp of American Falls, Idaho. This right is offered to protect existing uses and prevent inequities to this adjoining landowner. Failure to accept this offer to purchase within 15 days after the specified sale date or succeeding sale dates shall constitute a waiver of his preference right consideration.

Only sealed bids for no less than the appraised fair market value will be accepted. A bid will also constitute an application for the conveyance of the mineral rights except oil and gas. Each bidder must submit a fifty dollar ($50.00) (non-returnable for the high bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)). Each bid shall be accompanied by certified check, postal money order, bank draft, or cashiers check made payable to the Bureau of Land Management for 30 percent (30%) of the bid price. Failure to submit these sums shall result in disqualification of the bid.

DATES: The above described lands will be offered for sale on June 19, 1985. If unsold on this date, they will be re-offered the first Wednesday of each month for three consecutive months until sold or the sale is otherwise suspended. All sealed bids (with the parcel name and serial number CLEARLY marked in the lower left hand corner of the envelope) must be received by 1:30 p.m. on the designated sale dates at the Burley District Office.

ADDRESSES: Sealed bids will be accepted at the Burley District Office, Rt. 3, Box 1, 200 South Oakley Highway, Burley, Idaho, 83318. Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Terrance M. Costello, Deep Creek Area Manager, at the above address, or by calling (208) 678-5514.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this notice of realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sales would not be fully consistent with sections 203(g) of FLPMA or other applicable laws.

Dated: March 29, 1985.

John S. Davis,

District Manager.

[FR Doc. 85-8155 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

[Lease M 48088]

Lake County, MT; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 48088, Lake County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, February 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms of rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 88), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: March 26, 1985.

Judith I. Reed,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 85-8152 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-84-M

[C-36674K]

Realty Action; Competitive Sale of Public Land in Delta County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action C-36674K. Competitive sale of public land in Delta County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under seciton 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value of $4,500.00

6th Principal Meridian, Colorado

T. 15 S., R. 95 W.,
Sec 33, N½NW¼NE¼SE¼, N½NW¼NE¼NE¼SE¼.
Containing 6.25 acres.

This parcel was offered unsuccessfully by direct sale to an adjacent landowner in December 1983 (48 FR 46629). It is now being offered for sale by unrestricted competitive bidding. Unauthorized farming of the parcel has occurred in past years, and settlement of the unauthorized activity is pending. Therefore, if the high bidder is the past user, patent to the parcel will not issue until the unauthorized use case has been closed. There is no legal access to the parcel.

The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specified parcel.

Bidding will be sealed bid only. To be considered, bids must be received in the Montrose District Office on or before 10:00 a.m. the day of the sale which will be June 19, 1985. Bids accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the "Department of the Interior—Bureau of Land Management" for not less than one-fifth (20%) of the amount of the bid, must be in a separate sealed envelope within the transmittal envelope. The sealed envelope must be marked in the lower left-hand corner "Sealed Bid, Public Land Sale, Parcel Number C-36674K, Sale to be June 19, 1985." All sealed bids will be opened at 1:00 p.m. on the day of the sale. If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The successful high bidder will be required to submit the remainder of the bid price in cash, by certified check, bank draft, money order, or any combination of these within 180 days after the determination of the highest bid.

Further, the successful high bidder will be required to file an application for the mineral estate except the oil, gas and coal of the parcel. This application must be filed with the Montrose District Office within 30 days of the sale date, and be accompanied by a $50.00 filing fee.

The patent issued for this land will contain a reservation to the United States of rights-of-way for the construction of ditches and canals (26 Stat. 391; 43 U.S.C. 945), a reservation of the oil, gas and coal with the right to explore, prospect for, mine, and remove under applicable law and regulations (43 U.S.C. 1719), and be subject to valid existing rights.

If the parcel does not sell at the June 19, 1985, sale the parcel will be offered the second Wednesday of every month beginning on July 10, 1985, and continuing until the parcel is sold or withdrawn. Detailed information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office.

DATE: For a period on or before May 20, 1985, interested parties may submit comments to the District Manager, Montrose District Office.

ADDRESS: Comments should be sent to: Montrose District Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401.

Any adverse comments will be evaluated by the District Manager, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Donley M. Lotvedt,

Acting Montrose District Manager.

[FR Doc. 85-8246 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-JB-M

[M 59616]

Conveyance and Order Providing for Opening of Public Lands; Garfield County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public lands in Garfield County, Montana—M 59616.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Managment Act of 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. No minerals were transferred by either party in the exchange. This notice also informs the public and interested state and local govermental officials of the issuance of the conveyance document.

DATE: At 9 a.m. on May 20, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including minig laws, but not from exchange, by the Notice of Realty Action publised in the **Federal Register** on February 23, 1984 (49 FR 6801). The segregation terminated on issuance of the patent on December 12, 1984.

ADDRESSES: For Further Information Contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657-6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Phipps Ranch, Inc., a Montana corporation:

Principal Meridian, Montana

T. 20 N., R. 33 E.,
Sec. 6, NE¼SW¼; and
Sec. 9, NW¼SW¼;
T. 18 N., R. 35 E.,
Sec. 1, lots 1 and 2, SE¼NE¼, NE¼SE¼.
T. 18 N., R. 36 E.,
Sec. 17, SE¼NE¼.
Aggregating 280.07 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County, Montana:

Principal Meridian, Montana

T. 20 N., R. 33 E.,
Sec. 6, lot 3.
T. 21 N., R. 33 E.,
Sec. 30, lots 1, 2, 3, 4 and E½NW¼.
Aggregating 280.74 acres.

3. The values of Federal public land and the non-Federal land in the exchange were appraised at $17,600 and $14,000, respectively. A $3,600 cash equalization payment was made to the United States.

4. At 9 a.m. on May 20, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

March 26, 1985.

John A Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-8248 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

TITLE: Woodcock Wing Collection Envelope

Abstract: The woodcock wing collection survey provides data on the annual population, distribution and chronology of the woodcock harvest, and hunter success. This information is compiled and analyzed and is used primarily by the Service to develop annual hunting regulations.

Service Form Number: 3-156a

Frequency: Annually

Description of Respondents: Woodcock hunters

Annual Responses: 10,000

Annual Burden Hours: 670

Service Clearance Officer: Authur J. Ferguson, 202-653-7499

Dated: March 18, 1985.

Don W. Minnich,

Acting Associate Director, Wildlife Resources.

[FR Doc. 85-8214 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Intent To Prepare an Environmental Impact Statement for Proposed Lease Sale of Cobalt-Rich Manganese Crusts in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On March 5, 1984, the Minerals Management Service (MMS) published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) for a proposed lease sale of cobalt-rich manganese crusts on the Outer Continental Shelf in the **Federal Register** (49 FR 8089). The March 5 Notice pertained to portions of the Exclusive Economic Zone (EEZ) adjacent to the State of Hawaii. This Notice reopens the comment period and amends the March 5 Notice to include portions of the EEZ adjacent to Johnston Island. Comments are requested from interested parties concerning the EIS for portions of the EEZ adjacent to Johnston Island.

Additionally, scoping meetings relative to Johnston Island will be conducted on the Islands of Oahu, Kauai, Maui, and Hawaii during the week of May 6-10, 1985. Written and oral comments will be accepted at that time. Further notice on dates and times of these meetings will be locally published.

DATE: Comments and information in response to this request should be postmarked or hand-delivered no later than June 4, 1985.

ADDRESSES: Comments and information may be mailed or delivered to Program Director, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802.

For further information or for copies of a map of area of interest contact: Dr. John Wilshire, Department of Planning and Economic Development, Post Office Box 2359, Honolulu, Hawaii 96804; telephone (808) 548-6262; or Mr. Robert G. Paul, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 260, Long Beach, California 90802; telephone (213) 548-2901

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, in conjunction with the State of Hawaii, is considering the potential economic and environmental impact resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. On March 5, 1984, MMS announced in the **Federal Register** its intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts. Public hearings were held in Honolulu, Hawaii, on April 30, 1984, and in Hilo, Hawaii, on May 1, 1984, to asist in determining the scope of the EIS. On August 28, 1984, a Call for Information was published in the **Federal Register** (49 FR 34099) to obtain information needed to delineate areas of interest to be addressed in the EIS.

The area surrounding Johnston Island, a possession of the United States, approximately 700 miles southwest of Honolulu, is a prime prospecting area for cobalt-rich manganese crusts. Recent samplings of thicknesses and grades of the manganese crusts near Johnston Island have produced results which are encouraging for possible commercial discoveries in the future.

A working group jointly formed by the State of Hawaii and the Federal Government has been considering the economic potential and the environmental impact related to ocean mining in portions of the EEZ near Hawaii. This working group recommended that the impact of ocean mining in portions of the EEZ adjacent to Johnston Island be considered concurrently with impacts due to ocean mining of portions of the EEZ adjacent to Hawaii.

Amendment to Previous Notice

The March 5, 1984, Notice of Intent to Prepare an Environmental Impact Statement (49 FR 8089) is amended to reopen the comment period until June 4, 1985 and to change the area of interest to also include an area adjacent to Johnston Island. The specific area is depicted on a map available from MMS or the Hawaiian Department of Planning and Economic Development at the addresses and telephone numbers listed above. Other information concerning the scope of the EIS is unchanged from the March 5, 1984, Notice.

Dated: March 29, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-8185 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Call for Information To Delineate Areas of Interest for Preparation of an Environmental Impact Statement on the Exploration for and Possible Recovery of Cobalt-Rich Manganese Crusts in the Exclusive Economic Zone Adjacent to Hawaii

ACTION: Expansion of applicable area for call for information.

SUMMARY: To delineate areas of interest to be addressed in an Environmental Impact Statement (EIS) on the exploration and possible recovery of cobalt-rich manganese crusts in the Exclusive Economic Zone (EEZ) surrounding the Hawaiian Archipelago, the joint Federal/State of Hawaii Task Force on cobalt-rich manganese crusts requested information on areas to b included in or excluded from the study (49 FR 34099). This Notice amends the Call for Information to reopen the comment period and to expand the applicable area to include portions of the EEZ adjacent to Johnston Island.

DATE: Comments and information in response to this request should be postmarked or hand-delivered no later than June 4, 1985.

ADDRESSES: Comments and information may be mailed or delivered to Program Director, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802. If information of a priviledged or confidential nature is submitted, it should be enclosed in a separately sealed envelope and marked CONFIDENTIAL. This information will be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552). Indications of interest are considered privileged and confidential. However, the names of persons or entities indicating interest or submitting comments will be of public record.

For further information or for copies of call for information map contact: Dr. John C. Wilshire, Department of Planning and Economic Development, Post Office Box 2339, Honolulu, Hawaii 96804, telephone (808) 548-6262; or Mr. Robert C. Paul, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802; telephone (213) 548-2901

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. On March 5, 1984, the Minerals Management Service (MMS) announced in the **Federal Register** (49 FR 8089) its intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts. Public hearings were held in Honolulu, Hawaii, on April 30, 1984, and in Hilo, Hawaii, on May 1, 1984, to assist in determining the scope of the EIS. To further delineate the areas of interest for recovery of cobalt-rich manganese crusts, a Call for Information was published in the **Federal Register** on August 28, 1984 (49 FR 46509).

The area surrounding Johnston Island, a possession of the United States approximately 700 miles southwest of Honolulu, is a prime prospecting area for cobalt-rich manganese crusts. Recent samplings of thicknesses and grades of the manganese crusts near Johnston Island have produced results which are encouraging for possible commercial discoveries in the future.

A working group jointly formed by the State of Hawaii and the Federal Government has been considering the economic potential and the environmental impact related to ocean mining in portions of the EEZ near Hawaii. This working group recommended that the impact of ocean mining in portions of the EEZ adjacent to Johnston Island be considered concurrently with impacts due to ocean mining of portions of the EEZ adjacent to Hawaii.

Purpose of This Notice

The purpose of this Notice is to obtain information concerning the specific areas of the EEZ adjacent to Johnston Island for which there is interest in recovering cobalt-rich manganese crusts.

Amendment to Previous Notice

The August 28, 1984, Call for Information (49 FR 34099), as amended November 26, 1984 (49 FR 46509), is further amended to reopen the comment period until June 4, 1985 and to change the area of interest to also include an area adjacent to Johnston Island. The specific area is depicted on a Call for Information Map available from MMS or the Hawaiian Department of Planning and Economic Development at the addresses and telephone numbers listed above. All other conditions of the Call for Information are unchanged.

Dated: March 29, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-8186 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4131, Block 19, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbon with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 28, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Officer located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the

Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8151 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Katmai National Park and Preserve; Availability of Draft General Management Plan/Environmental Assessment, Land Protection Plan and Wilderness Suitability Review

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of avaiability of draft general management plan/environment assessment, land protection plan, and wilderness suitability review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Katmai National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, King Salmon, and local communities (see schedule below).

This document proposes management actions addressing issues and problems facing Katmai National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitors uses, general development within and adjacent to the park/preserve, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the resource values for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability reveiw will be developed.

Dates and Addresses: Comments on the draft document should be received no later than July 8, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell Stree,t Rm 107, Anchorage, Alaska 99503-2892.

Public reading copies of the draft document will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240

Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, AK 99503-2892

Alaska Resources Library, Federal Building, 701 C Street, Anchoarage, AK 99502

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th, Juneau, AK

Consortium Library, University of Alaska, 3211 Providence Ave., Anchorage, AK 99507

Katmai National Park and Preserve Headquarters, King Salmon, Alaska 99613

Elmer Rasmuson Library, University of Alaska, Fairbanks, AK.

Reading copies will also be available at community libraries in King Salmon, Naknek, and South Naknek and village council offices in Levelock and Igiugig.

Public Meetings: Public meetings will be held at the following locations:

Com-Ser-Fac, King Salmon, AK, Monday, April 29, 1985, 7:30 p.m.

Community Building, Levelock, AK, Wednesday, May 1, 1985, 1:00 p.m.

Community Building, Igiugig, AK, Thursday, May 2, 1985, 7:30 p.m.

Bristol Bay Borough Building, Naknek, AK, Tuesday, April 30, 1985, 7:30 p.m.

Recreation Hall, South Naknek, AK, Wednesday, May 1, 1985, 7:30 p.m.

Regional Office, National Park Service, 2525 Gambell Street, Rm 110, Anchorage, AK, Monday, June 3, 1985, 7:00 p.m.

A limited number of copies of the full document are available upon request from: Chief of Planning National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503-2892, (907) 271-4366.

Dated: March 28, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-8206 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-70-M

Wrangell-St. Elias National Park and Preserve; Availability of Draft General Management Plan/Environmental Assessment, Land Protection Plan and Wilderness Suitability Review

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of availability of a Draft General Management Plan/ Environmental Assessment, Land Protection Plan, and Wilderness Suitability Review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Wrangell-St. Elias National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, Fairbanks, and local communities (see schedule below).

This document proposes management actions addressing issues and problems facing Wrangell-St. Elias National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitor uses, general development within and

adjacent to the park/preserve, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the purposes for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability review will be developed.

Dates and Addresses: Comments on the draft document should be received no later than July 8, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell Street, Rm 107, Anchorage, Alaska 99503–2892.

Public reading copies of the draft document will be be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240

Alaska Resources Library, Federal Building, 701 C Street, Anchorage, AK 99502

Alaska Regional Office National Park Service, 2525 Gambell Street, Anchorage, AK 99503-2892

Consortium Library, University of Alaska, 3211 Providence Ave., Anchorage AK 99507

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th Juneau, AK

Wrangell-St. Elias National Park and Preserve Headquarters, Mile 105.5 Richardson Hwy, South of Glennallen, AK

Elmer Rasmuson Library, University of Alaska, Fairbank, AK.

Community libraries in Glennallen, Tok, Valdez, and Cordova.

National Park Service Ranger Stations at Chitina, Slana, and Yakutat.

Public meetings: Public meetings will be held at the following locations:

City Hall, Yakutat, AK, Monday, June 3, 1985, 7 p.m.

Regional Office, National Park Service, 2525 Gambell Street Rm 110 Anchorage, AK, Tuesday, June 4, 1985, 7 p.m.

High School, Rm 3, Glennallen, AK, Thursday, June 6, 1985, 7 p.m.

Duffy's Roadhouse, Slana, AK, Friday, June 7, 1985, 3 p.m.

Community Hall, Kenny Lake, AK Monday, June 10, 1985, 7 p.m.

Old Hardware Store, McCarthy, AK, Tuesday, June 11, 1985, 11 a.m.

Auditorium, Noel Wien Library, Fairbanks, AK, Wednesday, June 12, 1985, 6 p.m.

Tok Lodge, Tok, AK, Friday, June 14, 1985, 6 p.m.

Top Deck, Sheffield House, Valdez, AK, Saturday, June 8, 1985, 7 p.m.

Copies of a summary and a limited number of copies of the full document are available upon request from: Chief of Planning, National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, (907) 271–4366.

For further information contact Vaughn Baker at the above address and telephone number.

Dated: March 22, 1985.

Robert Peterson

Acting Regional Director, Alaska Region.

[FR Doc. 85–8205 Filed 4–4–85; 8:45 am]

BILLING CODE 4310-70-M

Denali National Park and Preserve; AK Interior.

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of availability of a draft general management plan/environmental assessment, land protection plan, and wilderness suitability review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Denali National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, Fairbanks, Healy, and Talkeetna (see schedule below).

This document proposes management actions addressing issues and problems facing Denali National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitor uses, general development within and adjacent to the park/preserve, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the purposes for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability review will be developed.

Dates and addresses: Comments on the draft document should be received no later than July 15, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell St., Rm 107, Anchorage, Alaska 99503–2892.

Public reading copies of the draft document will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets, NW., Washington, D.C. 20240

Alaska Resources Library, Federal Building, 701 C Street, Anchorage AK 99502

Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892

Consortium Library, Univesity of Alaska, 3211 Providence Ave., Anchorage, AK 99507

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th, Juneau, AK

Denali National Park and Preserve Headquarters, McKinley Park, AK

Elmer Rasmuson Library, University of Alaska, Fairbanks, AK

Public meetings: Public meetings will be held at the following locations:

Monday, June 3, 1985, 6:30 P.M., Auditorium, Fairbanks North Star Borough Library, Fairbanks, AK

Tuesday, June 4, 1985, 7 P.M., Sugarloaf Room, Healy Community Center, Healy, AK

Thursday, June 6, 1985, 7 P.M., Gym, Talkeetna Elementary School, Talkeetna, AK

Wednesday, June 12, 1985, 7:30 P.M., Auditorium, Anchorage Historical and Fine Arts Museum, 121 WE. 7th Ave., Anchorage, AK

A limited number of copies of the full document are available upon request from: Chief of Planning, National Park

Service, Alaska Regional Office, 2525 Gambell St., Room 107, Anchorage, Alaska 99503-2892, (907) 271-4366.

For further information contact Linda Nevel at the above address and telephone number.

Dated: March 28, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-8271 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority 135]

Assistant to the Administrator for Management, AID; Delegation of Authority

AGENCY: Agency for International Development, IDCA.

ACTION: Delegation of authority amendment.

SUMMARY: This document amends the authority delegated to the Controller by Delegation of Authority No. 135.

EFFECTIVE DATE: February 26, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce K. Birnberg, Accounting Systems Division, Office of Financial Management, Agency for International Development, 1875 Connecticut Avenue, Washington, D.C. 20523, (202) 632-1062.

The Agency for International Development is amending Delegation of Authority 135 Section 1 to read as follows:

I. Authority To Sign the Following

(a) * * *

(h) * * *

(i) Letters of commitment to U.S. banking institutions;

(j) Letters of commitment to suppliers; and

(k) Applications for letters of credit.

Dated: February 26, 1985.

James A. Norris,

Counselor to the Agency.

[FR Doc. 85-8247 Filed 4-4-85; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-208, Flat Goods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposals

(1) Number of forms submitted: two

(2) Title of forms: (1) Questionnaire for Producers of Flatgoods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers and (2) Questionnaire for Importers of Flat Goods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers

(3) Type of request: new

(4) Frequency of use: nonrecurring

(5) Description of respondents: U.S. producers and importers of flat goods of manmade fibers, luggage of manmade fibers, and handbags of manmade fibers

(6) Estimated number of respondents: 600

(7) Estimated total number of hours to complete the forms: 10,500

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from William Fry, the USITC agency clearance officer (tel. no. 202-523-4463). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503, Attention: Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission (202-395-7231). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them pormptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to William Fry (United States International Trade Commission, 701 E. Street, NW, Washington, D.C. 20436).

Issued: April 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8148 Filed 4-4-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cargill Limited, 300 240 Graham Avenue P.O. Box 5900, Winnipeg, Manitoba R3C 4C5.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: (i) Mighty Peace Shipping & Transportation Ltd., a company incorporated under the laws of Canada.

(1) The parent corporation and address of its principal office is as follows:

Farm House Foods Corporation, 111 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202
State of Incorporation—Wisconsin

(2) The wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices and the States of their incorporation are as follows:

(a) Carpenter Cook Company, 1230 48th Avenue, Menominee, Michigan 49858
State of Incorporation—Michigan

(b) Don-Lou Artesian Wells, Ltd., Route 1, Hillview Road, Mishicot, Wisconsin 54228
State of Incorporation—Wisconsin

(c) Fairbank Farms, Inc., R.D. No. 1, Ashville, New York 14710
State of Incorporation—New York

(d) Farm House Wholesale Corporation, 2951 South First Street, Eldridge, Iowa 52748
State of Incorporation—Wisconsin

(e) Ben Kozloff, Inc., 35 East Wacker Drive, Chicago, Illinois 60601
State of Incorporation—Illinois

(f) Roberts Farm House Foods Corporation, 575 Cameron Street, Eau Claire, Wisconsin 54701
State of Incorporation—Wisconsin

(g) Seamark Corp., 64 Long Wharf, Boston, Massachusetts 02110
State of Incorporation—Massachusetts

(h) Worcester Quality Foods, Inc., 512 Southbridge, Worcester, Massachusetts 01610

State of Incorporation—
Massachusetts

1. Parent corporation and address of principal office: Fort Howard Paper Company, 1919 South Broadway, Green Bay, WI 54304.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal office:

(a) HAC Holding Corp., 1919 South Broadway, Green Bay, WI 54304
(b) Harmon Assoc., Corp, 86 Garden Street, Westbury, NY 11590
(c) Harco Trucking Corp., 86 Garden Street, Westbury, NY 11590
(d) Harmon International Paper Corp., 86 Garden Street, Westbury, NY 11590
(e) Maryland Cup Corporation, 10100 Reisterstown Road, Owings Mills, MD 21117.

James H. Bayne,

Secretary.

[FR Doc. 85-8181 Filed 4-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30634]

Union Pacific Railroad Co., et al.; Trackage Rights Exemption

On March 6, 1985, Union Pacific Railroad Company (UP) and its lessor, Oregon-Washington Railroad & Navigation Company, filed a notice of exemption for trackage rights over a line of track of Burlington Northern Railroad Company (BN) between milepost 54.228 and milepost 56.69 in Grays County, WA.

UP operates over a line adjacent to the line of BN. UP's trackage at times is under water due to flooding. Because BN's parallel trackage is higher, it does not incur the same water problem. Operations over the BN trackage and construction of the necessary connections will permit continued service to all of the active industries that presently are being served by UP.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers and falls within the class of transactions identified at 49 CFR 1180.2(d)(5) that 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 here. 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 agreement 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 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-8182 Filed 4-4-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-83X)]

Southern Pacific Transportation Co.; Abandonment Exemption; Los Angeles County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 the abandonment of 5.18 miles of line by Southern Pacific Transportation Company from milepost 498.00 at or near Cota, CA to milepost 503.184 at or near East Long Beach, CA, subject to labor protection.

DATES: This exemption is effective on May 6, 1985. Petitions for reconsideration must be filed by April 25, 1985. Petitions for stay must be filed by April 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. AB-12 (83X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

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

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

Decided: March 29, 1985.

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

James H. Bayne,

Secretary.

[FR Doc. 85-8321 Filed 4-4-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that Halliburton Co. ("Halliburton") and Jet Research Center, Inc. ("JRC") have filed with the United States District Court for the Southern District of Texas a motion to terminate the Final Judgment ("Judgment") in *United States v. Borg-Warner Corporation, et al.*, Civil Action No. 13772; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case (filed on July 27, 1961) alleged that defendants unlawfully combined and conspired to restrain and to monopolize, and attempted to monopolize, interstate trade and commerce in jet perforating in oil well servicing and in jet charges and other supplies used in jet perforating. While most provisions of the Judgment, entered by the Court in Houston on October 22, 1962, are no longer effective, it still requires Halliburton and JRC to sell to any customer, upon request, any jet process products they manufacture that at any time since entry of the Judgment they have sold to any person other than a government or government agency.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public's interest. Copies of the Complaint, Final Judgment, Halliburton's and JRC's motion papers, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW, Washington, DC, 20530 (Telephone: (202) 633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of Texas, Houston Division, Federal Courthouse, 515 Rusk, Houston, Texas 77002. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be

received within sixty days and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, United States Department of Justice, Washingtonk DC, 20530 (Telephone: (202) 724-7966).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-8125 Filed 4-4-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Final Judgment and Competitive Impact Statement; United States v. Anthony J. Bertucci Construction Company, Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) have been filed with the United States District Court for the Eastern District of Louisiana, in *United States of America v. Anthony J. Bertucci Construction Company, Inc., et al.*, Civil No. 78-3165, Section H.

The Complaint in this case alleged that the defendants and other co-conspirators engaged in a combination and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. 1), the substantial terms of which were: (1) To allocate among themselves bank stabilization jobs in six United States Army Corps of Engineers Districts; and (2) to submit collusive, noncompetitive and rigged bids on bank stabilization jobs in the Corps of Engineers Districts. Count Two of the Amended Complaint stated a claim under section 4A of the Clayton Act (15 U.S.C. 15A) for the recovery of damages allegedly suffered by the United States as a result of the defendant's illegal conspiracy. Count Three alleged that the defendants knowingly submitted false, fictitious or fraudulent claims to the Corps of Engineers, which were paid by the government without knowledge that these claims were false or fraudulent. Count Three demanded judgment against the defendants under 31 U.S.C. 231-233, for each false claim as well as double the damages suffered by the government. Counts Two and There have been settled with each defendant.

The proposed Final Judgment will terminate the proceedings with regard to Count One of the Complaint. The proposed Final Judgment would enjoin any direct or indirect renewal of the type of conspiracy alleged in Count One of the Complaint. To facilitate monitoring of complaince with the provisions relating to competitive bidding, the proposed Final Judgment would require each defendant to preserve all written price computations, estimating sheets, worksheets or similar calculations actually performed or used by it in connection with the preparation of a bid. The proposed Final Judgment also contains provisions to ensure that the necessary employees of each defendant are made aware of their and the defendant's obligations under the antitrust laws and the Final Judgment, and to prompt each defendant to establish or continue an antitrust compliance program. The proposed Final Judgment would give the Department of Justice access to the files and records of each defendant to ensure compliance.

Public comment is invited within the statutory 60-day waiting period. Such comments, and responses thereto, will be published in the **Federal Register** and will be filed with the Court. Comments should be directed to James A. Backstrom, Jr., Chief, Dallas Field Office, Department of Justice, 1100 Commerce Street, Room 8C6 Dallas, Texas 75242, telephone number (214) 767-8051.

Joseph H. Widmar,

Director of Operations Antitrust Division.

U.S. District Court for the Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc.; Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Markham & Brown, Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78-3165, Section H]

Filed: March 27, 1985.

Stipulation

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 the plaintiff and defendants in this or any other proceeding.

Dated:

For the Plaintiff: J. Paul McGrath, *Assistant Attorney General;* Joseph H. Widmar, James A. Backstrom, Jr., *Attorneys, Antitrust Division, United States Department of Justice.*

Mary Coleen T. Sewell, *Attorney, Antitrust Division, United States Department of Justice, 1100 Commerce Street, Room 8C6, Dallas, Texas 75242, (214) 767-8051.*

For the defendants: Charles K. Reasonover, *for Anthony J. Bertucci Construction Company, Inc.;* Robert G. Pugh, *for W. H. Carder, Inc. [Documentation in VI (A) limited to items on hand on December 13th, 1983.];* W. Stuart McCloy, Jr., *for Davis Construction Company;* Barrett Ashley, *for Ford Construction Company;* Bruce C. Rohde, *for Luhr Bros., Inc.;* Lehman Finch, *for Markham & Brown, Inc.;* Abraham E. Margolin, *for Massman Construction Co.;* J. Brooke Lathram, *for McAlister Construction Company, Inc.;* Bruce C. Rohde, *for Midwest Construction Company;* John D. Martin, Jr., *for Patton-Tully Transportation Company;* Abraham E. Margolin, *for Pensacola Construction Co.;* Jill Jelinek, *for Peter Kiewit Sons' Co.;* E. Harley Cox, Jr., *for Pine Bluff Sand & Gravel Company;* Steve G. Napper, *for Souter Construction Co., Inc.;* William E. McCurdy, Jr., *for Southern River Rock Co.*

U.S. District Court; for the Eastern District of Louisiana, New Orleans Division

United States of America, Plantiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc., Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Markham & Brown Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78-3165, Section H]

Filed: March 27, 1985.

Final judgment

Plaintiff, United States of America, having filed its Complaint herein on September 27, 1978, and its Amended Complaint on January 30, 1979, and plaintiff and defedants having reached separate agreements with regard to Counts Two and Three of the Amended Complaint, and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment, without trial or adjudication of any issue of fact or law

herein and without this Final Judgment constituting any evidence against or an admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed with respect to Count One of plaintiff's Amended Complaint as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Count One of the Amended 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) "Bank stabilization construction" means the construction, reconstruction, repair or maintenance of bank stabilization structures such as, but not limited to, the various types of dikes and revetments and similar construction—but excluding such principally earthen structures as levee set-backs and retention dikes—and such other related or allied construction performed in connection therewith.

(B) "Bank stabilization contractor" means any person engaged directly or indirecty in bank stabilization construction.

(C) "Bank stabilization job" means actual or prospective bank stabilization construction in accordance with plans and specifications, terms and conditions of any soliciation for bids issued, or contract awarded by the Corps of Engineers, and financed or to be financed in whole or in part by the federal government through the Corps of Engineers.

(D) "Corps of Engineers" means the Department of the Army, Corps of Engineers, an agency of the United States of America, including the office of the Chief of Engineers, and all constitutent Divisions and Districts.

(E) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

III

The provisions of this Final Judgment apply to the defendants and to each of their officers, directors, partners, agents, employees, subsidiaries, affiliates, 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 entering into, adhering to, participating in, maintaining, furthering or enforceing, either directy or indirectly, any contract, agreement, understanding, arrangement, plan, combination or conspiracy with any other bank stabilization contractor to:

(A) Submit or solicit any noncompetitive, collusive or complementary bid for any bank stabilization job;

(B) Fix, determine, establish, maintain or stabilize the prices, or any term, condition, component or part thereof, for any bank stabilization job;

(C) Refrain from bidding on a bank stabilization job;

(D) Compensate, by any means, unsuccessful bidders or persons who refrained from bidding on a bank stabilization job;

(E) Allocate contracts or rotate or divide territories with respect to any bank stabilization job; or

(F) Communicate to, furnish to, or exchange with any bank stabilization contractor, either directly or through other persons, information concerning bids, or any term, condition, component or part thereof, or any bid range, with regard to any bid the defendant or other bank stabilization contractor has submitted, intends to submit, or is considering submitting on any bank stabilization job prior to the release of such information to the public or to the trade generally.

V.

Nothing in this Final Judgment shall:

(A) Apply to any prices, terms or other conditions of a *bona fide* sale, lease or rental offered by a defendant to any other bank stabilization contractor, or offered by any other bank stabilization contractor to a defendant in negotiating between that defendant and such other bank stabilization contractor any proposed purchase, sale, lease or rental of equipment, supplies or services used in bank stabilization construction; or

(B) Prohibit a defendant from negotiating concerning, entering into, participating in, or maintaining, with any other person, a *bona fide* joint venture or subcontract agreement whereby a single bid will be submitted, and the assets and facilities of each of the parties will be utilized for performing the bank stabilization job, provided that such joint venture or subcontract agreement does not represent compensation prohibited by section IV(D) of this Final Judgment, and provided further that any joint venture is denominated as a joint venture in the bid submitted.

VI

From the date of entry of this Final Judgment until September 1, 1991, each defendant shall:

(A) Preserve all written bid computations, estimates, worksheets and similar documents prepared or used by it in the preparation of any bid, joint venture or subcontract, whether submitted or not and whether successful or not, for any bank stabilization job let after September 27, 1978;

(B) Affix to every bid for a bank stabilization job let by the Corps of Engineers, a written certification, signed by an officer of such defendant, or officers of each company in the case of a joint venture, responsible for the preparation of bids, that such bid was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any bank stabilization contractor, except as specifically permitted by Section V of this Final Judgment. When a defendant enters into a subcontract agreement either before the submission of the bid, or subsequent thereto a written certification must be executed by the contractor and the subcontractor and submitted to the Corps of Engineers within ten (10) days after the subcontract is formally established.

VII.

Each defendant is ordered and directed to:

(A) Furnish, within thirty (30) days after the entry of this Final Judgment, a copy of this Final Judgment to each of its officers, directors and partners, and to each of its employees and agents who have any authority or responsibility for preparing, estimating, reviewing or submitting bids for bank stabilization jobs;

(B) Furnish a copy of this Final Judgment to each successor to such officers, directors, partners, employees or agents described in section VII(A) within thirty (30) days after such individual becomes employed or associated with defendant;

(C) Obtain a receipt from each person to whom a copy of this Final Judgment has been furnished, pursuant to sections VII(A) and (B), stating that the person has received and read the Final Judgment, and to maintain said receipts

so long as the Final Judgment is effective:

(D) Establish or continue a program for dissemination of, explanation of, and compliance with, this Final Judgment, for each officer, director, partner, employee and agent described in section VII(A), advising them of their obligations under this Final Judgment. This program shall include, at a minimum, an explanation of the Final Judgment and a statement of the company's compliance policy regarding it as well as an explanation of the criminal and civil penalties and other liabilities that may be imposed upon them and the defendant for violation of the antitrust laws.

(E) File with this Court and serve upon the plaintiff within sixty (60) days of the entry of this Final Judgment, and thereafter upon request by plaintiff for a period of five (5) consecutive years from the date of its entry, an annual affidavit detailing all steps defendant has taken since the prior affidavit to discharge its obligations under this Section VII and to include with said affidavit copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VIII

Each defendant shall be required, prior to a sale or other disposition of all, or substantially all, of the assets used by it for bank stabilization construction, to submit a letter of intent to the plaintiff. This letter should include information sufficient to demonstrate that the proposed transaction is not a sham or a fraud intended to avoid the terms of this Final Judgment, nor a device to facilitate collusion among bank stabilization contractors. Within 15 days after defendant presents such a letter of intent to the plaintiff at the offices of the Antitrust Division in Dallas, Texas, the plaintiff shall indicate its approval or disapproval in writing to defendant. If plaintiff requires supplementary information concerning the proposed transaction, it shall request such information within seven days after receipt of said letter of intent and must indicate its approval or disapproval in writing within 15 days after receipt of the supplementary information. Failure to respond within the required time under either circumstance shall be deemed to be approval by the plaintiff. If plaintiff objects to the proposed transaction, the transaction shall not be consummated unless the acquiring person agrees to be bound by the terms of this Final Judgment, the transaction is approved by the Court, or plaintiff notifies defendant in writing that its objection has been withdrawn.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview under oath officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested. 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.

(C) If, at the time information or documents are furnished by defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

This Final Judgment shall continue in effect from the date of its entry by this Court until September 1, 1991.

XI

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 further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith and for the punishment of violation hereof.

XII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

U.S. District Court, for the Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc.; Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78-3165, Section H]

Filed: March 27, 1985.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. 16(d)-(h)], the United States of America hereby 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 September 27, 1978, the government filed a three-count civil complaint against the defendants herein as well as against Gibbar Bros., Inc. and Markham and Brown, Inc. which were dismissed from the civil case by mutual agreement in June 1981 and October 1984 respectively. An amended complaint, filed on January 30, 1979, alleged the same counts against the defendants and specified the amount of monetary damages allegedly suffered by

the United States from the defendants' conduct.

The first count of the amended complaint charged that, from around 1964 until approximately September 1978, the defendants and other co-conspirators engaged in a combination and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. 1), the substantial terms of which were: (a) To allocate among themselves bank stabilization jobs in the New Orleans, Vicksburg, Memphis, St. Louis, Kansas City and Omaha United States Army Corps of Engineers Districts; and (b) to submit collusive, noncompetitive and rigged bids on bank stabilization jobs in the six aforementioned Corps of Engineers Districts. Count One of the amended complaint sought a judgment declaring that the defendants had engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also sought an order enjoining the defendants, and their respective officers and employees, from directly or indirectly continuing or renewing the unlawful conspiracy.

Count Two of the amended complaint stated a claim under Section 4A of the Clayton Act (15 U.S.C. 15A), for the recovery of damages in the amount of $11,970,403 allegedly suffered by the United States as a result of defendants' illegal conspiracy. The government claimed that the United States, through its Corps of Engineers, had to pay substantially higher prices for bank stabilization jobs during the period of September 27, 1978, through September 27, 1979, because of the defendants' bid rigging.

In Count Three of the amended complaint, the government alleged that, between September 27, 1972, and September 27, 1978, the defendants knowingly sumitted 1,253 payment claims to the Corps of Engineers totalling approximately $192,663,212, which were false, fictitious or fraudulent, and which the government paid without knowledge that these claims were false or fraudulent. The government alleged that the claims were false or fraudulent because the consipracy resulted in the defendants being awarded bank stabilization contracts on the basis of Engineers, in that the defendants attested that the bids were submitted competitively and without collusion when they knew such was not the case. Count Three of the amended complaint demanded judgment against the defendants [under 31 U.S.C. 231–233, commonly known as the False Claims Act] for $2,000 for each of the 1,253 claims as well as double the $23,119,585 damages suffered by the government in the form of higher bank stabilization prices that resulted from the defendants' unlawful conspiracy. The claim alleged in Count Three were asserted as alternatives to those alleged in Count Two to the extent that any transaction complained of gave rise to liability under both counts.

Counts Two and Three of the amended complaint have been compromised by the government in a series of separate settlements with each of the defendants between March 27, 1979 and July 1981. In all cases, the damages recovered, which totalled $7,179,492, were paid in full satisfaction of Count Two of the amended complaint, Count Three being dismissed as part of the settlement agreement. The disposition of these counts with regard to each party to the proposed Final Judgment are set forth below:

Defendant	Damages
Anthony J. Bertucci Construction Company, Inc.	$550,000
W.H. Carder, Inc.	78,111
Davis Construction Company	360,000
Ford Construction Company	275,000
Luhr Bros., Inc.	1,350,000
Markham & Brown, Inc.	1,008,000
Massman Construction Co.	721,000
McAlister Construction Company, Inc.	450,000
Midwest Construction Company	94,270
Patton-Tully Transportation Company	420,000
Pensacola Construction Co.	665,000
Peter Kiewit Sons' Co.	300,000
Pine Bluff Sand & Gravel Co.	800,000
Souter Construction Co., Inc.	78,111
Southern River Rock Co.	30,000

In some instances, provision was made in the Partial Settlement Agreement for payment of the damages in yearly installments until October 1, 1983. In these settlement agreements the parties also agreed to work for a mutually acceptable resolution of Count One of the amended complaint.

Entry by the Court of the proposed Final Judgment will terminate the proceedings with regard to Count One of this action, except insofar as the Court will retain jurisdiction for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of its provisions.

On September 27, 1978, the day the original civil complaint was filed, a grant jury in the Eastern District of Louisiana returned a fifty-four count indictment against the fourteen companies which are parties to this proposed Final Judgment, as well as against Gibbar Bros., Inc. and Markham and Brown, Inc., and, in addition, against ten of the principal officials of some of the defendant companies. Count One of the indictment charged the defendants with a felony violation of the Sherman Act (15 U.S.C. 1) for engaging in a combination and conspiracy, the substantial terms of which were to allocate bank stabilization jobs among themselves and to submit collusive, noncompetitive and rigged bids on bank stabilization jobs to the U.S. Army Corps of Engineers. Counts Two through Thirty of the indictment charged a number of the criminal defendants with mail fraud in violation of 18 U.S.C. 1341, and the remaining twenty-four counts alleged violations of 18 U.S.C. 1001 (False Statements).

A number of the criminal defendants entered into plea agreements with the government disposing of the charges. At the time of sentencing, the government ordinarily refrained from making sentencing recommendations. The Court imposed a three-year suspended sentence with three years of supervised probation on most of the individual defendants; in addition, each defendant was ordered to engage in public service one day per week for two years and was fined between $5,000 and $36,000. Pursuant to the plea agreements, the agreed fines for the corporate defendants ranged from $25,000 to $200,000.

Four individuals and three defendant corporations, Anthony J. Bertucci Construction Company, Ford Construction Company and Luhr Bros. Inc., went to trial in May 1979 on the mail fraud and false statement counts, which the Court had earlier severed from the Sherman Act count. The jury rendered verdicts of guilty on all counts as to these defendants on May 24, 1979. At sentencing, the Court levied fines of from $40,000 to $50,000 on the corporate defendants and sentenced the individual defendants in the same manner described earlier, except that the fines levied ranged from $14,500 to $48,000. No separate trial was held on the Sherman Act count, as all defendants had entered pleas of guilty by the time trial was scheduled to begin in May 1981. Fines were imposed ranging from $25,000 to $200,000.

II—Description of the Alleged Violation

The defendants in this case are bank stablization contractors who do contracting work along the Mississippi, Missouri and Red Rivers. Their work consists primarily of building and maintaining dikes, revetments and associated structures. Dikes, though of numerous kinds and designs, are typically rock structures which extend at right angles into a river to control its flow, to prevent undesirable channels and to encourage the river to maintain a desired depth and width; revetments are a form of retaining wall, usually made of

stone, which prevents erosion and helps the river stay in desired alignment.

All bank stabilization work is commissioned by the United States Army Corps of Engineers, which determines where stabilizing structures are needed, what type of work will best suit the need and when the work must be done. To commission and supervise work on the rivers, the Corps operates from six United States Army Engineer Districts: New Orleans, Vicksburg, Memphis, St. Louis, Kansas City and Omaha. Each district has a chief engineer responsible for preparing plans and specifications for jobs within its control, advertising those jobs and finally awarding the work to the lowest qualified bidder, pursuant to sealed, competitive bidding.

All bank stabilization work is competitively advertised and bid, pursuant to federal law and regulations. This procedure ensures that all interested and qualified companies are made aware of the work and that the award is made at the lowest cost to the government, consistent with performance standards. Normally, about thirty days prior to the bid opening, plans and specifications for the project and an invitation to bid are sent to interested firms. Before the bid opening, the Corps makes a detailed estimate of what the construction of the job, excluding profit, should cost; but the Corps does not reveal this estimate until all bids are opened, and the award is made. A bank stabilization contractor wishing to submit a bid does so by completing, executing and forwarding to the Corps of Engineers a standard "Bid Form" ("Standard Form 21") provided by the Corps. By executing and returning the "Bid Form", a bank stabilization contractor provides the Corps of Engineers with its proposed price for completing a job and certifies that the amount was arrived at independently and without consulting or agreeing with any other contractor.

The Contractor who submits lowest bid is awarded the contract, except if the lowest bid exceeds the Corps estimate by twenty-five percent, in which cae all bids are rejected, and the job is readvertised.

There are seventeen companies that perform work on the Mississippi, Missouri and Red Rivers, and sixteen were made defendants in the amended complaint. Most of the companies have either been awarded, or bid on, work in several Corps districts, and a few perform or bid on work in all the districts. From September 27, 1974, through September 27, 1978, the United States of America made payments totaling approximately $99,753,360 to these sixteen defendants for bank stabilization work.

The government was prepared to provide that bib rigging on Corps jobs began as long ago as the early 1960's in some districts and was common practice in all other districts by the late 1960's or early 1970's. The government further was prepared to prove as follows: The bid rigging was accomplished by the principals of the defendant companies through various types of conversations; sometimes the illegal discussions took place in meetings, cometimes in telephone calls, and at other times both types of communications were utilized; meetings took place in cities such as Memphis, Omaha, Kansas City and St. Louis, the actual sites of the meeting depending on the district and the river involved in the proposed project; in some districts, the discussions took place annually, after the Corps announced all upcoming work for the year; in other districts discussions were on an as-needed basis; and in these meetings or telephone calls and other encounters, bank stabilization jobs would be discussed, the low bidder would be selected, information would be exchanged concerning bid amounts or bid ranges, and the defendants would agree to submit intentionally high bids, or to withhold bids, on projects on which another defendant had been designated as the low bidder. The government would have been prepared to demonstrate that, in most cases, by the time the Corps received all sealed bids, the winning contractor had already been selected.

The amended complaint alleged that the combination and conspiracy had the following effects, among others:

(a) Price of bank stabilization jobs were fixed, maintained, and established at artificial and noncompetitive levels;

(b) Competition in the construction of bank stabilization jobs was restrained, suppressed and eliminated; and

(c) The United States and the Corps of Engineers were denied the benefits of free and open competition in contracting for the performance of bank stabilization jobs.

III —Explanation of the Proposed Final Judgment

The government and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation provides that there is no 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, entry of the proposed Final Judgment is conditioned upon a determination by the Court that it is in the public interest.

A. *Prohibited Conduct.* The proposed Final Judgment would enjoin any direct or indirect renewal of the type of conspiracy alleged in Count One of the amended complaint. Specifically, Paragraph IV of the proposed Final Judgment enjoins any defendant from entering into, or adhering to, any agreement or plan with another bank stabilization contractor to submit or to solicit any noncompetitve, collusive or complementary bid for any bank stabilization job, or to refrain from bidding on such a job, or to fix or determine any bid, including any part of a bid, submitted for any bank stabilization job. Any agreement or plan between a defendant and a bank stabilization contractor to allocate contracts or to rotate or divide markets or territories with respect to bank stabilization jobs is also forbidden. The proposed Final Judgment also would prohibit any agreement by a defendant to compensate unsuccessful bidders or those who refrain from bidding on a bank stabilization job, whether the compensation is money, a subcontract or some other thing of value. Paragraph IV further prohibits any agreement or plan to communicate to, or exchange with, any bank stabilization contractor information concerning bids, or any term, condition, component or part thereof, with regard to any bid the defendant or other bank stabilization contractor has submitted, intends to submit or is considering submitting.

There are limited expections to the prohibitions contained in Paragraph IV, particularly with regard to the exchange-of-information provisions. First, as Paragraph V(A) states, the Final Judgment is not applicable to a *bona fide* sale, lease, purchase or rental of equipment or supplies used in bank stabilization construction between a defendant and any other bank stabilization contractor. Second, the Final Judgment would not prohibit a *bona fide* joint venture arrangement or subcontract agreement between a defendant and any other person, so long as such *bona fide* joint venture or subcontract is not a subterfuge to avoid the injuction against compensation unsuccessful bidders or nonbidders on bank stabilization jobs. (See Paragraph V(B).)

B. *Required Conduct.* To facilitate monitoring of compliance with the provisions relating to competitive bidding, under Paragraph VI each defendant would be required, until September 1, 1991, to perserve all written price computations, estimating

sheets, worksheets and similar calculations actually performed or used by it in connection with the preparation of a bid, whether submitted or not and whether successful or not, for any bank stabilization job.

Paragraph VII of the proposed Final Judgment contains several provisions to ensure that the necessary employees of each defendant are made aware of their and the defendant's obligations under the antitrust laws and the Final Judgment and to prompt each defendant to establish or continue an antitrust compliance program to prevent future bid rigging. In addition, each defendant would be required, within 30 days, to serve a copy of the Final Judgment on each of its directors and officers, and upon each of its employees or agents who have any responsibility or authority for preparing, estimating, reviewing or submitting bids for bank stabilization jobs. Each defendant also would be required to serve a copy of the Final Judgment on new employees within 30 days of their being employed by the defendant. Each defendant would be obligated to obtain and keep receipts reflecting the service of the Final Judgment on corporate personnel and to establish a reasonable antitrust compliance program to advise those persons having duties in regard to the establishment or estimating of bids or parts of bids for bank stabilization jobs of the company's obligations under the Final Judgment and the criminal and other penalties for violation of the Final Judgment.

Paragraph VIII would require each defendant to submit a letter of intent to the plaintiff providing information sufficient to demonstrate that a proposed sale or disposition of all or substantially all of a defendant's assets that are used in bank stabilization construction is not for the purpose of avoiding the terms of the Final Judgment. The plaintiff has fifteen (15) days in which to indicate in writing its approval or disapproval of the proposed transaction. The plaintiff has seven (7) days in which to request supplementary information concerning the transaction. If the plaintiff objects to the proposed transaction, the transaction may not proceed unless the acquiring person agrees to be bound by the terms of the Final Judgment, the Court approves the transaction or the plaintiff withdraws its objection.

Under Paragraph IX of the proposed Final Judgment, the Department of Justice would be given access to the files and records of each defendant in order to examine such records for compliance. The Department also would be granted access to interview employees of each defendant to determine whether it and its employees are complying with the Judgment. Suitable provisions protecting the confidentiality of defendant's records are incorporated in the proposed Final Judgment.

The proposed Final Judgment is applicable to each of the defendants and to its affiliates, subsidiaries, officers, directors, partners, employees and to all persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

The Court would retain jurisdiction of this case for the purpose of ensuring compliance with the Final Judgment.

IV—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 such person has suffered, as well as costs and reasonable attorney fees. As the United States Army Corps of Engineers, an agency of the United States Department of Defense, was the only purchaser of bank stabilization construction in this case, there are no potential private plaintiffs who have suffered any equitable or monetary damage as a result of the alleged violation. Hence, there appear to be no potential private litigants who have standing to sue under section 4 of the Clayton Act in this matter.

V—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 James A. Backstrom, Jr., Department of Justice, Antitrust Division, Room 8C6, 1100 Commerce, Dallas, Texas 75242, within the 60-day period provided by the Act. The comments and the government's responses to them 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 should the government determine that some modification of the Final Judgment is necessary. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this 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.

VI—Alternatives to the Proposed Final Judgment

The relief in the proposed Final Judgment is designed to prevent a recurrence of any of the activities alleged in the amended complaint. The prohibitory language of the Final Judgment will ensure that all bidders' decisions on bank stabilization jobs are made independently by the individual competitors. The proposed Final Judgment contains sufficient record-keeping requirements and access to defendants' records to allow the Department to adequately monitor defendants' activities in the future.

Accordingly, it is the view of the Department of Justice that the proposed Final Judgment is fully adequate to prevent any future antitrust violations by the defendants. Disposition of the case without additional litigation, the only alternative to the proposed Final Judgment considered by the Department, is appropriate in view of the fact that the proposed Final Judgment includes the form and scope of relief equal to that which might have been obtained after a full hearing on the issues at trial.

VII—Determinative Documents

Attached as Exhibits 1 through 14 are Agreements of partial Settlement between the parties affecting Counts I and II of the amended complaint. The government considers these documents determinative in formulating the proposed Final Judgment.

Dated:

Mary Coleen T. Sewell, *Attorney, U.S. Department of Justice, Antitrust Division, 1100 Commerce, Room 8C6, Dallas, TX 75242.*

[FR Doc. 85-8126 Filed 4-4-85; 8:45 am]

BILLING CODE 4410-01-M

The National Cooperative Research Act of 1984; United Technologies Corporation and Toshiba Corporation

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Toshiba Corporation has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) that United Technologies Corporation and Toshiba Corporation have entered into a joint venture in the form of a Maryland close corporation, International Fuel Cells Corporation, and (2) the nature and

objectives of International Fuel Cells Corporation related to research and development. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The shareholders of International Fuel Cells Corporation are:

United Technologies Corporation, United Technologies Building, Hartford, Connecticut 06101 (through its Power Systems Division, Fuel Cell Operations); and

Toshiba Corporation, 1-1, Shibaura 1-Chome, Minato-ku, Tokyo 105, Japan (through its Heavy Apparatus Group)

International Fuel Cells Corporation will engage in research and development in the following areas:

1. Developing and testing basic techniques, new designs, and manufacturing technologies for the production of fuel cell power plants and fuel cell systems;

2. Extending into practical applications the scientific and technical findings and theories related to fuel cell power plants and systems including the experimental production and testing of such power plants and systems; and

3. Collecting, exchanging, and analyzing research related to and possible licensing of fuel cell power plants and systems and their applications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-8121 Filed 4-4-85; 8:45 am]

BILLING CODE 4410-01-M

United States v. Standard Oil Company (New Jersey), et al., Proposed Termination of Final and Supplemental Judgments

Notice is hereby given that Exxon Corporation ("Exxon"), as Standard Oil Company (New Jersey) is now called, has filed with the United States District Court for the District of New Jersey a motion to terminate the Final and Supplemental Judgments in *United States* v. *Standard Oil Company (New Jersey) et al.*, Civil No. 2091. The Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgments, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on March 25, 1942) alleged that defendants had conspired with I.G. Farbenindustrie Aktiengesellschaft ("I.G. Farben"), a German chemical company, to restrain interstate and foreign commerce in petroleum products and chemicals by entering into cartel agreements to allocate products between them and to use their combined present and future patents to prevent others from manufacturing and selling oil and chemical products. The Final Judgment (entered on March 25, 1942) and Supplemental Judgment (entered on April 7, 1943) require Exxon to discontinue all existing relations and agreements with I.G. Faren, set forth numerous provisions to ensure the competitive licensing and sublicensing of Exxon's patents, and enjoin Exxon from engaging in a wide range of activities to prevent further anticompetitive conduct.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgments would serve the public interest. Copies of the complaint and judgments, Exxon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone (202) 633-2481), and at the Office of the Clerk of the United States for the District Court of New Jersey, U.S. Post Office in Court House Building, Federal Square, Newark, New Jersey 07102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the propoosed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Melanie Steward Cutler, Chief, Energy Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone (202) 724-6410).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-8124 Filed 4-4-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology/Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/Physical Anthropology.

Date and Time: April 22-23, 1985, 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 628.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, Washington, DC 20550, (202) 357-7804.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

April 2, 1985.

[FR Doc. 85-8209 Filed 4-4-85; 8:45 am]

BILLING CODE 7555-01-M

Panel for Political Science; Advisory Panel for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-46, as amended, the National Science Foundation announces the following meeting:

Name: Panel for Political Science.

Date and Time: April 22 & 23, 1985, 9:00 a.m. to 5:00 p.m.

Place: Room 1242-B, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact: Drs. Frank P. Scioli, Jr. and Lee P. Sigelman, Program Directors, Social and Economic Science, Room 312, National Science Foundation, Washington, D.C 20550. Telephone (202) 357-7534.

Purpose of Subcommittee: To provide advice and recommendations concerning Political Science research.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 2, 1985.

[FR Doc. 85-8208 Filed 4-4-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regional State Liaison Officers' Meeting

On April 30 and May 1, 1985, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington. The subjects which will be discussed include emergency response, waste management and regional issues as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region V Office, 1450 Maria Lane, Walnut Creek, California. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:30 p.m. on Tuesday, April 30 and from 8:30 a.m. until 12:30 p.m. on Wednesday, May 1, 1985.

Questins regarding this meeting should be directed to Dean Kunihiro at (415) 943-3714.

Dated at Walnut Creek, California this 29th day of March 1985.

For the Nuclear regulatory Commission.

John B. Martin,

Regional Administrator, Region V.

[FR Doc. 85-8212 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

[License Nos. SNM-362, SMB-405, 08-00566-05, 08-00566-10, and 08-00566-12; Docket No. 70-398]

Finding of No Significant Impact; Renewal and Consolidation of Materials; U.S. Department of Commerce, National Bureau of Standards, Gaithersburg, MD

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal and consolidation of Materials License Nos. SNM-362, SMB-405, 08-00566-05, 08-00566-10, and 08-00566-12 for the continued operation of the National Bureau of Standards facility at Gaithersburg, Maryland.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the renewal and consolidation of the above Materials Licenses. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment (NUREG-1130) is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of NUREG-1130 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfields, Virginia 22161.

Dated at Silver Spring, Maryland, this 27th day of March 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-8210 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Arizona Public Service Co., et al.; Order

In the matter of Arizona Public Service Co., Salt River Project Agricultural Improvement and Power District, Southern California Edison Co., El Paso Electric Co., Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

The Arizona Public Service Company, et al.[1] (the licensees and co-owners) are the holders of Facility Operating License No. NPF-34, dated December 31, 1984, which authorizes operation of the Palo Verde Nuclear Generating Station, Unit 1 at 3800 megawatts thermal. However, pending Commission approval, operation is restricted to five percent of rated power (190 megawatts thermal). One of the utilities included as a co-owner on the license is the Los Angeles Department of Water and Power.

The Los Angeles Department of Water and Power (LADWP) was identified as a co-owner for the facility in Amendment No. 5 to the Palo Verde Final Safety Analysis Report (FSAR) dated August 1981. Amendment No. 5 to the FSAR states that LADWP will acquire an "* * * undivided ownership interest as a tenant in common with the other Participants in the Palo Verde Nuclear Generating Station, including each of Palo Verde Units 1, 2 and 3, at rush time as Palo Verde Unit 1 is placed into commerical operation * * *"

Because LADWP is not offically a co-owner at this time, Facility Operating License No. NPF-34 is amended to include the following footnote on page 1 of the license:

> Los Angeles Department of Water and Power will be included as an owner in this license on the date it officially acquires an ownership interest in the facility which is expected to occur shortly after Palo Verde Unit 1 achieves commerical operation.

Dated at Bethesda, Maryland, this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8211 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Robert McInerney, Petitioner Ranchita, CA; Order Accepting Appeal and Establishing Procedural Schedule

[Order No. 607; Docket No. A85-17]

Issued: April 1, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

[1] The other owners are: Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

Docket Number: A85-17.

Name of Affected Post Office: Ranchita, California 92066 (Community Post Office).

Name of Petitioner: Robert McInerney.

Type of Determination: Discontinuance of community post office.

Date of Filing of Appeal Papers: March 25, 1985.

Categories of Issues Apparently Raised:

Whether opportunity to be heard or other procedural steps to which Petitioner claims entitlement under 39 U.S.C. 404(b), were improperly omitted.[1]

Effect on adequacy of postal services of the discontinuance of the facility [39 U.S.C. § 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders: The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Mar 25, 1985	Filing of Petition
Apr 1, 1985	Notice and Order of Filing of Appeal
Apr 19, 1985	Last day for filing of petitions to intervene (*see* 39 CFR 3001.111(b))
Apr 29, 1985	Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115 (a) and (b))
May 30, 1985	Postal Service Answering Brief (*see* 39 CFR 3001.115(c))
June 4, 1985	(1) Petitioner's Reply Brief should Petitioner choose to file one (*see* CFR 3001.115(d)).
June 11, 1985	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
July 23, 1985	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5)).

[FR Doc. 85-8249 Filed 4-4-85; 8:45 am]

BILLING CODE 7715-01-M

[1] *See* PRC Op. A83-30, Knob Fork, West Virginia. *Compare* PRC Op. A82-10, Oceana Station, Virginia.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85-3-85; Docket 43006]

Application of Pan Aviation, Inc. for Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order instituting fitness investigation, Order 85-3-85, Docket 43006.

SUMMARY: The Department is instituting the *Pan Aviation, Inc. Fitness Investigation* to determine if Pan Aviation is fit to provide interstate and overseas scheduled air transportation of property and mail and foreign scheduled air transportation of property and mail between Miami, Florida and Basel, Switzerland.

DATES: Persons wishing to file requests for additional evidence should do so in Docket 43006 by April 15, 1985.

ADDRESSES: Requests for additional evidence and requests to intervene should be filed in Docket 43006 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-3-85 is available for inspection at our Documentary Services Division, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

Dated: March 29, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-8238 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 42987; Order 85-4-5]

Southwest Airlines Co.; Muse Air Corporation, et al. Application; for Exemption or Approval; Order

Issued by the Department of Transportation on the 3rd day of April, 1985

By application dated March 25, 1985, Southwest Airlines Co., Southwest Acquisition, Inc., Muse Air Corporation, the Amalgamated Sugar Company and Harold C. Simmons (together, "the Applicants") have requested that the Department approve or exempt under section 408 of the Federal Aviation Act of 1958, as amended, ("the Act"), the acquisition of control of Muse Air Corporation ("Muse Air") by Southwest Airlines Co. ("Southwest"). Because of Muse's financial condition, the parties to the transaction have also requested that the Department grant their application on an expedited basis.

Southwest and Muse Air are both certificated air carriers with headquarters in Dallas, Texas. Both operate primarily in markts in Texas and the southwestern United States. Southwest has established Southwest Acquisition, Inc. as a shell corporation to acquire the outstanding stock of Muse Air. Under the terms of the acquisition agreement, Muse Air shareholders would receive a combination of cash and Southwest securities in exchange for their Muse Air stock, and Muse Air would continue to be operated as a separate company after the acquisition. Amalgamated Sugar Company ("Amalgamated"), one of the other applicants, currently holds a controlling interest in Muse Air. Mr. Harold Simmons, the remaining applicant, is a principal in Amalgamated.

Under the Department's Regulations, §§ 303.23(g)-(i), 14 CFR 303.23(g)-(i), the Department may, within 10 days after a section 408 application is filed, dismiss the application on the grounds that it is incomplete. An application is incomplete if it is not in substantial compliance with §§ 303.30-303.38 of the Department's Regulations, 14 CFR 303.23(g). Interested persons may also object to the application on the grounds that it is incomplete within 10 days after the application is filed. 14 CFR 303.23(g). The period for the filing of objections to the completeness of the application has not expired, and the Department has not yet reached a decision on this issue. However, in order to facilitate a timely review of the application, the Department has determined to establish further preliminary procedures at this time, while reserving a decision on the completeness of the application.

Section 408 establishes two distinct texts for approval of acquisitions of control. The first is a general public interest test: The Department may not approve an acquisition that will not be consistent with the public interest. The second test focuses on the competitive impact of the section 408 transaction: The Department may not approve a transaction that would result in a monopoly, or further an attempted monopoly, or that would be likely to lessen competition substantially in any region of the country, unless the anticompetitive effects of the transaction are outweighed in the public

interest by the significant transportation conveniences and needs it is likely to meet, which needs cannot be met by reasonably available alternatives with materially less anticompetitive impact. If an acquisition passes these public interest and competitive tests, then the Department must approve it. Section 408(b)(1), 49 U.S.C. 1378(b))(1). In addition, the Department may exempt any person from the requirements of section 408 if the exemption is consistent with the public interest. Section 416 (b)(1), 49 U.S.C. 1386(b)(1).

The Applicants have requested an exemption from section 408 to permit the transaction and, as previously noted, have asked for expedited consideration. Answers to the exemption request are due on April 9, 1985. The Department has not yet decided whether to grant the requested exemption or to dispose of the application under the procedures of sectin 408(b). However, the Department has determined that interested persons should comment on the type of procedures that may be used under section 408(b), if the exemption is denied. These comments should be filed on April 9, 1985, the same date as answers to the exemption request.[1]

Section 408(b) provides for the Department to render a decision after notice and a hearing (49 U.S.C. 1378(b)(1)), but does not require by its terms an oral evidentiary hearing. In the absence of such an explicit requirement, an oral evidentiary hearing is not required unless there are disputed material issues of fact the resolution of which would be assisted by such procedures. *Sea-Land Service* v. *United States*, 683 f. 2d 491 (D.C. Cir. 1982), *United States* v. *CAB*, 511 F.2d 1315 (D.C. Cir. 1975). By this order, the Department is directing persons who believe an oral evidentiary hearing is required, to submit a request for such a hering by April 9, 1985. The requests should include list of specific issues for which it is asserted that an oral hearing is required, a statement of the disputed material issues of fact the resolution of which require an oral evidentiary hearing, and a description of the nature of the evidence that the submitter would develop at an oral evidentiary hearing that could not be developed in a documentary proceeding. Any person opposed to the use of oral evidentiary hearing procedures will be permitted to file a response by April 12, 1985.

In the course of its administration of section 408, the Department's predecessor, the Civil Aeronautics Board ("Board") developed policies and standards for the evaluation of air carrier mergers in a post-deregulation industry, emphasizing competition rather than public utility type regulation.[2] Although the Department is not bound to apply those policies and standards, persons requesting an oral evidentiary hearing should take them into account in identifying the issues for which a hearing is required, and in identifying the nature of any material facts in dispute.

On March 27, 1985, the Applicants filed a supplement to their application which included, *inter alia*, more detailed information concerning the availability of airport terminal facilities at Houston Hobby Airport and Dallas Love Field. Supplemental information was also filed regarding the policies of those airport operators on accommodating new entrants. Similar information on current allocation of facilities and utilization rates, with respect to all of the airports listed in Exh. J.A.–505, will be useful to the Department in evaluating the application. In addition, the Applicants should also provide comparable information on other airports in the same metropolitan areas, *e.g.*, Houston Intercontinental, DFW Regional Airport, and the airports in the Los Angeles metropolitan area. Information concerning local airport operator policies on new entrant access is particularly relevant where there are currently no additional facilities directly available. The Department is therefore directing the Applicants to provide this additional information by April 9, 1985.

Accordingly

1. The Department directs that all persons seeking an oral evidentiary hearing in this proceeding shall file such requests on or before April 9, 1985. Such requests shall identify specifically the issues on which an oral evidentiary hearing is requested, the nature of the material issues of fact believed to be in dispute, and the nature of the evidence that would be adduced by an oral hearing that could not be obtained through a documentary proceeding;

2. Any person objecting to the use of oral evidentiary hearing proceedings shall file responses to the requests specified in the preceding paragraph on or before April 12, 1985;

3. The Department directs the Applicants in this proceeding to submit supplemental information on airport access, as outlined in this order, on or before April 9, 1985;

4. The Department denies the Applicants' request to accelerate the due date for the filing of answers to their request for an exemption under section 416(b) of the Act. Answers shall be filed on or before April 9, 1985;

5. The Department shall publish a copy of this order in the **Federal Register**, and

6. The Department shall serve a copy of this Order on all air carriers holding certificates of Public Convenience and Necessity, the Attorney General of the State of Texas, and the United States Department of Justice.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–8306 Filed 4–4–85; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Department of Transportation's Procedural Regulations, Week Ended March 29, 1985.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

[1] The applicants had requested that the due date for answers to the exemption request be accelerated to April 4th, the due date for objections to the completeness of their application. In light of the decision to receive comments on the procedural issues under section 408(b) on April 9, this request will be denied.

[2] *See, e.g. Continental Western Merger Case*, Orders 81–6–1.2 (March 31, 1981); *Texas International-Continental Acquisition Case*, Order 81–10–66 (August 14, 1981); *Bergt-AIA-Wien Acquisition and Control Case*, Order 82–7–121 (August 5, 1982), and the Board decisions cited therein.

Date filed	Docket No.	Description
Mar. 25, 1985	42986	LeasExpress Air, Inc., c/o Joseph R. Haley, 116 West Grand Avenue, El Segundo, California 90245. Application of LeasExpress Air, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in permanent interstate and overseas charter air transportation of passengers, freight, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 22, 1985.
Mar. 26, 1985	42996	Hawaiian Airlines, Inc., c/o Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, D.C. 20037. Application of Hawaiian Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amended certificate of public transportation of persons, property and mail between Honolulu, Hawaii and Tokyo, Japan and Honolulu, Hawaii and Nagoya, Japan. Conforming Applications, Motions to Modify Scope and answers may be filed by April 23, 1985.
Mar. 27, 1985	42997	Florida West Airlines, Inc., c/o Harry A. Bowen, Bowen and Atkin, 2020 K Street, NW., Suite 350, Washington, D.C. 20006. Application of Florida West Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate to engage in scheduled foreign air transportation of property and mail between a point or points in the United States and an intermediate point or points in the Dominican Republic, Venezuela, Trinidad and Tobago, Guatemala, El Salvador, Honduras, Belize, Costa Rica, Panama, Ecuador, Colombia, and a terminal point in Peru. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 24, 1985.
Mar. 29, 1985	43004	Barth's Aviation SARL/TA Air St-Barthelemy, c/o Virginia Deardorff, 16924 Flickerwood Road, Parkton, Maryland 21120. Application of Barth's Aviation SARL/TA Air St-Barthelemy pursuant to section 402 of the Act and Subpart Q of the Regulations applies, as a foreign air carrier, for a permit authorizing it to conduct chartered and scheduled air transportation of passengers and cargo between St. Barthelemy, French West Indies, and the co-terminal points of St. Thomas, U.S. Virgin Islands, and San Juan, Puerto Rico. Answers may be filed by April 29, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-8239 Filed 4-4-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket 43006]

Pan Aviation Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him at Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated: Washington, D.C., April 1, 1985

Elias C. Rodriguez,
Chief Administrative Law Judge.
[FR Doc. 85-8237 Filed 4-4-85; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 149; Airborne Distance Measuring Equipment (DME); 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 RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on May 1-3, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eleventh Meeting Held on March 11-13, 1985; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 on Airborne MLS Area Navigation Equipment; (5) Review Task Assignments From Previous Meeting; (6) Review of the Twelfth Draft Committee Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on March 27, 1985.

Karl F. Bierach,
Designated Officer.
[FR Doc. 85-8119 Filed 85-4-4; 8:45 am]
BILLING CODE 4910-13-M

Federal Railroad Administration

[Q-84-2]

The Atchison, Topeka and Santa Fe Railway Co.; Proposed Construction; Barstow, CA

The Atchison, Topeka and Santa Fe Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed construction of an employee sleeping quarters facility within one-third mile of the receiving yard at Barstow, California. This proceeding is identified as FRA employee sleeping quarters petition No. Q-84-2.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 16, 1985, in the City Council Chambers at 220 East Mountain View Avenue in Barstow, California.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlinging the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebutal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on April 1, 1985.

J.W. Walsh,
Associate Administrator for Safety.
[FR Doc. 85-8236 Filed 4-4-85; 8:45 am]
BILLING CODE 4910-06-M

[BS-Ap-No. 2388]

The Baltimore and Ohio Chicago Terminal Railroad Co. and Indiana Harbor Belt Railroad Co.; Proposed Modification

The Baltimore and Ohio Chicago Terminal Railroad Company (BOCT) and the Indiana Harbor Belt Railroad Company (IHB) have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed modification of Harvey Junction and North Harvey Junction Interlockings on the Chicago Heights Subdivision, Chicago Terminal Division, Western Region, of the BOCT, and on the Main Line, Ivanhoe to Franklin, of the IHB, hear Harvey, Illinois. This proceeding is identified as FRA Block Signal Application No. 2388.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 21, 1985, in the 14th Floor Conference Room of the One North Western Building at 165 North Canal Street in Chicago, Illinois.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on April 1, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-8235 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

First Article Bus Test Plan

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces in this notice the availability of a First Article Bus Test Plan. The Test Plan is for standard heavy duty 35–40 foot transit buses, but can be modified or used in part for procurement of either small or articulated buses. Any tests made part of the grantee's specification must be compatible with the maximum competition requirements of OMB Circular A–102, Attachment O. The use of the First Article Bus Test Plan is completely voluntary.

ADDRESSES: Copies of the First Article Bus Test Plan may be obtained from the American Public Transit Association, 1225 Connecticut Avenue, NW., Washington, D.C. 20036, telephone (202) 828–2800.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th Street, SW., Room 6432, Washington, D.C. 20590. Contact: Ramon Lopez, (202) 426–8483.

SUPPLEMENTARY INFORMATION:

Introduction and Program Objective

Concerns have been raised by the transit industry regarding the life, safety, and performance of "new" buses being delivered to U.S. transit authorities. Recognizing these concerns, UMTA prepared this bus test plan to aid transit authorities and bus manufacturers in recognizing and dealing with the problems associated with purchase and introduction of a "new" or First Article Bus into revenue service. The Test Plan was initiated by the American Public Transit Association (APTA) Bus Technology Liaison Board's (BTLB) detailed discussion of bus and bus subsystem testing and its desire to establish criteria for acceptance of new equipment.

First Article Buses are defined as the first ten buses off the production line that are built for and delivered to a U.S. transit authority and:

1. Are of a new design that has not been used in revenue service in the U.S.; or

2. Include any major change in configuration or components critical to sustained service operation that has not been evaluated and proven acceptable in U.S. transit service.

The final decision on whether or not a bus is a First Article Bus and what tests should be performed should be reached by agreement between the transit bus manufacturer and the transit authority purchasing the bus. It is not intended that these be new performance specifications for buses and the inclusion of any of these First Article Bus tests in a purchase contract would not replace any present legal, safety, performance or other requirements specified in the procurement package. Revenue service tests are eligible project costs under Sections 3 and 9 of the UMT Act.

For example, when a transit authority is purchasing buses and there is a reasonable possibility that one or more bids may be from a manufacturer of First Article Buses, then this test plan could be included in the Request For Proposals (RFP), this would also be the case if major new bus equipment was being requested in the RFP. In both of these cases, the manufacturer would test the bus in accordance with the nonrevenue tests and provide the results to the transit authority. Upon acceptance of these results, the transit authority would evaluate the buses in accordance with the revenue service tests described in the test plan.

The tests described in the Plan are classified into three types—safety, performance evaluation, and revenue operations.

- Safety tests address braking, handling and stability, and structural stength and distortion.
- Performance evaluation tests address acceleration, gradeability, fuel economy, and, to a limited degree, noise and vibration.
- Revenue operation tests for a period of 1 to 2 years address structural durability, service reliability, equipment reliability, maintainability and life.

The final Test Plan was developed by an UMTA funded contractor with extensive cooperation from the BTLB and the following agencies:

Central Ohio Transit Authority
Chicago Transit Authority
Metropolitan Atlanta Rapid Transit Authority
New York City Transit Authority
Southeastern Michigan Transit Authority
General Motors Corporation
Grumman Flexible Corporation
Neoplan USA

Issued on: March 23, 1985.

Ralph L. Stanley,

Urban Mass Transportation Administrator.

[FR Doc. 85-8164 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Ronald A. Pearlman,
Assistant Secretary for Tax Policy.

[FR Doc. 85-8165 Filed 4-4-85; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 66
Friday, April 5, 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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, April 15, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual section 13—Requests for Litigation for Temporary and Preliminary Relief
4. Request for Opinion Letter Concerning Section 83 Disclosure of a Title VII Charge File to the Spouse of a Charging Party

Closed

1. Litigation Authorization; GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued April 3, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 8352 Filed 4-3-85; 3:50 pm]

BILLING CODE 6750-06-M

2

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 11, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1985-1995 Period. Summary: The Commission will consider the adoption of a Second Notice of Proposed Rulemaking in CC Docket No. 79-185 addressing policies for the distribution of circuits among North Atlantic facilities for the 1986-1995 period.

Common Carrier—2—Title: Notice of Proposed Rulemaking In the Matter of International Competitive Carrier Policies Summary: The Commission will consider adopting a Notice of Proposed Rulemaking to reduce tariff and facility authorization requiremens for international non-dominant carriers.

Common Carrier—3—Title: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. Summary: In this Report and Order in CC Docket No. 80-634 the Commission adopts modifications to Comsat's Form M and Form 901 reporting requirements.

Common Carrier—4—Title: American Telephone & Telegraph Company, AT&T Communications Tariff F.C.C. Nos. 9, 10, and 11. (Transmittal Nos. 285, 318). Summary: The Commission will consider AT&T's proposed private line tariffs, scheduled to take effect April 12, 1985.

Mass Media—1—Title: Application for review and petition for reconsideration of Bureau's actions dismissing the applications of Way of the Cross of Utah, Inc. and Way of the Cross of Odessa, Inc. for non-commercial educational television stations to operate in Ogden, Utah, and Big Spring, Texas, respectively. Summary: The Commission will determine whether the applicants are either educational institutions or educational organizations eligible to apply for reserved broadcast channels.

Mass Media—2—Title: Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984. Summary: The Commission will consider proposed rule changes to implement the provisions of the Cable Communications Policy Act of 1984.

Mass Media—3—Title: Complaints filed by Action for Children's Television and National Association for Better Broadcasting. Summary: The Commission will consider these complaints on a consolidated basis to determine whether any violations of Commission rules or policy in the area of children's advertising have been identified.

Mass Media—4—Title: Petition for Rule Making to prohibit profit-sharing arrangements in the broadcasting of children's programming. Summary: The Commission will consider whether to initiate a rule making proceeding to prohibit independent producers and syndicators of children's broadcast television programming from using profit-sharing arrangements as the financial mechanism for their productions. By the profit-sharing technique producers obtain advertising time from broadcast stations, without payment in advance, in exchange for a percentage ot the profits from the sale of products bearing the name of the program, its characters, or program devices.

Mass Media—5—Title: Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities (MM Docket No. 83-46, incorporating Docket Nos. 20521, 20548 and BC 78-239). Summary: By this *Memorandum Opinion and Order*, the Commission will consider, on reconsideration, whether or not to revise the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and the manner in which these interests are reported.

Mass Media—6—Title: Compatibility Between the Broadcasting Services and VHF Aeronautical Mobile Radio Services. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making to establish interference protection criteria in the matter.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-8349 Filed 4-3-85; 3:50 pm]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1985.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, April 11, 1985, following the Open Meeting, which is scheduled to commence at 9:30, A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Mass Media—1—Investigation into: (1) Unauthorized operation of a radio station on the frequency 1616 kHz; (2) refusal to allow inspection of a radio station; (3) unauthorized location of the main studio of a radio station; (4) unauthorized use of a remote pickup base station; (5) misrepresentation that the transmitter to be used for a remote pickup base station would comply with the type acceptance criteria; (6) whether Allen H. Weiner, President and majority stockholder of Weiner Broadcasting Company, possesses the qualifications to be or to remain a licensee of the Commission; and (7) whether the licenses for Radio Station WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and Remote Pickup Base Station KPF-941, Yonkers, NY, should be revoked.

This item is closed to the public because it concerns Investigatory Records Matters See 47 CFR 0.603 (g)).

The following perons are expected to attend:

Comissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Mass Media Bureau and members of his staff
Chief, Office of Congressional and Public Affairs and members of his staff

Action by the commission March 26, 1985. Commissioners Fowler, Chairman; Quello, Dawson, Rivera, and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, Telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-8350 Filed 4-3-85; 3:50 pm]

BILLING CODE 6712-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 1, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Safety Bank, an operating noninsured institution located at 4901 Vine Street, St. Bernard, Ohio, for Federal deposit insurance.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Abilene National Bank, Abilene, Texas (now known as MBank Abilene, National Association)

Determination relating to deposit insurance coverage of public unit funds.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 2, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8322 Filed 4-3-85; 1:09 pm]

BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 11:00 a.m., April 3, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTER TO BE CONSIDERED: Agreement No. 202-010689: Actions of the Transpacific Westbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8324 Filed 4-3-85; 1:07 pm]

BILLING CODE 6730-01-M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., April 10, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting open to the public. The rest of the meeting closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Consideration of a Proposed Rule Concerning the Contract Practices (other than Service Contracts) of Carriers Operating as Ocean Common Carriers.

Portions closed to the public:

1. Agreement No. 008900-026: Various Revisions to the "8900" Lines Agreement
2. Agreement No. 10464—Armada/GLTL East Africa Service: Status of claim for civil penalty.
3. Dockets Nos. 82-1 and 82-10—California Cartage Company, Inc. et al. v. Pacific Maritime Association and ILWU: Consideration of Motion to Dismiss and certain other pleadings.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725..

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8325 Filed 4-3-85; 1:07 pm]

BILLING CODE 6730-01-M

7

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4-85]

Announcement in Regard to Commission Meetings and Hearings; Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time:
Monday, April 22, 1985 at 10:30 a.m.
Subject Matter:
Consideration of Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96-606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a

meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C. on April 1, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 7835 Filed 4-3-85; 9:26 am]

BILLING CODE 4410-01-M

8

LEGAL SERVICES CORPORATION

Notice of Tentative Meeting Schedule

SUMMARY: This notice sets forth the tentative schedule of meetings of the Board of Directors of the Legal Services Corporation through December 1985. This schedule is tentative and subject to change. Formal notice as required by the Government in the Sunshine Act (5 U.S.C. 552b) will be published in the **Federal Register** no less than seven days prior to a meeting.

Board of Directors:
- April 25-26—Washington, D.C.
- May 23-25—Washington, D.C.
- June 27-28—Detroit, Michigan
- August 1-2—Salt Lake City, Utah
- September 5-6—Santa Ana, Calif.
- October 3-4—Boston, Mass.
- November 7-8—El Paso, Texas
- December 12-13—New Orleans, La.

Special Committee on Presidential Search:
- March 29—Dallas, Texas
- April 14—Chicago, Illinois

FOR FURTHER INFORMATION CONTACT: Dennis Daugherty, Acting Secretary, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202/272-4040).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is a District of Columbia nonprofit corporation created and funded by Congress pursuant to the Legal Services Corporation Act as amended, 42 U.S.C. 2996. The Board of Directors has established three standing committees and one special committee. The three standing committees are those on Appropriations and Audit, Operations and Regulations, and Provision for the Delivery of Legal Services. A Special Committee on Presidential Search has been established. Meetings of committees of the Board will usually be scheduled during the time periods set aside for Board business on this tentative schedule, but additional meetings may be scheduled as necessary. This schedule is a tentative one and is subject to change. It is being published for the convenience of the public and not pursuant to statutory requirement.

Date issued: March 20, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-8353 Filed 4-3-85; 3:47 pm]

BILLING CODE 6820-35-M

federal register

Friday
April 5, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amendeds 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut:	
CT84-3016	June 8, 1984.
CT84-3016	June 8, 1984.
Illinois: IL83-2037	Apr. 29, 1983.
New York: NY81-3061	Sept. 11, 1981.
Oklahoma: OK84-4049	Sept. 3, 1984.
Pennsylvania:	
PA83-3001	Aug. 19, 1983.
PA83-3053	Nov. 25, 1983.
PA85-3012	Mar. 8, 1985.
PA84-3017	June 15, 1984.
PA84-3042	Dec. 14, 1984.
Rhode Island: RI84-3043	Nov. 30, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Illinois: IL83-5020 (IL85-5020)	July 1, 1983.
Pennsylvania: PA79-3020 (PA85-3017)	July 20, 1979.
Virginia: VA82-3033 (VA85-3020)	Dec. 3, 1982.

Signed at Washington, D.C., this 29th day of March 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION #CT84-3016 - MOD #12
(49 FR 23980 - June 8, 1984)
Statewide Connecticut

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS:		
Building Construction		
Area 4	17.60	3.25+a
Heavy & Highway Constr.		
Area 1	14.30	2.10
Area 2	14.57	2.58
Area 3	13.80	2.70
Area 4	14.30	2.35
CARPENTERS:		
Building Construction		
Carpenters	16.35	2.43
Millwrights	16.85	2.43
Heavy & Highway Carpenters		
Area 1 & 2	15.95	1.80+d
ELECTRICIANS:		
Area 2	16.86	3.05+ 9.25%
Area 3	18.15	3.05+ 9.25%
Area 5	16.80	3.78+ 3%
PAINTERS:		
Area 2		
Painters & Sandblasters	16.00	2.21+k
Structural Steel	17.00	2.21+k
Spray	20.00	2.21+k
BRIDGE (Statewide):		
Journeyman Brush & Roller	22.20	
Journeyman Blasting (Sand, Water, etc.)	23.20	
Journeyman Spray	25.70	

DECISION #IL83-2037-MOD#5
(48 FR19583-April 29, 1983)
Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

CHANGE:

	Basic Hourly Rates	Fringe Benefits
TUG ENGINEER - OPERATOR	$19.90	$1.05+h
TUG OPERATOR-On Launch	19.35	1.05+h

Footnote h: Delete Association Day from holidays

MODIFICATIONS P. 2

DECISION NO. NY81-3061 - MOD #7
(46 FR 45525 - September 11, 1981)
Clinton County, New York

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.10	2.36
ELECTRICIANS:		
Zone I - City of Plattsburg and 5 mile radius		
Electricians	14.10	2.60+ 4%+b
Cable Splicers	14.40	2.60+ 4%+b
Light Commerical up to a Maximum of $75,000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
Zone II - From Zone I to a 20 mile radius of Plattsburg		
Electricians	14.30	2.60+ 4%+b
Cable Splicers	14.60	2.60+ 4%+b
Light Commercial up to a Maximum of $75,000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
Zone III - Beyond Zone II		
Electricians	14.50	2.60+ 4%+b
Cable Splicers	14.80	2.60+ 4%+b
Light Commercial up to a Maximum of $75,000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
LABORERS, Building		
Common Laborers and self-propelled Equipment Ops.	11.00	2.00+f
Concrete or plaster pump Operator, All men on building demolition and wrecking	11.15	2.00+f
Sandblasters and construction clean-up, Driller, Wagon Jack or Wagon Drill Operator, Metal Form and Curb Setter, Asphalt Raker, Tail or Screw man on paving Machine	11.30	2.00+f
Acetylene Torch Operator on Demolition work and cutting of pipes		
Blasters	11.45	2.00+f
LINE CONSTRUCTION:		
Substations and switching structures: Pipe type cable installation and maintenance jobs or projects: Railroad catenary installation and maintenance: Bonding of rails:		
Lineman: Technician	17.75	4.35+h +6.25%
Cable splicer	19.525	4.35+h +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+h +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+h +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+h +6.25%
Groundman	10.098	4.35+h +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman: Technician	16.83	4.35+h +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+h +6.25%
Groundman truck driver (tractdr trailer unit)	14.306	4.35+h +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+h +6.25%
Groundman	10.098	4.35+h +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+h +6.25%

MODIFICATIONS P. 3

DECISION NO. NY81-3061
MOD#7 (Cont'd):

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd):		
Groundman digging machine operator: dynamite man	17.649	4.35+h +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+h +6.25%
Mobile equipment operator: Groundman truck driver: mechanic	15.688	4.35+h +6.25%
Groundman	15.098	4.35+h +6.25%
PLUMBERS & STEAMFITTERS	15.15	2.60
ROOFERS		
Roofer	14.00	3.37
Pitch and Asbestos	14.50	3.37
SHEET METAL WORKERS	16.87	1.04+g
SPRINKLER FITTERS	16.92	3.23
POWER EQUIPMENT OPERATORS		
Building Construction		
Class I	14.91	4.75+a
Class II	15.80	4.75+a
Class III	16.31	4.75+a
Class IV	16.50	4.75+a
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration, and repair on any existing structure which is intended for predominantly residential use		
Class I	11.18	4.75+1
Class II	11.85	4.75+1
Class III	12.23	4.75+1
Class IV	12.38	4.75+1
Heavy & Highway		
Group I	15.86	4.25+k
Group II	15.32	4.25+k
Group III	13.79	4.25+k
Group IV	12.44	4.25+k
TRUCK DRIVERS		
Heavy & Highway Construction		
Class I	13.49	2.45+n
Class II	13.54	2.45+n
Class III	13.59	2.45+n
Class IV	13.74	2.45+n
Class V	13.69	2.45+n

ADD:

	Basic Hourly Rates	Fringe Benefits
FOOTNOTE:		
h. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.		

Contractor #0984-4049-Mod. #7
439935473-September 3, 1984
Adair, Atoka, Bryan, Coal, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner and Washington Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS (AREA 70)		
Carpenters	$14.08	2.02
Millwrights-Piledrivermen	14.38	2.02
CARPENTERS (AREA 71)		
Carpenters	12.19	1.87
Millwrights-Piledrivermen	12.69	1.87

MODIFICATIONS P. 4

DECISION NO. PA84-3017
MOD. NO. 4
(49 FR 24659 - June 15, 1984)
Berks, Lehigh & Northampton Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$17.91	2.04
Carpenters		
Zone 2	15.81	3.71
Cement masons		
Zone 1	13.79	1.65
Electricians		
Zone 1	17.00	1.94+ 3%
Zone 4	17.61	1.94+ 10%
Elevator Constructors	16.91	3.24+ a+b
Elevator Constructor Helpers	11.54	3.24+ a+b
Elevator Constructors Helpers (Prob.)	8.46	
Ironworkers:		
Zone 1	17.40	4.25
Zone 2	18.45	4.20
LINE CONSTRUCTION		
Zone 1		
Journeyman Lineman	16.88	.80+ 3 3/8%
Winch truck operator	11.82	.80+ 3 3/8%
Truck Drivers	10.97	.80+ 3 3/8%
Groundman	10.13	.80+ 3 3/8%
Zone 2		
Lineman & Cable splicers	17.61	1.55+ 10 3/8%
Line truck operator & Equipment operator	17.61	1.55+ 10 3/8%
Groundman	10.57	1.55+ 10 3/8%
Millwrights		
Zone 1	16.21	3.71
Zone 2	13.70	2.22
Painters		
Zone 2		
Brush	15.23	3.44
Steel	17.25	3.44
Spray	16.25	3.44
Piledrivermen	15.97	6.91+d
Plasterers		
Zone 1	13.81	1.66
Plumbers	18.68	3.94
Steamfitters		
Zone 1	19.56	4.16
Soft floor layers		
Zone 2	14.39	4.36

ADD:

Area covered by Millwrights Zone 2, to read Berks County

DECISION NO. PA84-3042
MOD. NO. 3
(49 FR 48888 - December 14, 1984)
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers		
Zone 4		
Class 5	11.44	2.86

MODIFICATIONS P. 5

DECISION NO. PA85-3001 - MOD. NO. 10
(48 FR 37605 - August 19, 1983)
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
BERKS & LEHIGH COS.		
Lineman	$16.88	.80+ 3 3/8%
Winch truck operator	11.81	.80+ 3 3/8%
Truck Drivers	10.97	.80+ 3 3/8%
Groundman	10.13	.80+ 3 3/8%
NORTHAMPTON COUNTY		
Lineman & Cable splicer	17.81	1.55+ 10 3/8%
Line Truck Operator	17.41	1.55+ 10 3/8%
Groundman	10.57	1.55+ 10 3/8%
IRONWORKERS:		
Carbon, Lehigh, Northampton, Counties (Monroe County entire County except Tobyhanna Army Depot)		
Structural, Ornamental & Reinforcing	15.25	4.20

DECISION NO. PA85-3033
MOD. #1
(48 FR 55369 - November 25, 1983)
Blair County, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Plasterers	15.35	[illegible]

DECISION NO. PA85-3012
MOD. NO. 2
(50 FR 9568 - March 8, 1985)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Cement masons:		
Zone 3	13.79	1.65
Electricians		
Zone 6		
Commercial	17.61	1.54+ 10%
Zone 7		
Commercial	17.00	1.94+3%
Residential up to and incl. 4 stories	9.06	1.94+3%
Zone 9		
Commercial	13.70	1.44+ 3%
Piledrivermen	15.97	6.91+g
Plasterers		
Zone 2	13.81	1.66
Plumbers		
Zone 2	18.68	3.94

DECISION NO. IL84-3041 - MOD. #3
(49 FR 47171 - November 30, 1984)
Statewide Rhode Island

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Compositions: Waterproofers	15.30	4.25
Slate, Tile, Pre-cast Concrete	15.32	4.25

SUPERSEDEAS DECISION

STATE: ILLINOIS
DECISION NUMBER: IL85-5020
COUNTY: COOK
DATE: Date of Publication
Supersedes Decision Number IL83-5020, dated July 1, 1983, in 48 FR 30571
DESCRIPTION OF WORK: Building, Residential, Heavy, and Highway Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.00	$3.28
BOILERMAKERS	18.40	4.53+5%
BRICKLAYERS:		
Bricklayers, Stonemasons	16.86	2.99
Caulkers, Cleaners & Pointers	17.01	3.35
CARPENTERS:		
Carpenters, Millwrights, Pile-drivermen & Soft Floor Layers	16.75	3.78
Residential Carpenter	16.25	3.78
CEMENT MASONS	16.05	4.88
ELECTRICIANS	17.55	3.85+3%
ELEVATOR CONSTRUCTORS		
Mechanics	18.46	3.00+eh
Helpers	70%JR	3.00+eh
Probationary Helpers	50%JR	
GLAZIERS	14.30	2.87
IRONWORKERS:		
Structural & Reinforcing	17.68	5.58
Ornamental	17.62	3.92
Riggers & Machine Movers	15.055	7.52
Metal Fence Erectors:		
Black Book	17.62	3.92
Red Book	12.31	3.92
LATHERS	13.82	1.29
LINE CONSTRUCTION:		
Lineman, Equipment Operator	17.50	20.65%
Groundman	12.50	20.65%
MARBLE SETTERS	18.66	2.70
MARBLE SETTERS FINISHERS	13.20	2.15
PAINTERS:		
Brush, Decorator, Paperhanger, Taper	15.75	2.40
PIPEFITTERS; STEAMFITTERS	18.00	3.60
PLASTERERS	15.95	3.10
PLUMBERS:		
Plumber:	17.25	3.40
Layout Technician	17.25	2.30
ROOFERS	17.00	3.00
SHEET METAL WORKERS:		
Commercial Building	16.90	4.24
Residential Aluminum Gutter	8.00	4.24
SPRINKLER FITTERS	17.79	3.85
TERRAZZO WORKER, TILE SETTER	18.16	2.47
TERRAZZO WORKER FINISHERS	13.40	1.75
TERRAZZO BASE MACHINE	12.35	1.50
TILE SETTER FINISHER	14.20	2.53
TRUCK DRIVERS:		
Building & Residential:		
2-3 Axles	15.175	d,e,f
4 Axles	15.425	d,e,f
5 Axles	15.625	d,e,f
6 Axles	15.825	d,e,f
Heavy & Highway:		
2-3 Axles	15.15	3.40e,f
4 Axles	15.40	3.40e,f
5 Axles	15.60	3.40e,f
6 Axles	15.80	3.40e,f
LABORERS (WRECKING):		
General	13.40	1.92
Wallmen, Wreckers, Butners & Hammermen	13.90	1.92
Smokestack or High Man	14.25	1.92
LANDSCAPE:		
Landscape Plantsman	8.65	g,h
Truck Driver, 2 axles	8.90	g,h
Truck Driver, 3 axles, and Equipment Operator	9.35	g,h
LABORERS (BUILDING & RESIDENTIAL)		
Group 1	13.65	2.17
Group 2	13.715	2.17
Group 3	13.75	2.17
Group 4	13.80	2.17
Group 5	13.85	2.17
Group 6	13.875	2.17
Group 7	13.975	2.17
Group 8	14.00	2.17
Group 9	14.10	2.17
Group 10	14.225	2.17
LABORERS (HEAVY & HIGHWAY):		
Group 1	13.90	1.92
Group 2	13.975	1.92
Group 3	14.05	1.92
Group 4	14.175	1.92
LABORERS (Sewer & Tunnel)		
Group 1	13.90	1.92
Group 2	14.025	1.92
Group 3	14.125	1.92
Group 4	14.25	1.92

DECISION NO. IL85-5020

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POWER EQUIPMENT OPERATORS Building & Residential Construction	Basic Hourly Rates	Fringe Benefits
GROUP 1	$ 18.40c	5.25
GROUP 2	17.10c	5.25
GROUP 3	15.45c	5.25
GROUP 4	13.70c	5.25

Basic Hourly Rates	Fringe Benefits

GROUP 1 - Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft.-and under; Concrete Placer; Concrete Pump (Truck Mounted); Concrete Tower; Cranes; Cranes, Hammerhead; Creter Crane; Crusher, Stone, etc; Derricks; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Highlift Shovels or Front Endloader 2½ yd. and Over; Hoists, Elevators, Outside Type Rack and Pinion and Similar Machines; Hoists, One, Two, and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotive; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes: squeeze cretes-screw type pumps Gypsum bulker and pump; Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck mounted); Roto Mill Grinder (36"and over); Roto Mill Grinder (less than 36"); Scoops-Tractor Drawn; Slip-Form Paver; Straddle Buggies; Tournapull; Tractor with Boom, and side boom; & Trenching Machines

GROUP 2 - Bobcat (over 3/4 cu. yd.); Boiler; Brick Forklift; Broom, Power Propelled; Bulldozers; Concrete Mixer (Two Bag and over); Conveyor, Portable; Forklift Trucks; Greaser Engineer; Highlift Shovels or Front Endloaders under 2½ yd.; Hoists, Automatic; Hoists, Inside Freight Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Rollers; Steam Generators; Tractors; Tractor Drawn Vibratory Roller (Receives an additional $.50 per hour); & Winch Trucks with "A" Frame

GROUP 3 - Air Compressor-Small 150 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-Large over 150; Combination-Small equipment operator; Generator-Small 50 kw and under; Generator-Large over 50kw; Heaters, Mechanical; Hoists, Inside Elevators (rheostat manual controlled); Hydraulic Power units (Pile driving and extracting); Pumps over 3" (1 to 3 not to exceed a total of 300 ft); Pumps, well points; Welding machines (2 through 5); Winches, & small electric drill winches; Bobcat (up to and including 3/4 cu yd) and Brick Forklift

GROUP 4 - Oilers; Hoists; Inside elevators (Pushbutton with automatic doors)

DECISION NO. IL85-5020

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POWER EQUIPMENT OPERATORS Sewer, Heavy & Highway Construction	Basic Hourly Rates	Fringe Benefits
GROUP 1	$18.30	$5.25
GROUP 2	17.75	5.25
GROUP 3	16.60	5.25
GROUP 4	15.20	5.25
GROUP 5	14.00	5.25

Basic Hourly Rates	Fringe Benefits

GROUP 1 - Asphalt Plant; Asphalt Heater and Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End-loader Machine (1 cu. yd. backhoe bucket or over or with attachment); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu.ft.; Concrete Placer; Concrete Tube Float; Cranes, all Attachments; Cranes, Hammerhead, Linden, Peco & machines of a like nature; Creter Crane; Crusher, Stone, etc.; Derricks; Derrick Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb and Gutter Machine; Gradall and machines of a like nature; Grader, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, One, Two, and Three Drum; Hydraulic Backhoes; Locomotive; Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram; Rock Drill-Crawler or Skid Rig; Rock Drill-Truck Mounted; Roto Mill Grinder (36" and over); Roto Mill Grinder (less than 36"); Slip-Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping form (tunnel); Tractor Drawn Belt Loader; Tractor Drawn Belt Loader with attach pusher; Tractor with Boom; Tractaire with Attachment; Trenching Machine; Truck Mounted Concrete Pump with boom; Underground Boring and/or Mining Machines under 5 ft.; Wheel Excavator; & Widener (Apsco)

GROUP 2 - Batch Plant; Bituminous Mixer; Bobcats (over 3/4 cu. yd.); Boiler and Throttle Valve; Bulldozer; Car Loader Trailing Conveyors; Combination Backhoe Front Endloader Machine (less than 1 cu. yd. backhoe bucket or over or with attachments); Compressor and Throttle Valve; Compressor, common receiver (3); Concrete Breaker or Hydro Hammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S series to and including 27 cu. ft.; Concrete Spreader; Concrete Curing Machine; Burlap Machine; Belting Machine and Sealing Machine; Conveyor Muck Carr (Haglund or similar type); Finishing Machine-Concrete; Greaser Engineer; Highlift Shovels or Front Endloader; Hoist-Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinkey; Pump Cretes: Squeeze cretes-screw type pumps Gypsum Bulker and pump; Roller Asphalt; Rotary Snow Plows; Rototiller, seaman, etc. Self-propelled; Scoops-Tractor Drawn; Self-propelled Compactor; Spreader-Chip-Stone, etc.; Scraper; Scraper-prime mover in tandem (Add $1.00 to Class 2 hourly rate for each hour and for each machine attached thereto); Tank Car Heater; Tractors, Push, Pulling sheeps foot, Disc, Compactor, etc.; & Tug Boats

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common receiver (2); Concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Fireman on Boilers; Forklift Trucks; Grouting Machines; Hoists, Automatic; Hoists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper-form-motor driven

GROUP 4 - Air Compressor-small 170 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-large over 170; Asphalt Spreader Backend Man; Combination-Small Equipment Operator; Generators-Small 50kw and under; Generators-Large over 50 kw; Heaters, Mechanical; Hydraulic Power Unit (pile driving or extracting); Light Plants (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4 small electric drill winches; & Bobcats (up to and including 3/4 cu. yd.)

GROUP 5 - Oilers

LABORERS CLASSIFICATIONS (Building & Residential):

Group 1 - Construction; Plasterers' Tenders; & Pumps for Dewatering & other Power Equipment
Group 2 - Cement Gun
Group 3 - Chimney over 40 ft.; Scaffold
Group 4 - Cement Gun Nozzle (Gunite)
Group 5 - Stone Derrickmen & Handlers
Group 6 - Jackhammermen; & Power Driven Concrete Saws & Other Power Equipment
Group 7 - Firebrick & Boiler Setters
Group 8 - Chimney on Fire Brick; Caisson Diggers; & Well Point System Men
Group 9 - Boiler Setter Plastic
Group 10 - Jackhammermen on Fire Brick

LABORERS CLASSIFICATIONS (Heavy & Highway):

Group 1 - Construction; Tenders; Material Expeditor (Asphalt Plant); Street Paving, Grade Seperation, Sidewalk, Curb & Gutter, Stripers & All Laborers not Otherwise Mentioned
Group 2 - Asphalt Tampers & Smoothers; Cement Gun
Group 3 - Cement Gun Nozzle (Laborers) Gunite
Group 4 - Rakers & Lutemen; Machine-Screwmen; Kettlemen; Mixermen; Drum-Men; Jackhammermen (Asphalt); Paintmen; Mitre Box Spreaders; Laborers on Birch, Overman & Similar Spreader Equipment; Laborers on Apsco;-Laborers on Air Compressors; Paving Form Setters; Jackhammermen (Concrete); Power Driven Concrete Saws; Other Power Equipment

LABORERS CLASSIFICATIONS (SEWER & TUNNEL):

GROUP 1 - Top laborers, and all laborers not otherwise mentioned
GROUP 2 - Concrete laborers; steel setters
GROUP 3 - Cement carriers; Cement mixers; Concrete repairmen; Mortar men; Scaffold men; and Second bottom men
GROUP 4 - Air trac drill operations; Bottom men; Bracers-bracing; Bricklayer's tender; Catch basin digger; Drainlayer; Dynamiter; Form men; Jackhammermen; Pipelayers; Rodders; Welders & burners; Well point system men

PAID HOLIDAYS: (Where Applicable)

A-New Year's Day B-Memorial Day C-Independence Day
D-Labor Day E-Thanksgiving Day F-Day after Thanksgiving
G-Christmas Day

FOOTNOTES:

a. Paid Holidays: A through G
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have more than five years of service and 6% for those with less than five years of service
c. Employees who are required to wear a dosimeter radiation detection device will have an additional 50c per hour added to thier hourly rate of pay
d. $117.00 per week
e. Paid Holidays: A, B, C, D, E, G, and Decoration Day
f. 900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation
g. Paid Holidays: A, B, C, D, E, G
h. 1 year's service - 1 week paid vacation; 3 or more years service - 2 weeks paid vacation

SUPERSEDEAS DECISION

STATE: Pennsylvania

Counties: Carbon, Monroe Counties, including Tobyhanna Army Depot and Pike County

DECISION NO. PA85-3017

Date of Publication

Supersedes Decision No. PA79-3020 dated July 20, 1979, in 44 FR42880.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.33	$2.66
BOILERMAKERS	18.88	2.865
BRICKLAYERS & STONEMASONS:		
Zone 1	14.95	4.02
Zone 2	15.70	2.00
Zone 3	15.00	2.86
Zone 4	16.31	2.55
CARPENTERS:		
Zone 1	14.50	2.55
Zone 2	15.81	3.71
Zone 3	14.46	2.70
CEMENT MASONS:		
Zone 1	13.50	.01
Zone 2	15.65	
Zone 1	16.31	2.55
ELECTRICIANS:		
Zone 1	17.00	1.84+ 3%
Zone 2		
Zone A- Form 20 - 1/10 miles to 30 miles from Public Square	16.54	2.70+ 3%
Zone B- All distance from 35- 1/10 miles & over	16.84	2.70+ 3%
Zone 3	15.93	2.50+ a+3%
Zone 4	17.61	1.59+ 3%
Zone 5		
Zone A- From 0 to 50 miles from Zero milestone marker	15.25	3.30+ 3%
Zone B- All distance over 50 miles	16.25	3.30+ 3%

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS	15.585	1.29 c+g
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	3.29+ c+d
ELEVATORS CONSTRUCTORS' HELPERS (PROB.)	50%JR	
GLAZIERS:		
Zone 1	14.54	1.465
Zone 2	13.04	2.90
Structural Steel	17.75	4.30
Reinforcing	17.50	4.30
LABORERS:		
Zone 1		
Class 1	12.80	2.87
Class 2	12.95	2.87
Class 3	13.20	2.87
Zone 2		
Class 1	10.88	2.51
Class 2	11.13	2.51
Class 3	11.38	2.51
Class 4	11.90	2.51
Class 5	11.63	2.51
LATHERS:		
Zone 1	12.04	.11
Zone 2	14.50	2.55
Zone 3	15.81	3.71
Head Burners	10.75	.66+f
LINE CONSTRUCTION		
Lineman, dynamite man, heavy equipment operator	16.29	1.00+ 3 3/8%
Winch truck operator	11.59	1.00+ 3 3/8%
Groundman	10.30	1.00+ 3 3/8%
MARBLE SETTERS:		
Zone 1	14.45	3.40
Zone 2	13.60	2.50
Zone 3	16.31	2.55
MILLWRIGHTS		
Zone 1	15.04	2.70
Zone 2	16.57	2.55

DECISION NO. PA85-3017

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Zone 1		
Brush	12.30	2.70
Tapers	12.96	2.70
Steel	13.96	2.70
Zone 2		
Brush & Roller	13.65	1.45
Structural Steel	14.65	1.45
Spray	15.15	1.45
Zone 3		
Brush	15.25	3.98
Spray	16.25	3.98
Steel	17.25	3.98
PLUMBERS		
Zone 1	15.24	4.45
Zone 2	18.68	3.94
PLASTERERS		
Zone 1	15.70	2.00
Zone 2	12.78	
Zone 3	16.76	1.91
Zone 4	16.73	
Zone 5	16.31	2.55
PILEDRIVERMEN	15.97	6.91+g
ROOFERS:		
Zone 1		
Shingle, slate, and tile	13.92	2.25
Mechanic II (for shingle, slate, or tile work)- handles and transports all materials, tools & equipment: clean-up debris	6.25	2.25
All other work	19.57	2.93+h
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment: clean-up debris	8.25	2.93+h
Zone 2		
Composition & Kettleman	14.55	2.10
Zone 3		
Composition & Kettleman	14.42	2.53
SHEET METAL WORKERS	15.92	2.00
SOFT FLOOR LAYERS		
Zone 1	12.20	2.55
Zone 2	14.46	2.70
Zone 3	15.81	3.71
SPRINKLER FITTERS	16.92	3.23

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Zone 1		
Group 1	15.89	26.6% +j
Group 2	15.60	26.6%+j
Group 3	14.72	26.6%+j
Group 4	13.95	26.6%+j
Group 5	13.47	26.6%+j
Group 6	12.55	26.6%+j
Group 7	16.14	26.6%+j
Group 7-A	16.41	26.6%+j
Group 7-B	16.64	26.6%+j
Zone 2		
Group 1	16.52	26.6%+j
Group 2	16.23	26.6%+j
Group 3	15.17	26.6%+j
Group 4	14.52	26.6%+j
Group 5	13.26	26.6%+j
Group 6	12.36	26.6%+j
TERRAZZO WORKERS		
Zone 1	14.70	2.40
Zone 2	15.15	.95
TILE SETTERS		
Zone 1	14.70	2.40
Zone 2	13.60	2.50
Zone 3	16.31	2.55
CLASS I - Helper, stake body truck (single axle), dumpster	12.77	
CLASS II- Dump trucks, tandem & batch trucks, semi trailer, agitator mixer trucks, ready mix and dumpcrete type vehicles, asphalt distributor when used for transportation, stake body truck (tandem)	12.84	
CLASS III - Euclid type, off-highway equipment back or belly dump truck, and double hitched equipment, straddle (Ross) carrier, lowbed trailer	13.33	

PAID HOLIDAYS: Where Applicable

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: Independence Day and Labor Day

c. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

d. Paid Holidays: A through F, plus Friday after Thanksgiving Day.

f. Nine paid holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer.

g. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day & Christmas Day.

h. Paid Holiday: Election Day.

j. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

WELDERS - Rate of craft

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided on the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREA COVERED BY BRICKLAYERS & STONEMASONS

ZONE 1 - Remainder of Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County
ZONE 4 - Pike County & Remainder of Monroe County

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Carbon County; including Twps. of Banks, Lausanna, Lehigh, Packer and Kidder
ZONE 2 - Remainder of Carbon County & Remainder of Monroe County
ZONE 3 - Tobyhanna Army Depot in Monroe County, Pike County in its entirety

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County & Pike County
ZONE 3 - Remainder of Monroe County

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Lausane, Penn. Forest, Towamensing, Lower Towamensing, Palmerton, E. Penn., Franklin, Mahoning, Packer, Lehigh, Banks Twps., in Carbon County
ZONE 2 - Remainder of Carbon County, Monroe County, including Tobyhanna Army Depot and Pike County in its entirety

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1 - Carbon County: Towamensing Lower Towamensing, East Penn Township and the Borough of Parryville in their entierty
Zone 2 - Carbon County: That portion of Kidder Twps., excluding Eastside Borough, north of State Highway 940 from that Borough to Monroe County: Monroe County: That portion of Tobyhanna and Tunkhannock Townships west of State Highway 115.
ZONE 3 - Carbon County: Penn Forest, Lehigh, Lausane, Banks, Packer, Mauch Chunk, Franklin, Mahoning Townships and East Side Borough in their entirety and that portion of Kidder Township south of State Highway 940, but excluding Perryville Borough:
ZONE 4 - Monroe County: Polk, Eldred, Chestnut Hill, Ross, Hamilton, Jackson, Pocono, Stroud, Smithfield and Middle Smithfield Townships: Pike County: Porter, Delaware and Lehamn Townships in their entirety:
ZONE 5 - Monroe County: Barrett, Coolbaugh, Pardise and Price Township, and that portion of Tobyhannock Townships east of State Highway 115: Remainder of Pike County:

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Carbon County, Remainder of Monroe County
ZONE 2 - Pike County in its entirety; Tobyhanna Army Depot in Monroe County

AREA COVERED BY LABORERS ZONES

ZONE 1 - Pike County and Tobyhanna Army Depot in Monroe County
ZONE 2 - Carbon County and Remainder of Monroe County.

AREA COVERED BY LATHERS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot and Pike County
ZONE 2 - Carbon County; including Twps. of Banks, Lousanna, Lehigh, Packer and Kidder.
ZONE 3 - Remainder of Carbon County

AREA COVERED BY MARBLE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot & Pike County
ZONE 3 - Remainder of Monroe County

AREA COVERED BY MILLWRIGHTS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, and Pike County in its entirety

ZONE 1 - Carbon County

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Summit Hill, Mauch Chunck, Mahoning, Palmerton, Franklin, Towamensing, Lansford & Lower Towamensing Twps., in Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Remainder of Carbon County
ZONE 4 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 5 - Remainder of Monroe County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, Remainder of Carbon County; Pike County in its entirety
ZONE 2 - Carbon County: (Township of Franklin, East Penn, Lower Towamensing, Upper Towamensing & Palmerton)

AREA COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, and Pike County
ZONE 2 - Carbon County

AREA COVERED BY ROOFERS ZONES

ZONE 1 - East Penn, Franklin, Lower Towamensing, Mahoning and Towamensing Townships in Carbon County, Remainder of Monroe County
ZONE 2 - Remainder of Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County & Pike County in its entirety

AREA COVERED BY SOFT FLOOR LAYERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

AREA COVERED BY TERRAZZO WORKERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Monroe County, including Tobyhanna Army Depot & Pike County

AREA COVERED BY TILE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

LABORERS CLASSIFICATIONS DEFINITIONS

ZONE 1
CLASS 1 - Unskilled and window cleaners
CLASS 2 - Semi skilled laboers; jackhammer iperators, (each man when two required for operation of jackhammer) vibrator and buster men, wagon drill and all men handling dynamite, gas buggies 2" pumps and concrete mixers (up to 2 bags) and all pneumatic tools, non-mettallic pipe layers and making of joints, clay, terra cotta ironston, vitrified concrete handling of burning torches, asphalt or other material
CLASS 3 - Plasterer tenders and mason tenders and handling of all material to be used - masons & scaffold builders
ZONE 2 -
CLASS 1 - Unskilled laborers & window cleaners
CLASS 2 - Operator of jackhammer, paving breaking & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drills & men handling burning torches in the wrecking of buildings, laying of all clay, terra cotta, ironstone, vitrified concrete or non metallic pipe & the making of joints for the same & cofferdams (below 10')
CLASS 3 - Plasterer & mason tenders, scaffold builders & handling of all materials to be used by palsterers & masons, brick & block loaded on pallets, cement finisher tenders, gunniting & molded-D & sandblaster helpers, power buggies, to get mason tender rates, all floor hardener & "cure" application shall be the work of the mason tender. All pumps, such as the concrete, plasterer, mortar & water, installing plastic or other non-solid refactory materials in connection with boiler work
CLASS 4 - Barko tamper operator
CLASS 5 - Wagon drills and men handling burning torches in the wrecking of buildings

CLASSIFICATIONS DEFINITION POWER EQUIPMENT OPERATORS ZONES

ZONE 1

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above

GROUP 2: All types of cranes, backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, paver 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, poppin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapull spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechar welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heater, farm tractors, form lift graders, fine grade machines, road finishing machines, concrete breaking machines, roller, seaman pulverizing mixer, power broom, seeding spreader, tireman, (for power equipment), machines similar to above

GROUP 5: Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc.) 100 ft. and over

GROUP 7-A: 150 ft. and over

GROUP 8-B: 200 ft. and over

CLASSIFICATIONS DEFINITION POWER EQUIPMENT OPERATORS ZONES (Cont'd)

ZONE 2

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist wirh two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type bachoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt palnt engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman polverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck bands (personnel boats), core drill helper

SUPERSEDEAS DECISION

STATE: VIRGINIA

COUNTIES: Henrico and the Independent City of Richmond

DECISION NO.: VA85-3020

DATE: Date of Publication

Supersedes Decision No. VA82-3033 dated December 3, 1982 in 47 FR p. 54744

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.78	2.07
BOILERMAKERS	16.625	3.54
BRICKLAYERS & STONEMASONS	13.50	1.47
CARPENTERS & SOFT FLOOR LAYERS	12.05	1.70
CEMENT MASONS	11.25	
CEMENT MASONS MACHINE MEN	11.35	
ELECTRICIANS	14.35	13%%
ELEVATOR CONSTRUCTORS	13.01	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS	9.11	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.505	
GLAZIERS	12.05	1.32
IRONWORKERS-Structural Reinforcing and Ornamental	13.75	2.40
LABORERS:		
Unskilled	7.95	.71
Tenders (excluding brick masons tenders) Motorized Georgia Buggy Operators, Nozzleman (gunite or Sandblasting), Concrete Saw Operator, Air Tool and Vibrator Operators Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo	8.05	.71
Workers Helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, Base & Terrazzo Grinders	8.35	.71
Wagon Drill Air Trac	8.45	.71
Powdermen	8.70	.71
LINEMEN & CABLE SPLICERS	14.00	.85+3 1/2%
CABLE SPLICERS	14.71	.85+3 1/2%
MARBLE, TILE & TERRAZZO WORKERS	10.10	
MILLWRIGHTS	13.95	1.61

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush, Paperhanders, Tapers, and Finishers	11.20	
Structural Steel, Swing State and Bosun Chair	11.45	
Scaffold or Other Hazard Work over 50 feet	11.45	
Spray	11.70	
Sandblasting, Elevated Tanks, Smoke Stacks and all Towers	11.05	
PILEDRIVERMEN AND DOCK-BUILDERS	12.45	1.70
PLASTERERS	13.00	
PLUMBERS & STEAMFITTERS	14.00	2.10
ROOFERS COMPOSITION	8.40	
ROOFERS HELPERS (Tearing off old roofing, Carrying materials & Cleanup)	6.50	
SHEET METAL WORKERS:		
City of Richmond	11.22	.81
Remainder of County	11.57	.81
SOUND AND SIGNAL INSTALLER	6.00	
SPRINKLER FITTERS	13.67	3.23
POWER EQUIPMENT OPERATORS Building Construction		
Group 1	12.80	1.875
Group 2	10.25	1.875
Group 3	8.25	1.875
Group 4	8.05	1.875
Group 5	7.86	1.875

See classification definitions on page 2

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Paid Holidays: A through F, Day after Thanksgiving.

c. Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve, provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

PEO DEFINITIONS:

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

GROUP 3 - Compressor over 125 cu. ft., bottom and end dumps, tractor without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helpers

GROUP 4 - Firemen

GROUP 5 - Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 10
Revised List of Migratory Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

Revised List of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking revises the List of Migratory Birds contained in 50 CFR 10.13. As revised, the List contains all species covered by the four treaties between the United States and other nations that are implemented by the Migratory Bird Treaty Act. The List of Migratory Birds was last revised on November 16, 1977 (42 FR 59258), with subsequent corrections (March 14, 1978, 43 FR 10565; April 10, 1978, 43 FR 14968). A revision is necessary to bring the List up to date. This rulemaking revises the scientific names of groups listed in two of the four migratory bird treaties. This rulemaking also adds certain species to and deletes others from the current List of Migratory Birds, and revises the English (common) and/or scientific names of previously listed species as necessary to conform with the most recent *Check-list of North American Birds* (American Ornithologists' Union, 6th ed., 1983). The full, revised List of Migratory Birds is presented here in two formats: alphabetically by English (common) name and in taxonomic order by scientific name.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone 202-254-3207. Reprints of this final rule, including the List of Migratory Birds, will be available from the above Office within 60 days after the effective date.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (16 U.S.C. 703-712) [hereinafter referred to as MBTA] expressly protects any migratory bird included in the terms of the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628, the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, 50 Stat. 1311, T.S. No. 912, the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990 (16 U.S.C. 703), and the Convention Between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, (16 U.S.C. 703, 712).

The Fish and Wildlife Service regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds under the terms of the MBTA. Regulations implementing the MBTA, which are found principally in Title 50 Code of Federal Regulations (CFR), Parts 10, 20, and 21, may be applied to any bird covered by one of the four treaties (16 U.S.C. 712).

Because of taxonomic changes over the years, there is need to better define and interpret the species intended to be afforded protection under the various migratory bird treaties. Many of the scientific group and species names appearing in the treaties are no longer in use. Lists of equivalent nomenclature are provided here to document the intended coverage of the wording appearing in the original treaties.

A list of birds protected under the Canadian, Mexican, and Japanese treaties is currently contained in 50 CFR 10.13. The revisions made here are necessary to:

(i) Include those birds protected under the Soviet treaty that are not presently listed;

(ii) Bring the list into accord with the English (common) and scientific names given in the 6th Edition of the American Ornithologists' Union's *Check-list of North American Birds* (1983);

(iii) Add species that are of regular occurrence in the United States that were not included on the last List;

(iv) Delete species formerly thought to occur in the United States but for which records have been disavowed;

(v) Delete species whose occurrence in the United States is deemed accidental, i.e., the U.S. is outside the species' normal range and occurrence is infrequent and irregular.

Changes in categories (iii), (iv), and (v) affect only certain species covered only by terms of the treaties with Canada and/or Mexico.

The first treaty offering protection to migratory birds, with Canada, was signed 69 years ago. That treaty indicated, by scientific names of families or groups or by the English names of species or groups of species, which birds were intended to be protected by the treaty. One subordinal group name, Limicolae, has gone out of usage in the intervening years. The equivalent current scientific names of the groups and species incorporated by scientific and English names in the treaty with Canada are presented here. Family names end in -idae, while subfamily names end in -inae.

Birds protected by U.S.-Canada treaty, 1916 with present equivalent scientific terminology:

1. Migratory Game Birds

Anatidae—no change
Gruidae—no change
Rallidae—no change
Limicolae or shorebirds = Charadriidae, Haematopodidae, Recurvirostridae, Scolopacidae
Columbidae—no change

2. Migratory Insectivorous Birds

Bobolinks, meadowlarks, orioles = Emberizidae/Icterinae, part
Catbirds = Mimidae, part
Chickadees, titmice = Paridae
Cuckoos = Cuculidae
Flickers, woodpeckers = Picidae, part or all
Flycatchers = Tyrannidae, part or all (interpreted as family group name and not meant to include Old World flycatchers in the family Muscicapidae)
Grosbeaks = Emberizidae/Cardinalinae, part, and Fringillidae/Carduelinae, part
Hummingbirds = Trochilidae
Kinglets = Muscicapidae/Sylviinae, part
Martins, swallows = Hirundinidae
Nighthawks, whip-poor-wills = Caprimulgidae, part or all
Nuthatches = Sittidae
Robins, thrushes = Muscicapidae/Turdinae, part or all
Shrikes = Laniidae
Swifts = Apodidae
Tanagers = Emberizidae/Thraupinae
Vireos = Vireonidae
Warblers = Emberizidae/Parulinae, part or all (like flycatchers, interpreted as group family name meant to include species whose common name does not include warbler; not meant to include Old World warblers)
Waxwings = Bombycillidae
Wrens = Troglodytidae
"All other perching birds which feed entirely or chiefly on insects" = Larks, Alaudidae; Creepers, Certhiidae; Dipper, Cinclidae; Gnatcatchers, Muscicapidae/Sylviinae, part; Thrashers, Mimidae, part; Pipits and wagtails, Motacillidae

3. Other Migratory Non-Game Birds

Auks, auklets, guillemots, murres, puffins = Alcidae, part or all
Bitterns, herons = Ardeidae, part or all

Fulmars, petrels, shearwaters=Procellariidae and Hydrobatidae
Gannets=Sulidae, part
Grebes=Podicipedidae
Gulls, jaegers, terns=Laridae/Stercorariinae, Larinae, Sterninae
Loons=Gaviidae

The treaty with Mexico, signed in 1937, listed birds by scientific family names, with the intent that birds in those families which were known to occur in both nations were to be covered by the treaty. Additional families were added by an amendment to the treaty in 1972. For technical reasons, some family names have changed and the composition of some families is now different from the listings used when the treaty or amendment was signed. Family names that have changed are given here followed by their present equivalent scientific name.

Compsothlypidae=Emberizidae/Parulinae, part
Fringillidae=Emberizidae/Emberizinae, Cardinalinae and Fringillidae/Fringillinae, Carduelinae, part
Icteridae=Emberizidae/Icterinae
Laridae=Laridae/Larinae, Sterninae
Micropodidae=Apodidae
Pandionidae=Accipitridae/Pandionae
Paridae=Paridae, Aegithalidae
Phalaropodidae=Scolopacidae, part
Rynchopidae=Laridae/Rhynchopinae
Stercorariidae=Laridae/Stercorariinae
Sylviidae=Muscicapidae/Sylviinae
Thraupidae=Emberizidae/Thraupinae, part
Turdidae=Muscicapidae/Turdinae

The treaties for the protection of migratory birds signed with Japan in 1972 and the Soviet Union in 1976 listed in appendices individual species of birds to be protected, these being species found in the United States, including its territories and possessions, and either Japan or the Soviet Union. One species was added to the Japanese treaty by amendment. Certain entries incorporated in this rulemaking differ from entries in the lists appended to one or both of those treaties. This presents a nomenclatural problem in listing species that are in the appendices of both the Japanese and Russian treaties, but under slightly different names or where the American Ornithologists' Union has adopted a name that is different from that formerly used for a species. For example, the species listed as "Dusky Thrush, *Turdus pallidus* (=*obscurus*)" is already listed by virtue of the Japanese treaty as "Eye-browed Thrush, *Turdus osbcurus*." In such cases, the revisions made here follow the nomenclature used or recognized by the American Ornithologists' Union. This does not change the protection afforded these species nor does it revise the appendices to either the Japanese or Soviet treaty. Entries on the treaties' appendices which have changed are presented here first followed by the present equivalent scientific name which appears in § 10.13, as revised by this rulemaking.

Gorsachius goisagi is listed as *Nycticorax goisagi;*
Cygnus bewickii is included in *Cygnus columbianus;*
Anser canagicus and *caerulescens* are listed in the genus *Chen;*
Branta nigricans is included in *Branta bernicla;*
Species in the genera *Mareca* and *Spatula* are listed in the genus *Anas;*
Melanitta deglandi is incorporated into *Melanitta fusca;*
Mergus albellus is listed as *Mergellus albellus;*
Accipiter virgatus is listed as *Accipiter gularis;*
Eudromias morinellus is listed in *Charadrius;*
Tringa incana and *brevipes* are listed as separate species in the genus *Heteroscelus;*
Tringa hypoleucos is listed as *Actitis hypoleucos;*
Numenius minutus and *Numenius borealis* are listed as separate species;
Crocethia alba is listed as *Calidris alba;*
Calidris minutilla and *subminuta* are listed as separate species;
Lobipes lobatus is listed in the genus *Phalaropus;*
Lunda cirrhata is listed in the genus *Fratercula;*
Petrochelidon pyrrhonota is listed as *Hirundo pyrrhonota;*
Motacilla alba has been divided into *Motacilla alba* and *Motacilla lugens;*
Carduelis flammea and *hornemanni* are listed as separate species.

This rulemaking adds forty-six species to the list of protected birds.

Ten of these result from taxonomic changes; what had been considered a single species is now listed as two or more species. There is no change in protection because of the change of listing. EXAMPLE—what was formerly considered to be the Western Gull, *Larus occidentialis*, is now considered to be two species, the Western Gull, *L. occidentalis*, and the Yellow-footed Gull, *Larus livens*.

Ten species are added because they are listed in the appendix to the Soviet treaty. Several of these would have been eligible for addition under the Canadian/Mexican treaty provisions.

Twenty-six species are added because of recent distributional records that indicate they are a part of the avifauna of the United States on a regular basis. This category includes one species recently transferred into a protected family (the Becard) and several that should have been listed previously that, for some unknown reason, were not.

This rulemaking removes twenty-five species from the list of protected birds.

Seven of these result from taxonomic changes; what were formerly considered to be two or more species have been combined into a single species and so listed. There is no change in protected status because of the change of name under which some populations are listed. EXAMPLE—the Mexican Duck, *Anas diazi*, is now included with the Mallard, *A. platyrhynchos*.

Four species are deleted because the record that was the basis for their former listing is no longer considered to be valid. EXAMPLE—Gull, Black-tailed. These four could also be deleted as being of only accidental occurrence (see below).

Three species are removed because they do not belong to groups covered by any treaty; they should not have been listed previously. EXAMPLE—Elepaio.

Eleven species are deleted because their occurrence in the United States is "accidental". They are not a normal part of the avifauna of the United States.

Excluding the changes made for taxonomic purposes, which do not change protection, this rulemaking results in a net addition of 18 species to the List.

To make the necessary changes described above, the Service proposed in June 1984 to revise the List of Migratory Birds (49 FR 23197–23202, June 5, 1984).

Public comment on the June proposal was limited (4 letters) and focused primarily on the introductory text to § 10.13 of 50 CFR; the deletion of certain species (specifically the Bahama Honeycreeper, *Coereba bahamensis* and the Eurasian Kestrel, *Falco tinnunculus*) from the List and the name change of the American Flamingo to the Greater Flamingo. The introductory text to § 10.13 has been rewritten to explicitly cite the treaties giving authority for the List. Records of occurrence for the Eurasian Kestrel have been reviewed and the species has been retained on the List. The Bahama Honeycreeper will be deleted, not because of occurrence/non-occurrence but because it does not belong to a taxonomic group covered by any of the four migratory bird treaties.

Because the List of Migratory Birds follows the taxonomy and nomenclature of the American Ornithologists Union's Check-list of North American Birds (6th

Edition, 1983) the English (common) name change from American Flamingo to Greater Flamingo also entails recognizing the reclassification of these two species. Formerly, the American Flamingo was *Phoenicopterus ruber* and the Greater Flamingo of Europe and Africa was *Phoenicopterus roseus*. Now, both are known as the Greater Flamingo: *Phoenicopterus ruber* irrespective of geographical origin. Thus, both New and Old World Greater Flamingos are now protected under the Migratory Bird Treaty Act.

Internal review of the proposed rule revealed certain changes that were inadvertently omitted. These changes, and the reasons for them, are listed here:

1. Species that should have been added due to new records or inclusion on the appendix to the Soviet Treaty (3):

Reed-Bunting, Common, *Emberiza schoeniculus*
Reed-Bunting, Pallas', *Emberiza pallasi*
Starthroat, Plain-capped, *Heliomaster constanti*

2. Species that should have been deleted due to accidental status (1):

Swift, Short-tailed, *Chaetura brachyura*

3. Change made erroneously (1):

Least Tern, *Sterna albifrons*, was changed to *Sterna antillarum*. This should have been Least Tern, *S. albifrons*, changed to Little Tern, and Least Tern, *Sterna antillarum*, added. That is, both species should be listed.

The listing of Least (or Little) Tern, *S. albifrons*, in the Japanese treaty referred to the Old World form which retains the English name Little and the scientific name *albifrons* while the New World form (Least) is split off as a species, *antillarum*.

4. Changes in generic or English names that should have been made (12):

Kingfisher, Belted, *Megaceryle alcyon*, will be *Ceryle alcyon*
Kingfisher, Ringed, *Megaceryle torquata*, will be *Ceryle torquata*
Puffin, Tufted, *Lunda cirrhata*, will be *Fratercula cirrhata*
Sandpiper, Stilt, *Micropalama himantopus*, will be *Calidris himantopus*
Sparrow, Five-striped, *Aimophila quinquestriata*, will be *Amphispiza quinquestriata*
Sparrow, LeConte's, *Ammospiza leconteii*, will be *Ammodramus leconteii*
Sparrow, Seaside, *Ammospiza maritima*, will be *Ammodramus maritimus*
Sparrow, Sharp-tailed, *Ammospiza caudacuta*, will be *Ammodramus caudacutus*
Storm-Petrel, Least, *Halocyptena microsoma*, will be *Oceanodroma microsoma*
Warbler, Parula, *Parula americana*, reinserted in list as Parula, Northern
Warbler, Tropical Parula, will be Parula, Tropical
Woodcock, American, *Philohela minor*, will be *Scolopax minor*

5. New changes due to action of the American Ornithologists Union (2):

Crissal Thrasher, *Toxostoma dorsale*, will be *Toxostoma crissale*
Oystercatcher, Black, proposed to be changed to Oystercatcher, American Black, will remain Oystercatcher, Black

These are modifications to the 6th edition that were published in the *Auk* 101:348, 1984. The first is mandated by a decision of the International Commission on Zoological Nomenclature.

These changes are incorporated in the full, revised List of Migratory Birds contained in this final rule.

Statement of Effects

Because the proposed revision of the List of Migratory Birds merely redescribes the birds already protected by the Federal treaties with Canada, Mexico, Japan and the Soviet Union, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection Requirements

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

Based on the fact that such regulations merely redescribe the birds already protected by the Federal treaties with Canada, Mexico, Japan and the Soviet Union, the Service has determined that revision of the List of Migratory Birds in 50 CFR 10.13 is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on such regulations is not required.

Endangered Species Act Consideration

A number of species appearing on the List of Migratory Birds are also designated as Endangered or Threatened under provisions of the Endangered Species Act (16 U.S.C. 1531-1543). No legal complications arise from the dual listing inasmuch as the two lists are developed by separate authorities and for different purposes.

Primary Authors

The primary authors of this final rule are Mark L. Shaffer, Office of Migratory Bird Management; and Richard C. Banks, Division of Wildlife Research.

List of Subjects in 50 CFR Part 10

Exports, Birds, Imports, Law enforcement officers, Wildlife.

Regulation Promulgation

Accordingly, Part 10, Subpart B of Chapter I, Title 50 of the Code of Federal Regulations, is hereby amended as set forth below.

PART 10—[AMENDED]

The authority for 50 CFR 10 reads as follows:

Authority: Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281; Black Bass Act, sec. 5, 44 Stat. 576, as amended, 46 Stat. 846; Migratory Bird Treaty Act, sec. 3, 40 Stat. 755, Bald Eagle Protection Act, sec. 2, 54 Stat. 251; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73-74, 19 U.S.C. 1202, Schedule 1, Part 15D, Headnote. 2(d), "Tariff Schedules of the United States"; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042.

Section 10.13 is revised to read as follows:

§ 10.13 List of Migratory Birds.

The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations on migratory birds contained in this Subchapter B of Title 50 Code of Federal Regulations. The species listed are those protected by the Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, 50 Stat. 1311, T.S. No. 912; the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and the Convention for the Conservation of Migratory Birds and Their Environment, United States-U.S.S.R., November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16

U.S.C. 703, 712. The species are listed two ways. In the first part of the List species are arranged alphabetically by English (common) name groups, with the scientific name following the English (common) name. All species of ducks are listed together under the heading "Ducks". In the second part of the List, species are listed by scientific name arranged in taxonomic order. Taxonomy and nomenclature follows the American Ornithologists' Union's Check-list of North American Birds (6th Edition, 1983).

I. Alphabetical Listing

Accentor, Siberian, *Prunella montanella*
Albatross:
  Black-footed, *Diomedea nigripes*
  Laysan, *Diomedea immutabilis*
  Short-tailed, *Diomedea albatrus*
  Yellow-nosed, *Diomedea chlororhynchos*
Anhinga, *Anhinga anhinga*
Ani:
  Groove-billed, *Crotophaga sulcirostris*
  Smooth-billed, *Crotophaga ani*
Auklet:
  Cassin's, *Ptychoramphus aleuticus*
  Crested, *Aethia cristatella*
  Least, *Aethia pusilla*
  Parakeet, *Cyclorrhynchus psittacula*
  Rhinoceros, *Cerorhinca monocerata*
  Whiskered, *Aethia pygmaea*
Avocet, American, *Recurvirostra americana*
Barn-Owl, Common, *Tyto alba*
Beardless-Tyrannulet, Northern, *Camptostoma imberbe*
Becard, Rose-throated, *Pachyramphus aglaiae*
Bittern:
  American, *Botaurus lentiginosus*
  Chinese, *Ixobrychus sinensis*
  Least, *Ixobrychus exilis*
  Schrenk's, *Ixobrychus eurhythmus*
Black-Hawk, Common, *Buteogallus anthracinus*
Blackbird:
  Brewer's, *Euphagus cyanocephalus*
  Red-winged, *Agelaius phoeniceus*
  Rusty, *Euphagus carolinus*
  Tawny-shouldered, *Agelaius humeralis*
  Tricolored, *Agelaius tricolor*
  Yellow-headed, *Xanthocephalus xanthocephalus*
  Yellow-shouldered, *Agelaius xanthomus*
Bluebird:
  Eastern, *Sialia sialis*
  Mountain, *Sialia currucoides*
  Western, *Sialia mexicana*
Bluethroat, *Luscinia svecica*
Bobolink, *Dolichonyx oryzivorus*
Booby:
  Blue-footed, *Sula nebouxii*
  Brown, *Sula leucogaster*
  Masked, *Sula dactylatra*
  Red-footed, *Sula sula*
Brambling, *Fringilla montifringilla*
Brant, *Branta bernicla*
Bufflehead (see **DUCKS**)
Bullfinch:
  Eurasian, *Pyrrhula pyrrhula*
  Puerto Rican, *Loxigilla portoricensis*
Bunting:
  Indigo, *Passerina cyanea*
  Lark, *Calamospiza melanocorys*
  Lazuli, *Passerina amoena*
  McKay's, *Plectrophenax hyperboreus*
  Painted, *Passerina ciris*
  Reed (see Reed-Bunting)
  Rustic, *Emberiza rustica*
  Snow, *Plectrophenax nivalis*
  Varied, *Passerina versicolor*
Bushtit, *Psaltriparus minimus*
Canvasback (see **DUCKS**)
Caracara, Crested, *Polyborus plancus*
Cardinal, Northern, *Cardinalis cardinalis*
Carib, Green-throated, *Eulampis holosericeus*
Catbird, Gray, *Dumetella carolinensis*
Chat, Yellow-breasted, *Icteria virens*
Chickadee (see Tit):
  Black-capped, *Parus atricapillus*
  Boreal, *Parus hudsonicus*
  Carolina, *Parus carolinensis*
  Chestnut-backed, *Parus rufescens*
  Mexican, *Parus sclateri*
  Mountain, *Parus gambeli*
Chuck-will's-widow, *Caprimulgus carolinensis*
Condor, California, *Gymnogyps californianus*
Coot:
  American, *Fulica americana*
  Caribbean, *Fulica caribaea*
  Eurasian, *Fulica atra*
Cormorant:
  Brandt's, *Phalacrocorax penicillatus*
  Double-crested, *Phalacrocorax auritus*
  Great, *Phalacrocorax carbo*
  Olivaceous, *Phalacrocorax olivaceus*
  Pelagic, *Phalacrocorax pelagicus*
  Red-faced, *Phalacrocorax urile*
Cowbird:
  Bronzed, *Molothrus aeneus*
  Brown-headed, *Molothrus ater*
  Shiny, *Molothrus bonariensis*
Crake:
  Corn, *Crex crex*
  Yellow-breasted, *Porzana flaviventer*
Crane:
  Common, *Grus grus*
  Sandhill, *Grus canadensis*
  Whooping, *Grus americana*
Creeper, Brown, *Certhia americana*
Crossbill:
  Red, *Loxia curvirostra*
  White-winged, *Loxia leucoptera*
Crow:
  American, *Corvus brachyrhynchos*
  Fish, *Corvus ossifragus*
  Hawaiian, *Corvus hawaiiensis*
  Mexican, *Corvus imparatus*
  Northwestern, *Corvus caurinus*
  White-necked, *Corvus leucognaphalus*
Cuckoo:
  Black-billed, *Coccyzus erythropthalmus*
  Common, *Cuculus canorus*
  Hawk (see Hawk-Cuckoo)
  Lizard (see Lizard-Cuckoo)
  Mangrove, *Coccyzus minor*
  Oriental, *Cuculus saturatus*
  Yellow-billed, *Coccyzus americanus*
Curlew (see Whimbrel):
  Bristle-thighed, *Numenius tahitiensis*
  Eskimo, *Numenius borealis*
  Far Eastern, *Numenius madagascariensis*
  Least, *Numenius minutus*
  Long-billed, *Numenius americanus*
Dickcissel, *Spiza americana*
Dipper, American, *Cinclus mexicanus*
Dotterel, Eurasian, *Charadrius morinellus*
Dove:
  Ground (see Ground-Dove)
  Inca, *Columbina inca*
  Mourning, *Zenaida macroura*
  Quail (see Quail-Dove)
  White-tipped, *Leptotila verreauxi*
  White-winged, *Zenaida asiatica*
  Zenaida, *Zenaida aurita*
Dovekie, *Alle alle*
Dowitcher:
  Long-billed, *Limnodromus scolopaceus*
  Short-billed, *Limnodromus griseus*

DUCKS

American Black Duck, *Anas rubripes*
Bufflehead, *Bucephala albeola*
Canvasback, *Aythya valisineria*
Eider:
  Common, *Somateria mollissima*
  King, *Somateria spectabilis*
  Spectacled, *Somateria fischeri*
  Steller's, *Polysticta stelleri*
Gadwall, *Anas strepera*
Garganey, *Anas querquedula*
Goldeneye:
  Barrow's, *Bucephala islandica*
  Common, *Bucephala clangula*
Harlequin Duck, *Histrionicus histrionicus*
Hawaiian Duck, *Anas wyvilliana*
Laysan Duck, *Anas laysanensis*
Mallard, *Anas platyrhynchos*
Masked Duck, *Oxyura dominica*
Merganser:
  Common, *Mergus merganser*
  Hooded, *Lophodytes cucullatus*
  Red-breasted, *Mergus serrator*
Mottled Duck, *Anas fulvigula*
Oldsquaw, *Clangula hyemalis*
Pintail:
  Northern, *Anas acuta*
  White-cheeked, *Anas bahamensis*
Pochard:
  Baer's, *Aythya baeri*
  Common, *Aythya ferina*

Redhead, *Aythya americana*
Ring-necked Duck, *Aythya collaris*
Ruddy Duck, *Oxyura jamaicensis*
Scaup:
Greater, *Aythya marila*
Lesser, *Aythya affinis*
Scoter:
Black, *Melanitta nigra*
Surf, *Melanitta perspicillata*
White-winged, *Melanitta fusca*
Shoveler, Northern, *Anas clypeata*
Smew, *Mergellus albellus*
Teal:
Baikal, *Anas formosa*
Blue-winged, *Anas discors*
Cinnamon, *Anas cyanoptera*
Falcated, *Anas falcata*
Green-winged, *Anas crecca*
Tufted Duck, *Aythya fuligula*
Whistling-Duck:
Black-bellied, *Dendrocygna autumnalis*
Fulvous, *Dendrocygna bicolor*
West Indian, *Dendrocygna arborea*
Wigeon:
American, *Anas americana*
Eurasian, *Anas penelope*
Wood Duck, *Aix sponsa*

END OF DUCKS

Dunlin, *Calidris alpina*
Eagle:
Bald, *Haliaeetus leucocephalus*
Golden, *Aquila chrysaetos*
Sea (see Sea-Eagle)
White-tailed, *Haliaeetus albicilla*
Egret:
Cattle, *Bubulcus ibis*
Chinese, *Egretta eulophotes*
Great, *Casmerodius albus*
Plumed, *Egretta intermedia*
Reddish, *Egretta rufescens*
Snowy, *Egretta thula*
Eider (see **DUCKS**)
Elaenia, Caribbean, *Elaenia martinica*
Emerald, Puerto Rican, *Chlorostilbon maugaeus*
Euphonia, Antillean, *Euphonia musica*
Falcon:
Aplomado, *Falco femoralis*
Peregrine, *Falco peregrinus*
Prairie, *Falco mexicanus*
Fieldfare, *Turdus pilaris*
Finch:
Cassin's, *Carpodacus cassinii*
House, *Carpodacus mexicanus*
Purple, *Carpodacus purpureus*
Rosy, *Leucosticte arctoa*
Flamingo, Greater, *Phoenicopterus ruber*
Flicker, Northern, *Colaptes auratus*
Flycatcher:
Acadian, *Empidonax virescens*
Alder, *Empidonax alnorum*
Ash-throated, *Myiarchus cinerascens*
Brown-crested, *Myiarchus tyrannulus*
Buff-breasted, *Empidonax fulvifrons*
Dusky, *Empidonax oberholseri*
Dusky-capped, *Myiarchus tuberculifer*
Fork-tailed, *Tyrannus savana*
Gray, *Empidonax wrightii*
Gray-spotted, *Muscicapa griseisticta*
Great Crested, *Myiarchus crinitus*
Hammond's, *Empidonax hammondii*
Least, *Empidonax minimus*
Narcissus, *Muscicapa narcissina*
Nutting's, *Myiarchus nuttingi*
Olive-sided, *Contopus borealis*
Puerto Rican, *Myiarchus antillarum*
Scissor-tailed, *Tyrannus forficatus*
Sulphur-bellied, *Myiodynastes luteiventris*
Vermilion, *Pyrocephalus rubinus*
Western, *Empidonax difficilis*
Willow, *Empidonax traillii*
Yellow-bellied, *Empidonax flaviventris*
Frigatebird:
Great, *Fregata minor*
Magnificent, *Fregata magnificens*
Lesser, *Fregata ariel*
Fulmar, Northern, *Fulmarus glacialis*
Gadwall (see **DUCKS**)
Gallinule, Purple, *Porphyrula martinica*
Gannet, Northern, *Sula bassanus*
Garganey (see **DUCKS**)
Gnatcatcher:
Black-capped, *Polioptila nigriceps*
Black-tailed, *Polioptila melanura*
Blue-gray, *Polioptila caerulea*
Godwit:
Bar-tailed, *Limosa lapponica*
Black-tailed, *Limosa limosa*
Hudsonian, *Limosa haemastica*
Marbled, *Limosa fedoa*
Golden-Plover, Lesser, *Pluvialis dominica*
Goldeneye (see **DUCKS**)
Goldfinch:
American, *Carduelis tristis*
Lawrence's, *Carduelis lawrencei*
Lesser, *Carduelis psaltria*
Goose:
Barnacle, *Branta leucopsis*
Bean, *Anser fabalis*
Canada, *Branta canadensis*
Emperor, *Chen canagica*
Greater White-fronted, *Anser albifrons*
Hawaiian, *Nesochen sandvicensis*
Ross', *Chen rossii*
Snow, *Chen caerulescens*
Goshawk, Northern, *Accipiter gentilis*
Grackle:
Boat-tailed, *Quiscalus major*
Common, *Quiscalus quiscula*
Great-tailed, *Quiscalus mexicanus*
Greater Antillean, *Quiscalus niger*
Grasshopper-Warbler, Middendorff's, *Locustella ochotensis*
Grassquit:
Black-faced, *Tiaris bicolor*
Yellow-faced, *Tiaris olivacea*
Grebe:
Eared, *Podiceps nigricollis*
Horned, *Podiceps auritus*
Least, *Tachybaptus dominicus*
Pied-billed, *Podilymbus podiceps*
Red-necked, *Podiceps grisegena*
Western, *Aechmophorus occidentalis*
Greenfinch, Oriental, *Carduelis sinica*
Greenshank, Common, *Tringa nebularia*

Grosbeak:
Black-headed, *Pheucticus melanocephalus*
Blue, *Guiraca caerulea*
Crimson-collared, *Rhodothraupis celaeno*
Evening, *Coccothraustes vespertinus*
Pine, *Pinicola enucleator*
Rose-breasted, *Pheucticus ludovicianus*
Yellow, *Pheucticus chrysopeplus*
Ground-Dove:
Common, *Columbina passerina*
Ruddy, *Columbina talpacoti*
Guillemot:
Black, *Cepphus grylle*
Pigeon, *Cepphus columba*
Gull:
Bonaparte's, *Larus philadelphia*
California, *Larus californicus*
Common Black-headed, *Larus ridibundus*
Franklin's, *Larus pipixcan*
Glaucous, *Larus hyperboreus*
Glaucous-winged, *Larus glaucescens*
Great Black-backed, *Larus marinus*
Heermann's, *Larus heermanni*
Herring, *Larus argentatus*
Iceland, *Larus glaucoides*
Ivory, *Pagophila eburnea*
Laughing, *Larus atricilla*
Lesser Black-backed, *Larus fuscus*
Little, *Larus minutus*
Mew, *Larus canus*
Ring-billed, *Larus delawarensis*
Ross', *Rhodostethia rosea*
Sabine's, *Xema sabini*
Slaty-backed, *Larus schistisagus*
Thayer's, *Larus thayeri*
Western, *Larus occidentalis*
Yellow-footed, *Larus livens*
Gyrfalcon, *Falco rusticolus*
Harrier, Northern, *Circus cyaneus*
Hawfinch, *Coccothraustes coccothraustes*
Hawk:
Asiatic Sparrow, *Accipiter gularis*
Black (see Black-Hawk)
Broad-winged, *Buteo platypterus*
Cooper's, *Accipiter cooperii*
Ferruginous, *Buteo regalis*
Gray, *Buteo nitidus*
Harris', *Parabuteo unicinctus*
Hawaiian, *Buteo solitarius*
Red-shouldered, *Buteo lineatus*
Red-tailed, *Buteo jamaicensis*
Rough-legged, *Buteo lagopus*
Sharp-shinned, *Accipiter striatus*
Short-tailed, *Buteo brachyurus*
Swainson's, *Buteo swainsoni*
White-tailed, *Buteo albicaudatus*
Zone-tailed, *Buteo albonotatus*

Hawk-Cuckoo, Hodgson's, *Cuculus fugax*
Hawk-Owl, Northern, *Surnia ulula*
Heron:
Great Blue, *Ardea herodias*
Green-backed, *Butorides striatus*
Little Blue, *Egretta caerulea*
Night (see Night-Heron)
Pacific Reef, *Egretta sacra*
Tricolored, *Egretta tricolor*
Hoopoe, *Upupa epops*
House-Martin, Common, *Delichon urbica*
Hummingbird (see Carib, Emerald, Mango, Starthroat, Woodstar, Violet-ear):
Allen's, *Selasphorus sasin*
Anna's, *Calypte anna*
Antillean Crested, *Orthorhynchus cristatus*
Berylline, *Amazilia beryllina*
Black-chinned, *Archilochus alexandri*
Blue-throated, *Lampornis clemenciae*
Broad-billed, *Cynanthus latirostris*
Broad-tailed, *Selasphorus platycercus*
Buff-bellied, *Amazilia yucatanensis*
Calliope, *Stellula calliope*
Costa's, *Calypte costae*
Lucifer, *Calothorax lucifer*
Magnificent, *Eugenes fulgens*
Ruby-throated, *Archilochus colubris*
Rufous, *Selasphorus rufus*
Violet-crowned, *Amazilia violiceps*
White-eared, *Hylocharis leucotis*
Ibis:
Glossy, *Plegadis falcinellus*
Scarlet, *Eudocimus ruber*
White, *Eudocimus albus*
White-faced, *Plegadis chihi*
Jabiru, *Jabiru mycteria*
Jacana, Northern, *Jacana spinosa*
Jaeger:
Long-tailed, *Stercorarius longicaudus*
Parasitic, *Stercorarius parasiticus*
Pomarine, *Stercorarius pomarinus*
Jay:
Blue, *Cyanocitta cristata*
Brown, *Cyanocorax morio*
Gray, *Perisoreus canadensis*
Gray-breasted, *Aphelocoma ultramarina*
Green, *Cyanocorax yncas*
Pinyon, *Gymnorhinus cyanocephalus*
Scrub, *Aphelocoma coerulescens*
Steller's, *Cyanocitta stelleri*
Junco:
Dark-eyed, *Junco hyemalis*
Yellow-eyed, *Junco phaeonotus*
Kestrel:
American, *Falco sparverius*
Eurasian, *Falco tinnunculus*
Killdeer, *Charadrius vociferus*
Kingbird:
Cassin's, *Tyrannus vociferans*
Couch's, *Tyrannus couchii*
Eastern, *Tyrannus tyrannus*
Gray, *Tyrannus dominicensis*
Loggerhead, *Tyrannus caudifasciatus*
Thick-billed, *Tyrannus crassirostris*
Tropical, *Tyrannus melancholicus*
Western, *Tyrannus verticalis*
Kingfisher:
Belted, *Ceryle alcyon*
Green, *Chloroceryle americana*
Ringed, *Cyeryle torquata*
Kinglet:
Golden-crowned, *Regulus satrapa*
Ruby-crowned, *Regulus calendula*
Kiskadee, Great, *Pitangus sulphuratus*
Kite:
American Swallow-tailed, *Elanoides forficatus*
Black, *Milvus migrans*
Black-shouldered, *Elanus caeruleus*
Hook-billed, *Chondrohierax uncinatus*
Mississippi, *Ictinia mississippiensis*
Snail, *Rostrhamus sociabilis*
Kittiwake:
Black-legged, *Larus tridactyla*
Red-legged, *Larus brevirostris*
Knot:
Great, *Calidris tenuirostris*
Red, *Calidris canutus*
Lapwing, Northern, *Vanellus vanellus*
Lark, Horned, *Eremophila alpestris*
Limpkin, *Aramus guarauna*
Lizard-Cuckoo, Puerto Rican, *Saurothera vieilloti*
Longspur:
Chestnut-collared, *Calcarius ornatus*
Lapland, *Calcarius lapponicus*
McCown's, *Calcarius mccownii*
Smith's *Calcarius pictus*
Loon:
Arctic, *Gavia arctica*
Common, *Gavia immer*
Red-throated, *Gavia stellata*
Yellow-billed, *Gavia adamsii*
Magpie:
Black-billed, *Pica pica*
Yellow-billed, *Pica nuttalli*
Mallard (see DUCKS)
Mango:
Antillean, *Anthracothorax dominicus*
Green, *Anthracothorax viridis*
Martin:
Caribbean, *Progne dominicensis*
Cuban, *Progne cryptoleuca*
Gray-breasted, *Progne chalybea*
House (see House-Martin)
Purple, *Progne subis*
Meadowlark:
Eastern, *Sturnella magna*
Western, *Sturnella neglecta*
Merganser (see DUCKS)
Merlin, *Falco columbarius*
Mockingbird, Northern, *Mimus polyglottos*
Moorhen, Common, *Gallinula chloropus*
Murre:
Common, *Uria aalge*
Thick-billed, *Uria lomvia*
Murrelet:
Ancient, *Synthliboramphus antiquus*
Craveri's, *Synthliboramphus craveri*
Kittlitz's, *Brachyramphus brevirostris*
Marbled, *Brachyramphus marmoratus*
Xantus', *Synthliboramphus hypoleucus*
Needletail, White-throated, *Hirundapus caudacutus*
Night-Heron:
Black-crowned, *Nycticorax nycticorax*
Japanese, *Nycticorax goisagi*
Malay, *Nycticorax melanolophus*
Yellow-crowned, *Nycticorax violaceus*
Nighthawk:
Antillean, *Chordeiles gundlachii*
Common, *Chordeiles minor*
Lesser, *Chordeiles acutipennis*
Nightjar:
Buff-collared, *Caprimulgus ridgwayi*
Jungle, *Caprimulgus indicus*
Puerto Rican, *Caprimulgus noctitherus*
Noddy:
Black, *Anous minutus*
Blue-gray, *Procelsterna cerulea*
Brown, *Anous stolidus*
Lesser, *Anous tenuirostris*
Nutcracker, Clark's, *Nucifraga columbiana*
Nuthatch:
Brown-headed, *Sitta pusilla*
Pygmy, *Sitta pygmaea*
Red-breasted, *Sitta canadensis*
White-breasted, *Sitta carolinensis*
Oldsquaw (see DUCKS)
Oriole:
Altamira, *Icterus gularis*
Audubon's, *Icterus graduacauda*
Black-cowled, *Icterus dominicensis*
Black-vented, *Icterus wagleri*
Hooded, *Icterus cucullatus*
Northern, *Icterus galbula*
Orchard, *Icterus spurius*
Scott's, *Icterus parisorum*
Streak-backed, *Icterus pustulatus*
Osprey, *Pandion haliaetus*
Ovenbird, *Seiurus aurocapillus*
Owl:
Barn (see Barn-Owl)
Barred, *Strix varia*
Boreal, *Aegolius funereus*
Burrowing, *Athene cunicularia*
Elf, *Micrathene whitneyi*
Flammulated, *Otus flammeolus*
Great Gray, *Strix nebulosa*
Great Horned, *Bubo virginianus*
Hawk (see Hawk-Owl)
Long-eared, *Asio otus*
Pygmy (see Pygmy-Owl)
Saw-whet (see Saw-Whet Owl)
Screech (see Screech-Owl)
Short-eared, *Asio flammeus*
Snowy, *Nyctea scandiaca*
Spotted, *Strix occidentalis*
Oystercatcher:
American, *Haematopus palliatus*
Black, *Haematopus bachmani*
Parula:
Northern, *Parula americana*
Tropical, *Parula pitiayumi*
Pauraque, Common, *Nyctidromus albicollis*

Pelican:
American White, *Pelecanus erythrorhynchos*
Brown, *Pelecanus occidentalis*
Petrel:
Black-capped, *Pterodroma hasitata*
Bonin, *Pterodroma hypoleuca*
Bulwer's, *Bulweria bulwerii*
Cook's, *Pterodroma cookii*
Dark-rumped, *Pterodroma phaeopygia*
Herald, *Pterodroma arminjoniana*
Kermadec, *Pterodroma neglecta*
Mottled, *Pterodroma inexpectata*
Murphy's, *Pterodroma ultima*
Storm (see Storm-Petrel)
White-necked, *Pterodroma externa*
Pewee:
Greater, *Contopus pertinax*
Lesser Antillean, *Contopus latirostris*
Wood (see Wood-Pewee)
Phainopepla, *Phainopepla nitens*
Phalarope:
Red, *Phalaropus fulicaria*
Red-necked, *Phalaropus lobatus*
Wilson's, *Phalaropus tricolor*
Phoebe:
Black, *Sayornis nigricans*
Eastern, *Sayornis phoebe*
Say's, *Sayornis saya*
Pigeon:
Band-tailed, *Columba fasciata*
Plain, *Columba inornata*
Red-billed, *Columba flavirostris*
Scaly-naped, *Columba squamosa*
White-crowned, *Columba leucocephala*
Pintail (see **DUCKS**)
Pipit:
Pechora, *Anthus gustavi*
Red-throated, *Anthus cervinus*
Sprague's, *Anthus spragueii*
Tree (see Tree-Pipit)
Water, *Anthus spinoletta*
Plover:
Black-bellied, *Pluvialis squatarola*
Common Ringed, *Charadrius hiaticula*
Golden (see Golden-Plover)
Great Sand, *Charadrius leschenaultii*
Little Ringed, *Charadrius dubius*
Mongolian, *Charadrius mongolus*
Mountain, *Charadrius montanus*
Piping, *Charadrius melodus*
Semipalmated, *Charadrius semipalmatus*
Snowy, *Charadrius alexandrinus*
Wilson's, *Charadrius wilsonia*
Pochard (see **DUCKS**)
Poorwill, Common, *Phalaenoptilus nuttallii*
Puffin:
Atlantic, *Fratercula arctica*
Horned, *Fratercula corniculata*
Tufted, *Fratercula cirrhata*
Pygmy-Owl:
Ferruginous, *Glaucidium brasilianum*
Northern, *Glaucidium gnoma*
Pyrrhuloxia, *Cardinalis sinuatus*
Quail-Dove:
Bridled, *Geotrygon mystacea*
Key West, *Geotrygon chrysia*
Ruddy, *Geotrygon montana*
Rail:
Black, *Laterallus jamaicensis*
Clapper, *Rallus longirostris*
King, *Rallus elegans*
Sora (see Sora)
Virginia, *Rallus limicola*
Yellow, *Coturnicops noveboracensis*
Raven:
Chihuahuan, *Corvus cryptoleucus*
Common, *Corvus corax*
Razorbill, *Alca torda*
Redhead (see **DUCKS**)
Redpoll:
Common, *Carduelis flammea*
Hoary, *Carduelis hornemanni*
Redshank, Spotted, *Tringa erythropus*
Redstart:
American, *Setophaga ruticilla*
Painted, *Myioborus pictus*
Slaty-throated, *Myioborus miniatus*
Reed-Bunting:
Common, *Emberiza schoeniculus*
Pallas', *Emberiza pallasi*
Roadrunner, Greater, *Geococcyx californianus*
Robin:
American, *Turdus migratorius*
Clay-colored, *Turdus grayi*
Rufous-backed, *Turdus rufopalliatus*
Rosefinch, Common, *Carpodacus erythrinus*
Rough-winged Swallow, Northern, *Stelgidopteryx serripennis*
Rubythroat, Siberian, *Luscinia calliope*
Ruff, *Philomachus pugnax*
Sanderling, *Calidris alba*
Sandpiper:
Baird's, *Calidris bairdii*
Broad-billed, *Limicola falcinellus*
Buff-breasted, *Tryngites subruficollis*
Common, *Actitis hypoleucos*
Curlew, *Calidris ferruginea*
Least, *Calidris minutilla*
Marsh, *Tringa stagnatilis*
Pectoral, *Calidris melanotos*
Purple, *Calidris maritima*
Rock, *Calidris ptilocnemis*
Semipalmated, *Calidris pusilla*
Sharp-tailed, *Calidris acuminata*
Solitary, *Tringa solitaria*
Spoonbill, *Eurynorhynchus pygmeus*
Spotted, *Actitis macularia*
Stilt, *Calidris himantopus*
Terek, *Xenus cinereus*
Upland, *Bartramia longicauda*
Western, *Calidris mauri*
White-rumped, *Calidris fuscicollis*
Wood, *Tringa glareola*
Sapsucker:
Red-breasted, *Sphyrapicus ruber*
Williamson's, *Sphyrapicus thyroideus*
Yellow-bellied, *Sphyrapicus varius*
Saw-whet Owl, Northern, *Aegolius acadicus*
Scaup (see **DUCKS**)
Scoter (see **DUCKS**)
Screech-Owl:
Eastern, *Otus asio*
Puerto Rican, *Otus nudipes*
Western, *Otus kennicottii*
Whiskered, *Otus trichopsis*
Sea-Eagle, Steller's, *Haliaeetus pelagicus*
Seedeater, White-collared, *Sporophila torqueola*
Shearwater:
Audubon's, *Puffinus lherminieri*
Black-vented, *Puffinus opisthomelas*
Buller's, *Puffinus bulleri*
Christmas, *Puffinus nativitatus*
Cory's, *Calonectris diomedea*
Flesh-footed, *Puffinus carneipes*
Greater, *Puffinus gravis*
Little, *Puffinus assimilis*
Manx, *Puffinus puffinus*
Pink-footed, *Puffinus creatopus*
Short-tailed, *Puffinus tenuirostris*
Sooty, *Puffinus griseus*
Townsend's, *Puffinus auricularis*
Wedge-tailed, *Puffinus pacificus*
Shoveler (see **DUCKS**)
Shrike:
Loggerhead, *Lanius ludovicianus*
Northern, *Lanius excubitor*
Siskin, Pine, *Carduelis pinus*
Skimmer, Black, *Rhynchops niger*
Skua:
Great, *Catharacta skua*
South Polar, *Catharacta maccormicki*
Skylark, Eurasian, *Alauda arvensis*
Smew (see **DUCKS**)
Snipe:
Common, *Gallinago gallinago*
Jack, *Lymnocryptes minimus*
Pin-tailed, *Gallinago stenura*
Swinhoe's, *Gallinago megala*
Solitaire, Townsend's, *Myadestes townsendi*
Sora, *Porzana carolina*
Sparrow:
American Tree, *Spizella arborea*
Bachman's, *Aimophila aestivalis*
Baird's, *Ammodramus bairdii*
Black-chinned, *Spizella atrogularis*
Black-throated, *Amphispiza bilineata*
Botteri's, *Aimophila botterii*
Brewer's, *Spizella breweri*
Cassin's, *Aimophila cassinii*
Chipping, *Spizella passerina*
Clay-colored, *Spizella pallida*
Field, *Spizella pusilla*
Five-striped, *Amphispiza quinquestriata*
Fox, *Passerella iliaca*
Golden-crowned, *Zonotrichia atricapilla*
Grasshopper, *Ammodramus savannarum*
Harris', *Zonotrichia querula*
Henslow's, *Ammodramus henslowii*
Lark, *Chondestes grammacus*
Le Conte's, *Ammodramus leconteii*
Lincoln's, *Melospiza lincolnii*
Olive, *Arremenops rufivirgatus*

Rufous-crowned, *Aimophila ruficeps*
Rufous-winged, *Aimophila carpalis*
Sage, *Amphispiza belli*
Savannah, *Passerculus sandwichensis*
Seaside, *Ammodramus maritimus*
Sharp-tailed, *Ammodramus caudacutus*
Song, *Melospiza melodia*
Swamp, *Melospiza georgiana*
Vesper, *Pooecetes gramineus*
White-crowned, *Zonotrichia leucophrys*
White-throated, *Zonotrichia albicollis*
Worthen's, *Spizella wortheni*

Spoonbill, Roseate, *Ajaia ajaja*

Starling:
Ashy, *Sturnus cineraceus*
Violet-backed, *Sturnus philippensis*

Starthroat, Plain-capped *Heliomaster constantii*,

Stilt, Black-necked, *Himantopus mexicanus*

Stint:
Little, *Calidris minuta*
Long-toed, *Calidris subminuta*
Rufous-necked, *Calidris ruficollis*
Temminck's, *Calidris temminckii*

Stork, Wood, *Mycteria americana*

Storm-Petrel:
Ashy, *Oceanodroma homochroa*
Band-rumped, *Oceanodroma castro*
Black, *Oceanodroma melania*
Fork-tailed, *Oceanodroma furcata*
Leach's, *Oceanodroma leucorhoa*
Least, *Oceanodroma microsoma*
Sooty, *Oceanodroma tristrami*
Wedge-rumped, *Oceanodroma tethys*
White-faced, *Pelagodroma marina*
Wilson's, *Oceanites oceanicus*

Surfbird, *Aphriza virgata*

Swallow:
Bahama, *Tachycineta cyaneoviridis*
Bank, *Riparia riparia*
Barn, *Hirundo rustica*
Cave, *Hirundo fulva*
Cliff, *Hirundo pyrrhonota*
Rough-winged (see Rough-winged Swallow)
Tree, *Tachycineta bicolor*
Violet-green, *Tachycineta thalassina*

Swan:
Trumpeter, *Cygnus buccinator*
Tundra, *Cygnus columbianus*
Whooper, *Cygnus cygnus*

Swift:
Antillean Palm, *Tachornis pheonicobia*
Black, *Cypseloides niger*
Chimney, *Chaetura pelagica*
Common, *Apus apus*
Fork-tailed, *Apus pacificus*
Needle-tailed (see Needletail)
Vaux's, *Chaetura vauxi*
White-collared, *Streptoprocne zonaris*
White-throated, *Aeronautes saxatalis*

Tanager:
Hepatic, *Piranga flava*
Puerto Rican, *Neospingus speculiferus*
Scarlet, *Piranga olivacea*
Stripe-headed, *Spindalis zena*
Summer, *Piranga rubra*
Western, *Piranga ludoviciana*

Tattler:
Gray-tailed, *Heteroscelus brevipes*
Wandering, *Heteroscelus incanus*

Teal (see DUCKS)

Tern:
Aleutian, *Sterna aleutica*
Arctic, *Sterna paradisaea*
Black, *Chlidonias niger*
Black-naped, *Sterna sumatrana*
Bridled, *Sterna anaethetus*
Caspian, *Sterna caspia*
Common, *Sterna hirundo*
Elegant, *Sterna elegans*
Forster's, *Sterna forsteri*
Gray-backed, *Sterna lunata*
Gull-billed, *Sterna nilotica*
Least, *Sterna antillarum*
Little, *Sterna albifrons*
Roseate, *Sterna dougallii*
Royal, *Sterna maxima*
Sandwich, *Sterna sandvicensis*
Sooty, *Sterna fuscata*
White, *Gygis alba*
White-winged, *Chlidonias leucopterus*

Thrasher:
Bendire's, *Toxostoma bendirei*
Brown, *Toxostoma rufum*
California, *Toxostoma redivivum*
Crissal, *Toxostoma crissale*
Curve-billed, *Toxostoma curvirostre*
Le Conte's, *Toxostoma lecontei*
Long-billed, *Toxostoma longirostre*
Pearly-eyed, *Margarops fuscatus*
Sage, *Oreoscoptes montanus*

Thrush:
Aztec, *Ridgwayia pinicola*
Blue Rock, *Monticola solitarius*
Dusky, *Turdus naumanni*
Eye-browed, *Turdus obscurus*
Gray-cheeked, *Catharus minimus*
Hawaiian, *Phaeornis obscurus*
Hermit, *Catharus guttatus*
Red-legged, *Turdus plumbeus*
Small Kauai, *Phaeornis palmeri*
Swainson's, *Catharus ustulatus*
Varied, *Ixoreus naevius*
Wood, *Hylocichla minima*

Tit, Siberian, *Parus cinctus*

Titmouse:
Bridled, *Parus wollweberi*
Plain, *Parus inornatus*
Tufted, *Parus bicolor*

Towhee:
Abert's, *Pipilo aberti*
Brown, *Pipilo fuscus*
Green-tailed, *Pipilo chlorurus*
Rufous-sided, *Pipilo erythrophthalmus*

Tree-Pipit, Olive, *Anthus hodgsoni*

Trogon:
Eared, *Euptilotus neoxenus*
Elegant, *Trogon elegans*

Tropicbird:
Red-billed, *Phaethon aethereus*
Red-tailed, *Phaethon rubricauda*
White-tailed, *Phaethon lepturus*

Turnstone:
Black, *Arenaria melanocephala*
Ruddy, *Arenaria interpres*

Veery, *Catharus fuscescens*

Verdin, *Auriparus flaviceps*

Violet-Ear, Green, *Colibri thalassinus*

Vireo:
Bell's *Vireo bellii*
Black-capped, *Vireo atricapillus*
Black-whiskered, *Vireo altiloquus*
Gray, *Vireo vicinior*
Hutton's, *Vireo huttoni*
Philadelphia, *Vireo philadelphicus*
Puerto Rican, *Vireo latimeri*
Red-eyed, *Vireo olivaceus*
Solitary, *Vireo solitarius*
Warbling, *Vireo gilvus*
White-eyed, *Vireo griseus*
Yellow-throated, *Vireo flavifrons*

Vulture:
Black, *Coragyps atratus*
Turkey, *Cathartes aura*

Wagtail:
Black-backed, *Motacilla lugens*
Gray, *Motacilla cinerea*
White, *Motacilla alba*
Yellow, *Motacilla flava*

Warbler:
Adelaide's, *Dendroica adelaidae*
Arctic, *Phylloscopus borealis*
Bachman's *Vermivora bachmanii*
Bay-breasted, *Dendroica castanea*
Black-and-white, *Mniotilta varia*
Black-throated Blue, *Dendroica caerulescens*
Black-throated Gray, *Dendroica nigrescens*
Black-throated Green, *Dendroica virens*
Blackburnian, *Dendroica fusca*
Blackpoll, *Dendroica striata*
Blue-winged, *Vermivora pinus*
Canada, *Wilsonia canadensis*
Cape May, *Dendroica tigrina*
Cerulean, *Dendroica cerulea*
Chestnut-sided, *Dendroica pensylvanica*
Colima, *Vermivora crissalis*
Connecticut, *Oporornis agilis*
Elfin Woods, *Dendroica angelae*
Golden-cheeked, *Dendroica chrysoparia*
Golden-crowned, *Basileuterus culicivorus*
Golden-winged, *Vermivora chrysoptera*
Grace's, *Dendroica graciae*
Grasshopper (see Grasshopper-Warbler)
Hermit, *Dendroica occidentalis*
Hooded, *Wilsonia citrina*
Kentucky, *Oporornis formosus*
Kirtland's, *Dendroica kirtlandii*
Lucy's, *Vermivora luciae*
MacGillivray's, *Oporornis tolmiei*
Magnolia, *Dendroica magnolia*
Mourning, *Oporornis philadelphia*
Nashville, *Vermivora ruficapilla*
Olive, *Peucedramus taeniatus*

Orange-crowned, *Vermivora celata*
Palm, *Dendroica palmarum*
Parula (see Parula)
Pine, *Dendroica pinus*
Prairie, *Dendroica discolor*
Prothonotary, *Protonotaria citrea*
Red-faced, *Cardellina rubrifrons*
Rufous-capped, *Basileuterus rufifrons*
Swainson's, *Limnothlypis swainsonii*
Tennessee, *Vermivora peregrina*
Townsend's, *Dendroica townsendi*
Virgina's, *Vermivora virginiae*
Willow, *Phylloscopus trochilus*
Wilson's, *Wilsonia pusilla*
Worm-eating, *Helmitheros vermivorus*
Yellow, *Dendroica petechia*
Yellow-rumped, *Dendroica coronata*
Yellow-throated, *Dendroica dominica*
Waterthrush:
Louisiana, *Seiurus motacilla*
Northern, *Seiurus noveboracensis*
Waxwing:
Bohemian, *Bombycilla garrulus*
Cedar, *Bombycilla cedrorum*
Wheatear, Northern, *Oenanthe oenanthe*
Whimbrel, *Numenius phaeopus*
Whip-poor-will, *Caprimulgus vociferus*
Whistling-Duck (see **DUCKS**)
Wigeon (see **DUCKS**)
Willet, *Catoptrophorus semipalmatus*
Wood-Pewee:
Eastern, *Contopus virens*
Western, *Contopus sordidulus*
Woodcock:
American, *Scolopax minor*
Eurasian, *Scolopax rusticola*
Woodpecker:
Acorn, *Melanerpes formicivorus*
Black-backed, *Picoides arcticus*
Downy, *Picoides pubescens*
Gila, *Melanerpes uropygialis*
Golden-fronted, *Melanerpes aurifrons*
Hairy, *Picoides villosus*
Ivory-billed, *Campephilus principalis*
Ladder-backed, *Picoides scalaris*
Lewis', *Melanerpes lewis*
Nuttall's, *Picoides nuttallii*
Pileated, *Dryocopus pileatus*
Puerto Rican, *Melanerpes portoricensis*
Red-bellied, *Melanerpes carolinus*
Red-cockaded, *Picoides borealis*
Red-headed, *Melanerpes erythrocephalus*
Strickland's, *Picoides stricklandi*
Three-toed, *Picoides tridactylus*
White-headed, *Picoides albolarvatus*
Woodstar, Bahama, *Calliphlox evelynae*
Wren:
Bewick's *Thryomanes bewickii*
Cactus, *Campylorhynchus brunneicapillus*
Canyon, *Catherpes mexicanus*
Carolina, *Thryothorus ludovicianus*
House, *Troglodytes aedon*
Marsh, *Cistothorus palustris*
Rock, *Salpinctes obsoletus*
Sedge, *Cistothorus platensis*
Winter, *Troglodytes troglodytes*
Wryneck, Eurasian, *Jynx torquilla*
Yellowlegs:
Greater, *Tringa melanoleuca*
Lesser, *Tringa flavipes*
Yellowthroat:
Common, *Geothlypis trichas*
Gray-crowned, *Geothlypis poliocephala*

II. Taxonomic Listing

Order GAVIIFORMES

Family GAVIIDAE

Gavia stellata, Red-throated Loon
Gavia arctica, Arctic Loon
Gavia immer, Common Loon
Gavia adamsii, Yellow-billed Loon

Order PODICIPEDIFORMES

Family PODICIPEDIDAE

Tachybaptus dominicus, Least Grebe
Podilymbus podiceps, Pied-billed Grebe
Podiceps auritus, Horned Grebe
Podiceps grisegena, Red-necked Grebe
Podiceps nigricollis, Eared Grebe
Aechmophorus occidentalis, Western Grebe

Order PROCELLARIIFORMES

Family DIOMEDEIDAE

Diomedea albatrus, Short-tailed Albatross
Diomedea nigripes, Black-footed Albatross
Diomedea immutabilis, Laysan Albatross
Diomedea chlororhynchos, Yellow-nosed Albatross

Family PROCELLARIIDAE

Fulmarus glacialis, Northern Fulmar
Pterodroma hasitata, Black-capped Petrel
Pterodroma phaeopygia, Dark-rumped Petrel
Pterodroma externa, White-necked Petrel
Pterodroma inexpectata, Mottled Petrel
Pterodroma ultima, Murphy's Petrel
Pterodroma neglecta, Kermadec Petrel
Pterodroma arminjoniana, Herald Petrel
Pterodroma cookii, Cook's Petrel
Pterodroma hypoleuca, Bonin Petrel
Bulweria bulwerii, Bulwer's Petrel
Calonectris diomedea, Cory's Shearwater
Puffinus creatopus, Pink-footed Shearwater
Puffinus carneipes, Flesh-footed Shearwater
Puffinus gravis, Greater Shearwater
Puffinus pacificus, Wedge-tailed Shearwater
Puffinus bulleri, Buller's Shearwater
Puffinus griseus, Sooty Shearwater
Puffinus tenuirostris, Short-tailed Shearwater
Puffinus nativitatis, Christmas Shearwater
Puffinus puffinus, Manx Shearwater
Puffinus opisthomelas, Black-vented Shearwater
Puffinus auricularis, Townsend's Shearwater
Puffinus assimilis, Little Shearwater
Puffinus lherminieri, Audubon's Shearwater

Family HYDROBATIDAE

Oceanites oceanicus, Wilson's Storm-Petrel
Pelagodroma marina, White-faced Storm-Petrel
Oceanodroma furcata, Fork-tailed Storm-Petrel
Oceanodroma leucorhoa, Leach's Storm-Petrel
Oceanodroma homochroa, Ashy Storm-Petrel
Oceanodroma castro, Band-rumped Storm-Petrel
Oceanodroma tethys, Wedge-rumped Storm-Petrel
Oceanodroma melania, Black Storm-Petrel
Oceanodroma tristrami, Sooty Storm-Petrel
Oceanodroma microsoma, Least Storm-Petrel

Order PELECANIFORMES

Family PHAETHONTIDAE

Phaethon lepturus, White-tailed Tropicbird
Phaethon aethereus, Red-billed Tropicbird
Phaethon rubricauda, Red-tailed Tropicbird

Family SULIDAE

Sula dactylatra, Masked Booby
Sula nebouxii, Blue-footed Booby
Sula leucogaster, Brown Booby
Sula sula, Red-footed Booby
Sula bassanus, Northern Gannet

Family PELECANIDAE

Pelecanus erythrorhynchos, American White Pelican
Pelecanus occidentalis, Brown Pelican

Family PHALACROCORACIDAE

Phalacrocorax carbo, Great Cormorant
Phalacrocorax auritus, Double-crested Cormorant
Phalacrocorax olivaceus, Olivaceous Cormorant
Phalacrocorax penicillatus, Brandt's Cormorant
Phalacrocorax pelagicus, Pelagic Cormorant
Phalacrocorax urile, Red-faced Cormorant

Family ANHINGIDAE

Anhinga anhinga, Anhinga

Family FREGATIDAE

Fregata magnificens, Magnificent Frigatebird
Fregata minor, Great Frigatebird
Fregata ariel, Lesser Frigatebird

Order CICONIIFORMES

Family ARDEIDAE

Botaurus lentiginosus, American Bittern
Ixobrychus exilis, Least Bittern
Ixobrychus sinensis, Chinese Bittern
Ixobrychus eurhythmus, Schrenk's Bittern
Ardea herodias, Great Blue Heron
Casmerodius albus, Great Egret
Egretta eulophotes, Chinese Egret
Egretta sacra, Pacific Reef Heron
Egretta intermedia, Plumed Egret
Egretta thula, Snowy Egret
Egretta caerulea, Little Blue Heron
Egretta tricolor, Tricolored Heron
Egretta rufescens, Reddish Egret
Bubulcus ibis, Cattle Egret
Butorides striatus, Green-backed Heron
Nycticorax nycticorax, Black-crowned Night-Heron
Nycticorax melanolophus, Malay Night-Heron
Nycticorax goisagi, Japanese Night-Heron
Nycticorax violaceus, Yellow-crowned Night-Heron

Family THRESKIORNITHIDAE

Eudocimus albus, White Ibis
Eudocimus ruber, Scarlet Ibis
Plegadis falcinellus, Glossy Ibis
Plegadis chihi, White-faced Ibis
Ajaia ajaja, Roseate Spoonbill

Family CICONIIDAE

Jabiru mycteria, Jabiru
Mycteria americana, Wood Stork

Order PHOENICOPTERIFORMES

Family PHOENICOPTERIDAE

Phoenicopterus ruber, Greater Flamingo

Order ANSERIFORMES

Family ANATIDAE

Dendrocygna bicolor, Fulvous Whistling-Duck
Dendrocygna autumnalis, Black-bellied Whistling-Duck
Dendrocygna arborea, West Indian Whistling-Duck
Cygnus columbianus, Tundra Swan
Cygnus cygnus, Whooper Swan
Cygnus buccinator, Trumpeter Swan
Anser fabalis, Bean Goose
Anser albifrons, Greater White-fronted Goose
Chen caerulescens, Snow Goose
Chen rossii, Ross' Goose
Chen canagica, Emperor Goose
Branta bernicla, Brant
Branta leucopsis, Barnacle Goose
Branta canadensis, Canada Goose
Nesochen sandvicensis, Hawaiian Goose
Aix sponsa, Wood Duck
Anas crecca, Green-winged Teal
Anas formosa, Baikal Teal
Anas falcata, Falcated Teal
Anas rubripes, American Black Duck
Anas fulvigula, Mottled Duck
Anas platyrhynchos, Mallard
Anas wyvilliana, Hawaiian Duck
Anas laysanensis, Laysan Duck
Anas bahamensis, White-cheeked Pintail
Anas acuta, Northern Pintail
Anas querquedula, Garganey
Anas discors, Blue-winged Teal
Anas cyanoptera, Cinnamon Teal
Anas clypeata, Northern Shoveler
Anas strepera, Gadwall
Anas penelope, Eurasian Wigeon
Anas americana, American Wigeon
Aythya ferina, Common Pochard
Aythya valisineria, Canvasback
Aythya americana, Redhead
Aythya baeri, Baer's Pochard
Aythya collaris, Ring-necked Duck
Aythya fuligula, Tufted Duck
Aythya marila, Greater Scaup
Aythya affinis, Lesser Scaup
Somateria mollissima, Common Eider
Somateria spectabilis, King Eider
Somateria fischeri, Spectacled Eider
Polysticta stelleri, Steller's Eider
Histrionicus histrionicus, Harlequin Duck
Clangula hyemalis, Oldsquaw
Melanitta nigra, Black Scoter
Melanitta perspicillata, Surf Scoter
Melanitta fusca, White-winged Scoter
Bucephala clangula, Common Goldeneye
Bucephala islandica, Barrow's Goldeneye
Bucephala albeola, Bufflehead
Mergellus albellus, Smew
Lophodytes cucullatus, Hooded Merganser
Mergus merganser, Common Merganser
Mergus serrator, Red-breasted Merganser
Oxyura jamaicensis, Ruddy Duck
Oxyura dominica, Masked Duck

Order FALCONIFORMES

Family CATHARTIDAE

Coragyps atratus, Black Vulture
Cathartes aura, Turkey Vulture
Gymnogyps californianus, California Condor

Family ACCIPITRIDAE

Pandion haliaetus, Osprey
Chondrohierax uncinatus, Hook-billed Kite
Elanoides forficatus, American Swallow-tailed Kite
Elanus caeruleus, Black-shouldered Kite
Rostrhamus sociabilis, Snail Kite
Ictinia mississippiensis, Mississippi Kite
Milvus migrans, Black Kite
Haliaeetus leucocephalus, Bald Eagle
Haliaeetus albicilla, White-tailed Eagle
Haliaeetus pelagicus, Steller's Sea-Eagle
Circus cyaneus, Northern Harrier
Accipiter gularis, Asiatic Sparrow Hawk
Accipiter striatus, Sharp-shinned Hawk
Accipiter cooperii, Cooper's Hawk
Accipiter gentilis, Northern Goshawk
Buteogallus anthracinus, Common Black-Hawk
Parabuteo unicinctus, Harris' Hawk
Buteo nitidus, Gray Hawk
Buteo lineatus, Red-shouldered Hawk
Buteo platypterus, Broad-winged Hawk
Buteo brachyurus, Short-tailed Hawk
Buteo swainsoni, Swainson's Hawk
Buteo albicaudatus, White-tailed Hawk
Buteo albonotatus, Zone-tailed Hawk
Buteo solitarius, Hawaiian Hawk
Buteo jamaicensis, Red-tailed Hawk
Buteo regalis, Ferruginous Hawk
Buteo lagopus, Rough-legged Hawk
Aquila chrysaetos, Golden Eagle

Family FALCONIDAE

Polyborus plancus, Crested Caracara
Falco tinnunculus, Eurasian Kestrel
Falco sparverius, American Kestrel
Falco columbarius, Merlin
Falco femoralis, Aplomado Falcon
Falco peregrinus, Peregrine Falcon
Falco rusticolus, Gyrfalcon
Falco mexicanus, Prairie Falcon

Order GRUIFORMES

Family RALLIDAE

Coturnicops noveboracensis, Yellow Rail
Laterallus jamaicensis, Black Rail
Crex crex, Corn Crake
Rallus longirostris, Clapper Rail
Rallus elegans, King Rail
Rallus limicola, Virginia Rail
Porzana carolina, Sora
Porzana flaviventer, Yellow-breasted Crake
Porphyrula martinica, Purple Gallinule
Gallinula chloropus, Common Moorhen
Fulica atra, Eurasian Coot
Fulica americana, American Coot
Fulica cariboea, Caribbean Coot

Family ARAMIDAE

Aramus guarauna, Limpkin

Family GRUIDAE

Grus canadensis, Sandhill Crane
Grus grus, Common Crane
Grus americana, Whooping Crane

Order CHARADRIIFORMES

Family CHARADRIIDAE

Vanellus vanellus, Northern Lapwing
Pluvialis squatarola, Black-bellied Plover
Pluvialis dominica, Lesser Golden-Plover
Charadrius mongolus, Mongolian Plover
Charadrius leschenaultii, Great Sand Plover
Charadrius alexandrinus, Snowy Plover
Charadrius wilsonia, Wilson's Plover
Charadrius hiaticula, Common Ringed Plover
Charadrius semipalmatus, Semipalmated Plover
Charadrius melodus, Piping Plover
Charadrius dubius, Little Ringed Plover
Charadrius vociferus, Killdeer
Charadrius montanus, Mountain Plover
Charadrius morinellus, Eurasian Dotterel

Family HAEMATOPODIDAE

Haematopus palliatus, American Oystercatcher
Haematopus bachmani, Black Oystercatcher

Family RECURVIROSTRIDAE

Himantopus mexicanus, Black-necked Stilt
Recurvirostra americana, American Avocet

Family JACANIDAE

Jacana spinosa, Northern Jacana

Family, SCOLOPACIDAE

Tringa nebularia, Common Greenshank
Tringa melanoleuca, Greater Yellowlegs
Tringa flavipes, Lesser Yellowlegs
Tringa stagnatilis, Marsh Sandpiper
Tringa erythropus, Spotted Redshank
Tringa glareola, Wood Sandpiper
Tringa solitaria, Solitary Sandpiper
Catoptrophorus semipalmatus, Willet
Heteroscelus incanus, Wandering Tattler
Heteroscelus brevipes, Gray-tailed Tattler
Actitis hypoleucos, Common Sandpiper
Actitis macularia, Spotted Sandpiper
Xenus cinereus, Terek Sandpiper
Bartramia longicauda, Upland Sandpiper
Numenius minutus, Least Curlew
Numenius borealis, Eskimo Curlew
Numenius phaeopus, Whimbrel
Numenius tahitiensis, Bristle-thighed Curlew
Numenius madagascariensis, Far Eastern Curlew
Numenius americanus, Long-billed Curlew
Limosa limosa, Black-tailed Godwit
Limosa haemastica, Hudsonian Godwit
Limosa lapponica, Bar-tailed Godwit
Limosa fedoa, Marbled Godwit
Arenaria interpres, Ruddy Turnstone
Arenaria melanocephala, Black Turnstone
Aphriza virgata, Surfbird
Calidris tenuirostris, Great Knot
Calidris canutus, Red Knot
Calidris alba, Sanderling
Calidris pusilla, Semipalmated Sandpiper
Calidris mauri, Western Sandpiper
Calidris ruficollis, Rufous-necked Stint
Calidris minuta, Little Stint
Calidris temminckii, Temminck's Stint
Calidris subminuta, Long-toed Stint
Calidris minutilla, Least Sandpiper
Calidris fuscicollis, White-rumped Sandpiper
Calidris bairdii, Baird's Sandpiper
Calidris melanotos, Pectoral Sandpiper
Calidris acuminata, Sharp-tailed Sandpiper
Calidris maritima, Purple Sandpiper
Calidris ptilocnemis, Rock Sandpiper
Calidris alpina, Dunlin
Calidris ferruginea, Curlew Sandpiper
Calidris himantopus, Stilt Sandpiper
Eurynorhynchus pygmeus, Spoonbill Sandpiper
Limicola falcinellus, Broad-billed Sandpiper
Tryngites subruficollis, Buff-breasted Sandpiper
Philomachus pugnax, Ruff
Limnodromus griseus, Short-billed Dowitcher
Limnodromus scolopaceus, Long-billed Dowitcher
Lymnocryptes minimus, Jack Snipe
Gallinago gallinago, Common Snipe
Gallinago stenura, Pin-tailed Snipe
Gallinago megala, Swinhoe's Snipe
Scolopax rusticola, Eurasian Woodcock
Scolopax minor, American Woodcock
Phalaropus tricolor, Wilson's Phalarope
Phalaropus lobatus, Red-necked Phalarope
Phalaropus fulicaria, Red Phalarope

Family LARIDAE

Stercorarius pomarinus, Pomarine Jaeger
Stercorarius parasiticus, Parasitic Jaeger
Stercorarius longicaudus, Long-tailed Jaeger
Catharacta skua, Great Skua
Catharacta maccormicki, South Polar Skua
Larus atricilla, Laughing Gull
Larus pipixcan, Franklin's Gull
Larus minutus, Little Gull
Larus ridibundus, Common Black-headed Gull
Larus philadelphia, Bonaparte's Gull
Larus heermanni, Heermann's Gull
Larus canus, Mew Gull
Larus delawarensis, Ring-billed Gull
Larus californicus, California Gull
Larus argentatus, Herring Gull
Larus thayeri, Thayer's Gull
Larus glaucoides, Iceland Gull
Larus fuscus, Lesser Black-backed Gull
Larus schistisagus, Slaty-backed Gull
Larus livens, Yellow-footed Gull
Larus occidentalis, Western Gull
Larus glaucescens, Glaucous-winged Gull
Larus hyperboreus, Glaucous Gull
Larus marinus, Great Black-backed Gull
Rissa tridactyla, Black-legged Kittiwake
Rissa brevirostris, Red-legged Kittiwake
Rhodostethia rosea, Ross' Gull
Xema sabini, Sabine's Gull
Pagophila eburnea, Ivory Gull
Sterna nilotica, Gull-billed Tern
Sterna caspia, Caspian Tern
Sterna maxima, Royal Tern
Sterna elegans, Elegant Tern
Sterna sandvicensis, Sandwich Tern
Sterna dougallii, Roseate Tern
Sterna hirundo, Common Tern
Sterna paradisaea, Arctic Tern
Sterna aleutica, Aleutian Tern
Sterna forsteri, Forster's Tern
Sterna antillarum, Least Tern
Sterna albifrons, Little Tern
Sterna sumatrana, Black-naped Tern
Sterna lunata, Gray-backed Tern
Sterna anaethetus, Bridled Tern
Sterna fuscata, Sooty Tern
Chlidonias leucopterus, White-winged Tern
Chlidonias niger, Black Tern
Anous stolidus, Brown Noddy
Anous minutus, Black Noddy
Anous tenuirostris, Lesser Noddy
Procelsterna cerulea, Blue-Gray Noddy
Gygis alba, White Tern
Rynchops niger, Black Skimmer

Family ALCIDAE

Alle alle, Dovekie
Uria aalge, Common Murre
Uria lomvia, Thick-billed Murre
Alca torda, Razorbill
Cepphus grylle, Black Guillemot
Cepphus columba, Pigeon Guillemot
Brachyramphus marmoratus, Marbled Murrelet
Brachyramphus brevirostris, Kittlitz's Murrelet
Synthliboramphus hypoleucus, Xantus' Murrelet
Synthliboramphus craveri, Craveri's Murrelet
Synthliboramphus antiquus, Ancient Murrelet
Ptychoramphus aleuticus, Cassin's Auklet
Cyclorrhynchus psittacula, Parakeet Auklet
Aethia pusilla, Least Auklet
Aethia pygmaea, Whiskered Auklet
Aethia cristatella, Crested Auklet
Cerorhinca monocerata, Rhinoceros Auklet

Fratercula cirrhata, Tufted Puffin
Fratercula arctica, Atlantic Puffin
Fratercula corniculata, Horned Puffin

Order COLUMBIFORMES

Family COLUMBIDAE

Columba squamosa, Scaly-naped Pigeon
Columba leucocephala, White-crowned Pigeon
Columba flavirostris, Red-billed Pigeon
Columba inornata, Plain Pigeon
Columba fasciata, Band-tailed Pigeon
Zenaida asiatica, White-winged Dove
Zenaida aurita, Zenaida Dove
Zenaida macroura, Mourning Dove
Columbina inca, Inca Dove
Columbina passerina, Common Ground-Dove
Columbina talpacoti, Ruddy Ground-Dove
Leptotila verreauxi, White-tipped Dove
Geotrygon chrysia, Key West Quail-Dove
Geotrygon mystacea, Bridled Quail-Dove
Geotrygon montana, Ruddy Quail-Dove

Order CUCULIFORMES

Family CUCULIDAE

Cuculus canorus, Common Cuckoo
Cuculus saturatus, Oriental Cuckoo
Cuculus fugax, Hodgson's Hawk-Cuckoo
Coccyzus erythropthalmus, Black-billed Cuckoo
Coccyzus americanus, Yellow-billed Cuckoo
Coccyzus minor, Mangrove Cuckoo
Geococcyx californianus, Greater Roadrunner
Saurothera vieilloti, Puerto Rican Lizard-Cuckoo
Crotophaga ani, Smooth-billed Ani
Crotophaga sulcirostris, Groove-billed Ani

Order STRIGIFORMES

Family TYTONIDAE

Tyto alba, Common Barn-Owl

Family STRIGIDAE

Otus flammeolus, Flammulated Owl
Otus asio, Eastern Screech-Owl
Otus kennicottii, Western Screech-Owl
Otus trichopsis, Whiskered Screech-Owl
Otus nudipes, Puerto Rican Screech-Owl
Bubo virginianus, Great Horned Owl
Nyctea scandiaca, Snowy Owl
Surnia ulula, Northern Hawk-Owl
Glaucidium gnoma, Northern Pygmy-Owl
Glaucidium brasilianum, Ferruginous Pygmy-Owl
Micrathene whitneyi, Elf Owl
Athene cunicularia, Burrowing Owl
Strix occidentalis, Spotted Owl
Strix varia, Barred Owl
Strix nebulosa, Great Gray Owl
Asio otus, Long-eared Owl
Asio flammeus, Short-eared Owl
Aegolius funereus, Boreal Owl
Aegolius acadicus, Northern Saw-whet Owl

Order CAPRIMULGIFORMES

Family CAPRIMULGIDAE

Chordeiles acutipennis, Lesser Nighthawk
Chordeiles minor, Common Nighthawk
Chordeiles gundlachii, Antillean Nighthawk
Nyctidromus albicollis, Common Pauraque
Phalaenoptilus nuttallii, Common Poorwill
Caprimulgus carolinensis, Chuck-will's-widow
Caprimulgus ridgwayi, Buff-collared Nightjar
Caprimulgus vociferus, Whip-poor-will
Caprimulgus noctitherus, Puerto Rican Nightjar
Caprimulgus indicus, Jungle Nightjar

Order APODIFORMES

Family APODIDAE

Cypseloides niger, Black Swift
Streptoprocne zonaris, White-collared Swift
Chaetura pelagica, Chimney Swift
Chaetura vauxi, Vaux's Swift
Hirundapus caudacutus, White-throated Needletail
Apus apus, Common Swift
Apus pacificus, Fork-tailed Swift
Aeronautes saxatalis, White-throated Swift
Tachornis phoenicobia, Antillean Palm Swift

Family TROCHILIDAE

Colibri thalassinus, Green Violet-ear
Anthracothorax dominicus, Antillean Mango
Anthracothorax viridis, Green Mango
Eulampis holosericeus, Green-throated Carib
Orthorhynchus cristatus, Antillean Crested Hummingbird
Chlorostilbon maugaeus, Puerto Rican Emerald
Cynanthus latirostris, Broad-billed Hummingbird
Hylocharis leucotis, White-eared Hummingbird
Amazilia beryllina, Berylline Hummingbird
Amazilia yucatanensis, Buff-bellied Hummingbird
Amazilia violiceps, Violet-crowned Hummingbird
Lampornis clemenciae, Blue-throated Hummingbird
Eugenes fulgens, Magnificent Hummingbird
Heliomaster constantii, Plain-capped Starthroat
Calliphlox evelynae, Bahama Woodstar
Calothorax lucifer, Lucifer Hummingbird
Archilochus colubris, Ruby-throated Hummingbird
Archilochus alexandri, Black-chinned Hummingbird
Calypte anna, Anna's Hummingbird
Calypte costae, Costa's Hummingbird
Stellula calliope, Calliope Hummingbird
Selasphorus platycercus, Broad-tailed Hummingbird
Selasphorus rufus, Rufous Hummingbird
Selasphorus sasin, Allen's Hummingbird

Order TROGONIFORMES

Family TROGONIDAE

Trogon elegans, Elegant Trogon
Euptilotus neoxenus, Eared Trogon

Order CORACIIFORMES

Family UPUPIDAE

Upupa epops, Hoopoe

Family ALCEDINIDAE

Ceryle torquata, Ringed Kingfisher
Ceryle alcyon, Belted Kingfisher
Chloroceryle americana, Green Kingfisher

Order PICIFORMES

Family PICIDAE

Jynx torquilla, Eurasian Wryneck
Melanerpes lewis, Lewis' Woodpecker
Melanerpes erythrocephalus, Red-headed Woodpecker
Melanerpes formicivorus, Acorn Woodpecker
Melanerpes uropygialis, Gila Woodpecker
Melanerpes aurifrons, Golden-fronted Woodpecker
Melanerpes carolinus, Red-bellied Woodpecker
Melanerpes portoricensis, Puerto Rican Woodpecker
Sphyrapicus varius, Yellow-bellied Sapsucker
Sphyrapicus ruber, Red-breasted Sapsucker
Sphyrapicus thyroideus, Williamson's Sapsucker
Picoides scalaris, Ladder-Backed Woodpecker
Picoides nuttallii, Nuttall's Woodpecker
Picoides pubescens, Downy Woodpecker
Picoides villosus, Hairy Woodpecker
Picoides stricklandi, Strickland's Woodpecker
Picoides borealis, Red-cockaded Woodpecker
Picoides albolarvatus, White-headed Woodpecker
Picoides tridactylus, Three-toed Woodpecker

Picoides arcticus, Black-backed Woodpecker
Colaptes auratus, Northern Flicker
Dryocopus pileatus, Pileated Woodpecker
Campephilus principalis, Ivory-billed Woodpecker

Order PASSERIFORMES

Family TYRANNIDAE

Elaenia martinica, Caribbean Elaenia
Camptostoma imberbe, Northern Beardless-Tyrannulet
Contopus borealis, Olive-sided Flycatcher
Contopus pertinax, Greater Pewee
Contopus sordidulus, Western Wood-Pewee
Contopus virens, Eastern Wood-Pewee
Contopus latirostris, Lesser Antillean Pewee
Empidonax flaviventris, Yellow-bellied Flycatcher
Empidonax virescens, Acadian Flycatcher
Empidonax alnorum, Alder Flycatcher
Empidonax traillii, Willow Flycatcher
Empidonax minimus, Least Flycatcher
Empidonax hammondii, Hammond's Flycatcher
Empidonax oberholseri, Dusky Flycatcher
Empidonax wrightii, Gray Flycatcher
Empidonax difficilis, Western Flycatcher
Empidonax fulvifrons, Buff-breasted Flycatcher
Sayornis nigricans, Black Phoebe
Sayornis phoebe, Eastern Phoebe
Sayornis saya, Say's Phoebe
Pyrocephalus rubinus, Vermilion Flycatcher
Myiarchus tuberculifer, Dusky-capped Flycatcher
Myiarchus cinerascens, Ash-throated Flycatcher
Myiarchus nuttingi, Nutting's Flycatcher
Myiarchus crinitus, Great Crested Flycatcher
Myiarchus tyrannulus, Brown-crested Flycatcher
Myiarchus antillarum, Puerto Rican Flycatcher
Pitangus sulphuratus, Great Kiskadee
Myiodynastes luteiventris, Sulpher-bellied Flycatcher
Tyrannus melancholicus, Tropical Kingbird
Tyrannus couchii, Couch's Kingbird
Tyrannus vociferans, Cassin's Kingbird
Tyrannus crassirostris, Thick-billed Kingbird
Tyrannus verticalis, Western Kingbird
Tyrannus tyrannus, Eastern Kingbird
Tyrannus dominicensis, Gray Kingbird
Tyrannus caudifasciatus, Loggerhead Kingbird
Tyrannus forficatus, Scissor-tailed Flycatcher
Tyrannus savana, Fork-tailed Flycatcher
Pachyramphus aglaiae, Rose-throated Becard

Family ALAUDIDAE

Alauda arvensis, Eurasian Skylark
Eremophila alpestris, Horned Lark

Family HIRUNDINIDAE

Progne subis, Purple Martin
Progne cryptoleuca, Cuban Martin
Progne dominicensis, Caribbean Martin
Progne chalybea, Gray-breasted Martin
Tachycineta bicolor, Tree Swallow
Tachycineta thalassina, Violet-green Swallow
Tachycineta cyaneoviridis, Bahama Swallow
Stelgidopteryx serripennis, Northern Rough-winged Swallow
Riparia riparia, Bank Swallow
Hirundo pyrrhonota, Cliff Swallow
Hirundo fulva, Cave Swallow
Hirundo rustica, Barn Swallow
Delichon urbica, Common House-Martin

Family CORVIDAE

Perisoreus canadensis, Gray Jay
Cyanocitta stelleri, Steller's Jay
Cyanocitta cristata, Blue Jay
Cyanocorax yncas, Green Jay
Cyanocorax morio, Brown Jay
Aphelocoma coerulescens, Scrub Jay
Aphelocoma ultramarina, Gray-breasted Jay
Gymnorhinus cyanocephalus, Pinyon Jay
Nucifraga columbiana, Clark's Nutcracker
Pica pica, Black-billed Magpie
Pica nuttalli, Yellow-billed Magpie
Corvus brachyrhynchos, American Crow
Corvus caurinus, Northwestern Crow
Corvus leucognaphalus, White-necked Crow
Corvus imparatus, Mexican Crow
Corvus ossifragus, Fish Crow
Corvus hawaiiensis, Hawaiian Crow
Corvus cryptoleucus, Chihuahuan Raven
Corvus corax, Common Raven

Family PARIDAE

Parus atricapillus, Black-capped Chickadee
Parus carolinensis, Carolina Chickadee
Parus sclateri, Mexican Chickadee
Parus gambeli, Mountain Chickadee
Parus cinctus, Siberian Tit
Parus hudsonicus, Boreal Chickadee
Parus rufescens, Chestnut-backed Chickadee
Parus wollweberi, Bridled Titmouse
Parus inornatus, Plain Titmouse
Parus bicolor, Tufted Titmouse

Family REMIZIDAE

Auriparus flaviceps, Verdin

Family AEGITHALIDAE

Psaltriparus minimus, Bushtit

Family SITTIDAE

Sitta canadensis, Red-breasted Nuthatch
Sitta carolinensis, White-breasted Nuthatch
Sitta pygmaea, Pygmy Nuthatch
Sitta pusilla, Brown-headed Nuthatch

Family CERTHIIDAE

Certhia americana, Brown Creeper

Family TROGLODYTIDAE

Campylorhynchus brunneicapillus, Cactus Wren
Salpinctes obsoletus, Rock Wren
Catherpes mexicanus, Canyon Wren
Thryothorus ludovicianus, Carolina Wren
Thryomanes bewickii, Bewick's Wren
Troglodytes aedon, House Wren
Troglodytes troglodytes, Winter Wren
Cistothorus platensis, Sedge Wren
Cistothorus palustris, Marsh Wren

Family CINCLIDAE

Cinclus mexicanus, American Dipper

Family MUSCICAPIDAE

Subfamily SYLVIINAE

Locustella ochotensis, Middendorff's Grasshopper-Warbler
Phylloscopus borealis, Arctic Warbler
Phylloscopus trochilus, Willow Warbler
Regulus satrapa, Golden-crowned Kinglet
Regulus calendula, Ruby-crowned Kinglet
Polioptila caerulea, Blue-gray Gnatcatcher
Polioptila melanura, Black-tailed Gnatcatcher
Polioptila nigriceps, Black-capped Gnatcatcher

Subfamily MUSCICAPINAE

Muscicapa griseisticta, Gray-spotted Flycatcher
Muscicapa narcissina, Narcissus Flycatcher

Subfamily TURDINAE

Luscinia calliope, Siberian Rubythroat
Luscinia svecica, Bluethroat
Monticola solitarius, Blue Rock Thrush
Oenanthe oenanthe, Northern Wheatear
Sialis sialis, Eastern Bluebird
Sialis mexicana, Western Bluebird
Sialis currucoides, Mountain Bluebird
Myadestes townsendi, Townsend's Solitaire
Phaeornis obscurus, Hawaiian Thrush
Phaeornis palmeri, Small Kauai Thrush
Catharus fuscescens, Veery
Catharus minimus, Gray-cheeked Thrush
Catharus ustulatus, Swainson's Thrush
Catharus guttatus, Hermit Thrush
Hylocichla mustelina, Wood Thrush

Turdus plumbeus, Red-legged Thrush
Turdus obscurus, Eye-browed Thrush
Turdus naumanni, Dusky Thrush
Turdus pilaris, Fieldfare
Turdus grayi, Clay-colored Robin
Turdus rufopalliatus, Rufous-backed Robin
Turdus migratorius, American Robin
Ixoreus naevius, Varied Thrush
Ridgwayia pinicola, Aztec Thrush

Family MIMIDAE

Dumetella carolinensis, Gray Catbird
Mimus polyglottos, Northern Mockingbird
Oreoscoptes montanus, Sage Thrasher
Toxostoma rufum, Brown Thrasher
Toxostoma longirostre, Long-billed Thrasher
Toxostoma bendirei, Bendire's Thrasher
Toxostoma curvirostre, Curve-billed Thrasher
Toxostoma redivivum, California Thrasher
Toxostoma crissale, Crissal Thrasher
Toxostoma lecontei, Le Conte's Thrasher
Margarops fuscatus, Pearly-eyed Thrasher

Family PRUNELLIDAE

Prunella montanella, Siberian Accentor

Family MOTACILLIDAE

Motacilla flava, Yellow Wagtail
Motacilla cinerea, Gray Wagtail
Motacilla alba, White Wagtail
Motacilla lugens, Black-backed Wagtail
Anthur hodgsoni, Olive Tree-Pipit
Anthus gustavi, Pechora Pipit
Anthus cervinus, Red-throated Pipit
Anthus spinoletta, Water Pipit
Anthus spragueii, Sprague's Pipit

Family BOMBYCILLIDAE

Bombycilla garrulus, Bohemian Waxwing
Bombycilla cedrorum, Cedar Waxwing

Family PTILOGONATIDAE

Phainopepla nitens, Phainopepla

Family LANIIDAE

Lanius excubitor, Northern Shrike
Lanius ludovicianus, Loggerhead Shrike

Family STURNIDAE

Sturnus philippensis, Violet-backed Starling
Sturnus cineraceus, Ashy Starling

Family VIREONIDAE

Vireo griseus, White-eyed Vireo
Vireo latimeri, Puerto Rican Vireo
Vireo bellii, Bells' Vireo
Vireo atricapillus, Black-capped Vireo
Vireo vicinior, Gray Vireo
Vireo solitarius, Solitary Vireo
Vireo flavifrons, Yellow-throated Vireo
Vireo huttoni, Hutton's Vireo
Vireo gilvus, Warbling Vireo
Vireo philadelphicus, Philadelphia Vireo
Vireo olivaceus, Red-eyed Vireo
Vireo altiloquus, Black-whiskered Vireo

Family EMBERIZIDAE

Subfamily PARULINAE

Vermivora bachmanii, Bachman's Warbler
Vermivora pinus, Blue-winged Warbler
Vermivora chrysoptera, Golden-winged Warbler
Vermivora peregrina, Tennessee Warbler
Vermivora celata, Orange-crowned Warbler
Vermivora ruficapilla, Nashville Warbler
Vermivora virginiae, Virginia's Warbler
Vermivora crissalis, Colima Warbler
Vermivora luciae, Lucy's Warbler
Parula americana, Northern Parula
Parula pitiayumi, Tropical Parula
Dendroica petechia, Yellow Warbler
Dendroica pensylvanica, Chestnut-sided Warbler
Dendroica magnolia, Magnolia Warbler
Dendroica tigrina, Cape May Warbler
Dendroica caerulescens, Black-throated Blue Warbler
Dendroica coronata, Yellow-rumped Warbler
Dendroica nigrescens, Black-throated Gray Warbler
Dendroica townsendi, Townsend's Warbler
Dendroica occidentalis, Hermit Warbler
Dendroica virens, Black-throated Green Warbler
Dendroica chrysoparia, Golden-cheeked Warbler
Dendroica fusca, Blackburnian Warbler
Dendroica dominica, Yellow-throated Warbler
Dendroica graciae, Grace's Warbler
Dendroica adelaidae, Adelaide's Warbler
Dendroica pinus, Pine Warbler
Dendroica kirtlandii, Kirtland's Warbler
Dendroica discolor, Prairie Warbler
Dendroica palmarum, Palm Warbler
Dendroica castanea, Bay-breasted Warbler
Dendroica striata, Blackpoll Warbler
Dendroica cerulea, Cerulean Warbler
Dendroica angelae, Elfin Woods Warbler
Mniotilta varia, Black-and-White Warbler
Setophaga ruticilla, American Redstart
Protonotaria citrea, Prothonotary Warbler
Helmitheros vermivorus, Worm-eating Warbler
Limnothlypis swainsonii, Swainson's Warbler
Seiurus aurocapillus, Ovenbird
Seiurus noveboracensis, Northern Waterthrush
Seiurus motacilla, Louisiana Waterthrush
Oporornis formosus, Kentucky Warbler
Oporornis agilis, Connecticut Warbler
Oporornis philadelphia, Mourning Warbler
Oporornis tolmiei, MacGillivray's Warbler
Geothlypis trichas, Common Yellowthroat
Geothlypis poliocephala, Gray-crowned Yellowthroat
Wilsonia citrina, Hooded Warbler
Wilsonia pusilla, Wilson's Warbler
Wilsonia canadensis, Canada Warbler
Cardellina rubrifrons, Red-faced Warbler
Myioborus pictus, Painted Redstart
Myioborus miniatus, Slaty-throated Redstart
Basileuterus culicivorus, Golden-crowned Warbler
Basileuterus rufifrons, Rufous-capped Warbler
Icteria virens, Yellow-breasted Chat
Peucedramus taeniatus, Olive Warbler

Subfamily THRAUPINAE

Spindalis zena, Stripe-headed Tanager
Neospingus speculiferus, Puerto Rican Tanager
Piranga flava, Hepatic Tanager
Piranga rubra, Summer Tanager
Piranga olivacea, Scarlet Tanager
Piranga ludoviciana, Western Tanager
Euphonia musica, Antillean Euphonia

Subfamily CARDINALINAE

Rhodothraupis celaeno, Crimson-collared Grosbeak
Cardinalis cardinals, Northern Cardinal
Cardinalis sinuatus, Pyrrhuloxia
Pheucticus chrysopeplus, Yellow Grosbeak
Pheucticus ludovicianus, Rose-breasted Grosbeak
Pheucticus melanocephalus, Black-headed Grosbeak
Guiraca coerulea, Blue Grosbeak
Passerina amoena, Lazuli Bunting
Passerina cyanea, Indigo Bunting
Passerina versicolor, Varied Bunting
Passerina ciris, Painted Bunting
Spiza americana, Dickcissel

Subfamily EMBERIZINAE

Arremonops rufivirgatus, Olive Sparrow
Pipilo chlorurus, Green-tailed Towhee
Pipilo erythrophthalmus, Rufous-sided Towhee
Pipilo fuscus, Brown Towhee
Pipilo aberti, Abert's Towhee
Sporophila torqueola, White-collared Seedeater
Tiaris olivacea, Yellow-faced Grassquit

Tiaris bicolor, Black-faced Grassquit
Loxigilla portoricensis, Puerto Rican Bullfinch
Aimophila aestivalis, Bachman's Sparrow
Aimophila botterii, Botteri's Sparrow
Aimophila cassinii, Cassin's Sparrow
Aimophila carpalis, Rufous-winged Sparrow
Aimophila ruficeps, Rufous-crowned Sparrow
Spizella arborea, American Tree Sparrow
Spizella passerina, Chipping Sparrow
Spizella pallida, Clay-colored Sparrow
Spizella breweri, Brewer's Sparrow
Spizella pusilla, Field Sparrow
Spizella wortheni, Worthen's Sparrow
Spizella atrogularis, Black-chinned Sparrow
Pooecetes gramineus, Vesper Sparrow
Chondestes grammacus, Lark Sparrow
Amphispiza bilineata, Black-throated Sparrow
Amphispiza belli, Sage Sparrow
Amphispiza quinquestriata, Five-striped Sparrow
Calamospiza melanocorys, Lark Bunting
Passerculus sandwichensis, Savannah Sparrow
Ammodramus bairdii, Baird's Sparrow
Ammodramus savannarum, Grasshopper Sparrow
Ammodramus henslowii, Henslow's Sparrow
Ammodramus leconteii, Le Conte's Sparrow
Ammodramus caudacutus, Sharp-tailed Sparrow
Ammodramus maritimus, Seaside Sparrow
Passerella iliaca, Fox Sparrow
Melospiza melodia, Song Sparrow
Melospiza lincolnii, Lincoln's Sparrow
Melospiza georgiana, Swamp Sparrow
Zonotrichia albicollis, White-throated Sparrow
Zonotrichia atricapilla, Golden-crowned Sparrow
Zonotrichia leucophrys, White-crowned Sparrow
Zonotrichia querula, Harris' Sparrow
Junco hyemalis, Dark-eyed Junco
Junco phaeonotus, Yellow-eyed Junco
Emberiza rustica, Rustic Bunting
Emberiza pallasi, Pallas' Reed-Bunting
Emberiza schoeniculus, Common Reed-Bunting
Calcarius mccownii, McCown's Longspur
Calcarius lapponicus, Lapland Longspur
Calcarius pictus, Smith's Longspur
Calcarius ornatus, Chestnut-collared Longspur
Plectrophenax nivalis, Snow Bunting
Plectrophenax hyperboreus, McKay's Bunting

Subfamily ICTERINAE

Dolichonyx oryzivorus, Bobolink
Agelaius phoeniceus, Red-winged Blackbird
Agelaius tricolor, Tricolored Blackbird
Agelaius humeralis, Tawny-shouldered Blackbird
Agelaius xanthomus, Yellow-shouldered Blackbird
Sturnella magna, Eastern Meadowlark
Sturnella neglecta, Western Meadowlark
Xanthocephalus xanthocephalus, Yellow-headed Blackbird
Euphagus carolinus, Rusty Blackbird
Euphagus cyanocephalus, Brewer's Blackbird
Quiscalus mexicanus, Great-tailed Grackle
Quiscalus major, Boat-tailed Grackle
Quiscalus quiscula, Common Grackle
Quiscalus niger, Greater Antillean Grackle
Molothrus bonariensis, Shiny Cowbird
Molothrus aeneus, Bronzed Cowbird
Molothrus ater, Brown-headed Cowbird
Icterus dominicensis, Black-cowled Oriole
Icterus wagleri, Black-vented Oriole
Icterus spurius, Orchard Oriole
Icterus cucullatus, Hooded Oriole
Icterus pustulatus, Streak-backed Oriole
Icterus gularis, Altamira Oriole
Icterus graduacauda, Audubon's Oriole
Icterus galbula, Northern Oriole
Icterus parisorum, Scott's Oriole

Family FRINGILLIDAE

Subfamily FRINGILLINAE

Fringilla montifringilla, Brambling

Subfamily CARDUELINAE

Leucosticte arctoa, Rosy Finch
Pinicola enucleator, Pine Grosbeak
Carpodacus erythrinus, Common Rosefinch
Carpodacus purpureus, Purple Finch
Carpodacus cassinii, Cassin's Finch
Carpodacus mexicanus, House Finch
Loxia curvirostra, Red Crossbill
Loxia leucoptera, White-winged Crossbill
Carduelis flammea, Common Redpoll
Carduelis hornemanni, Hoary Redpoll
Carduelis pinus, Pine Siskin
Carduelis psaltria, Lesser Goldfinch
Carduelis lawrencei, Lawrence's Goldfinch
Carduelis tristis, American Goldfinch
Carduelis sinica, Oriental Greenfinch
Pyrrhula pyrrhula, Eurasian Bullfinch
Coccothraustes vespertinus, Evening Grosbeak
Coccothraustes coccothraustes, Hawfinch

Dated: February 26, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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federal register

Friday
April 5, 1985

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval: Ownership and Control; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval: Ownership and Control

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations having to do with the permit approval process by adding definitions for the terms "ownership" and "control," and expanding the scope of the findings required prior to permit approval. A clear explanation of the meaning of "ownership" and "control," along with a corresponding expansion of the findings required prior to permit approval is needed to eliminate or greatly reduce the possibility of persons obtaining and/or holding permits in violation of the permit approval provisions of section 510(c) of the Surface Mining Control and Reclamation Act.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on June 14, 1985.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on June 7, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern time on May 24, 1985.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C., Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearing scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Murray Newton, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202-343-5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**") The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearing which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr Newton (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on May 24, 1985. If no one has contacted Mr. Newton to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

A significant number of operators who have unabated violations of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), at one mine, or who have not paid civil penalties or AML fees, are applying for permits for other sites. In some instances, individuals involved in operations which have unabated violations or outstanding fees or penalties have formed new corporations, partnerships, or other business entities and have applied for permits for new operations without correcting the violations or paying the fees and penalties resulting from the first operation. Frequently, the person or entity named as the applicant for a permit has no previous record of violations. However, because of the relationships involving the applicant, it appears that the applicant is, in fact, owned or controlled by persons who do have outstanding violations. Such practices have enabled operators to avoid the requirements of the Act first by operating a mine in violation of the Act until the regulatory authority issues a cessation order, and then by abandoning the site of the violation and starting a new operation under a new name or a new business organization and continuing the same practices. Similar practices occur with respect to civil penalties and AML fees which have not been paid when due. If allowed to persist, these practices could seriously weaken enforcement of the Act. The regulatory changes proposed by this rule will aid OSM in dealing with these problems.

In addition, these rules would assist OSM in implementing a court order in the case of *Save Our Cumberland Mountains, Inc., et al.* v. *Clark*, Civil Action No. 79-1521 (D.D.C. 1985) (Parker J.), relating to enforcement measures that can be taken against operators with unabated cessation orders and unpaid civil penalties. Under the February 1, 1985 Order, the Secretary of the Interior is required to improve the enforcement and implementation of section 510(c) of the Act.

Section 510(c) of the Act states that the regulatory authority shall not issue an applicant a permit "if any surface

coal mining operation *owned or controlled by the applicant* is currently in violation of the Act" or other specified environmental laws, until the applicant submits proof to the regulatory authority that the violation has been corrected or is in the process of being corrected to the satisfaction of the issuing agency. (Emphasis added.) OSM has implemented this provision in 30 CFR 773.15(b)(1), which essentially repeats the statutory language, and adds a second exception if the applicant demonstrates that it is pursuing, in good faith, a direct administrative or judicial appeal contesting the violations.[1] 48 FR 44344, September 28, 1983.

The phrase "owned or controlled by the applicant" as used in section 510(c) of the Act is not specifically defined in the Act. Promulgating a rule defining "ownership" and "control" will assist OSM in establishing standards for permit denial under section 510(c).

The findings and decisions required to be made under section 510 of the Act must be made on the basis of a complete permit application, the requirements for which are largely set out in sections 507 and 508 of the Act. Section 507(b)(4) of the Act requires any applicant which is a partnership, corporation, association or other business entity to include in its permit application:

> the name and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and addresses of any person owning, of record 10 percentum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation * * * within the five-year period preceding the date of submission of the application; * * *. 30 U.S.C. 1257(b)(4).

The legislative history of this section establishes the connection between this informational requirement and the permit approval or denial provisions in section 510(c) of the Act. As stated by the drafters of the Act:

> [t]he information required by [section 507(b)(4)] is *a key element of the operator's affirmative demonstration* that the environmental protection provisions of the Act can be met as stipulated in Section 510 and includes: (1) *Identification of all parties*, corporations, and officials involved to allow identification of parties *ultimately responsible for and most directly affected by the operation* as well as to cross-check the mining application with other applications in the same State or other States * * *.

H.R. Rep. No. 94-896, 94th Cong., 2d Sess. 111 (1976). (Emphasis added.) *See also*, S. Rep. No. 94-28, 94th Cong., 1st Sess. 206 (1975).

The purpose of the information required by section 507(b)(4) concerning persons who have some degree of ownership or control of the applicant is to provide the regulatory authority with information on which it can base its findings as required by section 510(c) of the Act. Because of the direct relationship between the informational requirement of section 507(b)(4) and the finding requirement of section 510(c), OSM has concluded that officers, partners, and directors of the applicant, and holders of 10 percent or more of any class of voting stock of the applicant should be considered to have "ownership or control" of a permit applicant.

Broadly defining "ownership" and "control" will limit the circumvention of the requirements of 510(c) through manipulation of business organizations by which the "applicant" would always be the lowest rung on the "ownership" or "control" ladder. Under such manipulations, the "applicant" would be found to be without violation and could receive a permit even though those persons who owned or controlled the applicant may have current violations.

Certainly, Congress did not intend that manipulations solely for the purpose of circumventing the Act's requirements be successful. Section 201(c)(1) of the Act provides that "[t]he Secretary acting through the Office [OSM], shall * * * order the suspension, revocation, or *witholding* of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto * * *." (Emphasis added.) Thus, it is proper for the Secretary to use every means at his disposal to insure that all persons comply with the Act.

This mandate may be implemented by denying permits where applicants are owned or controlled by persons who own or control surface coal mining and reclamation operations which are in violation of environmental laws, in addition to denying permits where the applicant itself owns or controls operations which are in violation of such laws. In order to accomplish this OSM is proposing to amend 30 CFR 773.15(b)(1), whch implements the finding requirement of section 510(c). A discussion of the specific regulatory changes is provided in the following section.

III. Discussion of Proposed Rule

The proposed rule would define separately the terms "ownership" and "control" as used in section 510(c) of the Act. The correct application of these terms is an essential part of the permit approval procedure set forth in section 510(c) and its implementing regulations at 30 CFR 773.15(b). OSM has decided to define these terms separately because, although clearly related, each term has its own discrete meaning.

Definition of "Ownership"

The proposed definition of "ownership" in 30 CFR 773.5 would describe the various ways in which a person or entity could be considered to have "ownership" of another entity.

Under the proposed definition, the person holding the proprietary interest in a sole proprietorship would be considered the owner of that entity.

For businesses organized as partnerships, general partnership in the entity would always establish ownership. This standard of ownership is in accord with the legal nature of a partnership which makes each general partner liable for the actions of the partnership. A joint venture, which is simply a partnership organized for a specific purpose, would be treated like a general partnership, with each person who contributes services or capital to the joint venture or enterprise considered an owner. A rebuttable presumption of "ownership" would be created where a limited partner holds 10 percent or more of the assets of the partnership. A person could rebut the presumption by showing that even though he or she has financial interest in the partnership, he or she does not have any express or implied authority to direct, or to assist in directing, partnership actions.

For businesses organized as corporations, the standard proposed for determining ownership would be record or beneficial ownership of 10 percent or more of any class of voting stock in the corporation. Stock ownership would exist whether the stock was actually held in the owner's name or by a broker or other person for the benefit of the owner. The 10 percent standard is proposed for this rule because OSM has concluded that Congress intended the information collected concerning 10 percent shareholders under section 507(b)(4) of the Act is to be used in this manner.

Under this proposed rule it is possible that person or entities would be determined to "own" a corporation even if such person or entity did not directly

[1] The second exception implements Congressional intent as expressed in the following passage of S. Rep. No. 95-128, 95th Cong., 1st Sess. 79 (1977): It is not the intention of the Committee that an operator who is charged with the types of violation described in section (510(c)) be collaterally penalized through denial of a mining permit if he is availing himself, in good faith, or whatever administrative and judicial remedies may be available to him . . .

own any of the stock of the corporation. Indirect ownership through a holding company or other entity would not shield a person from the applicability of this rule. Ownership of an entity which in turns owns 10 percent or more of any class of the voting stock in a corporation would be considered as ownership of such corporation. This vertical chain of "ownership" would occur most often with parent and subsidiary relationships where the subsidiary itself owns a separate corporation. Theoretically, this vertical linkage could go on beyond the three levels as described in the example above. OSM requests comments concerning the specific issue of how far up or down this vertical chain of "ownership" the definition should go, and whether, for instance, a minimum attributible ownership percentage of the applicant should be imposed. In addition, comments are specifically requested as to whether parent corporations which acquire subsidiaries should be responsible for actions of the subsidiaries prior to their acquisition. OSM is considering creating an exception in the final rule to account for such circumstances.

Other standards, such as the "50 percent or greater" test used in the "two-acre" rule (30 CFR 700.11(b)), are being considered by OSM and comment is specifically requested on any such alternative standards. The most useful comments would include statements of the legal and factual basis for using a particular standard. However, because of the differing purposes and statutory bases for the use of an "ownership" or "control" standard in different regulations, the standards may be different without necessarily being inconsistent with each other.

Definition of Control

The proposed definition of "control" in 30 CFR 773.5 would provide that in every case "ownership" would mean "control." OSM believes that it is correct to state that persons having "ownership" in an entity also "control" it. General partners clearly "control" the actions of the partnership. Likewise the partners in a joint venture "control" the actions of the joint venture. In addition, OSM's experience suggests that owners of 10 percent or more of a corporation's voting stock exercise sufficient practical control of the business to meet the general standard of "control."

The proposed definition also would provide that there may be instances where a person with no financial interest in an entity may, through his or her relationship to such entity, have the express or implied authority to determine the manner in which such entity carries out its day-to-day business affairs. Specifically, the proposed definition would describe control as ownership or any other relationship which gives one person express or implied authority to determine the manner in which that person or another person mines, handles, sells or disposes of coal.

The proposed definition, would state that if a person is an officer or director of a corporation such a relationship shall constitute "control." This express designation of authority in a person to direct the affairs of the corporation is sufficient evidence of "control" of such corporation.

In addition, the proposed definition would create a rebuttable presumption of "control" where a person owning or controlling coal arranges to have another entity mine such coal but retains the right to receive such coal after it is mined. This situation commonly occurs in what has become known as "contract mining." A person could rebut this presumption of "control" by showing that he or she did not exercise express or implied control over the operation that actually extracted the coal. This would have to be determined on a case-specific basis. Contractual arrangements between the owner of the coal and the operation mining such coal, wherein the owner disclaims responsibility for the actions of the operation mining the coal, would not necessarily be conclusive evidence of the absence of "control."

Comments are requested as to what specific kinds of business or other relationships could be presumed to establish control. For example, should the final rule contain an express presumption that agents, subcontractors, general managers, foremen, or others who exercise independent discretion for directing the day-to-day operations at a mine have control within the meaning of section 510(c).

Section 773.15(b)(1)

As discussed earlier, § 773.15(b)(1) implements section 510(c) of the Act. In its present form, § 773.15(b)(1) prohibits the regulatory authority from issuing a permit when the permit applicant owns or controls any surface coal mining and reclamation operation currently in violation of the Act or other environmental protection laws. It does not, in its present form, expressly require the witholding of a permit if those who own or control the applicant are currently in violation of the Act or other environmental protection laws.

OSM proposes to amend 30 CFR 773.15(b)(1) by expanding the scope of the regulatory authority's required finding to include a determination that any surface coal mining and reclamation operation owned or controlled by those persons who own or control the applicant is not currently in violation of the Act or other environmental protection laws. By so doing, OSM would gain an effective tool to ensure that persons who own or control an operation in violation of the Act will have to have corrected or be in the process of correcting those violations before any operation of which they have "ownership" or "control" can be issued a permit to conduct surface coal mining and reclamation operations.

It should be recognized that if the proposed change is adopted, OSM may amend permit application requirements to receive additional information. OSM requests comments on the specific additional items of information that would be necessary to conform permit application requirements to the final revision to § 773.15(b). Comments are requested on whether it is feasible for applicants to obtain and submit violation information concerning persons who own or control them.

Instead of such an expansive change to § 773.15(b)(1), OSM is considering a more manageable option which, in addition to the requirement of existing § 773.15(b)(1), would require the regulatory authority to make a finding that persons who owned or controlled the applicant only did not own or control operations which had outstanding failure-to-abate cessation orders, unpaid civil penalties imposed by OSM, or unpaid AML fees. This option would be a less expansive change to the scope of the findings than is contained in the regulatory language in this rule, but could be implemented more easily with information currently available. Public comment is requested on this option as an alternative to the regulatory revision proposed.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule contains no information collection requirements requiring submittal to the Office of Management and Budget under the provisions of the Federal Paper Work Reduction Act.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that this proposed rule is not a major rule and does not require a regulatory impact analysis because it will impose only

minor costs on the coal industry and coal consumers. This rule would not add new regulatory burdens to operators. It would provide regulatory authorities with another mechanism for ensuring that operators are in full compliance with existing regulations. Therefore, it should not add appreciably to the cost of operating a mine in compliance with an approved regulatory program.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities for the same reasons as discussed in the previous paragraph.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

List of Subjects in 30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Part 773 as follows:

Dated: March 18, 1985.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 reads as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

2. Section 773.5 is added to read as follows:

§ 773.5 Definitions.

For purposes of this subchapter:

Control means ownership or any other relationship which gives one person express or implied authority to determine the manner in which that person or another person mines, handles, sells, or disposes of coal. Being an officer or director of a corporation shall consititute control. Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining shall establish a rebuttable presumption of control of such other person.

Ownership means holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, being a contributor of capital or services in a joint venture, or having record or beneficial ownership of 10 percent or more of any class of voting stock in a corporation. In addition, being a limited partner owning 10 percent or more of the assests in a partnership, creates a rebuttable presumption of ownership.

3. Section 773.15 is amended by revising paragraph (b)(1) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(b) *Review of violations.* (1) The regulatory authority shall make a finding that any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—

* * * * *

[FR Doc. 85–8178 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–05–M

federal register

Friday
April 5, 1985

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children; Proposed Annual Funding Priority and Closing Date, Transmittal of Applications, Fiscal Year 1985 Awards, Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Applications for Fiscal Year 1985 Awards.

Applications are invited for new projects under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program.

Authority for this program is contained in section 624 of Part C of the Education of the Handicapped Act.

(20 U.S.C. 1424)

Applications may be submitted by public or private, profit or non-profit organizations and institutions.

The Auxiliary Activities program supports research, development or demonstration, training, and dissemination activities consistent with Part C of the Act that meet the unique educational needs of handicapped children and youth, including those who are severely handicapped. An announcement of the closing date for applications addressing seven other priorities under this program was published on January 4, 1985 (50 FR 700). This application notice addresses one additional priority under section 624 of the Act proposed by the Secretary for fiscal year 1985 awards under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children and Youth program.

Closing Date For Transmittal of Applications: An application for a new project must be mailed or hand delivered on or before June 7, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.086, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An application should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds: It is estimated that approximately $880,000 will be available for support of 9 new projects under this priority in fiscal year 1985. This estimate does not bind the Department of Education to a specific number of grants or cooperative agreements or to the amount of any grant or cooperative agreement unless that amount is otherwise specified by statute or regulation. Funding beyond the first year period is subject to an annual review of progress, availability of funds, and other factors (see 34 CFR 75.251–75.253).

Priority

INNOVATIVE PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN, FISCAL YEAR 1985

Priority No.	Priority area	Anticipated	
		Funding level	Number of awards
84.086N	Education of Severely Handicapped (including Deaf-Blind) Children and Youth in the Least Restrictive Environment.	$880,000	9

Application Forms: Application forms and program information packages are expected to be available on April 8, 1985. These materials may be obtained by writing to the Special Needs Section, Special Education Programs, Department of Education, 400 Maryland Avenue SW., (M/S 2313, Room 3511), Washington, D.C. 20202. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1820–0028)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Auxiliary Activities program (34 CFR Part 315). Final regulations for this program were published on July 9, 1984 (49 FR 28020). A notice of proposed annual funding priority for this program is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposed annual funding priority is subject to modification in response to public comments submitted within 30 days of publication. In the event any substantive changes are made in the priority or other requirements for new projects, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

For further Information contact: R. Paul Thompson, Special Needs Section, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 4615), Washington, D.C. 20202. Telephone: (202) 732–1161.

(Catalog of Federal Domestic Assistance No. 84.086: Auxiliary Activities—Innovative Programs for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8194 Filed 4–4–85; 8:45 am]

BILLING CODE 4000–01–M

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes an annual funding priority for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. The Secretary proposes to add to the priorities previously announced a priority addressing the need for exemplary models of educational projects in the least restrictive environment to the seven proposed annual funding priorities for this program which have recently been announced in the **Federal Register.**

DATE: Comments must be received on or before April 5, 1985.

ADDRESS: Comments should be addressed to: R. Paul Thompson, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (M/S 2313-3511), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson. Telephone: (202) 732-1177.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by Section 624 of the Education of Handicapped Act, supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the Act (20 U.S.C. 1424).

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, included amendments to the provisions of Section 624. In accordance with this authority, the Secretary proposes to fund projects under the following priority for fiscal year 1985.

The selection of this proposed priority is based upon: (1) A comprehensive review of the program's history, including the number of responses to various requests for proposals and responses to the 1982, 1983, and 1984 grant competitions; and (2) an analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field.

The Secretary announced seven other proposed annual funding priorities under this program which were published on January 4, 1985 (50 FR 700). Projects under this priority will be funded for up to 36 months, subject to annual review of progress, the availability of Federal funds, and other factors (see 34 CFR 75.251-75.253).

Priority

Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment

This priority supports projects which, on a district-wide basis (local educational agency) or cross district basis, design, implement, and evaluate innovative approaches for the education of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environment. Projects under this priority must:

1. Develop new models for delivery of integrated educational services, including changes in the location of instructional areas for provision of these services, for severely handicapped children who currently are being educated in segregated environments;

2. Demonstrate through the provision of project services, the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate, regular school settings;

3. Provide inservice training of personnel in local educational agencies including principals, assistant principals and teaching staff which are planning to provide educational services to handicapped children of the project in the least restrictive and least segregated environments; and

4. Provide components which promote acceptance of these children and youth by administrators, teachers, parents, and other children and youth in the least restrictive and least segregated environment.

It is estimated that approximately $880,000 is available for issuing up to 9 grants with each grant averaging approximately $98,000 annually. These grants will be awarded for 36 months or less.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 4615, 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.

(Catalog of Federal Domestic Assistance No. 84.086; Innovative Programs for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-8193 Filed 4-4-85; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
April 5, 1985

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

Research in Education of the Handicapped; Notice of Final Biennial Funding Priorities

DEPARTMENT OF EDUCATION

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of Final Biennial Funding Priorities.

SUMMARY: The Secretary announces biennial funding priorities for the Research in Education of the Handicapped program. To ensure wide and effective use of program funds, the Secretary selects from among 12 priorities in order to direct funds to the areas of greatest need for fiscal years 1985 and 1986. A separate competition will be established for each selected priority.

EFFECTIVE DATE: This notice of priorities will take effect either on or before May 20, 1985, or later if Congress takes certain adjournments. If you want to know the effective date of this notice of priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Nancy Safer, Research Projects Branch, Division of Educational Services, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Room 3511-M/S 2313), Washington, D.C. 20202. Telephone: (202) 732-1123.

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 or demonstration projects relating to the educational needs of handicapped children. Under this program, the Secretary makes awards to eligible parties to conduct 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 related activities supported under this program shall 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 or recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98-199, included amendments to section 641 of the Act. 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 received, and then publish final research priorities. In accordance with this requirement, a Notice of Proposed Biennial Funding Priorities was published in the **Federal Register** on November 16, 1984 (49 FR 45478) for the Research in Education of the Handicapped program.

Summary of Comments and Responses

A total of eight comments were received concerning the proposed eleven funding priorities. In general, the comments supported the proposed priorities. The comments and the Department's responses are summarized below:

Comment. Two commenters recommended adding additional groups to the populations considered under Special Population/Handicapped Projects. The suggested additional populations were minority, limited English proficient, and multihandicapped students.

Response. No change has been made. Multihandicapped students already receive attention in the severely handicapped programs, and the research institutes supported under Part E of the Act focus on handicapped minority and limited English proficient students. Moreover, research interests related to those populations could also be submitted under any of the other proposed priorities, providing a broad range of research opportunities relating to these populations.

Comment. One commenter suggested that the extant data base projects be expanded to permit researchers to build upon or expand an existing data base.

Response. A change has been made. The proposed priority was revised to permit not only use of, but building or expanding on an existing data base. Under this priority, investigators may obtain new information only if it is integral to utilizing and interpreting an extant data base.

Comment. One commenter questioned the relationship of the proposed priority on "Educational Progress of Handicapped Students" in the Special Studies funding priorities and with the priorities for Research in Education of the Handicapped.

Response. No change has been made. Section 618 of the Act, as amended by Pub. L. 98-199, requires the Secretary to evaluate the impact and effectiveness of the Act, and the progress being made to implement its requirements. Thus, the proposed Special Studies priorities under section 618, published on October 26, 1984 (49 FR 43090), were selected for evaluation activities, whereas the funding priorities for Research in Education of the Handicapped are responsive to a broader mandate to contribute to the process of innovative change and program improvement. The priorities under this program support research for: Enhancing new knowledge and understanding, developing and verifying effective practices, reviewing and analyzing current research, developing new or improved approaches and products based on research findings, and contributing to information exchange.

Comment. One commenter suggested that the priority for Comparative Research Projects be expanded to permit research on children initially entering school.

Response. A change has been made. Though continuing efforts are being made by State and local educational agencies to ensure early screening, identification and diagnosis, many handicapped children are not identified and do not receive services until they enter school. The priority has been revised to permit studies targeted at primary age children in recognition of this concern.

Comment. One commenter raised the concern that the proposed priority on standards and criteria was overly restrictive in its focus on effect and impact because it appears to exclude studies describing the current status of personnel-related standards and criteria among the States.

Response. No change has been made. The priority as currently stated would not exclude research projects which describe the current status but would require that the research include investigation into the effect or impact related to such status descriptions. Research designed only to describe the current status related to standards and criteria could be submitted in fiscal years 1985 and 1986 in response to the Field-Initiated Research priority.

Comment. One commenter recommended that an additional priority be included to address early childhood program evaluation.

Response. No change has been made. This area is currently the focus of both a current and proposed research institute under the Handicapped Children's Early Education Program. In addition, program evaluation is a component of all early childhood demonstration projects supported under section 623 of the Act. Further, projects designed to study the efficacy of early intervention could be submitted in respose to either the Field-

Initiated or Comparative Research Projects priorities.

Comment. One commenter recommended that the proposed priorities be expanded to include research on parents and families having handicapped children and youth.

Response. A change has been made. An additional priority has been added for parent research projects. The significance of the role of the parent and the family in the education of handicapped children and youth has been and continues to be a priority concern. The addition of this priority will facilitate research directed to increase the effect of parent and family participation in the education of their handicapped children and youth.

Comment. One commenter requested clarification of the statement that information collection requirements associated with the priorities had been approved by the Office of Management and Budget, and wanted to know what new data would be required of State or local educational agencies.

Response. No change has been made. The reference to approval of information collection requirements by the Office of Management and Budget related only to the approved standard grant application form to be completed as part of the application submission. Thus, there are no data requirements for State or local educational agencies unless they submit a proposal for a project using the standard application form.

Priorities

Field-Initiated Research Projects

This priority provides support for a broad range of field-initiated research projects focusing on the education of handicapped children and youth. The appropriate areas of interest for projects are limited only by the mission of the research program—support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Student-Initiated Research Projects

This priority provides support to postsecondary students to initiate and direct a broad range of research and research related projects focusing on the education of handicapped children. Content of the research projects is limited only by the mission of the research program—the support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Program Organization Option Projects

This priority supports projects dealing with solutions to the unique instructional, management, personnel, and financial problems associated with educating children and youth with different handicapping conditions within the same special educational placement option. (*See* 34 CFR 300.551, *Continuum of alternative placements.*) (Fiscal Year 1986)

Implementation of Research Projects

This priority supports projects that use the results of education related research studies to develop and field-test improved practices in educating handicapped students. (Fiscal Year 1986)

Enhancing Instructional Program Options

This priority provides support for projects to enhance the capacity of local educational agencies to provide a variety of instructional options and screening procedures prior to evaluation and placement of children with learning problems in special education. (Fiscal Years 1985 and 1986)

Special Population/Handicapped Projects

This priority supports projects dealing with the unique educational problems resulting from a combination of membership in a particular special population and having (a) handicapping condition(s). The Secretary will give an absolute preference to projects that identify and analyze intervention strategies for serving secondary-aged handicapped students who are also youthful offenders, children of migrant families, school dropouts, or substance abusers. (Fiscal Years 1985 and 1986)

Extant Data Base Projects

This priority supports projects related to the education of handicapped children that use, build on, or expand existing data files or records and information as the data source of research focusing on issues related to the education of handicapped children. (Fiscal Year 1986)

Research Integration Projects

This priority supports projects that review and synthesize existing research related to education of the handicapped, examine the implications of that research for practice in the education of the handicapped, and that determine future research needs. (Fiscal Years 1985 and 1986)

Increasing Teaching/Learning Efficiency Projects

This priority supports projects that focus on teacher and school variables associated with improved performance of handicapped students as shown by a variety of educational outcome measures. (Fiscal Year 1986)

Comparative Research Projects

This priority supports projects which systematically, through experimental or quasi-experimental designs, compare the effectiveness and efficiency of alternative interventions for educating preschool, primary, or secondary-aged handicapped children and youth. (Fiscal Year 1986)

Standards and Criteria Projects

This priority supports projects to study—(a) The effect and impact of standards and criteria used to provide credentials, employ, and promote school personnel; or (b) the effect and impact of standards and criteria used for determining placement, promotion, graduation, or programming of handicapped students. (Fiscal Year 1986)

Parent Research Projects

This priority supports research projects to provide new information relating to parents and families of handicapped children and youth to increase the effect of their participation in the education of their handicapped children and youth. (Fiscal Year 1986)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

(20 U.S.C. 1441–1444)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8195 Filed 4–4–85; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
April 5, 1985

Part VII

Department of Energy Nuclear Regulatory Commission

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982; Notice

DEPARTMENT OF ENERGY

NUCLEAR REGULATORY COMMISSION

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982

AGENCIES: Department of Energy and Nuclear Regulatory Commission.

ACTION: Update of the previously published notice of offer to cooperate with and provide technical assistance to nonnuclear weapon states in the field of spent nuclear fuel storage and disposal.

SUMMARY: The Department of Energy and the Nuclear Regulatory Commission, in accordance with section 223 of the Nuclear Waste Policy Act of 1982 Pub.L. 97–425), January 7, 1983 (the Act), published in the **Federal Register** on March 30, 1983 (48 FR 13253, corrected on April 20, 1983 by notice 48 FR 16960) and updated and reissued in the **Federal Register** on April 6, 1984 (49 FR 13858) an offer to cooperate with and provide technical assistance to nonnuclear weapon states for alleviating problems that may develop from accumulation of spent nuclear fuel. This notice is the second update and again tenders this offer as provided by the Act. Available resources, scope, criteria, and modes of cooperation are described in this offer, which will be further updated and reissued annually for the next 3 years.

Background

Section 223 of the Act provides that "it shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal."

Section 223 (b) (1) of the Act required that within 90 days of enactment of the Act the Department of Energy and the Nuclear Regulatory Commission would:

> * * * Publish a joint notice in the **Federal Register** stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) Data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

It is the intention of the Department of Energy and the Nuclear Regulatory Commission to offer to provide cooperation and technical assistance to other nations to improve spent fuel storage conditions as deemed necessary. It is not the intention of this offer to include transfer to the United States of spent fuel from foreign nuclear power reactors.

Section 223(c) of the Act specifies:

> Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

Response to the Offers

This notice was first published in the **Federal Register** on March 30, 1983 and was updated and reissued in the **Federal Register** on April 6, 1984. To date, seven countries have accepted this offer and substantive exchanges have occurred with three countries.

Discussion and Description or Proposed Cooperative Activities and Programs

For several years the United States has been cooperating with other nations as well as international organizations in areas related to spend fuel handling, storage, and disposition. The Department of Energy and the Nuclear Regulatory Commission have adhered to policies of sharing the results of their studies and programs in these areas with other nations and they have sought to establish a framework to permit U.S. private organizations working in these fields to cooperate with their counterparts in the other nations. To the extent feasible, it is the intention of the Department of Energy and the Nuclear Regulatory Commission to augment their international cooperative ties in these areas. Any arrangements relative to funding of joint research and development projects will be developed on a case by case basis subject to program demands and the authorization and appropriation of funds by Congress.

In the course of developing the proposed new arrangements with other governments of foreign institutions, both the Department of Energy and the Nuclear Regulatory Commission will be guided by a number of factors and criteria, including the following:

—Whether the proposed program of cooperation will be useful in assisting a nonnuclear weapon state in overcoming significant and timely spent fuel storage or handling problems;

—Whether the arrangements will serve to advance knowledge in the field;

—Whether the arrangements will help solve common spent fuel handling problems; and

—Whether the arrangements will contribute to more predictability in fuel cycle operations.

While it is anticipated that in the near future most nations will be able to solve their spent fuel storage problems on a national basis, this is an area that could benefit from enhanced international cooperation. As noted by the Final Report of the International Atomic Energy Agency's Expert Group on International Spent Fuel Management (IAEA–ISFM/EG/26, Rev. 1, page 4, July 1982), prior to 1990 there is reasonably good assurance that adequate provision for dealing with spent fuel will exist. During the 1990s, however, the Report states that greater reliance must be placed on spent fuel management options which are now mainly in the planning stage, and further states that "By the year 2000 additional capacity remains to be identified and eventually provided. As greater reliance is placed upon planned facilities, some international cooperation could provide greater assurances that adequate means to deal with the spent fuel arisings would be provided."

Some new storage technologies now under development hold promise for achieving further economies in storage arrangements. Also, there are incentives for developing common standards and guidelines between nations relating to the conditions for shipping spent fuel. nations can benefit from comparing information on the applicable regulatory practices and, in some cases, it may be productive for nations sharing common spent fuel storage problems to explore new institutional mechanisms designed to facilitate joint action.

The following paragraphs in this notice briefly summarize the nature of the activities of the Department of Energy and the Nuclear Regulatory Commission in these areas as well as the major cooperative activities that these agencies would propose to explore or engage in, as circumstances warrant.

The U.S. Department of Energy

The Department of Energy is now working with industry and utilities to assure that sufficient spent fuel storage capacity will be available for meeting U.S. domestic needs. U.S. utilities operating power reactors are presently storing spent fuel in water-filled pools at their reactor sites. In the next few years, additional capacity will be needed at some sites and the gravity of this problem could increase rapidly unless additional storage capacities are made available on a timely basis. Accordingly, the Department of Energy, industry, and utilities are now actively developing alternative methods for consolidating, transporting, and storing spent light water reactor fuel in order to increase at-reactor storage capacity.

The emphasis of this domestic program is to work jointly with industry for developing and licensing alternative storage technologies. Within this context, the Department of Energy is now in the process of working with industry and utilities in developing and demonstrating spent fuel rod consolidation and dry storage equipment and technology in support of utility license applications and is participating in efforts to assure the licensability of the entire system for handling, packaging, transportation, and storage. In addition, monitored retrievable storage facilities are being evaluated as integral components of the nuclear waste management system.

With these considerations in mind, and considering the criteria cited above, the Department of Energy is prepared to engage in the following kinds of cooperative activities with nonnuclear weapon states and international organizations:

—To provide information, in the form of exchanges of documents and reports, on Department of Energy funded research and development projects in the specific areas of spent fuel handling and storage; pool storage; spent fuel packaging for storage or disposal; dry storage in metal casks, drywells, vaults and concrete silos; and on the technology of away-from-reactor and monitored retrievable storage;

—To arrange, on an appropriate basis, visits and briefings between foreign representatives and Department of Energy and contractor personnel in those areas and to facilitate, within the terms of applicable U.S. laws, regulations and policies, contacts with private U.S. business entities and organizations with specialized capabilities in these fields;

—To arrange consultations between foreign representatives and expert Department of Energy and contractor personnel to review and comment on, as appropriate, other nations' proposed development program plans and facility designs;

—To furnish, under mutually agreed terms, information on certain U.S. standards and verified computer codes that may be used for equipment, component and facility design; and

—To cooperate, as appropriate, with international organizations to disseminate information to nonnuclear weapon states.

As U.S. program demands and the authorization and appropriation of funds by Congress permit, the Department of Energy also is prepared to participate in jointly funded development and demonstration activities such as:

—The demonstration of concepts for disassembling spent fuel assemblies and for consolidating fuel rods in operating reactor pools;

—The development and demonstration of technology for packaging spent fuel for storage and disposal;

—Activities related to assessing the feasibility of away-from-reactor storage, including foreign participation in, or observation of, U.S. tests and demonstrations of equipment and technology for dry storage of spent fuels; and

—The conduct of joint studies to evaluate monitored retrievable spent fuel storage.

In addition to the management of spent fuel in retrievable modes, the Department of Energy also is conducting extensive research and development on the geologic disposal of nuclear waste, including the spent fuel option. Where there is mutual interest, information in these areas can be exchanged through:

—The transmittal of published information;

—Arrangement of visits and consultations with the Department of Energy and contractor experts on spent fuel disposal methodology;

—Program planning; and

—Systems analyses.

The research and development activities conducted under the Department of Energy geologic isolation program include:

—The detailed characterization of spent fuel;

—Research and systems studies on spent fuel disposal packages and containers, and their materials;

—Safety analyses; and

—Disposal repository designs, including their performance evaluations in various host rock media.

As part of these activities, the U.S. Geological Survey is also available through the Department of Energy for discussions on the earth science characteristics of disposal sites.

Under the cooperative activities that have been described above, the information to be provided could possibly include exchanges of documents and reports, visits between specialists, short- or long-term assignments, the undertaking of joint seminars and meetings, and jointly supported research and development projects.

The Nuclear Regulatory Commission

In regard to the issue at hand, the Nuclear Regulatory Commission is responsible for safety and environmental reviews, licensing, inspection and enforcement, and the conduct of research on the safety and environmental regulation of reactor waste in the United States, including the handling, storage, treatment, and disposal of spent reactor fuel. These responsibilities include licensing dry and wet at-reactor and away-from-reactor storage, monitored retrievable storage, and spent fuel and waste disposal (including geological disposal) at permanent repositories.

The Nuclear Regulatory Commission is prepared to cooperate with, and provide technical assistance to, nonnuclear weapon states in the areas of the health, safety, and environmental regulation of spent fuel management and disposal activities. Cooperation could include the following:

—Making available data from past and ongoing research and regulatory efforts: These data consist of evaluated and documented experimental results, validated and fully documented computer codes, and research results for which documentation and evaluation are complete. These data are primarily documented as written reports, which the Nuclear Regulatory Commission can provide in specific technical subject areas, as agreed. State-of-the-art information on ongoing safety research programs can be acquired through attendance by representatives from participating countries at the annual Water Reactor Safety Research Information Meeting and other occasional topical meetings. Additional data more directly related to regulatory activities, such as regulations, standards, and guides, can also be provided as appropriate in specific subject areas as requested;

—Consulting with expert Nuclear Regulatory Commission personnel and Nuclear Regulatory Commission

contractor staff. As arranged by specific agreement with the Nuclear Regulatory Commission, expert technical consultation can be provided by Nuclear Regulatory Commission personnel and, as needed, by contractor employees in the regulatory areas within the Commission's purview;

—Helping (to the extent permitted by U.S. laws, regulations, and policies) foreign governments to establish initial contacts with private U.S. entities that conduct business in the applicable waste management activities;

—Cooperating, as appropriate, with international organizations to disseminate information to nonnuclear weapon states; and

—Participating in joint research programs. The Nuclear Regulatory Commission is ready to negotiate and engage in jointly funded research programs, consistent with the Agency's mission, with appropriate foreign entities, subject to the authorization and appropriation of funds by the Congress.

Relationships With Multinational Organizations and International Scientific Bodies

In addition to the foregoing activities, and within the framework of such foreign policy guidance as may be provided by the U.S. Department of State, it is expected that the Nuclear Regulatory Commission and Department of Energy will continue to participate in activities related to spent fuel handling that are undertaken by international organizations, if appropriate. These organizations have sponsored a range of activities relevant to this subject, and it is recognized that some nonnuclear weapon states may wish to avail themselves of the services of these bodies as well as the cooperative programs that are available bilaterally. The Nuclear Energy Agency of the Organization for Economic Cooperation and Development, for example, has been actively involved in studies related to the disposal of nuclear wastes. Also, as mentioned above, through the efforts of an Expert Group on International Spent Fuel Management, the International Atomic Energy Agency in 1982 completed a study on the potential for international cooperation in the management of spent fuel, giving emphasis to technical, economic, institutional, and legal considerations. Several of the recommendations of the International Atomic Energy Agency Expert Group could serve as a stimulus for further cooperative initiatives. Areas that may merit further study include the establishment of nuclear safety standards recommended by the International Atomic Energy Agency for spent fuel storage and transport, and possible further studies, as the interests of the international community dictate, such as multinational or regional approaches to spent fuel management and disposal.

Storage and Disposition of Research Reactor Spent Fuels

The cooperative programs described in this announcement are addressed to the problems associated with the storage and handling of power reactor spent fuel that originates primarily in light water reactors. As such, they do not address any issues associated with the accumulation of foreign research reactor fuels.

Solicitation of Expressions of Interest From Nonnuclear Weapon States

As the next step in developing this offer of cooperation and technical assistance, nonnuclear weapon states will again be contacted through diplomatic channels to acquaint them with this proposal and to solicit expressions of interest. The Department of State will transmit any such expressions of interest to the Department of Energy and the Nuclear Regulatory Commission.

Requests for Information

Inquiries about this notice may be sent to the following:

Ben C. Rusche, Director, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, D.C. 20585 (Tel. No. 202/252-6850)

James R. Shea, Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Tel. No. 301/492-7886)

Dated: April 1, 1985.

Approval:

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management, Department of Energy.

Dated: March 29, 1985.

William J. Dircks,

Executive Director for Operations, Nuclear Regulatory Commisssion.

[FR Doc. 85-8245 Filed 4-4-85; 8:45 am]

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federal register

Friday
April 5, 1985

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Coverage of Oxygen for Use in a Patient's Home; Final Notice With Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-024-FNC]

Medicare Program; Coverage of Oxygen for Use in a Patient's Home

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

ACTION: Final notice with request for comments.

SUMMARY: This notice announces Medicare policy concerning coverage for oxygen and oxygen equipment used at home by beneficiaries under the Medicare Part B durable medical equipment benefit. The policy states criteria for Medicare carriers to use in processing claims for reimbursement of oxygen services provided at home and is intended to ensure consistent coverage determinations by Medicare carriers nationwide. We are also using this notice to inform patients, physicians, suppliers of oxygen and oxygen-related equipment, and the general public of our policy.

DATES: *Effective date:* This notice is effective September 1, 1985. For additional information regarding the effective date, refer to section VII under **"SUPPLEMENTARY INFORMATION"**.

Section V. of this notice contains information collection requirements. The public is not required to comply with the information collection requirements other than those currently required until OMB approves these additional requirements under section 3507 of the Paperwork Reduction Act. A notice will be published in the **Federal Register** when approval is obtained.

Comment Date: Although this notice is final, comments may be submitted as described below. To assure consideration, comments must be mailed by May 6, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-24-FNC, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code: BERC-24-FNC.

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

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

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 320B, New Executive Office Building, Washington, D.C. 20503, Attention: Fay Iudicello.

FOR FURTHER INFORMATION CONTACT: William Larson, (301) 594-8569.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(s)(6) of the Social Security Act provides for payment under Part B of Medicare for durable medical equipment (DME) used in the patient's home. However, section 1862(a)(1)(A) of the Act excludes from coverage items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

Medicare has been paying for oxygen services in a patient's home under the DME authority, and carriers have been providing reimbursement according to general criteria regarding coverage of DME. (See the Medicare *Carriers Manual*, Chapter II, Coverage and Limitations, sections 2100 and 2105.) A physician's prescription is required to determine the medical need for DME items under Medicare, including oxygen services. In addition, Medicare carriers evaluate the factors involved in each case, as they do with all Medicare claims for payment, to determine whether the "reasonable and necessary" rule is met. The only detailed criteria concerning coverage of home use of oxygen relate to portable oxygen (*Carriers Manual*, Chapter II, Coverage Issues Appendix, section 60-4). These criteria, however, address only in part the issue of medical need for oxygen. They state that portable oxygen is appropriate for ambulatory patients who suffer from hypoxemia (deficiency of oxygen) either constantly or with exercise, and that the hypoxemia can be demonstrated by arterial blood gas studies. The criteria also state that some patients, e.g., those with a diagnosis of chronic interstitial pneumonia or of pulmonary hypertension, are able to benefit from oxygen on an ambulatory basis and that coverage is afforded. Finally, the criteria require a physician's prescription that should indicate the flow rate and circumstances under which oxygen is used.

HCFA has lacked uniform criteria to determine when a valid medical need for oxygen exists. Therefore, situations have developed in which patients receive oxygen instead of a more desirable alternative therapy or continue to receive the services after the need has passed. This is confirmed by a 1981 HCFA Regional Office study which identified a number of situations in which the patient's need for services billed under Medicare was not supported by the patient's own attending physician. Receiving an unneeded or a less desirable therapy is not only wasteful of program funds, but may also harm the patient. We have concluded that more refined criteria are necessary to ensure that oxygen services are provided only when "reasonable and necessary" to accomplish a medical purpose. This would assure that funds are not being expended unnecessarily and that Medicare is not paying for services that could possibly be harmful to beneficiaries.

In addition, the lack of uniform criteria has led to widely varying determinations by Medicare carriers on beneficiaries' claims for reimbursement for the expenses involved in use of oxygen at home.

The lack of uniform criteria has resulted in complaints to Congress from beneficiaries, physicians, and suppliers of oxygen and related equipment. As a result of these complaints (and otherr about Medicare reimbursement for durable medical equipment), Congress asked the General Accounting Office (GAO) to review Medicare's payment practices for durable medical equipment.

In a September 10, 1981 report, "Medicare's Reimbursement Policies for Durable Medical Equipment Should be Modified and Made More Consistent," HRD-81-140, GAO found that both beneficiaries and suppliers of home oxygen services are subject to a wide degree of variation for reimbursement, coverage, and utilization criteria, based on their locality.

Although GAO recognized that some variation among Medicare carriers in reimbursement, coverage, and other medical policy is neither unusual nor necessarily inappropriate, the amount of variation in different localities was cause for GAO concern. Finding that a uniform policy for home oxygen services is needed, GAO recommended (pp. iv, 28) that HCFA guarantee that reimbursement, coverage, and utilization criteria be consistently applied in all regions.

Our revised policy ensures consistent coverage determinations by Medicare carriers nationwide, as well as ensuring that patients with a medical need for home oxygen receive Medicare coverage for it. Our revised policy applies to oxygen services furnished in a patient's home by DME suppliers reimbursed under the Medicare Part B DME benefit.

II. Proposed Federal Register Notice

In order to develop a uniform national policy on coverage of home use of oxygen, while meeting the "reasonable and necessary" requirements of the Medicare statute, we published a proposed policy in the **Federal Register** on December 14, 1979 (44 FR 72653). That proposal included the following criteria for Medicare coverage of oxygen services in the home:

1. Prescription

A physician would have to write a prescription that specifies: Diagnosis of the disease requiring oxygen; the flow rate, frequency, and duration of use of oxygen; method of delivery of oxygen; and an estimate of how long the patient would require oxygen services. In addition, the prescription would have to include sufficient information for the carrier to make a determination of the medical necessity for oxygen. In connection with the prescription requirements, carriers would also review cases periodically to determine whether the medical need continues.

2. Laboratory Report

The beneficiary's claim would have to include a laboratory report of a blood gas study (oxygen partial pressure expressed as an arterial PO_2 value) as evidence of oxygen deficiency that requires administration of oxygen in the home. We also specifically requested comments on whether we should adopt, as a criterion for coverage of oxygen, a single arterial PO_2 value, for example, at or less than 55 mm Hg, or a range of acceptable PO_2 values, such as 55 to 60 mm Hg. Carriers would be required to review each case not meeting the adopted criterion to determine whether other factors support a finding of medical need. In order to avoid unnecessary medical expense and because blood gas studies are not without risk to the patient, we specified that carriers must not request a repeat blood gas study unless evidence requested from or provided by the patient's physician leads the carrier to conclude that a further study is needed.

3. Health Conditions

Coverage would be considered appropriate for patients with severe chronic obstructive pulmonary disease who demonstrate severe hypoxemia in the stable chronic state. Commonly associated with this condition are: (a) Recurring congestive heart failure due to chronic cor pulmonale (heart disease due to pulmonary hypertension secondary to disease of the blood vessels of the lungs), (b) erythrocytosis (increase in the total red cell mass) requiring repeated phlebotomy (removal of excess blood), (c) impairment of cognitive (thinking) processes, and (d) restlessness or insomnia. Coverage would also be appropriate for patients who demonstrate severe hypoxemia only during activities or during periods of dyspnea (difficult or labored breathing).

Coverage would not be appropriate for (a) patients with angina pectoris in the absence of hypoxemia, (b) patients who experience breathlessness without cor pulmonale or evidence of hypoxemia, (c) patients with severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities, and (d) patients with terminal illnesses that do not affect the lungs.

4. Portable Oxygen System

A portable oxygen system would be covered only when necessary to complement a stationary system needed by the patient. The physician's prescription would have to define the circumstances under which the portable system would be used and its medically therapeutic purpose.

5. Limitations of DME Coverage

Oxygen and oxygen equipment are covered under the DME benefit. There is no statutory authority for covering the professional services of a respiratory therapist furnished in a patient's home, unless they are furnished as "incident to" a physician's service.

Therefore, the notice provided that the services of a respiratory therapist would not be reimbursed under the DME benefit.

The proposed notice also specifically requested the public's comments regarding—

a. Objective evidence or other indicators that could be used in establishing a patient's medical need for a home program of supplemental oxygen;

b. The use of PO_2 standard, or other evidence of oxygen deficiency, as an absolute norm or as a screening guide to be considered along with other factors in determining the need for oxygen;

c. Special accommodations for patients not meeting the criteria who may have developed a psychological dependence on oxygen; and

d. The possibility of establishing flow meter limitations on oxygen equipment.

III. Summary of Changes

After consideration of comments, consultation with medical specialists, and our own additional review, we have made the following changes from the proposed policy. Except for the change relating to electronic billing which is explained below, our reasons for each change are explained in section IV.B. in the discussion of comments.

A. The prescription criteria have been made more flexible by explicitly stating that the physician can (a) give an estimate of the frequency and duration of oxygen use and (b) adjust the prescription if the patient's condition changes. The final criteria enable the physician to furnish medical documentation to the carrier in a form other than a prescription. Additionally, the final criteria have been changed to allow separate medical documentation when the claim is sent by an electronic billing system. The proposed criteria required that the documentation be included with the claim for oxygen and would have restricted the use of electronic billing.

B. The proposed notice recommended a single arterial blood gas standard, specifically a PO_2 level of up to 55 mm Hg, as the criterion for coverage of oxygen. The final notice provides more flexible arterial blood gas standards, including a conditional standard of a PO_2 level of 55 to 59 mm Hg and a rebuttable presumption against coverage above that level. However, the notice also provides for coverage of oxygen for persons with higher levels under certain limited conditions. Also, the notice provides that the beneficiary's claim may contain a statement of the results of the blood gas study that determined the PO_2 level, rather than the laboratory report itself as required in the proposed notice.

C. Ear oximetry is now an acceptable means for determining blood oxygen levels. (Ear oximetry is a procedure in which a photoelectric device is used to measure the oxygen saturation of blood flowing through the ear.)

D. The final notice describes the circumstances when it is appropriate for the carrier to request documentation of a repeat blood gas study.

E. The health conditions indicating a need for oxygen therapy are expanded to include restrictive and other lung diseases, pulmonary hypertension associated with hypoxemia, and

significant hypoxemia demonstrated by sleep or exercise studies.

F. Coverage of a portable oxygen system is provided for, alone as well as when necessary to complement a stationary system.

G. For patients who are currently on oxygen and for whom the carrier does not have medical documentation of the need for oxygen, there is a 12-month grace period for submittal of that documentation. Provision is also made for reimbursement for oxygen services beyond the 12-month period if the attending physician certifies that the patient has a continuing need for oxygen.

H. There are no flow meter limitations on oxygen equipment; however, the physician must specify the flow rate and oxygen concentration when prescribing oxygen.

IV. Discussion of Comments

A. Commenters

This section is an overview of the categories of commenters who responded to the notice, and their more general concerns. In section IV.B, we discuss their significant comments on specific provisions of the oxygen policy.

1. *Beneficiaries.* We received comments from over 4,000 patients on oxygen therapy, their physicians or relatives writing on their behalf, and Medicare beneficiaries in general, most of whom expressed opposition to the proposed criteria. Their opposition appears to be based on a misunderstanding that the proposed policy would mean that many patients now receiving oxygen therapy would no longer be reimbursed for it under Medicare.

We wish to assure these commenters and others interested in this issue that under these criteria qualified Medicare patients who have a medical need for home oxygen therapy will be reimbursed for it under the program. In addition, we have made specific changes to assure that beneficiaries currently receiving oxygen are assured of continued Medicare coverage on a medically appropriate basis. Our intent in publishing the proposed policy was not to discontinue Medicare coverage of this service. Rather, our primary concern was to establish medical criteria for determining appropriate coverage of oxygen, in addition to related requirements such as information to be included in the physician's prescription for oxygen. These criteria are necessary to ensure uniform coverage determinations by Medicare carriers nationwide, and appropriate use of Medicare funds.

As a result of specific comments received, we have revised the final criteria to make them more flexible. For example, we now provide coverage for a range of PO_2 levels rather than a single arterial blood gas standard and we have expended the list of health conditions that indicate a need for oxygen. Also, we have added a specific provision for patients currently receiving oxygen who do not meet the medical criteria, but who have a continuing medical need for oxygen. Further changes made are discussed in section III. of this preamble. We want to emphasize our belief that Medicare beneficiaries who have a medical need for home oxygen should not be adversely affected by our development of a uniform coverage policy.

2. *Physicians.* We received comments from 181 physicians specializing in pulmonary diseases and from 197 physicians who are general or other practitioners. Overall, the pulmonary specialists' comments were decisively supportive of the proposed policy. One hundred sixty-three specialists stated they generally endorse the criteria; a number of them offered constructive suggestions and comments on the proposed criteria. Eleven specialists disagreed with the notice as too strict; seven of these expressed the opinion that the proposal was an unnecessary interference in the practice of medicine. The other physicians' comments ranged from 49 who were generally supportive of the criteria to 55 who disagreed with them, indicating that the physician's judgment should suffice to establish oxygen coverage.

We do not agree that Medicare is interfering in the practice of medicine by issuing the oxygen criteria. We believe that the issuance of criteria to determine when payment should be made is both appropriate and necessary. Both the proposed and final criteria on oxygen services have maintained the physician's role by requiring documentation, such as a prescription, for home use of oxygen. However, section 1862(a)(1)(A) of the Act precludes Medicare from paying for any items or services, including oxygen therapy and equipment, that are not "reasonable and necessary". These criteria are intended to enable Medicare carriers nationwide to determine, based on uniform criteria, whether those oxygen services are reimbursable under the criteria.

3. *DME Suppliers.* Comments were received from 270 DME suppliers. The majority were opposed to the proposed policy, although many agreed with the need for uniform coverage criteria.

a. A number stated that the criteria could have serious economic consequences. They believe that certain physicians are likely to hospitalize patients who do not qualify for home oxygen as a result of the criteria, thereby resulting in greater health care costs.

We agree that improper restrictions on coverage of home oxygen could contribute to unnecessary hospital and skilled nursing facility (SNF) stays. However, our national criteria have been carefully developed with the help of comments received from pulmonary specialists and other physicians to assure that this will not happen. The criteria are designed to provide coverage for all medically appropriate uses of oxygen in the home, and thereby should help to limit the use of institutions to the conditions and cases requiring that type of care.

b. Some DME suppliers inquired whether they would be reimbursed by Medicare if, acting in good faith, they provided oxygen to a beneficiary and accepted an assignment of the beneficiary's Medicare claim for payments, but the beneficiary was later determined not to meet these criteria. ("Accepting assignment" means that the supplier agrees to accept the direct payment by Medicare as payment in full, except for any applicable deductible or coinsurance from the beneficiary. This is in contrast to the supplier being paid by the beneficiary, who in turn would be reimbursed by the program.)

There is always some degree of risk whenever a physician or supplier accepts assignment of a Medicare claim because there is no guarantee of payment before a carrier's review of the reasonableness and medical necessity for the oxygen. However, the Medicare statute at section 1879 of the Act contains a limitation of liability provision that protects DME suppliers and others when claims, including those for which they have accepted assignments, are denied on the basis that the items or services were not medically necessary. Section 1879 of the Act permits payments despite a decision to deny a claim, if the reason for denial is that the service is judged not reasonable and necessary and if both the beneficiary and supplier did not know, and could not reasonably have been expected to know, that payment would not be made. (The regulations relating to this provision are located at 42 CFR 405.330 through 405.332.)

The national criteria that are set forth in this notice and that will be used by carriers when reviewing claims specify

what evidence is required to establish medical necessity for home use of oxygen. If an assigned claim documented in accordance with the criteria is denied for lack of medical necessity, the limitation of liability provision may apply, and the supplier would receive payment (in cases where neither the beneficiary nor the supplier knew or could reasonably have been expected to have known that the services were noncovered). The limitation of liability provision could not, however, apply to claims with incomplete documentation (e.g., a physician's prescription without the diagnosis or other required information), since the carriers would not have all the evidence needed to make the medical necessity determinations.

In addition to the protection afforded by the limitation of liability provisions to a beneficiary and supplier, the national criteria should eliminate uncertainty that previously may have existed about Medicare coverage requirements for oxygen services. This uncertainty may have been partially responsible for the concern about denial of payments expressed by many DME suppliers.

4. *Respiratory Therapists and Other Respondents.* a. One hundred and ten registered respiratory therapists submitted comments. The majority generally favored the overall policy, although a number expressed opposition to that part of the policy that indicated the DME benefit does not cover home care by respiratory therapists.

There is no statutory authority under Part B of the program to cover the professional services of a respiratory therapist furnished in the home, in connection with the durable medical equipment benefit. Section 1861(s)(6) of the Act, that provides for Medicare coverage of durable medical equipment used in the patient's home, covers only the equipment. If a patient requires respiratory therapy services, these can be covered under Part B of the program if furnished in a hospital outpatient setting or at a comprehensive outpatient rehabilitation facility, if the appropriate requirements are met.

b. We received comments from 164 other sources, such as registered nurses, third-party payers, social and welfare agencies, oxygen-equipment manufacturers, and hospital administrators. Their principal concern is the possible increase in health care costs (discussed in section IV.A.3, "DME Suppliers") and the cost to patients whose present oxygen services may not be reimbursed by Medicare because of the new criteria (discussed in section IV.B.5, "Patients Currently on Oxygen").

B. Comments on Specific Provisions

Our primary intent is to establish medical criteria for coverage of home use of oxygen, in addition to requirements for documentation to be included in the physician's prescription for oxygen. Therefore, we were particularly interested in comments from pulmonary specialists because of their medical expertise in the area of oxygen therapy, and explicitly invited recommendations from them in the notice of proposed policy. In addition, we obtained advice from the Public Health Service (PHS) through the National Center for Health Care Technology (NCHCT), now the Office of Health Technology Assessment. We have relied heavily on input from these specialists in our analysis and discussion of comments and in the formulation of the final criteria for coverage of oxygen therapy in the home.

1. Prescription—Medical Documentation

Comment: Several commenters expressed concern regarding the statement in the proposed criteria that Medicare carriers would periodically review individual cases to determine whether there is a continuing medical need for oxygen. Apparently, the commenters believe that these periodic reviews would require the attending physician to do additional testing or paperwork in order for the patient to continue to qualify for coverage of home oxygen.

Response: Continuing reviews for medical necessity means that carriers must periodically confirm the appropriateness of continuing the payment for DME, including oxygen in cases where there is a possibility the patient is no longer residing at home, or has improved to the point where the equipment is no longer medically necessary. (See § 4105.2 of the Medicare *Carriers Manual* for guidelines regarding these reviews.) Most, if not all, of these reevaluations would generally occur as infrequently as once or twice a year, and can be made by telephone contact with the physician or a member of the physician's office staff who the physician has designated to relay that information. We believe that a reevaluation is not unreasonable and that oversight of the need for these services is necessary in order to assure that the program's coverage requirements are being met and that Federal payments are not being made incorrectly.

Comment: A number of commenters believe it would be difficult or impossible, in some cases, to predict initially how much, how long or how frequently oxygen therapy would be needed for certain patients. They suggested that the prescription requirements be made more flexible to permit periodic prescription adjustment by the physician.

Response: We agree and have made the prescription requirements flexible in the following manner:

(a) The initial prescription, or other medical documentation, must give an *estimate* of the frequency and duration of use of oxygen.

(b) The criteria specifically provide for subsequent adjustments in the frequency of use and the rate of flow if the patient's condition, and need for oxygen changes.

2. Laboratory Report: Blood Gas Study

Comment: In the proposed criteria, we specifically requested comments on whether a PO_2 standard, or other evidence of oxygen deficiency that we adopt, should be an absolute requirement or should be used as a screening guide along with other factors.

Many commenters suggested that, rather than applying a strict arterial blood gas standard for coverage of oxygen therapy services as specified in the proposed guidelines, the evidence requirements for demonstrating the medical need for oxygen should be more flexible. A number of commenters pointed out that blood gas determinations for a particular patient will vary depending on the patient's body position, age, and activity level, as well as the altitude where the patient lives. Almost half of the pulmonary specialists recommended that we use a range of PO_2 levels as acceptable evidence of oxygen insufficiency. Specifically, 46 specialists stated a PO_2 level of up to 60 would be acceptable evidence of oxygen insufficiency, and 10 specialists stated a PO_2 level of up to 65 would be acceptable. In addition, eight specialists stated that a PO_2 level of over 60 should be referred to a pulmonary specialist for a determination as to the medical need for oxygen.

Response: We have revised the laboratory report requirements to reflect the many suggestions that we establish a flexible arterial blood gas standard. Rather than limiting coverage to a single arterial PO_2 level, we now provide for coverage of oxygen at arterial PO_2 levels below, at, or above 55 mm Hg, as specified below. Our final specifications are based on comments received from the pulmonary specialists and on advice from PHS/NCHCT as to when significant hypoxemia exists and supplemental oxygen is appropriate. PHS/NCHCT consulted with the

National Institute of Health's National Heart, Lung, and Blood Institute, Division of Lung Diseases in developing its recommendations. (A copy of the PHS/NCHCT recommendations can be obtained from Robert A. Streimer, Director, Office of Coverage Policy, Bureau of Eligibility, Reimbursement and Coverage, HCFA, 401 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.)

The final criteria are as follows:

(1) A PO_2 level at or below 55 mm Hg, taken during the day while at rest, is the level at which the Medicare carrier may assume that there is a medical necessity for oxygen. In adopting a PO_2 level for this criterion, we intended to provide for reasonable variations in test results. The reliability of tests for PO levels is affected by such factors as the precision of the instruments, and physiological changes in the patient that can occur minute-by-minute. By adopting this PO_2 level, rather than a more restrictive one, we believe that we have adequately provided for normal fluctuations in the results of tests for PO_2 levels.

(2) Coverage is provided for nocturnal use of oxygen (during the night only) if the patient demonstrates significant hypoxemia during the night. In this case, significant hypoxemia means a decrease in arterial PO_2 of more than 10 mm Hg, if the decrease is associated with symptoms reasonably attributable to hypoxemia, such as nocturnal restlessness. This requires two test results: the arterial PO_2 level while sleeping and while awake and at rest.

(3) If the patient demonstrates PO_2 at or below 55 mm Hg taken during sleep or exercise, and a PO_2 at or above 56 mm Hg taken during the day while at rest, supplemental oxygen is provided for only during the sleep or exercise. In these cases, however, there must also be evidence that the hypoxemia during sleep or exercise is improved by the oxygen therapy.

(4) The medical need for oxygen is doubtful in the case of a PO_2 level of 56–59 mm Hg, taken during the day while at rest, with no demonstration of a lower level during sleep or exercise. However, coverage is provided if there is additional evidence to establish medical necessity for oxygen, such as dependent edema suggesting congestive heart failure, "P" pulmonale on EKG, or erythrocythemia with a hematocrit greater than 56 percent.

(5) The carrier will apply a rebuttable presumption of noncoverage in the case of a patient with a PO_2 level of 60 or over. That is, the carrier will deny payment, but the beneficiary or physician may submit evidence to support a finding that medical necessity exists despite the PO_2 level and payment should be made.

The final policy regarding laboratory reports also takes into account variations in oxygen measurement due to such factors as the altitude level, and the age and activity of the patient. We believe that all of the revisions in the final criteria will allow sufficient flexibility in the standards of acceptable evidence to enable carriers to make appropriate decisions as to whether supplemental oxygen is warranted in each case.

Comment: In the proposed policy, we specifically asked for comments on what objective evidence, other than an arterial PO_2 value, could demonstrate desaturation. Sixty-nine specialists, 30 other physicians, 52 respiratory therapists, 40 DME suppliers, and 10 other commenters suggested ear oximetry, a procedure to measure arterial blood saturation. Ten specialists, 9 other physicians, 23 respiratory therapists, and 10 DME suppliers recommended transcutaneous electrode monitoring for determining the PO_2 level.

Response: Based on the medical advice we have received, we have provided for ear oximetry as an acceptable means for determining blood oxygen levels (arterial blood saturation). For purposes of these criteria, a saturation of 85 percent is considered the equivalent of a PO_2 of 55, and a saturation of 90 percent is the equivalent of a PO_2 of 60. Also, for purposes of determining the need for oxygen because of a decrease in the oxygen level during sleep, a decrease in saturation of more than 5 percent and a decrease in PO_2 of more than 10 mm are comparable indicators of the need for oxygen. We are not able to accept the suggestion that measurements of arterial partial pressure of oxygen by transcutaneous oxygen electrodes be considered an acceptable method of determining the need for oxygen, because there is a lack of documentation of the safety and efficacy of this technology.

Comment: A number of commenters stated that the requirement of submission of a laboratory report to document the medical need for oxygen would be impractical in cases where the testing has been done at some hospitals. Apparently, certain hospitals require written releases from the patient as well as the attending physician before they will provide a copy of the laboratory report. The commenters pointed out, however, that the submission of the results of the laboratory tests, rather than the reports themselves, would be possible in virtually all cases.

Response: We have revised the final policy to provide that the results of a blood gas study, rather than the laboratory report itself, may be included in the submission of a Medicare claim for home oxygen services. Accordingly, the proposed section title "Laboratory Report" has been changed to read "Laboratory Evidence".

Comment: Several commenters stated that the proposed guidelines were unclear as to the meaning of the prohibition against carriers requesting repeated PO_2 determinations unless there was convincing evidence of the medical need for them.

Response: We agree that the criteria were unclear with respect to this issue. We have included examples of situations where repeat arterial blood gas studies are normally appropriate. For example, a repeat arterial blood gas study would be appropriate if the carrier finds in the course of its periodic continuing medical necessity review (where the patient's condition may change enough to warrant this review) that the patient has undergone a major change in his or her physical condition or work status that may have a significant impact upon the medical need for supplemental oxygen. Thus, in these situations, carriers may request documentation of a repeat arterial blood gas study.

3. Health Conditions

Comment: Nearly one-third of the pulmonary specialists suggested that we expand the list of health conditions for which home oxygen services are medically appropriate to include other conditions, e.g., restrictive lung disease, cardiac problems, pulmonary hypertension, interstitial fibrosis, asthma, and cor pulmonale. Several commenters disagreed with the proposed exclusion of coverage of home oxygen services for patients with angina pectoris in the absence of hypoxemia or terminal cancer that does not affect the lungs.

Response: We have consulted with PHS regarding the additional medical indications for oxygen therapy, and we concluded that certain indications are appropriate and should be included in the final criteria. Accordingly, we have expanded the covered medical indications to include restrictive and other lung diseases, and to include pulmonary hypertension as one of the conditions associated with significant hypoxemia. However, we have not accepted the suggestion that we provide coverage of home oxygen for patients with angina pectoris, or terminal cancer that does not affect the lungs, in the

absence of hypoxemia. Our decision is based on the supporting views of a majority of the pulmonary specialists submitting comments as well as the medical advice obtained within the Department.

Comment: The proposed notice states that patients with certain conditions can be expected to improve with oxygen therapy when used at least 12 hours a day. A number of respiratory therapists and DME suppliers understood this to mean that we were proposing that oxygen therapy would have to be necessary for at least 12 hours a day in order to be covered. With that understanding, those commenters suggested that the 12-hour day usage standard would be too rigid. They also pointed out an apparent inconsistency between the 12-hour standard and another provision in the proposed policy. That provision specified that coverage of oxygen therapy is appropriate for patients who demonstrate severe hypoxemia only during activities or during periods of dyspnea. These activities and periods do not last 12 hours.

Response: We agree that a 12-hour day usage would be too strict a standard. The final criteria do not require that oxygen usage be required for any specified minimum number of hours a day. To avoid possible misunderstanding, we have deleted the reference to the 12-hour a day usage.

Comment: In the proposed criteria, we refer to the treatment modality in which oxygen is prescribed for use only during the night for the patient who has a chronic obstructive pulmonary disease and demonstrates, during the day while at rest, a PO_2 level at or below 55 mm Hg. Commenters maintain that research studies have demonstrated that this treatment modality is not optimally effective and that oxygen should be prescribed for use during the day and night for the patient described.

Response: Based on medical advice that this treatment modality is not optimally effective, we have deleted references to it from the criteria.

Comment: A number of commenters suggested that coverage is appropriate for patients who do not show significant desaturation during the day, but who demonstrate significant hypoxemia based on sleep studies. This provision was not in the proposed criteria.

Response: We have revised the criteria to provide for oxygen when there is a greater than normal fall in oxygen level during sleep (discussed in section IV.B.2, "Laboratory Report: Blood Gas Study").

4. Portable Oxygen Systems

Comment: Twenty pulmonary specialists as well as other physicians and practitioners objected to the proposed requirement that a patient need a stationary oxygen system to qualify for a portable system, and said that such a policy would preclude from coverage many patients who have a medical need for a portable system.

Reponse: We agree with the commenters and have revised the criteria to provide for coverage of home use of portable oxygen services—whether standing alone or as a complement to a stationary system—that have been demonstrated to be needed by a patient. However, section 1861(s)(6) of the Act does not specifically cover the use of portable oxygen systems under the DME benefit. It provides for coverage of equipment that is "used in a patient's home". This raises the question of the authority to provide coverage of a portable oxygen system (especially one that does not complement a stationary system) since the system, by its nature, may be used outside of a patient's home. We believe that a portable oxygen system that is appropriate for use in a patient's home may be a covered item under the DME benefit when it is used in a patient's home and when it is medically reasonable and necessary for the patient given his or her symptoms and medical diagnosis. A patient may have an intermittent need for oxygen that cannot be met by a stationary system. That intermittent need might be present during exercise performed by a patient who has a medical diagnosis of exercise-induced hypoxemia. The final criteria provide that portable oxygen services for use in a patient's home—whether standing alone or as a complement to a stationary system—may be covered under the program if (a) a physician's prescription or other documentation and laboratory evidence document the medical need for the portable system for use in the patient's home, (b) the physician's order describes a specified activity or exercise program, and (c) it is demonstrated that the use of the portable system during the activity or exercise results in an improvement in the patient's ability to exercise or perform various activities. If these criteria are met, portable oxygen services are covered even if the equipment is sometimes used outside the patient's home. As in the case of all DME (for example, wheelchairs), coverage depends on the equipment's suitability and need for use in the patient's home, not on whether it is used there exclusively.

5. Patients Currently on Oxygen

Comment: In the proposed criteria, we asked what special provisions would be necessary to accommodate the needs of patients who are now receiving oxygen and (a) would not meet the proposed criteria, or (b) would not meet the criteria and have developed a psychological dependence on oxygen.

Commenters other than patients who addressed this issue were fairly evenly split between those favoring continuing coverage for oxygen indefinitely for patients now reimbursed under Medicare, and those supporting phasing out coverage for these patients over a reasonable period of six to twelve months. The second approach would permit patients and their physicians time either to submit evidence demonstrating that the coverage criteria were being met or, if they do not meet the criteria, to help patients phase out their dependence on supplemental oxygen.

Response: This is a very important and sensitive issue which must be considered from a professional, realistic and humanitarian point of view. Many Medicare beneficiaries currently receiving covered oxygen therapy in their homes are either homebound or bed confined. HCFA does not intend to trigger a mass program of transporting these persons for the sole purpose of obtaining arterial blood gas or other documentation of the medical need for oxygen. On the other hand, we do not believe we can continue coverage of this modality indefinitely in the absence of evidence establishing a medical need for oxygen.

We have adopted the suggestion for a phasing-out period. The final guidelines provide that patients currently being reimbursed under Medicare for home oxygen use, for whom carriers do not have medical documentation of a need for oxygen, as required in the final criteria, have a grace period of 12 calendar months from the effective date of the final criteria. During this time evidence of the need for oxygen may be submitted to the Medicare carrier. Patients currently being reimbursed for home oxygen for whom carriers now have the medical documentation of the need for oxygen are not required to submit new medical evidence, regardless of when the existing medical evidence was established. Carriers will verify the patient's continuing need periodically, as explained in sections IV.B.1 and 2 concerning medical documentation and blood gas studies.

However, if there is a medical risk that the patient's condition could be

complicated by his or her withdrawal from oxygen, but he or she does not meet the medical criteria of this notice, we are providing for the reimbursement for oxygen services beyond the 12-month period if the attending physician certifies that the patient has a continuing need for oxygen.

6. Flow-Meter Limitations

Comment: In the proposed criteria, on the assumption that flow rates greater than 8 liters per minute (LPM) are potentially hazardous for home users of oxygen, we asked if we should set flow meter limitations on oxygen and, if so, what they should be. A number of commenters recommended that we not set flow meter limitations. They noted that the determination of what is a potentially hazardous flow rate varies from patient to patient. While 8 LPM is potentially hazardous for some patients, 5 LPM is dangerous for others. Also, they commented that most patients would not require more than 2 LPM, and that physicians should document the need for greater flows.

Response: In response to the above recommendations and in view of the scarcity of evidence that Medicare beneficiaries have been endangered by utilizing excessive oxygen flow rates, we have decided not to apply specific limitations on flow rates at this time. However, in view of the comments received and medical advice that a high percentage of patients do not require more oxygen than 2 LPM, Medicare carriers will be instructed that all claims involving flow rates of more than 2 LPM must be reviewed by their medical staff. The final criteria require the patient's physician to give the flow rate, frequency and duration of use of oxygen, and the patient's health conditions. These data will enable the carrier's medical staff to determine whether the prescribed flow rate is reasonable and necessary for the patient and thus, covered under the program.

Upon further review of the proposed notice, we are also requiring the physician to specify the oxygen concentration to be used. Concentrations of oxygen can vary from 20 percent to 100 percent. Medicare carriers will need this information in order to ensure that patients who require high flow rates are furnished oxygen equipment that delivers the appropriate oxygen concentration levels.

V. Criteria for Medicare Coverage of Oxygen Services in the Home

In order to be reimbursed under Medicare, oxygen services in the home must be furnished in accordance with the conditions listed below.

A. Medical Documentation

1. The initial claim must include medical documentation, or in situations where electronic billing is used, separate medical documentation must be furnished. This documentation, which could be a prescription, must be written by a physician who has recently examined the patient, and must specify—

a. A diagnosis of the disease requiring home use of oxygen;

b. The flow rate and oxygen concentration; and

c. An estimate of the frequency and duration of use. A prescription for "Oxygen PRN" or "Oxygen as needed" is not acceptable.

2. If the patient's condition and the need for oxygen services change, the attending physician must adjust the medical documentation accordingly; and the revisions must be submitted to the carrier.

3. Carriers are required to conduct periodic, continuing medical necessity reviews (on patients whose conditions warrant these reviews) to determine whether the patient has improved to the point where oxygen is no longer necessary. These reevaluations can be initiated by telephone contact with the physician or with a member of the physician's staff who has been designated by the physician to relay the necessary information. Where indicated, a repeated arterial blood gas study may be requested by the carrier (see section B, paragraph 2, which follows). This periodic review is standard procedure in all cases where DME, including oxygen equipment, is being provided for under Medicare. See § 4105.2 of the *Medicare Carriers Manual.*

B. Laboratory Evidence

1. The initial claim must also include the results of a blood gas study as evidence of the need for administration of oxygen in the home. This will usually be in the form of a measurement of the partial pressure of oxygen (PO_2) in arterial blood. A measurement of arterial oxygen saturation obtained by ear oximetry will also be acceptable. The conditions under which the studies are performed must be stated, i.e., at rest, while sleeping, while exercising, on room air or, if while on oxygen, the amount, body position during testing, and similar information necessary for interpreting the evidence.

2. A repeat arterial blood gas study will normally be necessary only where evidence indicates that an oxygen recipient has undergone a major change relevant to home use of oxygen. A major change, for example, in the patient's physical condition or work status requires a repeat blood gas study.

C. Health Conditions for Coverage of Home Oxygen Therapy

1. Coverage is provided for patients with significant hypoxemia in the chronic stable state, if the following conditions are met:

a. The patient has appropriately tried other treatment measures without success.

b. The patient has—

(1) A severe lung disease, such as—

(a) Chronic obstructive pulmonary disease;

(b) Diffuse interstitial lung disease, whether of known or unknown etiology;

(c) Cystic fibrosis;

(d) Bronchiectasis; or

(e) Widespread pulmonary neoplasm; or

(2) Hypoxia-related symptoms or findings that might be expected to improve with oxygen therapy. Examples of these symptoms and findings are—

(a) Pulmonary hypertension;

(b) Recurring congestive heart failure due to chronic cor pulmonale;

(c) Erythrocytosis;

(d) Impairment of the cognitive process;

(e) Nocturnal restlessness; and

(f) Morning headache.

c. Except as modified in paragraph 1.d. of this section, the patient has significant hypoxemia, evidenced by any of the following:

(1) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent, taken at rest, breathing room air.

(2) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent taken during sleep for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or above 86 percent, while awake, or a greater than normal fall in oxygen level during sleep (a decrease in arterial PO_2 more than 10 mm Hg, or decrease in arterial oxygen saturation more than 5 percent), associated with symptoms or signs reasonably attributable to hypoxemia (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia). In either of these cases, coverage is provided only for nocturnal use of oxygen.

(3) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent, taken during exercise for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or

above 86 percent, during the day while at rest. In this case, supplemental oxygen is provided during exercise if there is evidence the use of oxygen improves the hypoxemia that was demonstrated during exercise when the patient was breathing room air.

d. In reviewing the arterial PO_2 levels and the arterial oxygen saturation percentages, specified in paragraph c. of this section, the carrier's medical staff must take into account variations in PO_2 levels that may result from deviations due to the patient's age, the altitude level, or the patient's decreased oxygen carrying capacity.

2. Coverage is provided for patients whose arterial PO_2 is 56–59 mm Hg or whose arterial blood oxygen saturation is 86–89 percent, if there is evidence of—

a. Dependent edema suggesting congestive heart failure;

b. "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

c. Erythrocythemia with a hematocrit greater than 56 percent.

3. For patients with arterial PO_2 levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90 percent, carriers must apply a rebuttable presumption that a home program of oxygen use is not medically necessary. In order for claims for home use of oxygen to be reimbursed, the carrier's reviewing physician must—

a. Review documentation submitted in rebuttal of this presumption; and

b. Grant specific approval of the claims.

4. Coverage is not provided for the following:

a. Patients with angina pectoris in the absence of hypoxemia. Since this condition is generally not the result of a low oxygen level in the blood and since other treatments are preferred, home oxygen use is not recommended and is not covered.

b. Patients who experience breathlessness without cor pulmonale or evidence of hypoxemia. Although intermittent oxygen use is sometimes prescribed to relieve this condition, we consider this potentially harmful and psychologically addicting. We do not believe there is medical need for oxygen use in these cases; therefore, Medicare coverage is not supportable.

c. Patients with severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities. There is no evidence that increased PO_2 will improve the oxygenation of tissues with impaired circulation.

d. Patients with terminal illnesses that do not affect the lungs. The use of oxygen is not medically necessary and therefore is not covered.

D. Portable Oxygen

1. A portable oxygen system may be provided, either—

a. To complement a stationary system if necessary; or

b. By itself to provide an intermittent supply of oxygen for use during exercise by a patient who has a medical diagnosis of exercise-induced hypoxemia.

2. A portable oxygen system is covered if the following conditions are met:

a. The claim for reimbursement must meet requirements, specified above, in sections A–C.

b. The medical documentation must include a description of the activities or exercise routine that the patient undertakes on a regular basis and that require the portable oxygen system in the home. That is, the documentation must describe the medically therapeutic purpose to be served by the portable system that cannot be met by a stationary system.

c. The claim must include documentation that use of the portable oxygen system during the prescribed activities or exercise results in clinical improvement in the patient's condition, as evidenced by an increase in the patient's ability to exercise and perform various activities.

E. Respiratory Therapists

Respiratory therapists' services are not covered under provisions for coverage of oxygen services in the home. The DME benefit (section 1861(s)(6) of the Act) provides for coverage of home use of oxygen but does not include a professional component in the delivery of such services.

F. Patients Currently Under a Program of Home Oxygen

1. If the carrier has received the documentation of the need for oxygen as specified in sections A–D, new documentation is not required, regardless of when the existing data were submitted. The carrier will periodically verify the patient's continuing need as specified in section A.3.

2. If the documentation of the need for oxygen, as specified in sections A–D, has not been submitted to the carrier, the following provisions apply:

a. The carrier will continue to reimburse for oxygen services furnished up to 12 months after the effective date of these criteria. During this period, the carrier will continue to implement the standards followed before these criteria became effective, and will continue to verify the patient's use of oxygen according to review procedures specified in § 4105.2 of the Medicare *Carriers Manual.*

b. Except as provided for in paragraph c. of this section, the carrier will not reimburse for oxygen services furnished more than 12 months after the effective date of these criteria, unless—

(1) The documentation specified in sections A–D is submitted to the carrier; and

(2) The carrier makes a determination that the services are covered.

c. If the patient does not meet the criteria specified in sections A–D, the carrier will reimburse for oxygen services furnished more than 12 months after the effective date of these criteria, if—

(1) The attending physician certifies that there is a continuing medical need for the patient to receive oxygen; and

(2) The Medicare carrier makes a determination that the services are covered.

VI. Comments

We have requested comments on this final notice due to the amount of time that has elapsed since we issued the proposal.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider any comments that are mailed by the date specified in the "DATES" section. If, as a result of public comments, we conclude that changes in this notice are needed, we will publish the changes in the **Federal Register**.

VII. Effective Date

This notice is effective September 1, 1985. This will provide lead time for HCFA to issue instructions to Medicare carriers for processing claims under this policy. It will also give carriers time to inform, and meet with, oxygen suppliers and interested persons before the policy becomes effective. This should facilitate proper implementation of the policy and avoid future misunderstandings since it will afford an opportunity for discussion of the specific requirements and the procedures carriers plan to follow.

VIII. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices

for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or import markets.

The intent of this notice is to ensure consistent coverage determinations by Medicare carriers nationwide. Implementation will result in some adjustments in the amount and degree of coverage (that is, there will be some increases and some decreases). However, we do not have data available to estimate the amounts involved. Also, we do not expect program expenditures to be affected by this notice. Because the annual impact in each of the first five years will not exceed the $100 million threshold, and because no other threshold criteria under Executive Order 12291 would be exceeded, this final notice is not considered a major rule and an impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. We believe that the Regulatory Flexibility Act (RFA) does not apply to this document. However, we are voluntarily applying the same criteria and degree of analysis.

As previously discussed, there will be some increases and decreases in coverage as a result of this notice. Additionally, there will be a slight increase in paperwork by attending physicians as claims will require more documentation regarding the patients' needs than is presently required. While we have no data available to estimate the actual effects on each supplier, we believe that they will be minimal relative to their total practice or business. Given the statutory requirements, explained previously in this notice, we believe that we have afforded maximum flexibility in each of the requirements. Therefore, we have determined, and the Administrator certifies that this notice will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis would not be required under the RFA.

(Secs. 1102, 1832(a)(1), 1833(a)(1), 1842(b)(3), 1861(s)(6), 1862(a)(1)(A) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(1), 1395l(a)(1), 1395u(b)(3), 1395x(s)(6), 1395y(a)(1)(A), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 1, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-8338 Filed 4-4-85; 8:45 am]

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