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# federal register

Monday
November 18, 1985

**Briefings on How To Use the Federal Register—**
For information on briefings in Philadephia, PA, see announcement on the inside cover of this issue.

## Selected Subjects

**Animal Drugs**
Food and Drug Administration

**Aviation Safety**
Federal Aviation Administration

**Bridges**
Coast Guard

**Citizenship and Naturalization**
Immigration and Naturalization Service

**Continental Shelf**
Minerals Management Service

**Exports**
International Trade Administration

**Public Housing**
Housing and Urban Development Department

**Radio Broadcasting**
Federal Communications Commission

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### PHILADELPHIA, PA

**WHEN:** Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

**WHERE:** Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

**RESERVATIONS:** Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

**FUTURE WORKSHOPS:** Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 316a

### Residence, Physical Presence and Absence

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule adds Georgetown University to the list of recognized American institutes conducting research abroad. This rule will allow employees of Georgetown University who are active in scientific research on behalf of the institute to be eligible for constructive residence.

**EFFECTIVE DATE:** November 18, 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, DC 20536, Telephone: (202) 633-3048.
For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014.

**SUPPLEMENTARY INFORMATION:** Section 316(b) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1427(b) allows for certain absences abroad by lawful permanent residents of the United States to preserve residence and be counted towards the residence requirements for naturalization. 8 CFR 316a.2 lists American institutions of research that have been recognized by the Attorney General to qualify for the constructive resident benefit. Absences abroad in the employment of these institutions will be counted as constructive residence in establishing the residence requirements for naturalization, provided all conditions of 8 U.S.C. 1427(b), which lists the requirements for naturalization, are satisfied.

The addition of Georgetown University to the list of institutions conducting research abroad will enable alien employees and alien spouses of United States citizen employees of Georgetown University to be deemed eligible for the benefits of sections 316(b) and 319(b), if regularly stationed abroad in the conduct of research.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely amends an existing listing. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have significant economic impact on a substantial number of small entities. This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section (1)(a) of E.O. 12291.

### List of Subjects in 8 CFR Part 316a

Citizenship and naturalization, Immigration and Nationality Act, Residence.

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

## PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

1. The authority for 8 CFR Part 316a continues to read as follows:

**Authority:** Secs. 103 and 316 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1427).

**§ 316a.2 [Amended]**

In § 316a.2, American institutions of research, the listing of organizations is amended by adding in alphabetical sequence "Georgetown University".

Dated: November 12, 1985.

**Richard E. Norton,**

*Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 85-27314 Filed 11-15-85; 8:45 am]

BILLING CODE 4410-10-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. I

### Revocation of Policy Statements; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statements; revocation, correction.

**SUMMARY:** This document corrects the document appearing in the Federal Register on November 1, 1985 (50 FR 45597) that revoked policy statements published by the Commission which have been superseded by agency action or became obsolete in some other way and listed current NRC policy statements. This action is necessary to remove an incorrect listing.

**DATE:** November 1, 1985.

**ADDRESS:** Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free: 800-368-5642.

1. On page 45597, the last line of item 10 in the list of policy statements being revoked which reads "See item 13." should be corrected to read "See item 12".

2. On page 45598, item 31 in the list of current policy statements "Financial Qualifications Statement of Policy (49 FR 24111; June 12, 1984)" should be removed. This policy statement was superseded by a final rule published September 12, 1984 (49 FR 35747) and was erroneously included in this list.

Dated at Washington, DC, this 13th day of November, 1985.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 85-27410 Filed 11-15-85; 8:45 am]

BILLING CODE 7592-21-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-127-AD; Amdt. 39-5171]

## Airworthiness Directives; Boeing Model 737-100, -200, and -300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment suspends the effective date of an existing airworthiness directive (AD) which requires replacement of escape slide pack release assemblies on Boeing Model 737 airplanes. AD 85-19-04 was issued to prevent premature release of the escape slide pack on Boeing Model 737 airplanes, by requiring installation of increased length escape slide pack release cable assemblies. Subsequent to the issuance of the AD, it has been discovered that compliance with the AD may result in interference between certain slide girts and the slide container latch bracket on some installations. This interference could result in a jammed door. The FAA will proceed with rulemaking to correct both the premature escape slide pack release and the girt interference problems when a corrective modification is developed.

**DATE:** Effective November 21, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 85-19-04, Amendment 39-5141 (50 FR 38505; September 23, 1985) requires installation of increased length escape slide pack cable assemblies on Boeing Model 737 airplanes. Installation of the new cable assemblies prevents premature release of the escape slide pack. During accomplishment of the AD, one operator discovered that the longer cable assemblies can lead to interference between the escape slide girt and the slide container latch bracket. This interference can result in a jammed door during an emergency evacuation. Because this situation may be aggravated by accomplishment of AD 85-19-04, the FAA has determined that it is not in the public interest to require a modification that is known to be inadequate; therefore, this action suspends the effective date of the AD.

The FAA will proceed with new rulemaking activity to accomplish the intent of AD 85-19-04, and to correct the potential for slide girt/latch bracket interference, after a corrective modification is developed.

Since a situation exists that requires the immediate suspension of the effective date of a 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 amendment is an emergency amendment that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this amendment since the amendment must be issued immediately to prevent an unsafe condition in aircraft. It has been further determined that this document involves an emergency amendment 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).

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By suspending the effective date of AD 85-19-04, Amendment 39-5141 (50 FR 38505; September 23, 1985).

This amendment becomes effective November 21, 1985.

Issued in Seattle, Washington, on November 7, 1985.

**Charles R. Foster,**

*Director, Northwest Mountain Region.*

[FR Doc. 85-27308 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-47-AD; Amdt. 39-5170]

## Airworthiness Directives; Boeing Model 727-200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) that requires repetitive inspections for corrosion, and repair, as necessary, of the lower surface of the wing center section which forms the upper wall of the ram air plenum chambers on Boeing Model 727-200 airplanes. This action is prompted by reports of corrosion progression through the lower skin into the center wing fuel tank, which permitted fuel to enter the ram air duct and fuel vapor to enter the passenger compartment through the air conditioning system.

**DATES:** Effective December 23, 1985.

**ADDRESSES:** The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that would require repetitive inspections for corrosion, and repair, as necessary, of the lower surface of the wing center section which forms the upper wall of the ram air plenum chambers on Boeing Model 727-200 airplanes was published in the **Federal Register** on June 4, 1985 (50 FR 23434). The comment period for the proposal closed on July 29, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. The Air Transport Association of America (ATA) submitted comments on behalf of its member operators.

The first comment was that the inspection requirements of the proposed AD should not apply to airplanes that

have the anti-corrosion protective finish, Corrogard. The environment in the ram air plenum chamber involves hot temperatures and high velocity unfiltered air that have been found to degrade the Corrogard finish. There has been one reported incident of an airplane with the Corrogard finish installed, on which corrosion progressed through the lower skin into the center wing fuel tank. Because of this incident and other similar incidents of corrosion in airplanes with the Corrogard finish, the FAA has determined that this AD must be made applicable to all Model 727–200 airplanes.

The second comment was that credit should be given for LPS–3 protectant applications during routine heat exchanger removal. The environment in the ram air plenum chamber during flight involves hot, unfiltered air moving through at high velocity. The FAA has determined that, because of the environment in the ram air plenum chamber, there are no anticipated long term anti-corrosion benefits from the LPS–3 applications.

The third comment was that there are several different duct configurations that require specific inspection methods not identified in the service bulletin. The FAA has determined that the ducting is the same for all Model 727–200 airplanes; the only differences are the means of inspection access on certain airplanes, and the type of anti-corrosion finish applied in the duct. Because there is no change to the duct area, the inspection instructions are applicable to all Model 727–200 airplanes, not just the airplanes listed in the service bulletin.

The fourth comment stated that the initial inspection compliance time of 1,500 hours should be extended because it would result in unnecessary grounding of airplanes. During the preparatio of this AD, the FAA proposed a compliance time of 1,500 hours to coincide with the normal inspection intervals. The FAA determined that the inspections should be completed within one year after the effective date of this AD. Upon further assessment, the FAA has determined that 3,000 hours time-in-service is generally equivalent to one year. Therefore, the initial inspection time of 1,500 hours can be changed to 3,000 hours time-in-service without compromising safety. The final rule has been changed accordingly.

The fifth comment was that corrosion is primarily dependent upon calendar time and that any reference to flight hours in the AD should be deleted. Corrosion, once started, is affected by calendar time, but the breakdown of the protective finish is attributable to the normal operational environment of the heat exchanger, which involves elevated temperatures and movement of large amounts of unfiltered air. Therefore, the FAA does not concur with the suggestion that the AD be based strictly upon calendar time.

The final comment was that the repetitive inspection interval should be increased to 8,000 hours to coincide with one operator's planned inspection times. The repetitive inspection interval was initially established based upon the estimated normal inspection interval. Since the increase from 7,500 to 8,000 flight hours does not significantly impact safety, the repetitive inspection interval has been extended accordingly in the final rule.

The FAA has reviewed the available data, including all of the comments received, and has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 861 U.S. operated airplanes will be affected by this AD, that it will take approximately 22 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 $757,680.

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, Boeing Model 727–200 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 727–200 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect corrosion of the wing lower skin that could result in fuel entering the ram air plenum chamber accomplish the following:

A. On airplanes with more than 10,000 hours time-in-service or 4 years since date of manufacture, accomplish the following within the next 3,000 hours time-in-service or 1 year, whichever occurs first after the effective date of this AD:

1. Visually inspect the upper wall of the air conditioning ram air plenum chamber for corrosion in accordance with Part II of Boeing Service Bulletin 727–51–17, dated April 26, 1974, or later FAA approved revision.

2. If corrosion is detected, repair and refinish in accordance with Figure 3 of the Boeing Service Bulletin 727–51–17 dated April 26, 1974, or later FAA-approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Repeat the procedures required in paragraph A., above, at intervals not to exceed either 8,000 hours time-in-service or 4 years, whichever occurs first.

C. Inspections accomplished in accordance with Part II of Boeing Service Bulletin 727–51–17 prior to the effective date of this AD satisfy the initial inspection requirements of this AD.

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.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective December 23, 1985.

Issued in Seattle, Washington, on November 7, 1985.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 85–27309 Filed 11–15–85; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 85-AWA-24]**

## Alteration of Brunswick, ME, Control Area, Maine Transition Area and Establishment of Machias, ME, Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends controlled airspace in and offshore of the state of Maine so that aircraft operating under Instrument Flight Rules (IFR) to and from the Machias Valley Airport can be contained in controlled airspace and thereby provided with air traffic control service.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

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

**SUPPLEMENTARY INFORMATION:**

### History

On August 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Brunswick, ME, Control Area and the Maine Transition Area, and establish the Machias, ME, Transition Area due to the establishment of instrument approach procedures at the Machias Valley, ME, Airport (50 FR 33354). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.163 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations is being made so that air traffic control service can be provided to aircraft operating to and from the Machias Valley, ME, Airport. By designating the affected airspace as controlled airspace, IFR operations benefit additionally from the increased meteorological minimums required for VFR flight in controlled airspace.

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

### List of Subjects in 14 CFR Part 71

Aviation safety, Additional control areas, Transition areas.

### Adoption of the Amendment

## PART 71—[AMENDED]

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

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.163 [Amended]**

2. Section 71.163 is amended as follows:

**Brunswick, ME [Revised]**

In the title remove "Brunswick, ME" and substitute "Brunswick"

That airspace extending upward from 2,000 feet MSL west of long. 69°30'00"W., and from 5,500 feet MSL east of long. 69°30'00"W., beginning at lat. 42°43'15"N., long. 70°25'00"W.; to lat. 43°18'15"N., long. 70°25'00"W.; to lat. 43°30'00"N., long. 70°06'00"W.; to lat. 43°41'00"N., long. 69°30'00"W.; to lat. 43°44'00"N., long. 69°19'42"W.; to lat. 43°48'00"N., long. 69°03'00"W.; to lat. 43°52'00"N., long. 69°00'00"W.; to lat. 44°18'30"N., long. 67°56'00"W.; to lat. 44°20'10"N., long. 67°56'00"W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°25'30"N., long. 67°30'00"W.; to lat. 44°23'00"N., long. 67°30'00"W.; to lat. 44°30'00"N., to long. 67°12'00"W.; to lat. 44°34'05"N., long. 67°13'08"W.; then via a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°47'45"N., long. 66°53'00"W.; then southerly via the Moncton Flight Information Region boundary to the north boundary of Control 1141; then westerly via the north boundary of Control 1141 to point of beginning.

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Maine, ME [Amended]**

In the title by removing "Maine, ME" and substituting "Maine" and by removing the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10"N." and substituting the words "extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°34'05"N., long. 67°13'08"W.; to lat. 44°30'00"N., long. 67°12'00"W.; to lat. 44°23'00"N., long. 67°30'00"W.; to lat. 44°25'30"N., long. 67°30'00"W.; extend by a line 3 nautical miles from and parallel to the U.S. shoreline to lat. 44°20'10"N.

**Machias, ME [New]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Machias Valley Airport (lat. 44°42'01"N., long. 67°28'51"W.); and within 3 statute miles each side of the Machias NDB (lat. 44°42'11"N., long. 67°28'12"W.); 177° bearing extending from the 5-mile radius to 8.5 miles southeast.

Issued in Washington, DC., on November 8, 1985.

**James Burns, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 85-27302 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 85-AWP-17]**

## Alteration of the Bakersfield, CA, Transition Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment will alter and redefine the transition area at Bakersfield, California. This action is necessary as a result of the upcoming name change to the Bakersfield Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC). This action also provides a small alteration to the existing transition area for clarity. The new description refers to geographical coordinates which are permanent in nature and deletes reference to the Bakersfield VORTAC.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

**FOR FURTHER INFORMATION CONTACT:** Bill Reidy, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1186.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 15, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering and redefining the Bakersfield, California, Transition Area (50 FR 28588). This alteration is a result of the upcoming Bakersfield VORTAC name change. To preclude numerous editorial changes to transition area descriptions, this amendment uses geographical coordinates as reference points which are permanent in nature and not subject to change as name and location of navigational aids. This action provides small alteration to the existing transition area for clarity. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) will alter and redefine the description of the Bakersfield, California, transition area using geographical coordinates and delete reference to the Bakersfield VORTAC used in the existing description. This action only changes the existing airspace slightly to provide a clear definition.

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

**List of Subjects in 14 CFR Part 71**

Transition areas.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration, Part 71 of the FAR is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Bakersfield, CA—[Revised]**

"That airspace extending upward from 700 feet above the surface beginning at lat. 35°20'00"N., long. 118°49'45"W.; to lat. 35°48'30"N., long. 119°12'00"W.; to lat. 35°46'00"N., long. 119°17'30"W.; to lat. 35°35'50"N., long. 119°15'00"N.; to lat. 35°32'30"N., long. 119°19'50"W.; to lat. 35°13'50"N., long. 118°58'45"W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 36°00'00"N., long. 118°45'00"W.; to lat. 35°05'00"N., long. 118°45'00"W.; to lat. 35°05'00"N., long. 120°05'00"W.; to lat. 35°43'50"N., long. 120°05'00"W.; to lat. 35°43'50"N., long. 119°30'00"W.; to lat. 36°00'00"N., long. 119°30'00"W.; thence to the point of beginning."

Issued in Los Angeles, California, on November 7, 1985.

**B. Keith Potts,**

*Acting Director, Western-Pacific Region.*

[FR Doc. 85-27307 Filed 11-15-85; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 71**

**[Airspace Docket No. 85-AWA-20]**

## Alteration of the Massachusetts Transition Area and the North Atlantic Control Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action alters controlled airspace in and offshore of the state of Massachusetts so that aircraft operating under Instrument Flight Rules (IFR) in the vicinity of the Nantucket, MA, Airport can be contained in controlled airspace and thereby provided with air traffic control service.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On July 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Massachusetts Transition Area and the North Atlantic Control Area to designate controlled airspace within which air traffic operating under IFR in the vicinity of Nantucket, MA, Airport would be provided air traffic control service (50 FR 29407). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.163 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations is being made so that air traffic control service can be provided to aircraft operating under IFR in the vicinity of Nantucket, MA, Airport. By designating the affected navigable airspace as controlled airspace, IFR operations benefit additionally from the increased meteorological minimums required for VFR flight in controlled airspace.

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

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Transition areas, Additional control areas.

**Adoption of the amendment**

**PART 71—[AMENDED]**

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

1. The authority citation for Part 71 continues to reas as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.163 [Amended]**

2. Section 71.163 is amended as follows:

**North Atlantic, MA [Amended]**

In the title by removing "North Atlantic, MA" and substituting "North Atlantic" and in the text after "shoreline" insert "to lat. 41°08'00" N., long. 71°04'45" W.; to lat. 41°00'00" N., long. 70°51'00" W.; to lat. 41°00'00" N., long. 70°00'00" W.; to lat. 41°09'00" N., long. 70°00'00" W.; to lat. 41°20'00" N., long. 69°45'10" W.; to lat 41°38'00" N., long. 69°45'10" W.; to lat. 41°40'00" N., long. 69°46'30" W.; to lat 41°40'00" N., long. 67°00'00" W.;"

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Massachusetts, MA [Amended]**

In the title by removing "Massachusetts, MA" and substituting "Massachusetts" and in the text by removing the words "to lat. 41°10'25" N., long. 70°12'50" W.; to lat. 41°04'00" N., long. 70°42'30" W.; to lat. 41°12'45" N., long. 70°42'30" W." and substituting the words "to lat. 41°00'00" N., long. 70°00" W.; to lat. 41°00'00" N., long. 70°51'00" W.; to lat. 41°08'30" N., long. 71°04'45" W.;"

Issued in Washington, DC, on November 8, 1985.

**James Burns, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 85-27303 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 85-AWA-26]**

## Alteration of VOR Federal Airways; CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the descriptions of several Federal Airways located in the state of California by revoking some airway segments and renumbering others. This action supports the FAA's agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

**EFFECTIVE DATE:** 0901 G.mt., January 16, 1986.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On August 2, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways located in the vicinity of San Francisco, CA, by deleting all alternate route designations (50 FR 31384). In addition, some airway segments will be revoked and other segments will be renumbered. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and deleting VOR Federal Airways V-5 and V-27 in the state of Hawaii, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal Airways in California by revoking some airway segments and renumbering others. This action supports the FAA's agreement with the ICAO to eliminate all alternate route designations from the National Airspace System.

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

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal Airways.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

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

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-25 [Amended]**

By removing the words "Salinas, CA, including an E alternate via INT Paso Robles 342° and Salinas 131° radials;" and substituting the words "Salinas, CA;"

**V-248 [Amended]**

By removing the words "From Paso Robles, CA," and substituting the words "From Salinas, CA, via INT Salinas 131° and Paso Robles, CA, 342° radials; Paso Robles;"

**V-27 [Amended]**

By removing the words "Mendocino; Fortuna, CA, including a west alternate from Mendocino 17 miles, 77 miles, 53 MSL, Fortuna, excluding the airspace between the main and the west alternate; Crescent City, CA, including a west alternate from Fortuna to Crescent City, excluding the airspace between the main and the west alternate;" and substituting the words "Mendocino; Fortuna, CA; Crescent City, CA;"

**V-494 [Amended]**

By removing the words "From Mendocino, CA," and substituting the words "From Crescent City, CA, via INT Crescent City 195° and Fortuna, CA, 345° radials; Fortuna; INT Fortuna 170° and Mendocino, CA, 321° radials; Mendocino;"

**V-107 [Amended]**

By removing the words "Oakland, CA, including an E alternate via INT Panoche 317° and Oakland 110° radials;" and substituting the words "Oakland, CA;"

**V-301 [Amended]**

By removing the words "From Point Reyes, CA," and substituting the words "From Panoche, CA; via INT Panoche 317° and Oakland, CA, 110° radials; Oakland; Point Reyes, CA;"

**V-230 [Amended]**

By removing the words "Panoche, CA, including a S alternate via INT Salinas 100°

and Panoche 245° radials;" and substituting the words "Panoche, CA;"

**V-87 [Amended]**

By removing the words "From San Francisco, CA," and substituting the words "From Panoche, CA; INT Panoche 245° and Salinas, CA, 100° radials; Salinas; INT Salinas 310° and Woodside, CA, 158° radials; Woodside; San Francisco, CA;"

**V-244 [Amended]**

By removing the words "Stockton, including a S alternate INT Oakland 110° and Stockton 246° radials;" and substituting the word "Stockton;"

**V-195 [Amended]**

By removing the words "From Oakland, CA," and substituting the words "From Stockton, CA; INT Stockton 246° and Oakland, CA, 110° radials; Oakland;"

Issued in Washington, DC, on November 8, 1985.

**James Burns, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 85-27304 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Parts 71 and 73

**[Airspace Docket No. 84-ANM-26]**

## Establishment of Restricted Area R-6714E, Yakima, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes Restricted Area R-6714E directly above existing Restricted Areas R-6714A, B, C, and D near Yakima, WA. The floor of which will be 29,000 feet MSL extending vertically to and including 55,000 feet MSL. This action will provide the necessary airspace for the testing of high altitude weapons. This airspace is expected to be used approximately 25 days per year.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

**FOR FURTHER INFORMATION CONTACT:** Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3128.

**SUPPLEMENTARY INFORMATION:**

### History

On August 19, 1985, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish a new Restricted Area R-6714E directly above existing Restricted Areas R-6714A, B, C, and D near Yakima, WA, and adjust the Continental Control Area accordingly (50 FR 33356). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.67 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

### The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish a new Restricted Area R-6714E directly above existing Restricted Areas R-6714A, B, C, and D near Yakima, WA, and adjust the Continental Control Area accordingly. This action increases the amount of airspace required by the military to conduct their hazardous type operations.

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

### List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Restricted areas, Continental control areas.

### Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.151 [Amended]**

2. Section 71.151 is amended as follows:

**R-6714E Yakima, WA [New]**

## PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 73.67 [Amended]**

4. Section 73.67 is amended as follows:

**R-6714E Yakima, WA [New]**

Boundaries. Beginning at lat. 46°51'00" N., long. 119°58'00" W.; along the west shore of the Columbia River to lat. 46°38'30" N., long. 119°55'30" W.; to lat. 46°33'30" N., long. 119°55'30" W.; to lat. 46°33'30" N., long. 120°09'00" W.; to lat. 46°37'00" N., long. 120°20'00" W.; to lat. 46°40'35" N., long. 120°26'35" W.; to lat. 46°43'00" N., long. 120°26'38" W.; to lat. 46°51'00" N., long. 120°21'30" W.; to lat. 46°51'00" N., long. 120°16'30" W.; to lat. 46°54'35" N., long. 120°14'57" W.; clockwise along the arc of a 12-mile radius circle centered at lat. 46°44'45" N., long. 120°20'00" W.; to lat. 46°51'13" N., long. 120°08'05" W.; to the point of beginning.

Designated altitudes. 29,000 feet MSL to and including 55,000 feet MSL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Seattle ARTCC.

Using agency. U.S. Army, Commanding General, Fort Lewis, WA.

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

**James Burns, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 85-27305 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 73

**[Airspace Docket No. 85-AWA-46]**

## Alteration of Restricted Area R-5001A, Fort Dix, NJ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment changes the time of use for Restricted Area R-5001A located in the vicinity of Fort Dix, NJ, indicating more accurately when the area is being utilized.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air

Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3656.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Area R–5001A located in the vicinity of Fort Dix, NJ, from continuous to a specific time of use. A review of R–5001A conducted by the Department of the Army indicated R–5001A is not used on a continuous basis. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted area is in effect, this action is a minor amendment in which the public would not be particularly interested. For this reason, I find that notice and public procedure under 5 U.S.C. 533(b) is unnecesssary. Section 73.50 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**Adoption of the Amendment**

**PART 73—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.50 [Amended]**

2. Section 73.50 is amended as follows:

**R–5001A Fort Dix, NJ [Amended]**

By removing the word "Continuous." and substituting the words "0600 to 2330 local time, daily. Other times by NOTAM issued one hour in advance."

Issued in Washington, DC, on November 8, 1985.

**James Burns, Jr.,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 85–27301 Filed 11–15–85; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 73**

**[Airspace Docket No. 84–ASO–26]**

## Alteration of Restricted Areas; Fort Stewart, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment changes the times of designation and realigns the internal boundaries of Restricted Areas R–3005A, B, C, D and E, located in the vicinity of Fort Stewart, GA. This action increases the availability of portions of the restricted areas during times when the areas are not being used for ground firing activity.

**EFFECTIVE DATE:** 0901 G.m.t., January 16, 1986.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On March 12, 1985, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to realign the internal boundaries of Restricted Areas R–3005A, B, C, D and E, located in the vicinity of Fort Stewart, GA, (50 FR 9809). The realignment of the areas was the result of negotiations between representatives of the Southern Region and representatives of the 24th Infantry Division, Fort Stewart, GA. The external boundaries of R–3005A, B, C, D and E will remain the same. This action releases portions of the restricted areas for public use when military training missions involve only ground firing. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice except the time of designation has been changed from continuous to the hours specified for use, thereby returning that airspace for public use. Section 73.30 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

**The Rule**

This amendment to Part 73 of the Federal Aviation Regulations changes the times of designation and realigns the internal boundaries of Restricted Areas R–3005A, B, C, D and E, located in the vicinity of Fort Stewart, GA. This action increases the availability of portions of the restricted areas during times when the areas are being used for ground firing activity.

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

**List of Subjects in 14 CFR Part 73**

Restricted areas.

**Adoption of the Amendment**

**PART 73—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 is revised to read as follows:

**Authority:** 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.

**§ 73.3 [Amended]**

2. Section 73.30 is amended as follows:

**R–3005A Fort Stewart, GA [Amended]**

By removing the present boundaries and time of designation and substituting the following boundaries: Beginning at lat. 32°07'00"N., long. 81°43'30"W.; to lat. 31°56'00"N., long. 81°43'30"W.; thence west along Georgia Highway 144 to lat.

31°55'30"N., long. 81°53'00"W.; to lat. 31°57'00"N., long. 81°53'15"W.; to lat. 31°59'45"N., long. 81°51'06"W.; to lat. 32°02'21"N., long. 81°50'42"W.; to lat. 32°02'59"N., long. 81°51'26"W.; to lat. 32°05'24"N., long. 81°50'03"W.; to lat. 32°07'28"N., long. 81°47'17"W.; to the point of beginning.

Time of Designation. 0600–2400 local time, Monday through Sunday; other times by NOTAM 24 hours in advance.

**R-3005B Fort Stewart, GA [Amended]**

By removing the present boundaries and time of designation and substituting the following boundaries: Beginning at lat. 32°06'45"N., long. 81°37'00"W.; thence south along Georgia Highway 119 to lat. 31°54'00"N., long. 81°38'15"W.; thence northwest along Georgia Highway 144 to lat. 31°56'00"N., long. 81°43'30"W.; to lat. 32°07'00"N., long. 81°43'30"W.; to the point of beginning.

Time of Designation. 0600–2400 local time, Monday through Sunday; other times by NOTAM 24 hours in advance.

**R-3005C Fort Stewart, GA [Amended]**

By removing the present boundaries and time of designation and substituting the following boundaries: Beginning at lat. 32°04'45" N., long. 81°26'30" W.; to lat. 31°57'30" N., long. 81°26'30" W.; thence southwest along Georgia Highway 144 to lat. 31°53'11" N., long. 81°37'51" W.; thence north along Georgia Highway 119 to lat. 32°06'45" N., long. 81°37'00" W.; to lat. 32°06'15" N., long. 81°31'30" W.; to lat. 32°05'30" N., long. 81°31'30" W.; to lat. 32°05'15" N., long. 81°30'00" W.; to the point of beginning.

Time of Designation. 0600–0300 local time, Monday through Sunday; other times by NOTAM 24 hours in advance.

**R-3005D Fort Stewart, GA [Amended]**

By removing the present boundaries and time of designation and substituting the following boundaries: Beginning at lat. 31°57'30" N., long. 81°26'30" W.; to lat. 32°04'45" N., long. 81°26'30" W.; to lat. 32°04'15" N., long. 81°22'30" W.; thence along the Ogeechee River to lat. 32°00'30" N., long. 81°19'30" W.; to lat. 31°58'45" N., long. 81°19'45" W.; to lat. 31°56'15" N., long. 81°23'00" W.; to lat. 31°54'03" N., long. 81°28'45" W.; thence counterclockwise along the arc of a 5-mile radius circle centered at lat. 31°53'20" N., long. 81°33'45" W.; to lat. 31°56'48" N., long. 81°30'42" W.; thence east along Georgia Highway 144 to the point of beginning.

Time of Designation. 0600–2400 local time, Monday through Sunday; other times by NOTAM 24 hours in advance.

**R-3005E Fort Stewart, GA [Amended]**

By removing the present boundaries and time of designation and substituting the following boundaries: Beginning at lat. 31°54'00" N., long. 81°38'15" W.; to lat. 31°53'11" N., long. 81°37'51" W.; to lat. 31°52'20" N., long. 81°38'10" W.; to lat. 31°51'55" N., long. 81°39'50" W.; to lat. 31°51'30" N., long. 81°41'45" W.; to lat. 31°55'00" N., long. 81°53'00" W.; to lat. 31°55'30" N., long. 81°53'00" W.; thence east along Georgia Highway 144 to the point of beginning.

Time of Designation. 0600–2400 local time, Monday through Sunday; other times by NOTAM 24 hours in advance.

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

**James Burns, Jr.,**

*Acting Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 85-27306 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Parts 371, 373, 379, 385, 386, 399

**[Docket No. 51068-5168]**

### Export Controls on the Republic of South Africa

**AGENCY:** Office of Export Administration Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule prohibits certain trade and other transactions involving South Africa set out in Executive Order 12532 and in section 6(n) of the Export Administration Act of 1979, as amended by the Export Administration Amendments Act of 1985. The main effect of the provisions implementing section 6(n) is to require validated export licenses for all exports to the South African military and police, even though the export could be made under general license to other parties in South Africa. Licenses to the military and police will be denied, except when specified medical and anti-hijacking exceptions apply. The principal effect of the Executive Order is to prohibit exports of all computers, computer software, or goods or technology to service computers to all apartheid enforcing entities of the South African Government. The Export Administration regulations list entities that have been determined to enforce apartheid. The list will be under continual review, and likely will be modified and expanded periodically.

Specifically, these regulations provide for:

1. Identifying the Republic of South Africa agencies that enforce apartheid or administer the black passbook and similar controls;

2. Imposing new validated license requirements for previously uncontrolled personal computers, computer software, and goods and technical data to service computers;

3. Revising licensing policies to reflect the prohibitions;

4. Requiring written assurance for export of technical data under General License GTDR;

5. Publishing a certification required from consignees of computers or goods to service computers in the Republic of South Africa and Namibia; and

6. Requiring denial of licenses for exports to nuclear utilization and production facilities.

In addition, consistent with the Executive Order, the Office of Export Administration (OEA) will institute and vigorously administer an enhanced system of end use verification, which will involve periodic verification by U.S. Government or exporter personnel of location and use of certain computers.

**EFFECTIVE DATE:** October 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** James Allen, Policy Planning Division, Office of Export Administration, Department of Commerce, Washington, D.C. (Telephone: (202) 377-5622).

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. This rule is exempted, pursuant to section 13(a) of the Export Administration Act of 1979, as amended, from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553). This regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements have been approved by the Office of Management and Budget under control numbers 0625-0001, 0625-0052, and 0625-0140. OMB approval is pending for the new reporting requirement contained in EAR 385.4(a)(9)(iv)(B). Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Mangement and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce/International Trade Administration.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no preliminary or final Regulatory Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on these regulations are welcome on a continuing basis.

**List of Subjects**

*15 CFR Part 371*

Exports.

*15 CFR Part 373*

Exports.

*15 CFR Part 379*

Exports, Science and technology.

*15 CFR Part 385*

Communist countries, Exports.

*15 CFR Part 386*

Exports.

*15 CFR Part 399*

Exports.

Accordingly, the Export Administration Regulations [15 CFR Parts 368–399] are amended as follows:

1. The authority citations for 15 CFR Parts 371, 373, 379, 385, 386 and 399 are revised to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

## PART 371—[AMENDED]

Section 371.2 is amended by adding paragraph (c)(11), which was formerly reserved:

**§ 371.2 General Provisions.**

* * * * *

(c) Prohibited shipments.* * *

(11) The exporter or reexporter knows or has reason to know that the commodity is for delivery, directly or indirectly, to or for use by or for military or police entities in the Republic of South Africa or Namibia. This includes commodities for purposes of servicing equipment owned, controlled or used by or for such entities; or

* * * * *

## PART 373—[AMENDED]

3. Section 373.1 is amended by revising paragraph (a)(1)(iii) to read as follows and by removing paragraph (a)(3):

**§ 373.1 Introduction.**

* * * * *

(a) *Special Limitations.* (1) * * *

(iii) Export or reexport any computers covered by CCL entry 1565 or 6565G, or any goods intended to service computers, to or for use by or for apartheid enforcing entities of the Government of South Africa identified in Supplement No. 1 to Part 385.

* * * * *

4. Section 373.3 is amended by removing the comma, and placing a colon after "Namibia" in the first sentence of (d)(3)(ii)(E)(*3*)(*ii*), and by removing the remainder of the sentence and by revising the phrase "computer-related equipment" in the first sentence of (d)(3)(ii)(E)(*3*)(*iii*) to read "goods to service computers" and by revising the certification in (d)(3)(ii)(E)(*3*)(*iii*) to read:

I(we) certify that the commodities and/or technical data received under this license will not be sold or otherwise made available, directly, or indirectly, to or for use by or for the following entities in the Republic of South Africa or Namibia: police or military entities, any entity involved directly or indirectly in either a nuclear or sensitive nuclear end use, or entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 385 of the Export Administration Regulations. These commodities are not to be used to service computers owned, controlled, or used by or for the entities indicated above.

**Note.**—See sections 373.3(a)(2) and 378.3 for definitions relating to nuclear end use.

5. Section 373.3(e)(1)(iii) is revised to read as follows:

* * * * *

(e) * * * (1) * * *

(iii) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (TDO) (Supplement No. 1 to Part 388), the list (where appropriate) of South African entities enforcing apartheid (Supplement No. 1 to Part 385), and other regulatory material necessary to ensure compliance;

* * * * *

## PART 379—[AMENDED]

6. Section 379.4(e) is revised to read as follows:

**§ 379.4 General License GTDR: Technical Data Under Restriction.**

* * * * *

(e) *Restrictions Applicable to Republic of South Africa and Namibia*—(1) *General Prohibition.* No technical data may be exported or reexported to the Republic of South Africa or Namibia under this General License GTDR where the exporter or reexporter knows or has reason to know that the data or any products of the data are for delivery, directly or indirectly, to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled or used by or for such entities. As used in this paragraph (e), the term "any products of the data" includes the direct product [1] of the data and any subsequent products of the direct product. No technical data for use in servicing computers, and no computer software, may be exported or reexported to the Republic of South Africa or Namibia under this General License GTDR where the exporter or reexporter knows or has reason to know that the data will be made available to or for use by or for apartheid-enforcing entities identified in Supplement No. 1 to Part 385. In addition, no technical data relating to the commodities listed in Supplement No. 2 to this Part 379 may be exported or reexported under this General License GTDR to any consignee in the Republic of South Africa or Namibia.

(2) *Written Assurance.* In addition to any written assurances that may be required by paragraph (f) of this section, no export or reexport of technical data, including computer software, may be made under this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product of the data will be made available to or for use by or for military or police entities of the Republic of South Africa or Namibia. If the technical data is intended to service computers or consists of computer software, the written assurance must also state that the data will not be made available to or for use by or for the apartheid-enforcing entities identified in Supplement No. 1 to Part 385. To facilitate this assurance, the potential exporter shall provide a current copy of Supplement No. 1 to Part 385 to the intended recipient at the time the written assurance is requested.

* * * * *

## PART 385—[AMENDED]

7. §385.4(a) is revised to read as follows:

[1] The term "direct product," as used in this paragraph, is defined to mean the immediate product (including processes and services) produced directly by use of the technical data.

§385.4 Country Groups T&V.

(a) *Republic of South Africa and Namibia.* In conformity with the United Nations Security Council Resolutions of 1963 and 1977 relating to exports of arms and munitions to the Republic of South Africa, and consistent with U.S. foreign policy toward the Republic of South Africa and Namibia, the Department of Commerce has established the following special policies for commodities and technical data under its licensing jurisdiction.

(1) An embargo is in effect on the export or reexport to the Republic of South Africa and Namibia of arms, munitions, military equipment and materials, and materials and machinery for use in manufacture and maintenance of such equipment. Commodities to which this embargo applies are listed in Supplement No. 2 to Part 379 of this chapter.

(2) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of *any* commodity, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in these destinations or used to service equipment owned, controlled or used by or for such military or police entities. (See § 385.4(a)(7) and (10) for case-by-case exceptions.)

(3) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of technical data—except technical data generally available to the public that meets the conditions of General License GTDA—where (i) the technical data relate to the commodities listed in Supplement No. 2 to Part 379 of this chapter, (ii) the exporter or reexporter knows or has reason to know that the technical data or any product of the data as defined in § 379.4(e) of this chapter are for delivery to or for use by or for the military or police entities of these destinations or for use in servicing equipment owned, controlled or used by or for these entities (see § 385.4(a)(7) and (10) for case-by-case exceptions), or (iii) the technical data consist of data to service computers or of computer software and the exporter or reexporter knows or has reason to know that it will be made available to or for use by or for apartheid enforcing entities identified in Supplement No. 1 to Part 385 (with case-by-case exceptions possible for humanitarian purposes). In addition, users in the Republic of South Africa or Namibia of technical data that do qualify for export or reexport under the provisions of General License GTDR must provide a written assurance to the U.S. exporter as required by § 379.4(e)(2) of this chapter.

(4) Parts, components, materials and other commodities exported from the United States under either a general or validated export license may not be used abroad to manufacture or produce foreign-made end-products where it is known or there is reason to know the end-product will be sold to or used by or for military or police entities in the Republic of South Africa or Namibia. (See § 385.4(a)(7) and (10) for case-by-case exceptions.)

(5) A validated export license is required for the export to the Republic of South Africa and Namibia of any instrument and equipment particularly useful in crime control and detection, as defined in § 376.14 of this chapter.

(6) General License GIT may not be used for any commodity destined for the Republic of South Africa or Namibia (see § 371.4(b) of this chapter).

(7) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of medicines, medical supplies, medical equipment, related technical data, and parts and components, to any end-user.

(8) A validated license is required for export to all consignees of aircraft and helicopters. Applications will generally be considered favorably on a case-by-case basis for such exports for which adequate written assurances have been obtained against military, paramilitary, or police use.

(9)(i) A validated license is required for the export or reexport to government consignees of computers as defined in CCL entries 1565A and 6565G, and of goods to service computers. "Goods to service computers" include any national security-controlled item intended for such use, and any items in ECCN 6594F. Applications will be denied if the export is likely to be used by or for apartheid enforcing entities identified in Supplement No. 1 to Part 385, with case-by-case exceptions possible for humanitarian purposes. (ii) Insubstantial U.S. origin parts or peripherals in foreign origin computer systems may be approved on a case-by-case basis. Content is generally considered to be insubstantial when it is 20% or less by value. (iii) Applications to export computers or goods to service computers to the Republic of South Africa or Namibia must be accompanied by the following certification signed by the ultimate consignee:

I(We) certify that we are the recipient of the commodities and/or technical data to be delivered under this license, that we are not affiliated with any apartheid-enforcing entity, and that the commodities and/or technical data will not be sold or otherwise made available, directly or indirectly, to or for use by or for the following entities in the Republic of South Africa or Namibia: police or military entities, any entity involved directly or indirectly in either a nuclear or sensitive nuclear end use, or entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 385 of the Export Administration Regulations. These commodities/technical data are not to be used to service computers owned, controlled, or used by or for the entities indicated above. I(We) will cooperate with post-shipment inquiries by U.S. officials to verify disposition or use of the commodities/technical data. If requested by the exporter, we will periodically provide information concerning the disposition or use of commodities/technical data received under this license, including the identity of customers to whom the items were resold.

Note.—See §§ 373.3(a)(2) and 378.3 for definitions relating to nuclear end uses.

(iv)(A) Exporters shall make available to each ultimate consignee a current copy of Supplement No. 1 to Part 385 identifying apartheid enforcing entities. OEA may require the licensee to certify subsequent to delivery that the computers have not been retransferred to unauthorized end-uses or end-users.

(B) When the license authorizes resale within the Republic of South Africa or Namibia, the requirement may include identification of customers to whom the ultimate consignees have sold the computers, with further identifications of customers to be provided at six month intervals until all computers exported under the license have been sold.

(10) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of commodities and related technical data, and parts and components, to be used in efforts to prevent acts of unlawful interference with international civil aviation.

(11) Applications for validated licenses for commodities and technical data for nuclear production or utilization facilities or those likely to be diverted to such facilities will be denied, except on a case-by-case basis to assist International Atomic Energy Agency (IAEA) safeguards or IAEA programs generally available to member states, or for technical programs to reduce proliferation risks, or for exports that are determined to be necessary for humanitarian reasons to protect the public health and safety.

(12) License applications involving contracts entered into prior to the President's Executive Order of September 9, 1985, will be considered on

a case-by-case basis in accordance with the regulations and policies that were in effect prior to the issuance of such Order. Applications involving contracts entered into on or after September 9, 1985, will be subject to the October 11, 1985, revisions to the regulations that implement that Order.

## PART 385—[AMENDED]

8. A new Supplement No. 1 to Part 385 (which was formerly reserved) is added as follows:

**Supplement No. 1 to Part 385—South Africa Entities Enforcing Apartheid**

The following have been identified as South African entities that enforce apartheid. Exporters should be aware that this list cannot be all-inclusive because names of agencies are subject to change, and because agencies may assume apartheid enforcing activities in the future. Before making commitments to export, exporters may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520, to ascertain whether or not a potential customer is an "agency enforcing apartheid."

Ministry of Justice
Ministry of Home Affairs and National Education
Ministry of Constitutional Development and Planning
Ministry of Law and Order
Ministry of Manpower
Ministry of Education and Developing Aid, including the Development Boards and the Rural Development Boards (formerly known as the Ministry of Cooperation, Development and Education)

Other agencies enforcing apartheid (including local, regional and "Homeland agencies") e.g., those that regulate employment, classification, or residence of non-whites.

**Note.**—The Department of State has determined that the following agencies are not considered to be apartheid enforcing entities:

Ministry of Communication and Public Works (This includes post and telecommunication agencies)
Ministry of Agricultural Economics and Water Affairs
Ministry of Mineral and Energy Affairs
Ministry of Finance.

9. Supplement No. 2 to Part 385 is amended by revising paragraph 1(a) and removing 1(c) as follows:

**Supplement No. 2 to Part 385—Interpretations**

1. The Department has received * * *

(a) In addition to the military and police of South Africa and Namibia, the following are considered to be police or military entities:

ARMSCOR (Armaments Development and Production Corporation) and its subsidiaries (Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentron (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering Works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressing (P.M.P.) (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telacast (Pty) Ltd., and Musgrave Manufacturers and Distributors)
Department of Prisons
"Homeland" Police and Armed Forces
National Institute of Defense Research of CSIR
National Intelligence Services
South African Railways Police Force
Weapons research activities of the Council for Scientific and Industrial Research (CSIR)

(b) * * *

## PART 386—[AMENDED]

10. § 386.6(a)(2) is amended by removing the footnote.

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6499G is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Technical Data" paragraph as follows:

6499G Other transportation equipment, n.e.s.; and parts and accessories, n.e.s.

* * * * *

*Special South Africa and Namibia Controls:* A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to read as follows:

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers; and specially designed components and accessories for these electronic computers and "related equipment".

* * * * *

*Special South Africa and Namibia Controls:*

Foreign policy export controls apply to exports to or for use by or for government consignees in the Republic of South Africa and Namibia. See § 385.4(a)(9).

## PART 399—[AMENDED]

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to read as follows:

6899G Other rubber and rubber products, n.e.s.

* * * * *

*Special South Africa and Namibia Controls:* A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

14. The Commodity Control List (Supplement No. 1 to 399.1) is amended by adding the following "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to the below listed ECCN's:

*Special South Africa and Namibia Controls:* A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a)

| | |
|---|---|
| 6098F | 6399G |
| 6099G | 5565D |
| 6191F | 6598F |
| 6199G | 6599G |
| 6299G | 4699G |
| 6390F | 6699G |
| 6391F | 6779F |
| 6392F | 6799G |
| 6398G | 6999G |

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), new ECCN's 6565G and 6594F are added in numerical order (disregarding the first digit).

6565G Personal computers excepted from control under ECCN 1565A because they meet the specifications of paragraph (h)(2)(iv) of 1565A.
*Controls for ECCN 6565G*
*Unit:* Report in number.
*Validated License Required:* Country Groups SZ.
*GLV $ Value Limit:* General License GLV not applicable; however, another general license may apply.
*Special South Africa and Namibia Controls:* A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or entities enforcing apartheid identified in Supplement No. 1 to Part 385, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).
6594F Electronic equipment specially designed to service computers, n.e.s. (specify make and model).
*Control for ECCN 6594F*
*Unit:* Report in "number".

*Validated License Required:* SZ, the Republic of South Africa and Namibia;
*GLV $ Value Limit:* $0 to all destinations.
*Processing Code:* EE
*Special Licenses Available:* See Part 373.

**Advisory Note.**—Licenses are likely to be approved for export to the Republic of South Africa and Namibia if the recipient has provided the written assurance required by § 385.4(a)(9).

**John K. Boidock,**
*Director, Office of Export Administration, International Trade Administration.*
November 14, 1985.
[FR Doc. 85-27482 Filed 11-14-85; 3:17 pm]
BILLING CODE 3510-DT-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 172 and 189

[Docket No. 81N-0292]

### Cinnamyl Anthranilate; Prohibition of Use in Human Food

*Correction*

In FR Doc. 85-25201, beginning on page 42929 in the issue of Wednesday, October 23, 1985, make the following corrections:

1. On page 42930, in the second column, in the last paragraph, in the tenth line, the citation should read: "58:461-465, 1977".

2. In the second column, in the sixth line from the bottom, the page numbers "266-233" should read "226-233".

3. In the third column, under **"II. New Data Submitted by FEMA"**, in the fourth line, "anthranilated" should read "anthranilate".

BILLING CODE 1505-01-M

### 21 CFR Part 440

[Docket No. 85N-0393]

### Antibiotic Drugs; Amoxicillin Trihydrate-Clavulanate Potassium Chewable Tablets

*Correction*

In FR 85-25202 beginning on page 42932 in the issue of Wednesday, October 23, 1985, make the following corrections on page 42933:

1. In the second column, in § 440.103f(a)(2), in the third line, "the" should read "this".

2. Also in the second column, in § 440.103f(a)(3)(ii)(*b*), in the second line, insert "in" before "making".

BILLING CODE 1505-01-M

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

**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 for Growmark, Inc., providing for the use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

**EFFECTIVE DATE:** November 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

**SUPPLEMENTARY INFORMATION:** Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is sponsor of NADA 139-239 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are for making complete swine feeds used for aid in prevention of migration and establishment and for removal and control of large roundworm (*Ascaris suum*) infections; and for aid in prevention of establishment and for removal and control of nodular worm (*Oesophagostomum* spp.) infections.

The NADA is approved and the regulations are amended to reflect this 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 agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that 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.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.485 by adding new paragraph (a)(25) to read as follows:

**§ 558.485 Pyrantel tartrate.**

(a) * * *

(25) To 020275: 9.6 and 19.2 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Dated: November 6, 1985.

**Lester M. Crawford,**
*Director, Center for Veterinary Medicine.*
[FR Doc. 85-27320 Filed 11-15-85; 8:45 am]
BILLING CODE 4160-01-M

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Virginiamycin

**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 two supplemental new animal drug applications (NADA's) filed by SmithKline Animal Health Products providing for use of premixes containing 5, 10, 20, 50, or 227 grams of virginiamycin per pound in manufacturing complete broiler chicken feeds. The complete feeds are indicated for prevention of necrotic enteritis.

**EFFECTIVE DATE:** November 18, 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:** SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed supplemental NADA's 91-467 and 91-513 providing for use of premixes

containing 5, 10, 20, 50, or 227 grams of virginiamycin per pound in manufacturing a complete broiler chicken feed containing 20 grams of virginiamycin per ton. The feed is used to prevent necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin. The supplemental NADA's are approved and the regulations are amended to reflect the approval.

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 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. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.635 by adding new paragraph (f)(2)(iii) to read as follows:

**§ 58.635 Virginiamycin.**

* * * * *

(f) * * *

(2) * * *

(iii) 20 grams per ton for prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin in broiler chickens; not for use in layers.

* * * * *

Dated: November 6, 1985.

**Lester M. Crawford,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 85-27319 Filed 11-15-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR Part 990

**[Docket No. R-85-1170; FR-1834]**

### Modification to the Performance Funding System

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Performance Funding System (PFS) for determining HUD annual operating subsidy to public housing agencies (PHAs) operating public housing projects. It requires a year-end adjustment in investment income for PHAs with significant amounts to invest, clarifies the role of the PHAs in determining the Allowable Expense Level for certain new projects, simplifies the determination of the change in the Allowable Expense Level each year, and requires a payment system for operating subsidies involving electronic funds transfers from the U.S. Department of the Treasury to PHAs on a predetermined schedule, based on projected cash expenditures. The rule does not require, as the proposed rule would have, year-end adjustments for dwelling rental income and other non-investment income.

**EFFECTIVE DATE:** Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication but not before further notice of the effective date is published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** John T. Comerford, Chief, Financial Management Branch, Office of Public and Indian Housing, Room 4216, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 426-1872. (This is not a toll-free number.).

**SUPPLEMENTARY INFORMATION:**

**Response to Public Comments**

*A. General*

The Department published a proposed rule on July 30, 1984 (49 FR 30330), which set forth minor regulatory changes in the Performance Funding System under which HUD determines the amount of operating subsidy it will pay to a PHA under section 9(a) of the U.S. Housing Act of 1937 (42 U.S.C. 1437g). The operating subsidy is the difference between a PHA's allowable expenses under the PFS formula and its adjusted projection of operating income. The proposed changes included simplification of the calculation of the change ("Delta") in the Allowable Expense Level ("AEL") for a PHA's projects; addition of specific year-end adjustments for several categories of income, to reflect the difference between original estimates and later data; clarification of the method of determining the AEL for new projects; and a revision to the payment method for operating subsidies to reflect requirements of the U.S. Department of the Treasury to use a system of electronic funds tranfer based on letters of credit.

These changes were proposed in order to simplify the calculations necessary for each year's determination of subsidy, while assuring that subsidy calculations are based on an assumption of reasonable return on PHA investments, and that Federal funds are not disbursed to PHAs in advance of actual need. The changes were viewed as a fine-tuning of the PFS currently in operation.

The Department received seventeen substantive comments which included comments from public housing agencies (PHAs) of varying sizes, the Council of Large Public Housing Authorities (CLPHA) and the National Association of Housing and Redevelopment Officials (NAHRO).

1. Piecemeal revision of the PFS

Several commenters objected to the proposed rule as a violation of a pledge made by OMB Director David Stockman to congressional leaders that the Administration would not propose changes in the PFS without evaluating the entire system and seeking consultation with PHAs and their representatives.

The pledge referenced by the commenters was an assurance made on November 16, 1983 by David Stockman, in individual letters to Senator Garn and Representative St Germain. Those letters stated, "The Administration has agreed that it would seek authorizing legislation for any fundamental changes

or structural program reforms it might wish to make for [operating subsidy and modernization] programs in 1985."

HUD and OMB regard the rule changes proposed in the PFS as minor, not the type contemplated in the discussion of legislative initiatives. Proposals for fundamental changes that were being considered when that assurance was made were discussed in the 1982 HUD report to Congress on Alternative Operating Subsidy Systems for the Public Housing Program. Two proposals that received considerable HUD attention were (1) to convert to a public housing subsidy system based on the Section 8 Existing Housing Fair Market Rents for the market area and to eliminate separate funding for modernization (but permit accumulation of a replacement reserve), and (2) to fund public housing through State or local governments. These proposals were considered as candidates for new legislative proposals, and, in fact, the first option was the subject of a HUD legislative proposal in 1983. The changes contained in the proposed rule, on the other hand, are not of the same magnitude. They go no further than to refine the current PFS, relying on the same basic formula. Therefore, HUD and OMB do not view the proposed rule as a violation of Mr. Stockman's commitment to Senator Garn and Representative St Germain.

2. Impact on Small Entities

One commenter stated that HUD's assertion in the preamble of the proposed rule that the rule would not have a significant impact on small entities is inaccurate. The major changes contained in the proposed rule were the year-end adjustments in income and the simplification of the "Delta"—the factor used to determine the change in Allowable Expense Level (AEL) from year to year. The basis for our conclusion that the rule would not significantly affect small entities was that the rule would primarily simplify procedures used for calculating Federal subsidy to small governmental entities operating public housing projects. The year-end adjustments on rental and other income, which were the target of most of the commenters, are now being removed from the final rule. The remaining year-end adjustment—for investment income—has less impact on small PHAs than on large ones, since it applies only to PHAs with more than $20,000 in their General Fund. Consequently, we conclude that this final rule will not have a significant impact on small entities.

*B. Allowable Expense Level for New Projects—Proposed § 990.105(e)(3)*

The proposed § 990.105(e)(5) addressed the issue of how to determine the AEL for a new project of a new PHA, or for a new project of an existing PHA when that project is placed under a separate Annual Contributions Contract (ACC). The rule proposed that HUD would determine the AEL for such a project for the first budget year, based on the AEL for a comparable project.

One PHA asked the purpose of this rule provision. The purpose is to provide simpler and more flexible procedures for setting AELs for new projects that were adopted as HUD policy in November 1980 in HUD Handbook 7475.13 CHG–6. That Handbook revision allowed a PHA to select a comparable project for determining the AEL for new projects. Before that change, a PHA was required to determine the AEL for a new project by recalculating the formula for the base year and working through the inflation factors for succeeding fiscal years to the requested budget year.

Two PHAs recommended that HUD specify in the rule the criteria for determining a comparable project to be used for establishing the Allowable Expense Level for a new project. Alternatively, they recommended that the PHA be allowed to identify a comparable project or, if there is none, to project a budget based on its other projects.

The Department's current practice is to allow PHAs to identify and select comparable projects. Since HUD field offices have access to extensive data on project characteristics, PHAs may obtain assistance from them in locating comparable projects. However, HUD retains the right to make a final determination regarding the appropriateness of the PHA's selection. This procedure is being clarified in a revision to the proposed § 990.105(e)(3) contained in this final rule.

One PHA asked what criteria would be used to determine whether a new project would be placed under a separate ACC and whether the PHA would be allowed to make the decision. Under current practice, a PHA is given the option during the project development phase whether to place its new projects under a separate ACC or a consolidated one. If a PHA decides to consolidate the new project under the existing ACC, it must be determined whether or not the new project, combined with existing projects, would amount to a change in the number of units of five percent or 1,000 units, whichever is less. If there would be a significant change in the number of units, the PHA's current AEL would be revised by the change in the Delta calculation that occurs when the characteristics of the new project are added. If the five percent/1,000 unit threshold of change is not met, the PHA's current AEL would be used for the new project, as well as existing ones. Under certain circumstances, for example where the AEL for existing projects is lower than the actual expense level for those projects, it would be more advantageous for a PHA to place a new project under a separate ACC. However, in making the decision to use a separate ACC, the PHA should also consider the separate reporting and budgeting requirements for separate ACCs required under HUD procedures.

*C. Adjustment to Base Year Expense Level and Appeal Procedure—Proposed § 990.110(a)*

A few PHAs commented that any PHA, not just new ones, should be able to have an adjustment in its Base Year Expense Level, on which succeeding years' AELs are based. They indicated that they now have new types of expenses that they did not have when their Base Year Expense Level was calculated. Examples cited are security expenses, staff costs no longer covered by the expired Comprehensive Employment Training Act (CETA), and deferred maintenance costs. In addition, two PHAs in the Southeast indicated that their cities have much higher costs than the region as a whole—a fact that they argued should be the basis for an adjustment in the Base Year Expense Level. CLPHA added that an appeal procedure should be available to assure that a PHA does not suffer unduly as a result of the revised procedures.

Each PHA's Base Year Expense Level was developed by examining the budgeted expenses of that PHA. The Base Year Expense Level, which is used to establish operating subsidy eligibility for the initial year under the PFS formula, is subject to an appeal during the initial implementation of the PFS, when it is used. The challenged provision was added in recognition that although the PFS has been operational for some time, there are still new projects under separate ACCs and new PHA's with a first project, for which guidance on establishing a Base Year Expense level was needed.

With regard to the two PHAs in the southeastern region that had higher costs than the region as a whole, which may not have been reflected in their Base Year Expense Levels, an adjustment to the Base Year is not appropriate, as that deals with the initial

year under the PFS formula. Funding after the initial year is based on a formula that does not take these factors into consideration. At this time of Federal budget restraint, we do not believe it is reasonable to provide for changes in the formula, including an appeal procedure, that would inevitably lead to higher levels of subsidy eligibility.

*D. Simplification of the Delta—Proposed § 990.105(e)(5)*

The Delta is the change in the Allowable Expense Level from year to year that is determined by considering differences in a PHA's housing stock with reference to such factors as the age of the units, building height, and average unit size. The proposed simplification was to use a Delta of +.5 percent each year, unless a PHA had experienced enough change in housing stock since the last comprehensive calculation to reach a threshold of net change in the number of units of 5 percent or 1,000 units, whichever is less. Only when the threshold is met would the comprehensive calculation be done, evaluating each project on each factor and applying various weights and constants to determine a new Delta, and a new AEL based on it. If the PHA has had little or no change in its stock, the .5 percent factor is applied to reflect the higher maintenance costs attributable to the aging of the stock.

Several PHAs favored this simplification. Three PHAs objected, arguing that the .5 percent increase compared unfavorably with Deltas calculated for them in the past. Two of these PHAs had changes of more than 5 percent in their number of units during that period, and therefore the simplified delta would not have applied to them, had the proposed rule been in effect then. The third PHA stated that the standard Delta was too low in comparison with the Delta used for it for three recent years. An examination of this case showed this to be true, but by a very small amount. Over five years, the .5 percent Delta would have given the PHA a slightly higher AEL. In this final rule, the Department stands by its choice of a .5 percent increase as the average value of the Delta calculation when a PHA experiences a very small change, or no change in the number of units.

One PHA stated that determining when a cumulative change in the number of units since the last adjustment to the AEL, based on actual figures, has reached the threshold requires burdensome tracking and recordkeeping for a large PHA. We believe that changes in the net public housing stock of a PHA are relatively modest and easy to track. In a year that a PHA has its AEL established based on a Delta derived from actual figures, it could note the number of units that would have to be reached before triggering another comprehensive calculation—the number representing a net decrease or increase of 5 percent or 1,000 units (whichever is less when applied to that PHA). If the PHA has more than 20,000 units, the 1,000 unit change would apply, and the PHA would simply note that no Delta calculation need be performed until the PHA had a net increase or decrease in number of units of 1,000 from the current unit count. Each year's PFS calculation provides a record of the number of units under management and whether the comprehensive Delta calculation had been used.

A few commenters suggested that the rule provide a more generous assumed percentage for the Delta or allow the PHAs the opportunity to choose whether to use the assumed percentage or the Delta based on actual data. One large, urban PHA suggested that PHAs that try to update their housing stock by eliminating old units and adding new units would be likely to trigger the threshold change in number of units, but then would have a Delta calculation lower than the assumed .5 percent increases. To encourage updating their housing stock, PHAs should have the option of using the assumed Delta, even when the threshold is triggered, they argued.

Allowing the PHA to choose when to calculate the Delta based on actual figures and when to use the assumed percentage would be tantamount to letting them choose the way to calculate the highest AEL rather than the way to calculate the AEL most representative of cost. This would not be consistent with the Department's obligation under section 9(a) of the Act to provide only such Federal assistance as the Secretary determines is *required* to assure the lower income character of the projects involved. Since the Department provides Federal tax dollars for the funding of operating costs for the PHAs under that authority, the Secretary has retained the ability to adjust the AEL downward when warranted by the nature of the change in units. For example, if a PHA changes from having only a large old family project to having a new elderly project in addition, the average AEL for that PHA should drop, since the new units would not require the same expense level as the older units. In the same vein, we believe that a PHA that chooses to eliminate older, more expensive units in numbers sufficient to trigger the threshold should have its AEL adjusted to reflect the level required by the remaining stock.

The .5 percent increase used as the assumed Delta is the Department's best estimate of the average actual change in expense level of PHAs that do not experience major changes in housing stock. We do not believe a higher figure to be warranted.

One commenter recommended that the factors used to determine the Formula Expense Level (FEL), from which the Delta is derived, should be revised. The current proposal to simplify the Delta is designed to streamline the current calculation in cases where a PHA has not significantly changed its number of units, but within the context of the current system and formula.

*E. Use of Actual vs. Estimated Income—Proposed § 990.110(b)–(d)*

Several commenters criticized the proposal to include in the rule year-end adjustments of the three types of income—dwelling rental, investment and "other". They asserted that adjustments to reflect actual experience, as opposed to estimates, are inconsistent with section 9(a)(1) of the United States Housing Act of 1937 (the Act). That section provides, in part, as follows:

> For purposes of making [operating subsidy] payments under this section, the Secretary shall establish standards for costs of operation and *reasonable projections of income*, taking into account the character and location of the project and characteristics of the families served, or the costs of providing comparable services, as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project. [Emphasis added]

Section 9(a)(1) of the Act contains not only the reference to use of reasonable projections of income but also a requirement that the Secretary limit annual payments to the PHAs to amounts that do "not exceed the amounts which the Secretary determines are required (A) to assure the lower income character of the projects involved, [and] (B) to achieve and maintain adequate operating services and reserve funds. . . ." These provisions must be read together in order to carry out the intent of Congress. Certainly, in the absence of reasonable projections of income, this statutory mandate to determine the amount necessary to operate public housing projects and to pay no more than that amount clearly implies that the Secretary should consider, over the course of the year, the excess income available to a PHA and

evaluate a PHA's need for operating subsidy based on responsible management of its assets.

1. Investment Income Adjustment—Proposed §§ 990.100(e) and 990.110(b)

Section 990.109(e) of the proposed rule provided that, before the beginning of a new budget year, the PHA estimate its income from investments (Estimated Investment Income) based on the estimated average cash balance available for investment earning interest at a rate of the estimated average yield for 91-day Treasury bills. The estimated average cash balance available for investment is an amount based on the actual average cash balance during the previous year and anticipated receipts based on approved modernization plans. It is an amount approved by HUD. The rate of interest is estimated by HUD, assuming that the next year's average 91-day Treasury bill rate may be lower than the previous year's average.

The adjustment required in proposed § 990.110(b) is the difference between the Estimated Investment Income and a Target Investment Income amount based on the *actual* average yield on 91-day Treasury bills for the PHA's fiscal year and the *actual* average cash balance available for investment during the PHA's fiscal year. HUD provides the PHA with the actual average 91-day Treasury bill rate. The 91-day Treasury bill rate is used because this type of investment is readily obtainable and it allows the PHA to retain reasonable liquidity.

Under § 990.109(e), PHAs have been required to provide realistic estimates of investment income since the establishment of PFS in 1975 (see 40 FR 17008, April 16, 1975). Section 990.110(e) has permitted HUD-initiated adjustments to operating subsidy based on data available after the approval of the year's operating budget since 1975. Section 990.110(e) permits HUD to

Make an upward or downward adjustment in a PHA's operating subsidy as a result of data subsequently available to HUD which alters any of the components, data and projections upon which the approved operating subsidy was based.

The prediction of investment income is made as early as six months before the beginning of the budget year. This amount of lead time makes it particularly difficult to predict the income accurately. Another factor that makes prediction difficult is the fluctuation in interest rates. In addition, the amount available for a PHA to invest during the year may vary greatly—from $10,000 to several million dollars, for example. Often, the source of this "capital" is modernization funding from HUD, committed for work scheduled during the budget year. If the modernization work is done early in the year, the funds may be used quickly and produce little investment income. On the other hand, if the work is delayed (an event that often cannot be predicted accurately), there may be large sums available for short-term investment by the PHA. The fact that a PHA experiences delays in completion of a modernization project (whether because of its own lack of diligence or for reasons beyond its control) should not result in a windfall of interest income.

Because of concern that some PHAs were not investing HUD funds wisely, HUD established a procedure for encouraging prudent investment and recognizing the difference between original estimates of excess income and the amounts actually available for short-term investment, by issuance of HUD Handbook 7475.1 CHG–10, in November 1981, under the authority of § 990.110(e), consistent with section 9 of the statute and the Annual Contributions Contracts.

Under that Handbook and HUD administrative instructions, there are two types of PHAs that are subject to special consideration in this investment income adjustment. PHAs that have only small sums to invest are required to give reasonable estimates of such income but are not required to do the year-end adjustment based on Target Investment Income. This policy recognizes the fact that a minimum amount is needed to invest efficiently. A PHA with less than a $20,000 average cash balance—a $10,000 deduction plus $10,000 to invest—is considered one with only a small sum to invest. (A minimum of $10,000 cash that can be invested for three months is generally needed to obtain the Treasury bill yield.) At the other end of the PHA size continuum, a PHA with more than 1,000 units is allowed to deduct (in addition to the standard $10,000 deduction) $10 for each unit over 1,000, in determining its average cash balance, with a total maximum exclusion of $250,000. If a PHA earns less investment income than the Target Investment Income based on the amount available for short-term investment, this procedure results in a reduction in subsidy eligibility. If the PHA earns more, this adjustment allows the PHA to retain the excess as an incentive bonus. This adjustment, which has appeared in procedural instructions, is included in this final rule as it functioned under procedural instructions.

The investment income adjustment is being retained despite general criticism, because HUD believes it is a necessary action to assure that a PHA with unexpectedly high investment potential is not provided more subsidy than is needed for effective operation of the PHA. Also, given the statutory admonition to fund only the amounts necessary to operate public housing, the Secretary believes HUD should not make payments to cover costs that could have been covered by prudent investment of the PHA's excess income. The Department believes that the adjustment, including the incentive bonus, produces a savings in operating subsidy eligibility by merely holding PHAs to a reasonable standard of prudent cash management.

Several commenters stated that inclusion of this provision in the proposed rule constituted a recognition that previously HUD did not have the authority to impose the year-end investment income adjustment and that PHAs should be compensated for adjustments made in prior years. The Department denies that this rule making constitutes, in any way, a recognition that HUD previously lacked authority to impose year-end investment adjustments. This rule, among other things, provides further delineation of the regulatory provisions already prescribing specific adjustments to income. See 24 CFR 990.110(e). Moreover, this rule making is not the appropriate forum to address claims of PHAs that they should be compensated for adjustments made in prior years. That matter is being litigated in *CLPHA* v. *Pierce*, C.A. 84–3114 (D. D.C.).

To provide clarification of how the adjustment is to operate, an explanation of the adjustment is offered here. For example, a PHA with fewer than 1,000 units might estimate its average funds available for investment at $650,000 when the estimated adjusted average 91-day Treasury bill rate is 7.5 percent, for an estimated investment income of $48,000. That amount would be calculated by subtracting the $10,000 allowance from $650,000 and multiplying the result by .075. If the PHA actually had an average balance of $852,000 available for investment, the PHA had actual investment income of $89,990, and HUD determined the actual average 91-day Treasury bill rate for the period was 9.5 percent, the reconciliation might look like the following:

| Account No. | | Average balance |
|---|---|---|
| 1111.1 | General Fund | $50,000 |
| 1111.3 | General Fund (Modernization) | |
| 1117 | Petty Cash Fund | 1,000 |
| 1118 | Change Fund | 1,000 |
| 1155 | Advances—Limited Revolving Fund | |

| Account No. | | Average balance |
|---|---|---|
| 1156 | Advances—Unlimited Revolving Fund | |
| 1157 | Advances—Master Account | |
| 1162 | General Investment Fund | 800,000 |
| | | 852,000 |
| | Deduct allowance | −10,000 |
| | Balance of Funds Available | 842,000 |
| | Multiply by T-bill rate | .0950 |
| | Target Investment Income | 79,990 |
| | Target Investment Income | 79,990 |
| | Less Estimated Investment Income | 48,000 |
| | Subsidy Adjustment | (31,990) |
| | Actual investment income | 89,990 |
| | Less Target Investment Income | 79,990 |
| | Incentive bonus to PHA | 10,000 |

Using one rate of return for all PHAs was criticized by one commenter, who suggested that PHAs should be grouped by sizes and higher rates of return used for the larger PHAs. This PHA expressed its concern that seasonal fluctuations in expenses related to heating bills render small PHAs unable to devote sizable sums of money for a sufficiently long period to obtain the 91-day Treasury bill rate.

As noted above, the smallest PHAs are exempted from the investment income adjustment based on that rate of return. Also, the $10,000 exclusion provides a "cushion" that is proportionately greater for smaller PHAs. In addition, § 990.113 of this final rule allows PHAs to schedule operating subsidy payments to provide higher payments in those months when cash needs are the greatest (e.g., winter months) and lower payments in the "off months". We believe this procedure gives small PHAs any needed protection against seasonal fluctuations in expenses.

Several PHAs complained that the method of calculating Target Investment Income fails to give enough itemized exclusions. For example, some funds available to a PHA are in the form of grants with restrictions on how the interest may be used, so the funds are not available for all type of needs. Another hurdle in obtaining the highest return on all funds is the penalty that some local financial institutions exact when a PHA insists on collateralization for any amounts invested beyond the amount that is federally insured. Alternative solutions proposed by various commenters were (1) to allow more itemized exclusions; (2) to eliminate the highest month's cash balance, while dividing the sum of the other eleven months by twelve; or (3) to change the rate for calculating the Target Investment Income to a percentage (such as 85 percent) of the interest rate on 91-day Treasury bills.

A PHA should not deposit in its General Fund any non-HUD grants that are restricted in nature (*i.e.*, in terms of retaining interest), and accordingly these funds would not be included in available cash in the calculation of investment income. The payment of fees to financial institutions, such as for a collateralization requirement, is considered an operating expense, which is considered in the AEL in the determination of subsidy need. Therefore, no special provision is needed in the rule to recognize this investment-related expense.

The Department believes that the $10,000 exclusion for all PHAs and the additional exclusion of $10 for each unit over 1,000 units provided in this final rule are sufficient. The Department does not think it would be wise to increase the complexity of this rule by adding exclusions for any additional categories.

Although the subject of the types of investments permitted was not the subject of the proposed rule, a few commenters suggested that the types of investment permitted (by HUD Handbook 7475.1 CHG–10, Chapter 4, Sections 4 and 5) be broadened to include sophisticated cash management techniques such as automatic vending accounts, zero balance accounts, and investing the "float" on larger payment to vendors. They also suggested that many States have instrumentalities such as Municipal Depository Trusts that are designed to accept and invest funds of municipalities and municipal agencies.

Under each PHA's Annual Contributions Contract, HUD must approve securities before the PHA may invest in them. HUD's primary interest is in the security of these funds. The list of approved securities is routinely reviewed and additions can be made, as appropriate. We will take the commenters recommendations into consideration at the next revision of the list. However, this rule does not address this specific cash management concern.

2. "Other Income" Adjustment—Proposed §§ 990.109)(e) and 990.110(c)

A few commenters objected to the "Other Income" adjustment, saying it is more trouble than it is worth, since the amounts involved are generally small and nearly all such income sources have a cost associated with them. The Department has decided to withdraw this proposed year-end adjustment. Estimates of "Other Income"—income that is neither dwelling rental income nor investment income—must still be reasonable however, and HUD Field Offices will review these estimates carefully before approving the PHA's budget.

Several commenters suggested that the exclusion in proposed § 990.109(e) for "payments received from tenants for which the PHA incurs an offsetting expense" should be revised to clarify that the exclusion covers damages billed or charged to tenants as well as damages paid for by tenants. We agree with this clarification and have changed the definition of Other Income in § 990.102 of the final rule accordingly.

Other exclusions from income urged by commenters were for (a) all non-cash items normally associated with Other Income, such as discounts; (b) the amounts billed to tenants for the cost of eviction proceedings; (c) fees charged for non-dwelling space; and (d) proceeds from operation of laundry facilities. Our responses are as follows: (a) non-cash items such as discounts would not ordinarily be included in income, so a specific exclusion is not needed in the rule; (b) the cost of legal expenses billed to a tenant in eviction proceedings in which the court sustains the PHA's position will be excluded; (c) income from space approved by HUD for non-dwelling use will not be excluded because the PHA is permitted to offset associated expenses; and (d) proceeds from laundry facilities will continue to be included in income, (except where the facilities are operated by a tenant organization, which is responsible for the costs involved) because the expenses are also considered in determining overall operating expenses.

3. Rental Income Adjustment—Proposed §§ 990.109(e) and 990.110(d)

Numerous commenters objected to this adjustment as a disincentive to PHAs to maximize rental income. For example, if a PHA were able to achieve an occupancy rate higher than the assumed 97 percent, it would not be allowed to retain the additional rental income, as is now the case, if there were a year-end adjustment of subsidy based on actual total income. Also, if a PHA were able to assist its tenants in obtaining employment and higher incomes—and consequently received higher rental payments based on higher incomes—it would not be able to keep any of the additional income produced by these efforts. Such efforts often entail hiring an employment development specialist or a benefits counselor. Another objection offered was that decreases in operating subsidy based on the adjustment would be mandatory, while increases in subsidy based on lower actual rental income would be discretionary on the part of HUD.

One of the reasons the Department proposed a year-end adjustment to

rental income (and "other income") was to correct abuses to the system that the Department had identified. In some instances, PHAs appeared to be intentionally understating income for the purpose of estimating operating subsidy. In reponse to this problem, HUD has trained its Field Offices on careful examination of PHA budget submissions and PFS calculations. With HUD's continuing authority (under proposed § 990.110(f)–§ 990.110(d) in this final rule) to make adjustments if it is determined that data was misrepresented, and improved Field Office review of budgets before approval, we believe we can prevent further abuses. Another rule that was published on June 24, 1985 (50 FR 25951) provides for incentives for PHAs to maintain high occupancy rates. The additional regulatory burden imposed on all PHAs by the proposed year-end rental income adjustments is, therefore, unnecessary, and would be contrary to the Administration's deregulation objectives. Consequently, after careful consideration the Department has decided to remove from the final rule the requirement for a year-end settlement of rental income.

One PHA objected to application of the proposed adjustment to it as a violation of its financial workout plan, which provides for the difference between actual and estimated rental income to be placed in an operating reserve. HUD's removal of this adjustment from the final rule will remove the threat of a conflict with this PHA's workout plant.

Another PHA asserted that Congress should be required to make up the difference in rental income that results from changes it mandates by statute (such as the Housing and Urban-Rural Recovery Act of 1983). The commenter stated that while §§ 990.110(d) (1) and (2) require a downward adjustment in subsidy when a PHA collects "too much" rental income, any increase in subsidy is granted only at HUD's discretion when a PHA is unable to attain projected income. The PFS regulations for estimating income (§ 990.108) are based upon HUD's current occupancy regulations, which incorporate the changes to rental income made by the 1981 and 1983 Acts. At the beginning of each budget year, tenant income (and related rent) changes are automatically incorporated into the PHA's subsidy eligibility calculations through the use of a recent rent roll. Rental income changes that occur after the submission of the budget and that are caused by changes in Federal laws or regulations, must be reflected in a revision to the operating budget in accordance with § 990.108(d). Although the regulations give HUD discretion in funding any resulting increases to subsidy eligibility, the Department's policy is to fund such increases.

*F. Payment Procedure—§ 990.113(a)*

The proposed rule included a change to § 990.113(a) to provide for the payment of operating subsidies through letters of credit, in order to carry out a cash management policy adopted in 1977 by the U.S. Department of Treasury (Treasury) applicable to grant recipients, as stated in 31 CFR 205. The purpose of that policy is to time payments as closely as possible to the actual disbursements by the recipient organization, so that the Treasury Department will not have to provide funds in advance of the time they are needed. As a government-wide policy, this policy will reduce the amount of interest the Treasury must pay to borrow money to finance Government programs. Under the letter of credit method of payment, PHAs would be required to submit payment requests to HUD through their banks each time funds were needed.

Public comment on this issue consisted of three major points: (1) PHAs should have an opportunity to comment on the HUD-Treasury guidelines on when a PHA should receive payment by letter of credit; (2) an automated system is acceptable, as long as it provides funds promptly when needed and on a predictable, regular basis; and (3) if additional paperwork is required, the process is unacceptable. After further study, including a pilot implementation of letters of credit in Regions IV and V, and in consultation with Treasury, HUD has decided to utilize a modified payment method. The Department believes this method is better suited to the operational characteristics and needs of the public housing program than letter of credit, and that the revision will satisfy the concerns expressed by the public.

The revised payment system is similar to letters of credit in that it uses Electronic Funds Transfers (EFTs), but it is more efficient because PHAs will not have to submit a request for payment each time funds are needed. Instead, funds will be disbursed automatically based on a predetermined schedule, as is currently done. However, the schedule will provide for several payments per month instead of the current maximum of one payment per month, and the scheduled payments will coincide with the approximate cash flow requirements of the PHA within each requested budget year based on a cash budget, established payroll dates, approximate dates of utility payments, or any other factors that provide an indication of cash needs. In order to minimize the burden on smaller PHAs and make the system more cost effective, there will be a minimum dollar amount, to be determined by HUD, for individual payments. For most PHAs, payments are expected to be made about twice a month, but this will vary. For example, the largest PHAs will be paid four times a month while the smallest PHAs may receive payments just once or twice a year. Under this system, a PHA will continue to be paid its full subsidy eligibility within each requested budget year, subject to the availability of sufficient appropriated funds. HUD recognizes that reducing the time PHAs hold funds will affect estimated investment income and cause an increase in operating subsidy eligibility.

In response to the public comments and consultation with Treasury, the revised payment system will cover *all* PHAs, regardless of size, instead of only those receiving a subsidy above a certain level—as would have been the case under letters of credit. The revised payment system will provide PHAs with much greater flexibility in obtaining payment of approved funds than under the existing system. If a PHA requires payment of approved funds sooner than anticipated in the approved schedule, it will be able to obtain them with relatively short notice to the appropriate HUD field office (generally less than a week), whereas the current system does not provide for such prompt response. In the regular course of business, payments will be made predictably, based on a schedule established in consultation with the PHA. No additional paperwork will be required, since notice by telephone of the need for an unscheduled payment of cash should be sufficient.

This revised system will be applied to PHAs over a period of time, based on a conversion schedule to be determined by HUD, with advance notice to the individual PHAs affected.

In addition to these changes made in response to public comment, the Department has made a minor change to § 990.115. That section conditions payment of operating subsidy on a PHA's compliance with HUD's requirement that tenant incomes be reexamined regularly. The rule has referred to the Annual Contributions Contract as the authority for the reexamination requirement. The rule has also recognized a difference between action required before June 7, 1977 and

those required on or after that date. Since the Department published a new rule on May 21, 1984, requiring reexamination of each family's income at least annually (§ 913.109(a) 49 FR 21485), we have revised § 990.115 to refer to that rule. The 1977 date is long past and we have revised the rule to eliminate any distinction based on pre-1977 requirements.

**Findings and Certifications**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export market.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have significant economic impact on a substantial number of small entities, because the rule would primarily simplify procedures used for calculating Federal subsidy to small governmental entities operating public housing projects.

This was listed as item number 965 under the Office of Public and Indian Housing in the HUD Semiannual Regulatory Agenda published on October 29, 1985 (50 FR 44166, 44209), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in §§ 990.109 (e) and (f) and 990.110(b) of this rule have been approved by to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0071. The information collection requirements contained in §§ 990.110 (a) and (c) and 990.115 (b) and (c) have been approved by OMB and assigned OMB control numbers 2577–0029 and 2577–0026.

The Catalog of Federal Domestic Assistance Program Number is 14.146, Low Income Housing Assistance Program (Public Housing).

**List of Subjects in 24 CFR Part 990**

Grant programs—Housing and community development, Low and moderate income housing, Public housing.

## PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

Accordingly, 24 CFR Part 990 is amended as follows:

1. The authority citation for Part 990 is revised to read as follows:

**Authority:** Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. Section 990.102 is amended by revising paragraph (a) and adding new paragraph (x), to read as follows:

**§ 990.102 Definitions.**

(a) *Allowable expense level (AEL).* The per unit per month dollar amount of expenses (excluding utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

* * * * *

(x) *Other income.* Income other than dwelling rental income and income from investments, except the following items are excluded: grants and gifts for operations, other than for utility expenses, receive from Federal, State, and local governments, individuals or private organizations; amounts charged to tenants for repairs for which the PHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

3. Section 990.105(e) is amended by redesignating existing paragraphs (e)(3) and (e)(4) as (e)(5) and (e)(6), by adding new paragraphs (e)(3) and (e)(4) , and by revising the text of the redesignated paragraph (e)(5), to read as follows:

**§ 990.105 Computation of allowable expense level.**

* * * * *

(e) *Computation of allowable expense level.* The PHA shall compute its Allowable Expense Level as follows:

* * * * *

(3) *Allowable Expense Level for first budget year under PFS for a new project.* A new project of a new PHA or a new project of an existing PHA that the PHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project". The AEL for the first budget year under PFS for a "new project" will be based on the AEL for a comparable project, as determined by the HUD field office. The PHA may suggest a project or projects it believes to be comparable.

(4) *Allowable Expense Level for budget years after the first budget year under PFS through budget years beginning in calendar year 1985.* For each budget year after the first budget year under PFS through budget years beginning in 1985, the AEL will be equal to the AEL for the Current Year increased (or decreased) by the following:

(i) Any increase to the Allowable Expense Level approved by HUD under § 990.108(c);

(ii) The increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year; and

(iii) The sum of the AEL for the Current Budget Year and the increase (decrease) described in paragraphs (e)(4) (i) and (ii) of this section, multiplied by the Local Inflation Factor.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begin in calendar year 1986 and thereafter.* For each budget year after the first budget year under PFS that begins in calendar year 1986 and thereafter, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 990.108(c);

(ii) The AEL for the Current Budget Year also shall be increased (or decreased) by either;

(A) If the PHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (e)(4) or paragraph (e)(5)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (e)(4) of this section or this paragraph (e)(5)(ii)(B), it shall use the increase (decrease)

between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The PHA characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that were used for the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (e)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (e)(5)(ii)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (e)(5) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

Example

*FY 1987.* Assume that: (1) The PHA has experienced no change in the number of its units, (2) the AEL for the PHA's FY 1986 is $64.00, and (3) the applicable Local Inflation Factor is 6 percent (expressed as 1.06). The AEL for FY 1987 is $68.18, computed as follows:

| | |
|---|---|
| 1. Allowable Expense Level for FY 1986 | $64.00 |
| 2. Delta: Increase (or Decrease) in Formula Expense Level ($64.00 × .5 percent) | .32 |
| 3. Sum (line 1 plus line 2) | 64.32 |
| 4. Local Inflation Factor | 1.06 |
| 5. Allowable Expense Level for FY 1987 (line 3 multiplied by line 4) | 68.18 |

*FY 1988.* Assume that the PHA has deprogrammed (e.g., demolished or sold) a project that represents seven percent of its units, and that the last time an adjustment to the AEL was made based on paragraph (e)(4) or paragraph (e)(5)(ii)(B) was in its FY 1985, at which time the PHA had the following characteristics for its Requested Budget Year: average age of 10 years, average project height of 5 stories, and average unit size of 4 bedrooms. The Formula Expense Level for the Current Budget Year is calculated using 12 years (10 years plus the two years in which the standard .5 percent adjustment was used), 5 stories and 4 bedrooms.

Also assume that the Formula Expense Level calculated based on these characteristics is $70.00 and that the PHA average characteristics for the Requested Budget Year are now an average age of 8 years, average project height of 4 stories and average unit size of 2 bedrooms, resulting in a Formula Expense Level for the Requested Budget Year of $68.00. The Formula Expense Level for the Requested Budget Year, therefore, decreases by $2.00. Assuming that the Local Inflation Factor is 4.5% (expressed as 1.045), the AEL for FY 1988 in $69.16, computed as follows:

| | |
|---|---|
| 1. Allowable Expense Level for FY 1987 | $68.18 |
| 2. Delta (or Decrease) in Formula Expense Level | (2.00) |
| 3. Sum (line 1 plus line 2) | 66.18 |
| 4. Local Inflation Factor | 1.045 |
| 5. Allowable Expense Level for FY 1988 (line 3 multiplied by line 4) | $69.16 |

It should be noted that the Delta in line 2 of the example reflects the application of the Formula weights, constant and Local Inflation Factor for the Requested Budget Year applied first to the PHA characteristics for the Current Budget Year and then to the PHA characteristics for the Requested Budget Year, to determine the respective Formula Expense Levels. The Local Inflation Factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

4. Paragraphs (e) and (f) of § 990.109 are revised to read as follows:

**§ 990.109 Projected operating income level.**

* * * * *

(e) *PHA's estimate of income other than dwelling rental income.*

(1) *Investment income.* PHAs with an estimated average cash balance of less than $20,000 shall make a reasonable estimate of investment income for the Requested Budget Year. PHAs with an estimated average cash balance of $20,000 or more shall estimate interest on general fund investments based on the estimated average yield for 91-day Treasury bills for the PHA's Requested Budget Year (yield information will be provided by HUD). The determination of average cash balance will allow a deduction of $10,000, plus $10 per unit for each unit over 1,000, subject to a total maximum deduction of $250,000. In all cases, the estimated investment income amount shall be subject to HUD approval.

(2) *Other Income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval.

(3) *Total.* The estimated total amount of income from investments and Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level.

(f) *Required adjustments to estimates* The PHA shall submit year-end adjustments of projected operating income levels in accordance with § 990.110(b), which covers investment income.

(Information collection requirements contained in paragraphs (e) and (f) of this section have been approved by the Office of Management and Budget under control number 2577-0071)

5. Section 990.110 is revised to read as follows:

**§ 990.110 Adjustments.**

Adjustment information submitted to HUD under this section must be accompanied by an original or revised operating budget.

(a) *Adjustment of base year expense level.*

(1) *Eligibility.* A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for IPA audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level or $10.31.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the operating budget for the first budget year under PFS. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* A PHA that had an estimated average cash balance of at

least $20,000 must submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the PHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a Target Investment Income amount based on the actual average yield on 91-day Treasury bills for the PHA's fiscal year being adjusted and the actual average cash balance available for investment during the PHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the PHA with the actual average yield on 91-day Treasury bills for the PHA's fiscal year. Failure of a PHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for IPA audit (§ 990.108(a)), must submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Field Office by a deadline established by HUD, which will be during the PHA fiscal year following the PHA fiscal year for which an operating subsidy was received by the PHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the PHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) A decrease in Utilities Expense Level because of decreased utility rates—to the extent funded by operating subsidy—will be deducted by HUD from future operating subsidy payments.

(2) An increase in Utilities Expense Level because of increased utility rates—to the extent funded by operating subsidy—will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(3) Fifty percent of any decrease in Utilities Expense Level attributable to decreased consumption will be retained by the PHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(4) An increase in Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available; if not available and if the increase would result in a reduction of the operating reserve below the authorized maximum, 50 percent of the amount of the reduction below such maximum will be funded by increased operating subsidy payments, subject to the availability of funds, if such excess utility consumption was attributable to causes that were beyond the control of the PHA.

(5) In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increased may be submitted to HUD at any time during the PHA Current Budget Year. Unlike the adjustments mentioned in paragaphs (c)(1) through (c)(4) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(6) Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* A PHA may request an adjustment to projected average monthly dwelling rental income under PFS if the PHA can establish to HUD's satisfaction that the projected amount computed under § 990.109 was not attained because of circumstances beyond the control of the PHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the PHA's rent schedule which has been approved by HUD. The PHA must also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustment to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the PHA's fiscal year being adjusted. In emergency cases, however, where a PHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this Subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the PHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Information collection requirements contained in paragraph (a) of this section have been approved by the Office of Management and Budget under control numbers 2577-0029 and 2577-0026. Information collection requirements contained in paragraph (b) of the section have been approved by OMB under control number 2577-0071. Information collection requirements contained in paragraph (c) have been approved by OMB under control numbers 2577-0029 and 2577-0026)

5. Section 990.113(a) is revised to read as follows:

**§ 990.113 Payment procedure for operating subsidy under PFS.**

(a) *General.* Subject to the availability of funds, payments of operating subsidy under PFS shall be made generally by electronic funds transfers, based on a schedule submitted by the PHA and approved by HUD, reflecting the PHA's projected cash needs. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make a informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

* * * * *

6. Section 990.115 is revised to read as follows:

**§ 990.115 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.**

(a) *Policy.* The income of each family must be reexamined at least annually (see Parts 913, 904, 905 and 960 of this chapter). PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original Operating Budget for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with Part 913 of this chapter.

(c) *PHAs not is compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of Operating Budget submission shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months proceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this Part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2577–0026)

Date: November 7, 1985.

James E. Baugh,

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 85–27353 Filed 11–15–85; 8:45 am]

BILLING CODE 4210–33–M

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 256

### Outer Continental Shelf Minerals Management; Bid Acceptance Procedures and Bond Requirements

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This final rulemaking establishes a procedure for accepting or rejecting bids on Outer Continental Shelf (OCS) leases in areas subject to defense-related activities that may be incompatible with mineral exploration/development activities. Section 256.47(e) gives the "authorized officer" 90 days in which to accept a bid, except bids on tracts which are subject to another nation's claims of jurisdiction and control which conflict with those of the United States, which bids must be accepted or rejected within the time specified in the notice of sale. After 90 days, a bid on a tract not subject to another nation's jurisdictional and control claims is considered to be rejected. This requirement is too inflexible when the Department offers tracts for lease in an area subject to extensive defense-related activities that may be, or may become incompatible with mineral exploration/development activities. To give the United States increased flexibility to resolve use-conflicts among military activities and mineral exploration/development activities on the OCS area, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is accepted or rejected.⅛

To fully implement rule 256.47(e)(2) and to protect the public interest, it is necessary that §§ 256.58 and 256.59 be amended to permit the Secretary to select a bid-payment or bid-decision procedure wherein the payment of any monies remaining to be collected by the United States is not compromised.

**EFFECTIVE DATE:** November 18, 1985.

**ADDRESS:** Any recommendations or comments should be sent to: Director, Minerals Management Service, 18th and C Streets, NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Chris Oynes, (202) 343–6906.

**SUPPLEMENTARY INFORMATION:** This final rulemaking amends 30 CFR 256.47(e)(2), 256.58, and 256.59, which govern the acceptance or rejection of bids submitted on Outer Continental Shelf (OCS) leases and the filing of corporate surety bonds to facilitate the collection of bonus bids deferred or decisions delayed. Section 256.47(e)(2) gave the "authorized officer" 90 days in which to accept a bid or else it was deemed to be rejected, except for bids on tracts subject to another nation's claims of jurisdiction and control. This 90-days requirement is too inflexible when the Department offers tracts for lease in an area subject to defense-related activities that may be, or may become incompatible with mineral exploration/development activities. To give the United States increased flexibility to resolve use-conflicts among military activities and mineral exploration/development activities on the OCS, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is accepted or rejected. This determination will appear in the final notice of sale.

Sections 256.58 and 256.59 did not provide for the filing of a corporate surety bond by the bidder as a means of ensuring payment of any part of a bonus bid wherein a deferred payment is authorized by the Secretary, or wherein a decision to accept or reject a bid is deferred by the Secretary. Both the deferral of payment of the cash bonus and the deferral of a decision to accept or reject a bid will be according to a schedule announced at the time of the notice of sale.

The author of this final rulemaking is Lawrence R. Hoese, Attorney-Adviser, Office of the Solicitor.

#### Administrative Procedure Act

MMS is issuing this rulemaking effective immediately, based upon a number of separate and independent exemptions and exceptions contained in the Administrative Procedure Act (APA). 5 U.S.C. 553. First, the APA rulemaking procedures do not apply "to the extent that there is involved—(1) a military or foreign affairs function of the United States * * *." 5 U.S.C. 533(a). This rulemaking is precipitated by the need to make offshore mineral extraction activities compatible with the military needs of the United States, i.e., to insure that the conduct of mineral exploration/development activities do not unduly impede, and are not unduly impeded by, the conduct of military training exercises in the Outer Continental Shelf (OCS) area. The Eastern Gulf of Mexico (EGOM) is presently subjected to extensive use by the United States Air Force for research, development, testing, and evaluation of advanced tactical air-to-air and air-to-surface weapons systems. Safe and effective testing of most of these systems can only be performed over large expanses of water, subject to surveillance and monitoring control by strategically located land/water/airborne tracking facilities. The intrinsic danger to the oil industry offshore is the occurance of falling debris as drone planes are shot down or exploded, dropping of ordance, low-flying planes, testing of weapons and tactical testing missions. Threats to life and property could exist to crews and structures without proper control of OCS

structures and operations in the area. Additionally, oil and gas operations could have adverse effects on carrier flight qualification operations conducted in the EGOM. To relocate these flight qualification operations further seaward would not be feasible due to the fuel limitations of training aircraft and the associated requirement to keep them within safe flying distances of emergency divert fields onshore. Because of the cooperative-use issues between the ongoing and planned defense activities and the ongoing and planned defense activities and the ongoing and planned mineral extraction activities which must be coordinated on the OCS, I find that a military function is involved to such an extent that this matter warrants special treatment under MMS rules.

Second, the rulemaking prescribes internal agency procedures on bid acceptances and rejections. Accordingly, the rulemaking constitutes a rule of internal practice or procedure that is specifically excepted from the notice and comment provisions prescribed in 5 U.S.C. 553(b)(A).

Finally, the Interior Department finds that the importance of making these rules effective immediately provides good cause for waiving the APA notice, comment, and advance publication requirements. This finding is based upon the statutory purpose of the OCSLA to expedite OCS oil and gas leasing, particularly in frontier areas, and to consider other uses of the space of the OCS. The Department has recently become aware that existing procedures for defense use areas are not allowing for timely exploration. Immediate adoption of the rule will allow the Secretary to apply it to Sale 94, Eastern Gulf of Mexico, in December, 1985. The EGOM is still considered a "frontier" area insofar as oil and gas discoveries are concerned, and although the EGOM is subject to extensive defense-related activities, the new rules should enhance the ability of Interior to insure that the mineral extracting and military uses contemplated are compatible.

**Executive Order 12291**

This final rulemaking concerning 30 CFR 256.47(e)(2) is not a "rule" under section 1(a)(2) of the Executive Order. This final rulemaking concerning 30 CFR 256.58(g) and 256.59 is not a "major rule" under section 1(b) of the Executive Order. For the information of the public, the Department has determined that these rules are not major actions and do not require the preparation of a regulatory impact analysis under Executive Order 12291 because in the first instance (256.47(e)(2) and 256.59) they have no economic impact, and in the second instance (256.58(g) there is little, if any economic impact. One rule will permit the Secretary to keep certain bonus bid deposits in escrow for more than 90 days. The funds will still be available to the U.S. Treasury because they will be invested in public debt securities. Because the funds will be invested, bidders will not lose interest on their bids if their bids are rejected. The other two rules provide for the implementation of the new bid acceptance procedure in a manner which assures the receipt of any part of a cash bonus wherein payment is deferred, or wherein the decision to accept a bid is delayed, by requiring the filing of a corporate surety bond in the amount of the bonus bid outstanding.

**Regulatory Flexibility Act**

This final rulemaking is not subject to the analyses required by 5 U.S.C. 603 and 604. For the information of the public, the Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of no economic impact. Furthermore, small entities generally do not have the resources to bid on OCS leases.

**Paperwork Reduction Act of 1980**

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.*

**National Environmental Policy Act**

This rule will not have a significant effect on the quality of the human environment. It is not a major federal action.

**List of Subjects in 30 CFR Part 256**

Administrative practice and procedure, Continental Shelf, Government contracts.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1131 *et seq.*), §§ 256.47(e), 256.58, and 256.59 of Title 30 of the Code of Federal Regulations are amended as set forth below.

Dated: November 13, 1985.

**J. Steven Griles,**

*Deputy Assistant Secretary of the Interior, Land and Minerals Management.*

1. The authority citation for Part 256 continues to read as follows:

**Authority:** Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

**PART 256—[AMENDED]**

2. 30 CFR 256.47 is amended by revising the first sentence of paragraph (e)(2). Paragraph (e)(2) is revised to read as follows:

**§ 256.47 Award of leases.**

* * * * *

(e) * * *

(2) In the final notice of sale, the Secretary may identify tracts or blocks which are subject to another nation's claims of jurisdiction and control which conflict with those of the United States, or which are subject to defense-related activities that may be incompatible with mineral exploration/development activities. For a tract or block so identified, the authorized officer must accept or reject the bid within the time specified in the notice of sale. For a tract not so identified, the authorized officer must accept or reject the bid within 90 days after the date on which bids are opened. Any bid not accepted within the prescribed time shall be considered rejected.

* * * * *

3. 30 CFR 256.58 is amended by adding a new paragraph (g), which reads as follows:

**§ 256.58 Acceptable bonds.**

* * * * *

(g) With the approval of the Secretary, the Director may provide at the time of the notice of lease sale that (1) the successful bidder for a lease where payment of any part of the cash bonus has been deferred pursuant to 43 U.S.C. 1337(a)(2), as implemented by 30 CFR 256.32(d), shall furnish the authorized officer a corporate surety bond in the amount of the cash bonus deferred conditioned on payment of the cash bonus deferred according to the notice of lease sale; and (2) the high bidder for a lease where the decision to accept the high bid has been deferred, pursuant to 43 U.S.C. 1337(a)(1), as implemented by 30 CFR 256.47(e)(2), shall furnish the authorized officer a corporate surety bond in the amount of the bid not already remitted, conditioned on payment of the yet to be remitted amount after the bidder has been notified that his high bid has been accepted, within the time specified in the notice of lease sale.

4. 30 CFR 256.59 is amended by revising it to read as follows:

**§ 256.59 Form of bond.**

All bonds furnished by a bidder, lessee, or operator shall be on a form, or in a form approved by the Director.

[FR Doc. 85-27431 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-MR-M

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 920

## Maryland Permanent Regulatory Program; Approval of State Program Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This document amends 30 CFR Part 920 to approve certain amendments to the Maryland permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SCMRA).

On January 13, 1984, the State of Maryland submitted proposed statutory and regulatory revisions to its approved program concerning permitting requirements and performance standards for coal exploration activities and inspection and enforcement procedures. On June 8, 1984, Maryland submitted additional statutory and regulatory revisions concerning the form, amount and release procedures for performance bonds. Also on August 7, October 10, and November 9, 1984, Maryland submitted further modifications to its initial amendment consisting of regulations governing surface coal mining and reclamation operations on State-owned land, statutory amendments concerning license suspension and permit conditions regarding areas designated unsuitable for mining, and revisions to the State's inspection frequency standards. On May 2, 1985, OSM sought further clarification concerning the State's right of entry requirements at § 7-507(c)(1) of the Maryland Annotated Code. On June 5, 1985, the State responded to OSM's letter of May 2. After providing opportunities for public comemnt and conducting a thorough review of the program amendments in accordance with 30 CFR 732.17, the Director has decided to approve the modifications, with certain exceptions, as discussed below. The Director is amending 30 CFR Part 920 to codify this decision on the Maryland program.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**EFFECTIVE DATE:** November 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

**ADDRESSES:** Copies of the amendments to the Maryland program and all written comments received on the proposed amendments are available for public review and copying at the OSM Headquarters Office, the OSM Charleston Field Office and the office of the State regulatory authority listed below, Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158;

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5124, Washington, D. C. 20240, Telephone: (202) 343-4855;

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

**SUPPLEMENTARY INFORMATION:**

On March 3, 1980, OSM received a proposed regulatory program from the State of Maryland. The proposed program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). Following the submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary on February 18, 1982 (47 FR 7214-7217).

On October 28, 1982, Maryland submitted revised regulations regarding definitions, permit application and review procedures, coal exploration, transfer of permit rights, designation of areas unsuitable for mining, roads, performance bonds, hydrologic balance, sediment control measures, explosives, special performance standards and backfilling and grading. On October 21 and November 23, 1983, Maryland revised and clarified certain provisions of these regulations. The Director of OSM fully approved the revised regulations and policy statements on February 8, 1984 (49 FR 4732-4734) (Administrative Record No. MD 235).

### Submission of Program Amendments

On January 13, 1984, the State of Maryland submitted proposed statutory and regulatory revisions to its approved program (Administrative Record No. MD 229). The Maryland submission contains revisions to the Code of Maryland Regulations (COMAR) at 08.13.09.07 and .40 concerning permitting requirements and performance standards for coal exploration activities, and inspection and enforcement procedures involving right of entry, public participation, notices of violation and cease and desist orders. It also contains revisions to Section 7-506, 7-507, 7-514.6 and 7-907 of Title 7 of the Annotated Code of Maryland requiring that an operator, rather than the department, publish notice of the release of a bond for a permitted strip mine; authorizing the department to enter on private property for purposes of access to any open-pit mining or prospecting operations, subject to certain notice of property owners and subject to judicial order where necessary; requiring that the Bureau of Mines reimburse a property owner for any damage resulting from such entry on private property; authorizing the department to extend beyond 90 days the abatement time scheduled for a strip mining violation; and altering requirements concerning prospecting for coal:

—To provide for written approval of the Bureau only where prospecting will result in substantial disturbance to the land or harm to water supplies or water quality, subject to certain bond requirements,

—To place a certain limit on the amount of coal which may be removed during prospecting,

—To establish certain procedures where written approval is necessary, and

—To protect trade secrets or confidential commercial of financial information submitted by a prospector.

The State submission also includes a statutory amendment to provided that the department is authorized to place a lien on all abandoned mine reclamation projects conducted under Title 7 and is precluded from placing a lien on such projection under certain conditions. Since this amendment concerns the State's approved abandoned mine land program under Title IV of SMCRA instead of the State's regulatory program, OSM has not considered this amendment under this rulemaking.

On February 16, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendments, a public comment period and an

opportunity for a public hearing on the amendments (49 FR 5971–5973). On March 1, 1984, OSM published a notice in the **Federal Register** which corrected the February 16, 1984, notice concerning the hearing date and the date by which persons interested in making oral or written presentations at the hearing must contact OSM (49 FR 7605–7606). The public hearing scheduled for March 12, 1984, was not held because no one expressed an interest in participating in the hearing. The public comment period closed on March 19, 1984 (Administrative Record No. MD 233).

Following its review and opportunity for public comment, on April 5, 1984, OSM notified Maryland of certain deficiencies contained in the proposed amendments, and provided the State an opportunity to submit additional information to address the deficiencies (Administrative Record No. MD 241). On April 16, 1984, and May 4, 1984, Maryland submitted additional information to clarify certain provisions of its initial amendment (Administrative Records Nos. MD 242 and MD 250). On May 9, 1984, as a follow-up to its May 4, 1984, letter, Maryland submitted revised bond release procedures (Administrative Record No. MD 249). Representatives of OSM and the State met on May 31, 1984, to discuss the additional information submitted by the State (Administrative Record No. MD 252). As a result of this meeting, Maryland withdrew its proposed amendment of May 9, 1984, and submitted additional modifications on June 8, 1984, concerning the form, amount and release procedures for performance bonds (Administrative Record No. MD 251).

On July 5, 1984, OSM reopened the comment period to provide the public sufficient time to consider the proposed revisions submitted by the State of Maryland on June 8, 1984, and to review the minutes of the meeting held on May 31, 1984, between OSM the State (49 FR 27582–27583) (Administrative Record No. MD 266).

On August 7, 1984, the State of Maryland submitted a proposed amendment to its permanent program at COMAR 08.13.09 to regulate surface coal mining and reclamation activities on land owned by the State. In so doing, the State proposes to repeal similar provisions at COMAR 08.13.04.28 of its interim regulations (Administrative Record No. MD 282). On October 10, 1984, Maryland submitted additional modifications to its permanent program in response to OSM's letter of April 5, 1984. The modifications consist of amendments to the Maryland Strip Mining Law at § 7–504(c) and § 7–505.1(e) concerning license suspension procedures and conditioning of permits to protect areas under study or which have been designated unsuitable for mining (Administrative Record No. MD 283). On November 9, 1984, Maryland also submitted a proposed amendment to its permanent program regulations at COMAR 08.13.09.40B regarding the inspection frequency of surface coal mining reclamation operations (Administrative Record No. MD 284).

On December 4, 1984, OSM reopened the comment period to provide the public sufficient time to comment on the modifications submitted by the State of Maryland on August 7, 1984, October 10, 1984, and November 9, 1984, to its permanent regulatory program. The public comment period closed on December 19, 1984 (49 FR 47419–47420) (Administrative Record No. MD 289).

On May 2, 1985, OSM requested additional information from the State concerning its right of entry requirements at § 7–507(c)(1) of Title 7 of the Maryland Annotated Code (Administrative Record No. MD 314). The State responded to OSM's concerns on June 5, 1985 (Administrative Record No. 316).

**Director's Findings**

Set forth below, pursuant to 30 CFR 732.15 and 732.17 and SMCRA, are the Director's findings concerning the program modifications submitted by the State of Maryland to amend its approved permanent regulatory program.

1. On January 13, 1984, the State of Maryland formally submitted House Bill 668 which was initially submitted on April 12, 1983, and took effect on July 1, 1983 (Administrative Record No. MD 214). House Bill 668 contains a proposed amendment to § 7–507(c)(1) of the Annotated Code of Maryland, Natural Resources Article, which provides in part that the Department and its agents may enter upon private property for access to or reclamation of any open-pit mining and reclamation operation or prospecting operation which is not otherwise accessible to the Department from a public road. Entry onto private property for these purposes shall not be undertaken without prior consent of the property owner. The amendment further provides that, if permission is not obtained, the State may after 30 days notice obtain a court order authorizing entry.

As the Bill Report to House Bill 668 explains, the amendment to § 7–507(c)(1) is for the purpose of providing express authority for the Maryland Department of Natural Resources to enter onto lands which are not part of an area permitted as a surface coal mining operation. The amendment is intended to provide procedures for the Department of Natural Resources to gain entry across the private property of third parties to operations which are not accessible from a public road or from a haul road permitted as part of a mining operation. Particularly, this statutory amendment was submitted in response to a situation which the Department of Natural Resources had encountered in 1982 in which a landowner had refused permission for the Bureau of Mines and its contractors to cross a private road on his property in order to gain access to a landlocked, unreclaimed strip mine. Because the Bureau of Mines had no express statutory authority to require such a landowner, who was neither the operator nor the permittee of the inactive site, to provide access to the Department of Natural Resources for purposes of reclamation, the Department of Natural Resources was forced to sue the landowner, alleging several equitable theories of relief. In another instance, the Department of Natural Resources' investigation of an illegal unpermitted operation was hampered by uncertainty about the inspector's legal status while crossing a third party's property in order to view the operation. To avoid similar lawsuits in the future, the Department of Natural Resources proposes the amendment to provide express authority for the Department of Natural Resources to obtain a court order for entry onto private lands which are not accessible from a public road.

To further clarify the intent of revised § 7–507(c)(1), on February 17, 1984, OSM requested that Maryland provide its interpretation of § 7–507(c) and § 7–516(b) of the Annotated Code of Maryland with regard to right of entry. In particular, OSM requested an interpretation of those sections as they relate to the right of State inspectors to enter private property to investigate alleged illegal operations without prior consent of the landowner (Administrative Record No. MD 231).

On April 16, 1984, Maryland stated that the amendment did not delete any authority which the Department of Natural Resources had with regard to entry and inspection of open-pit mining operations. Rather, the amendment addressed a situation in which the Department's authority was not clear. That is, the situation where the Department sought entry across the property of a third party unrelated to the mining operation. According to the State, the amendment does not in any way affect the Department's ability to

order the cessation of an illegal "wildcat" operation. Section 7-516(b) provides that conducting coal mining operations without a permit is a misdemeanor punishable by a fine of not more than $10,000.00 or by imprisonment for not more than one year. Because the statute provides that mining without a permit is a crime, the full resource of criminal law enforcement are available when the Bureau of Mines encounters an illegal operation. These resources include the availability of the State Police and the Natural Resources Police to assist in conducting stakeouts and observations, and the ability to obtain a search warrant for entry onto the property where the illegal operation is being conducted, should the minesite be inaccessible from a public road. The State concluded that the amendment to § 7-507(c)(1) does not limit in any way the Department of Natural Resources' authority with regard to entry onto and inspection of coal mining operations, including operations being conducted without the required permit. The amendment increases the Department's authority, by providing express authority for the Department to gain access across the private property of third parties who are not related to a mining operation (Administrative Record No. MD 242).

After further consideration, on May 2, 1985, OSM advised Maryland that the primary problem with the amendment is that it may be interpreted or applied in a manner which imposes restrictions on State inspectors' right of entry which are inconsistent with § 571(b)(3) of SMCRA and 30 CFR 840.12. The amendment requires or is being interpreted to require property owner consent or court order for inspector entry in three situations in which property owner consent or a court order is not required under the Federal regulations. Those situations involve (1) haulroads across lands owned by private parties, (2) wildcat mining operations accessible only through private property, and (3) isolated unplanned areas of subsidence which constitute surface impacts under §701(28) of SMCRA which are accessible only through private property. Under Federal law and regulations, OSM inspections in these three situations are authorized to take place without warrants or landowner consent. Thus, to be no less effective than the Federal regulations, Maryland law must authorize nonconsensual, warrantless inspections in these situations (Administrative Record No. MD 314).

On June 5, 1985, Maryland stated that its pre-1983 statute and regulations clearly establish a right of entry for State inspectors of a scope equal to that enjoyed by Federal inspectors under Federal law and regulations. The amendment applies only to operations not accessible to a Bureau of Mines inspector from a public road, or from a haulroad which by definition under COMAR 08.13.09.01B(49)(d)(ii) is part of a surface coal mining operation. With the additional authority provided by the amendment, State inspectors now have statutory authority to obtain a court order for entry onto private property which is not part of a surface coal mining operation as that term is defined in law and regulation. The amendment did not remove, qualify, or limit any existing authority with regard to an inspector's right of entry; rather, the amendments expanded the already existing authority to include situations which the State believed were not adequately addressed in existing law and regulation. In summary, the State concluded that the amendment provides Maryland inspectors with a right of access to, in, and through surface coal mining operations which is fully commensurate with the authority required by § 517(b)(3) of SMCRA and 30 CFR 840.12. In each of the three situations described by OSM in its letter of May 2, 1985, the area to which the inspector is required to have access is, by statutory authority or regulatory definition, part of the surface coal mining operation. As such, the area would be included in the land to which Maryland inspectors have a right of access pursuant to § 7-507(c)(1) and COMAR 08.13.09.40(c)(1) (Administrative Record No. MD 316).

OSM agrees that Maryland's previous approved State program provisions established on their face right of entry standards which were commensurate with those of Federal standards. However, by requiring the State inspector to obtain the prior consent of the landowner or a court order authorizing entry, the proposed amendment limits or restricts an inspector's right to enter and inspect any surface mining and reclamation operation which is not accessible from a public road.

As explained in OSM's letter of May 2, 1985, three concerns were identified with the amendment. First, in regard to haulroads across lands owned by private parties, OSM was concerned that, if a permitted haulroad crossed a third party's land, the inspector had to obtain permission from the third-party owner or a court order to gain entry. On May 2, 1985, OSM requested Maryland's assurance that State inspectors could use for inspection purposes any road which is used for a surface coal mining operation, without a warrant or court order and without the landowner's permission. Since § 7-507(c)(1) and COMAR 08.13.09.40(c)(1) provide that an inspector may enter on and inspect any surface mining and reclamation operation and COMAR 08.13.09.01(49)(d)(ii) defines haulroad as part of a surface coal mining operation, and because a permitted haulroad must ultimately connect with a public road, the Director finds that, under the proposed amendment, Maryland inspectors would not have to obtain landowner permission or a court order to authorize entry across a third-party's land to inspect a "permitted" surface coal mining operation.

Secondly, with regard to use of unpermitted haulroads for access to wildcat or illegal mining operations, OSM was concerned that the State had indicated that a State inspector had to observe mining vehicles on the unpermitted road in order to establish that the road is a haulroad. Under the Federal program, a road which is either observed to be used for access to a surface coal mining operation, or which by observation is connected with and apparently serves the operation (e.g., when the road is the only road which leads to the operation) is by definition part of the surface mining operation. Therefore, under § 517 (a) and (b)(3) of SMCRA and 30 CFR 842.13, a Federal inspector is authorized to use such roads to inspect the operation, and is not required to obtain a search warrant. It is not necessary to observe actual use when use is apparent by virtue of the fact that a private road clearly connects the operation with a public road. In order to transport coal from the minesite, the operator almost certainly must use some contiguous series of roads. In every case of wildcat mining, there must be an access road, and an inspector must be authorized to use that road. The fact that there is no mining taking place at the time of the inspection does not constitute grounds for denying access to an inspector, so long as the mining occurred after August 3, 1977. If for some reason a third-party landowner obstructed a Federal inspector, OSM has the right to obtain a search warrant or court order. But OSM is not required to obtain such an order, or to get the landowner's permission, in order to have the authority to use the road for access to an unpermitted surface mining operation. Although wildcat mining is a punishable offense under State law, in its letter of April 16, 1984, Maryland indicated that the revised amendment

requires that an inspector must obtain the prior permission of the landowner, a search warrant or a court order for entry onto private property where an illegal operation is being conducted which is inaccessible from a public road. Under Federal law, an inspector has the authority to enter and conduct a warrantless inspection of any illegal, unpermitted surface mining operation regardless of its accessibility or proximity to a public road. Warrantless inspections of any surface coal mining operation without advance notice are necessary to further the regulatory scheme and to ensure compliance with the requirements of SMCRA. Therefore, the Director finds that § 7-507(c)(1) of Title 7 of the Annotated Code of Maryland, to the extent it is interpreted by the State to require a court order or permission to use an unpermitted haulroad for inspection if the State does not observe mining vehicle use of an unpermitted haulroad, is less stringent than § 517 (a) and (b)(3) of SMCRA and is less effective than 30 CFR 840.12. To the extent that the inspector use of unpermitted haulroads to inspect active or inactive mines under the regulatory program is limited by other Maryland law, this will be evaluated by OSM as part of its continuing oversight of the Maryland regulatory program.

Thirdly, OSM was concerned that the proposed amendment would improperly limit an inspector's right of entry on areas of isolated, unplanned subsidence. Although COMAR 08.13.09.01B(4) and 08.13.09.01B(63) provide that the area above the underground mine working is to be permitted, in practice Maryland only permits the surface effects of underground coal mines. The surface effects can include such things as haulroads, preparation plants, coal storage areas, refuse disposal areas, etc. The area overlying the underground workings is depicted on the mine map in the permit application, but Maryland does not usually require that an operator have right of entry on those areas to conduct surface mining and reclamation activities. If an area overlying the underground workings of a deep mine is not permitted and material damage occurs on the surface on land which is outside of the permitted area, the operator has an obligation under 30 CFR 817.121(c)(1) to restore that damage. That subsided land would have to be included in the permit area. But under the State program, if that land is not accessible by a public road, revised §7-507(c)(1) would not allow immediate access without permission or court order, if the subsidence can only be reached by crossing a third party's land. In its letter of May 2, 1985, OSM stated that isolated unplanned subsidence which constitutes a surface impact incident to an underground coal mine constitutes a surface mining operation under § 701(28)(A) of SMCRA. Therefore, under § 517 (a) and (b)(3) of SMCRA, an inspector must have the right of entry to a subsidence site without advance notice, court order, or permission. If this involves passage across a third person's property, such access is authorized by the terms of the Act. To maintain otherwise would render part of the language of § 517 (a) and (b)(3) meaningless. Both provisions provide that authorized representatives of the Secretary and the regulatory authority, respectively, shall have a "right of entry *to*, upon, or through any surface coal mining and reclamation operation" (emphasis added). The word "to" in this context must be given a meaning. And to interpret this authorization to mean that a third party could refuse access to a surface coal mining operation, or that a court order or search warrant was a pre-condition to access a surface mining operation would clearly render meaningless the word "to". Further weight is attached to this position by the language of § 517(b)(3) of SMCRA, which provides that the representative of the regulatory authority shall have the right of entry "without advance notice and upon presentation of appropriate credentials." To require advance notice of a third party landowner would violate this Federal requirement. Maryland did not respond directly to this issue in its letter of June 5, 1985. However, based on Maryland's interpretation of the proposed amendment with regard to unpermitted mining operations, it is clear that Maryland will explicitly require the landowner's permission or a court order for access to areas of unplanned subsidence incidental to underground coal mining operations when such areas are not accessible by a public road. Therefore, the Director finds that all available information indicates that the provisions of § 7-507(c)(1) are not the same as or similar to 30 CFR 840.12 and are inconsistent with those of § 517(b)(3) of SMCRA in that inspector entry must be authorized without advance permission or court order, even when the inspector must cross a third party's property to inspect unplanned subsidence.

The Director agrees that prior consent of the landowner or a court order authorizing entry may be necessary for entry onto private property to conduct reclamation activities, but such prerequisites unnecessarily limit an inspector's right to enter private property and conduct inspection and enforcement activities on prospecting and surface mining reclamation operations which are inaccessible from a public road. To require that Maryland inspectors obtain the permission of the landowner or a court order before making an inspection of a prospecting or surface mining reclamation operation that is not accessible from a public road has potential for impairing the enforcement of Maryland's surface mining law and is contrary to the provisions and intent of SMCRA. Therefore, since § 7-507(c)(1) of Title 7 of the Annotated Code of Maryland is less stringent than § 517 (a) and (b)(3) of SMCRA and less effective than 30 CFR 840.12, the Director is requiring the State to amend that portion of § 7-507(c)(1) which requires the Department and its agents to obtain the prior consent of the property owner or a court order for entry upon private property to inspect any open-pit mining or prospecting operation which is not accessible from a public road.

2. House Bill 668, which was formally submitted on January 13, 1984, also contains a proposed amendment to § 7-506(h) of Title 7 of the Annotated Code of Maryland. The revision requires that a coal mine operator publish an advertisement of any bond release on a surface coal mining permit under Maryland's permanent regulatory program.

Previously, the Maryland Department of Natural Resources was responsible for publishing the advertisement. The purpose of the amendment is to relieve the Department of Natural Resources of the administrative burden and costs associated with the publication.

Since § 519 of SMCRA and 30 CFR 800.40 require the operator to publish and submit a copy of a newspaper advertisement with the application for bond release, the Director finds that § 7-506(h) of the Maryland Annotated Code is no less stringent than § 519 of SMCRA and no less effective than 30 CFR 800.40(a).

3. House Bill 668 contains a proposed amendment to § 7-507(c)(2) of Title 7 of the Annotated Code of Maryland. The amendment provides that the Department of Natural Resources can extend the time allowed for correcting a situation of non-compliance with the law, regulations, or permit conditions beyond the 90-day period currently allowed, provided the operator can demonstrate that compliance within 90 days is not attainable either because of conditions totally beyond the control of the operator, or because abatement of

the violation within 90 days would require action violative of mine safety standards established under Federal or State law or would clearly cause more environmental harm.

In the accompanying Bill Report to House Bill 668, the Department of Natural Resources explained that because the bill combines the five circumstances for extensions of the 90-day abatement period under 30 CFR 843.12 into three categories, the Department of Natural Resources would have to more fully explain its categories in the Department's implementing regulations in order to assure consistency with the Federal requirements. On January 13, 1984, the Maryland Department of Natural Resources submitted proposed revisions to its regulations at COMAR 08.13.09.40F (4), (5), (6) and (7) which more fully explain the circumstances under which extensions to the 90-day abatement period could be authorized.

Therefore, the Director finds that § 7-507(c)(2) of the Maryland Annotated Code in combination with COMAR 08.13.09.40F (4), (5), (6) and (7) describe the circumstances under which an abatement period of more than 90 days may be granted an operator in a way which is the same as or similar to § 521(a) of SMCRA and no less effective than 30 CFR 843.12 (f), (g), (h), (i) and (j).

4. House Bill 668 also contains an amendment to § 7-514.6 of Title 7 of the Maryland Annotated Code. The proposed amendment repeals former § 7-514.6, which required persons prospecting for coal to obtain the written approval of the Department of Natural Resources, and replaces it with a new section which eliminates the requirements for the Department's written approval of prospecting when the operation is not reasonably likely to cause substantial disturbance to the natural land surface or to cause serious harm to water supply or water quality. Any person who intends to prospect for coal is required to submit to the Department of Natural Resources a notice of intent to prospect, at least two weeks prior to commencement of land disturbance. Proposed § 7-514.6 is intended to reduce the burden on both persons proposing to prospect and the regulatory authority.

The Federal regulations at 30 CFR Part 772 require the operator to file a notice of intent for all proposed prospecting operations, but written approval is only required for activities which substantially disturb the land surface. For other prospecting operations, written approval is not required under Federal law or regulations.

Therefore, the Director finds that the Maryland prospecting provisions at § 7-514.6 of the Annotated Code of Maryland are no less stringent than the Federal requirements at § 512 of SMCRA and no less effective than 30 CFR Part 772.

5. On January 13, 1984, Maryland submitted a revision to its prospecting regulations at COMAR 08.13.09.07. On April 5, 1984, OSM notified the State that COMAR 08.13.09.07 does not require any person who extracts coal for commercial sale during coal exploration operations to obtain a surface coal mining permit as provided by 30 CFR 772.14.

On May 4, 1984, Maryland advised OSM that the definition of "prospect" at § 7-501(x) of the Maryland Code prohibits the sale of any coal removed during prospecting.

Since § 7-501(x) of the Maryland Annotated Code prohibits the sale, exchange or transfer of coal removed during prospecting, the Director finds that § 7-501(x) of the Maryland Annotated Code and COMAR 08.13.09.07 are no less effective than 30 CFR 772.14.

6. The State regulations submitted on January 13, 1984, contained a proposed amendment to COMAR 08.13.09.07. OSM notified the State on April 5, 1984, that the proposed amendment to its coal prospecting regulations does not require that coal exploration on lands designated unsuitable be approved by the regulatory authority as provided by 30 CFR 772.12. Further, Maryland's coal exploration regulations do not contain any of the permitting requirements for exploration operations which operate on areas designated unsuitable for mining. Therefore, COMAR 08.13.09.11F is less effective than 30 CFR 772.12 and a program amendment is being required to address this deficiency.

7. The January 13, 1984, submission contained an amendment to COMAR 08.13.09.07G(5)(a) which included a reference to Regulation .26. OSM notified the State on April 5, 1984, that COMAR 08.13.09.07G(5)(a) and 08.13.07.26 do not prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a).

Therefore, the Director finds that COMAR 08.13.09.07G(5)(a) and 08.13.07.26 are less effective than 30 CFR 815.15(a) in that they do not prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities and a program amendment is being required.

8. The coal exploration regulations submitted on January 13, 1984, contained a proposed revision to COMAR 08.13.09.07G(5)(b). OSM notified Maryland on April 5, 1984, that the proposed revision does not require roads or other transportation facilities used, constructed or improved for coal exploration activities to comply with the applicable provisions for roads, utility installation and support facilities (Regulation .22) as provided by 30 CFR 815.15(b).

On October 1, 1984 [In Re: *Permanent Surface Mining Regulation Litigation* (II), Civil Action No. 79-1144 (D.D.C. 1984)], Judge Flannery remanded OSM's road classification system for failure to provide adequate notice and opportunity to comment on the substance of the adopted road rules at 30 CFR 816.150(a). These road rules are made applicable to exploration roads under 30 CFR 815.15(b). Therefore, until OSM has repromulgated its road regulations, Maryland is not required to amend its program to be no less effective than 30 CFR 815.15(b) and 816.150. Once OSM has adopted such rules, Maryland will have to amend its coal exploration road requirements to be no less effective than the Federal requirements.

Because Maryland's proposed prospecting regulation at COMAR 08.13.09.07G(5)(b) is consistent with § 512 and § 515(b)(17) of SMCRA, the Director finds that Maryland's coal exploration regulations, except as noted elsewhere in this notice, are no less stringent than § 512 of SMCRA.

9. The Maryland coal exploration regulations submitted on January 13, 1984, contained a proposed revision to COMAR 08.13.09.07G(5)(k). On April 5, 1984, OSM informed State officials that the revised regulation, unlike former COMAR 08.13.09.07G(10), does not require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i). OSM advised the State that surface drainage from coal exploration activities must be passed through a siltation structure unless the disturbed area is small and the operator demonstrates that sediment control measures are not necessary for drainage from the disturbed area to meet effluent limitations and applicable water quality standards.

Therefore, the Director finds COMAR 08.13.09.07G(5)(k) is less effective than 30 CFR 815.15(i) and Maryland must amend its program to be no less effective than the Federal provision.

10. On January 13, 1984, Maryland also submitted proposed revisions to its inspection and enforcement

requirements at COMAR 08.13.09.40. On April 5, 1984, OSM provided comments to Maryland on the proposed revisions. The State requested that the amendments to the inspection and enforcement regulations not be considered by the Director at this time. The changes required to these regulations will be addressed independently of this action and pursuant to 30 CFR 732.17, Maryland will be formally notified of required changes to its inspection and enforcement regulations. Therefore, action on the proposed revisions at COMAR 08.13.09.40, except as provided herein, is deferred pending the completion of OSM's regulatory reform review of the Maryland program. This review is expected to be completed in the near future.

11. On June 8, 1984, Maryland submitted additional statutory and regulatory revisions concerning the form, amount and release procedures for performance bonds. The submission contained an amendment to § 7–511 of the Maryland Annotated Code. The proposed amendment provides for the deletion of the State's requirement to retain a minimum $10,000 performance bond at all times. On June 8, 1984, Maryland also submitted proposed revisions to COMAR 08.13.09.15H. The amendment provides for the deletion of the $10,000 minimum bond retention requirement at COMAR 08.13.09.15H(2) and COMAR 08.13.09.15H(5)(d).

Although § 509 of SMCRA requires the performance bond for the entire area under one permit to be no less than $10,000, § 519(c) of SMCRA further provides for the release of the bond as reclamation activities are completed. The $10,000 minimum applies only to the total bond amount initially posted and need not apply to the bond amount retained following the completion of a phase or phases of reclamation and partial bond release. However, at all times the remaining bond must be sufficient to cover the cost of future reclamation. Maryland's program contains such provisions.

Therefore, the Director finds that the deletion of the provisions at § 7–511 of the Annotated Code of Maryland, COMAR 08.13.09.15H(2) and COMAR 08.13.09.15H(5)(d) regarding the retention of $10,000 minimum bond is no less stringent than § 519(c) of SMCRA and no less effective than 30 CFR 800.14.

12. On June 8, 1984, Maryland submitted proposed revisions to § 7–506(c)(3) of the Annotated Code of Maryland and COMAR 08.13.09.15F(3). The proposed amendments provide for performance bonds to be in the form of irrevocable letters of credit. Section 509 of SMCRA and 30 CFR 800.12(b) provide that performance bonds can be in the form of letters of credit and set forth the conditions concerning such bonds.

Therefore, the Director finds that the provisions of § 7–506(c)(3) of the Annotated Code of Maryland and COMAR 08.13.09.15F(3) are no less stringent than those of § 509 of the SMCRA and no less effective than 30 CFR 800.21(b).

13. One June 8, 1984, Maryland proposed revisions to COMAR 08.13.09.15C(3) and COMAR 08.13.09.15H(5) concerning the amount of and release procedures for performance bonds. Maryland set the minimum amount of the general bond at $1,500 per acre for the approved open acre limit and revised its Phase I bond release provisions to require that none of the general bond can be released until the completion of Phase I reclamation and a completion report and bond release application is submitted, unless the permittee requests a reduction in the open acre limit before the release.

The Director finds that the requirements of COMAR 08.13.09.15C(3) and COMAR 08.13.09.15H(5) regarding the amount of and release procedures for performance bonds are no less effective than 30 CFR 800.14 and 30 CFR 800.40.

14. On June 8, 1984, Maryland also proposed revisions to COMAR 08.13.09.15I and COMAR 08.13.09.15J. The proposed amendments require the operator to publish the advertisement on bond release and to submit proof of advertisement and notification upon applying for bond release in accordance with revised § 7–506(h) of the Annotated Code of Maryland. The proposed revisions are to implement statutory revisions (see Finding 2).

Therefore, the Director finds that COMAR 08.13.09.15I and COMAR 08.13.09.15J are no less effective than 30 CFR 800.40(a) in regard to bond release procedures.

15. On August 7, 1984, Maryland submitted an amendment to its permanent program which repealed existing COMAR 08.13.04.28, interim program provisions for State-owned lands, and transferred those provisions, with minor amendments, to COMAR 08.13.09 which regulate surface coal mining and reclamation operations on land owned by the State. The proposed amendment provides that all open-pit mining operations on land owned by the State must comply with the special requirements contained in COMAR 08.13.09, Open-Pit Mining on State-Owned Land, including provisions relating to permit applications, bonding and insurance and all performance and reclamation standards of the State's permanent program.

The proposed revisions to COMAR 08.13.09A clarify that all mining on State-owned land will be conducted in accordance with Maryland's approved permanent program. Therefore, the Director finds that COMAR 08.13.09, as proposed, is no less effective than the Federal requirements.

16. On October 10, 1984, Maryland submitted a statutory amendment to § 7–504 of Title 7 of the Annotated Code of Maryland. Maryland amended § 7–504, Open-Pit Mining Operator's License, by adding a new subsection which provides for the suspension of an operator's license under certain conditions.

The Director finds that § 7–504(c) of the Annotated Code of Maryland is not inconsistent with SMCRA.

17. On October 10, 1984, Maryland also submitted an amendment to § 7–505.1(e) of Title 7 of the Annotated Code of Maryland. The amendment provides that the Department of Natural Resources must condition all permits to protect lands under study as areas unsuitable for mining. Once an area has been designated unsuitable for mining, the Department of Natural Resources may not issue a permit to conduct mining on that area.

Furthermore, COMAR 08.13.09.5A(4) provides that a permit may not be approved if the proposed permit area is within an area designated unsuitable for mining, or within an area under study for designation as unsuitable for mining as required by 30 CFR 773.15(c)(3).

Section 510(b)(4) of SMCRA provides that no permit revision or renewal thereof may be approved unless the regulatory authority finds in writing that the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to § 522 of SMCRA, and is not within an area under study for such designation in an administrative proceeding commenced pursuant to § 522(a)(4)(D) or § 522(c) of SMCRA.

Therefore, the Director finds that § 7–505.1(e) of the Annotated Code of Maryland and COMAR 08.13.09.5A(4) are no less stringent than § 510(b)(4) of SMCRA and are no less effective than 30 CFR 773.15(c)(3).

18. On November 9, 1984, Maryland submitted a proposed revision to its regulations at COMAR 08.13.09.40B. The amendment provides for frequency of inspections of active and inactive surface coal mining operations and defines complete and partial inspections.

On January 16, 1985, OSM discussed with Maryland the State's proposed definition of a "completed" operation as set forth at COMAR 08.13.09.40B(2) (Administrative Record No. MD 294). OSM indicated that, as proposed in the November 9th amendment, the definition does not include Reclamation Phase II as required by 30 CFR 804.11(f) and 842.11(c)(2). To ensure consistency with the Federal rules, Maryland agreed to amend its proposed definition of "completed" operation as follows: "A completed operation is an operation where Reclamation Phase II as defined by Regulation 08.13.09.15H(6)(b) has been completed." Maryland indicated that upon promulgation its definition of completed operation at COMAR 08.13.09.40B would be revised as set forth above.

Therefore, the Director finds that proposed COMAR 08.13.09.40B, as amended, which sets forth inspection frequencies for active and inactive surface coal mining operations and defines complete and partial inspections is no less effective than 30 CFR 840.11 and 842.11.

### Disposition of Public Comments

Public comments on the revised Maryland program were solicited by OSM on three occasions. Comments were requested by the publication of Federal Register notices on February 16, 1984, July 5, 1984, and December 4, 1984 (49 FR 5971–5973, 49 FR 27582–27583, and 49 FR 47419–47420). No public comments were received on the amendments.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies on the proposed State program amendments. Of those agencies invited to comment, comments were received from the following Federal agencies: U.S. Department of Agriculture, Forest Service; U.S. Department of the Army, Corps of Engineers; U.S. Department of Labor, Mine Safety and Health Administration; U.S. Environmental Protection Agency; U.S. Department of the Interior, National Park Service, Fish and Wildlife Service; and Advisory Council on Historic Preservation.

Except for the Advisory Council on Historic Preservation, none of the Federal agencies had any negative comments regarding the proposed amendments.

1. The U.S. Fish and Wildlife Service found that the proposed amendments do not affect their previous non-jeopardy opinion of September 17, 1980, concerning Maryland's permanent regulatory program (Administrative Record No. MD 239).

2. The Environmental Protection Agency (EPA) commented that the proposed changes to Maryland's bond requirements appear to say that at least part of the bond can be released prior to the completion of Reclamation Phase III (Administrative Record No. MD 265). EPA's interpretation of COMAR 08.13.09.15H is correct. Under Maryland's revised bonding provisions, the general bond can be released after the completion of Reclamation Phase I, 50 percent of the revegetation bond can be released after the completion of Reclamation Phase II and the remaining revegetation bond can be released at the completion of Reclamation Phase III.

3. The Advisory Council on Historic Preservation (Advisory Council) stated that the likelihood exists that implementation of the State program will result in adverse effects upon properties included in or eligible for the National Register of Historic Places. The Advisory Council went on to say that before approving this undertaking, OSM is required to take into account its effects on historic properties and to afford the Council a reasonable opportunity to comment in accordance with the National Historic Preservation Act, as amended (16 U.S.C. Sec. 470f) and the Council's regulations (36 CFR Part 800). In order to comply with Section 106 of the National Historic Preservation Act, OSM, in its program approval process, must obtain State assurance that any authorization of exploration will take into account effects on historic properties listed or eligible for listing on the National Register of Historic Places. Maryland has assured OSM that no coal exploration activities will be permitted on lands which will adversely affect any cultural or historic resources listed or eligible for listing on the National Register of Historic Places, unless the proposed exploration has been approved by both the Maryland Bureau of Mines and the agency with jurisdiction over such matters (Administrative Record No. MD 295). Therefore, the Director finds that the approval of the proposed amendment will not result in adverse effects upon properties included in or eligible for the National Register of Historic Places.

### Additional Information

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to the § 702(d) of SMCRA; 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order 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.*). The 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.

4. *Environmental Protection Agency (EPA) Concurrence:* On September 16, 1980, EPA transmitted its initial written concurrence on the Maryland permanent regulatory program as it relates to air and water quality standards under the authority of the Clean Air Act, as amended, (42 U.S.C. 1857 *et seq.*) and the Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*). Since the revised program modifications submitted by Maryland on January 13, 1984, do not involve changes to State air and water quality standards that EPA has already reviewed and approved, it was not necessary to obtain EPA concurrence on these revisions.

### List of Subjects in 30 CFR Part 920

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

Dated: November 8, 1985.

**James W. Workman,**

*Acting Director, Office of Surface Mining.*

## PART 920—MARYLAND

30 CFR Part 920 is amended as follows:

1. The authority citation for Part 920 continues to read as follows:

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

2. 30 CFR 920.10 is revised to read as follows:

### § 920.10 State program approval.

The Maryland State program submitted on March 3, 1980, as amended and clarified on June 16, 1980, and as further amended on April 9, 1980, June 3,

1981, and October 23, 1981, is approved effective February 18, 1982. Copies of the approved program, as amended are available for review at:

(a) Maryland Department of Natural Resources, Energy Administration, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4138.

(b) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

(c) Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, N.W., Washington, D.C. 20240, Telephone: (202) 343–4855.

3. 30 CFR 920.15(d) is added to read as follows:

**§ 920.15 Approval of amendments to State regulatory program.**

* * * * *

(d) The following statutory and regulatory amendments submitted to OSM on January 13, 1984, June 8, 1984, August 7, 1984, October 10, 1984, and November 9, 1984, are approved effective November 18, 1985, subject to the requirements set forth in § 920.16: Maryland's permitting requirements and performance standards for coal exploration activities of COMAR 08.13.09.07 as submitted on January 13, 1984; statutory revision to § 7–506(h), and § 7–514.6 of Title 7 of the Annotated Code of Maryland regarding the advertisement of bond release and prospecting, respectively, as submitted on January 13, 1984; Maryland's statutory and regulatory revisions concerning the form, amount and release procedures for performance bonds at proposed COMAR 08.13.09.15H(2), proposed COMAR 08.13.09.15I(1) (b) and (c), proposed COMAR 08.13.09.15I(2)(a), proposed COMAR 08.13.09.15J (4), (5) and (6)(a), § 7–511 (a) and (b) of the Annotated Code of Maryland, COMAR 08.13.09.15C(3), COMAR 08.13.09.15F(3), COMAR 08.13.09.15H(5), COMAR 08.13.09.15B(2)(c), and § 7–506(c)(3) of the Maryland Annotated Code as submitted on June 8, 1984; regulatory revisions to COMAR 08.13.09 as submitted on August 7, 1984, providing for the regulation of surface coal mining and reclamation operations on State-owned land; statutory revisions to § 7–504 (a) and (c) and § 7–505.1(e) of the Annotated Code of Maryland concerning license suspension and protection of areas designated for mining as submitted on October 10, 1984; statutory and regulatory revision concerning the circumstances under which extensions to the 90-day abatement period can be authorized at § 7–507(c)(2) of the Annotated Code of Maryland and COMAR 08.13.09.40F (4), (5), (6), and (7) as submitted on January 13, 1984; and regulatory revisions at proposed COMAR 08.13.09.40B as submitted on November 9, 1984, and clarified on January 16, 1985, concerning the State's inspection frequency standards. This approval is contingent upon the promulgation of the aforementioned proposed regulations.

4. 30 CFR 920.16 is added to read as follows:

**§ 920.16 Required program amendments.**

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

(a) By January 17, 1986, amend its program at COMAR 08.13.09.07 to require that coal exploration activities on lands designated unsuitable be approved by the regulatory authority as provided by 30 CFR 772.12.

(b) By January 17, 1986, amend its program at COMAR 08.13.09.07G(5)(a) to prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a).

(c) By January 17, 1986, amend its program at COMAR 08.13.09.07G(5)(k) to require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i).

(d) By July 30, 1986, amend is program at § 7–507(c)(1) of Title 7 of the Annotated Code of Maryland to provide authority for right of entry as provided by § 517 of SMCRA and 30 CFR 840.12.

[FR Doc. 85–27179 Filed 11–15–85; 8:34 am]
BILLING CODE 4310–05–M

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## 30 CFR Part 926

## Approval of Permanent Program Amendment from the State of Montana Under the Surface Mining Control and Reclamation Act of 1977

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the approval of a program amendment submitted by the State of Montana as an amendment to the State's permanent regulatory program (hereinafter referred to as the Montana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blaster training, examination and certification.

After conducting a thorough review of the proposed amendment submitted by the State, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations and is approving it.

The Federal rules at 30 CFR Part 926 codifying decisions concerning the Montana program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

**EFFECTIVE DATE:** November 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Jerry Ennis, Field Office Director, Casper Field Office, Office of Surface Mining, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–198. Telephone: (307) 328–5830.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Montana program was approved by the Secretary of the Interior on April 1, 1980, conditioned on the correction of 6 minor deficiencies. Information pertinent to the general background, revisions, modifications and amendments to the proposed permament program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560–21580), the February 11, 1982 **Federal Register** (47 FR 6266–6268), the January 3, 1984 **Federal Register** (49 FR 66–67) and the January 3, 1985 **Federal Register** (50 FR 258–260).

At the time of the Secretary's approval of the Montana program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the State was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Montana program, the Secretary specified that Montana would be required to adopt such provisions following promulgation of the Federal standards (45 FR 21560–21580, April 1, 1980).

On March 4, 1983, OSM issued final rules effective April 4, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). The Federal rules require each State to design and

implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining, and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience, and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later tan 12 months after the State's blaster certification program has been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

## II. Submission of Revisions

On January 3, 1984, the State of Montana submitted to OSM an amendment to its approved permanent regulatory program. The proposed amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification and the provisions of 30 CFR Part 816.61 through 816.68 relating to use of explosives. These materials were supplemented later by clarifying information submitted by the State on September 20, 1984. Additionally, the State submitted to OSM, on August 16, 1985, its *Blaster Certification Training Manual*. The proposed program modification consists of proposed regulations governing: the requirements for the conduct of blasting operations, the standards for certification of blasters, the proposed training outline for blaster training and the suspension or revocation of a blaster's certification.

The proposed amendment also consists of the *Blaster Certification Training Manual* which includes instructions for its proper use, sample review questions at the end of each chapter, all appropriate Montana regulations governing the use of explosives and a blaster's certification affidavit. The purpose of the affidavit is to certify, to the State, that a candidate has read the manual, completed the review questions and understands the material. The affidavit also must be notarized.

On February 6, 1984, OSM published a notice in the **Federal Register** announcing receipt of the Montana amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 4385). The public comment period ended March 7, 1984. An opportunity to request a public hearing was provided, but none was requested.

The State of Montana conducted a hearing on February 2, 1984, to receive comments on the adequacy of Montana's proposed regulations. As a result of substantive comments received at the hearing, the state revised its package and reopened its comment period until April 13, 1984.

The State then submitted to OSM on March 6, 1984, a request for an extension until May 31, 1984, to submit final rules addressing the blaster certification program. OSM published notice in the March 22, 1984 **Federal Register** of the State's request and invited public comment. The comment period closed April 23, 1984, with OSM receiving no comments (49 FR 10675).

On May 14, 1984, the Director, OSM announced in the **Federal Register** his decision to extend until May 31, 1984, the deadline for Montana to (1) promulgate rules governing the training, examination and certification of blasters, and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

On May 25, 1984, the State of Montana submitted to OSM a proposed blaster certification program amendment. OSM published notification of receipt of the State's submission and announced a public comment period on the proposed amendment in the June 14, 1984 **Federal Register** (49 FR 24542). On August 20, 1984, the State of Montana was notified of deficiencies that were identified as a result of OSM's review of the May 25, 1984 submission. Montana responded, on September 20, 1984, to OSM's concerns by providing additional material to address the issues raised by OSM.

OSM evaluated the State's blaster certification examination and blaster training program and identified deficiencies in the training program. As a result, the State of Montana requested on June 18, 1985, an additional extension of time, until October 31, 1985, to develop the training portion of its blaster certification program.

On July 18, 1985, OSM published a notice in the **Federal Register** (50 FR 29235) inviting public comment on the State's request. The public comment period closed on August 19, 1985. On August 16, 1985, prior to the close of the public comment period, OSM received from Montana a draft copy of the State's *Blaster Certification Training Manual*, making the State's June 18, 1985 request for an extension of time until October 31, 1985, moot.

## III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Montana on January 13, 1984, the clarifying material submitted on September 10, 1984 and the *Blaster Certification Training Manual* submitted on August 16, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

### *A. General*

The Montana submission requires that the Montana Department of State Lands (DSL) be responsible for the training, examination and certification of blasters within the State.

### *B. 26.4.310 Blasting Plan*

Section 26.4.310 of Montana's Strip and Underground Mine Reclamation Rules and Regulations (hereinafter referred to as Rules) requires, as part of each application, the submission of a blasting plan. The blasting plan must explain how the applicant intends to comply with Sections 26.4.621 through 26.4.626 which address the requirements for use of explosives. The Director finds this provision to be no less effective than the Federal requirement at 30 CFR 780.13.

### *C. 26.4.621 through 26.4.626 Use of Explosives*

(1) Section 26.4.621 requires that all surface and underground mining blasting operations shall be conducted by an experienced, trained and competent person who possesses a valid blaster's certification. This section also requires that all blasters shall comply with applicable State and Federal laws governing the use of explosives. The Director finds this provision to be no less effective than the Federal requirement of 30 CFR 816.61.

(2) Section 26.4.622 sets forth the procedures to be followed by the applicant when conducting a pre-blast survey on a home or structure located within one-half mile of the proposed blast site. The Director finds this provision to be no less effective than the Federal regulations at 30 CFR 816.62.

(3) Section 26.4.623 sets forth the requirements and schedules to be followed concerning public notification of proposed blasts at surface and underground mining operations. The Director finds this provision to be no less effective than the Federal regulations at 30 CFR 816.64.

(4) Section 26.4.624 sets forth the requirements to be followed while detonating explosives. This section addresses the performance standards to be followed in the following areas: blast timing, safety measures, amount of explosives to be detonated, control of airblasts, control of ground vibrations, protection of structures limiting blasting in certain situations. The Director finds this provision to be no less effective than the Federal requirements of 30 CFR 816.66.

(5) Section 26.4.625 sets forth the procedures to be followed when a seismograph is used to monitor the velocity of ground motion and peak particle velocity. The Director finds this provision to be no less effective than the Federal regulations at 30 CFR 816.67.

(6) Section 26.4.626 sets forth the requirements to be followed by the operator concerning recordkeeping of blasts. The rule identifies data that must be contained in all blasting records and the length of time such records must be retained. The Director finds this provision to be no less effective than the Federal regulations at 30 CFR 816.68.

*D. 26.4.1260 through 26.4.1263 Blaster Certification*

(1) Section 26.4.1260 sets forth some very general requirements applicable to the conduct of blasters in Montana. The Director finds this provision no less effective than the Federal provisions at 30 CFR Part 850.

(2) Section 26.4.1261 sets forth the requirements to be followed by persons seeking to become certified blasters. The Director finds this provision to be less effective than the Federal regulations at 30 CFR 850.15

(3) Section 26.4.1262, concerning blaster training courses, sets forth the minimum amount of training that a candidate for blaster certification must successfully complete. The Montana provision identifies the required subject areas as those contained in the Federal regulations. The Director finds this provision to be no less effective than the Federal requirements of 30 CFR 850.13.

(4) Section 26.4.1263 sets forth the requirements governing the suspension or revocation of a blaster's certification. The Director finds this provision to be no less effective than the Federal regulations at 30 CFR 850.15.

## IV. Public Comment

Of the Federal agencies invited to comment on the proposed amendment, one acknowledgement was received from the Bureau of Indian affairs. No comments were opposed.

The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17 (h)(10)(i).

## V. Director's Decision

The Director, based on the above findings, is approving the January 3, 1984 amendment to the Montana program as modified on May 25, 1984, September 20, 1984 and August 16, 1985. The Director is amending Part 926 of 30 CFR Chapter VII to reflect approval of the State program modifications.

## VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCA, 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 926

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

Dated: November 8, 1985.

**James W. Workman,**

*Acting Director, Office of Surface Mining.*

## PART 926—MONTANA

30 CFR Part 926 is amended as follows:

(1) The authority citation for Part 926 continues to read as follow:

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

(2) 30 CFR 926.15 is amended by adding a new paragraph (e) as follows:

### § 926.15 Approval of amendments to State regulatory program

* * * * *

(e) The following amendment submitted to OSM on January 3, 1984 and modified on May 25, 1984, September 20, 1984 and August 16, 1985 is approved effective [November 18, 1985]: Montana rule 26.4.310 requiring the submission of a blasting plan as part of a person's mine permit application; Sections 26.4.621 through 26.4.626 of the Montana rules which identify the requirements governing the use of explosives; and Sections 26.4.1260 through 26.4.1263 of the Montana rules which address the Montana blaster training, examination and certification program.

[FR Doc. 85–27183 Filed 11–15–85; 8:45 am]

BILLING CODE 4310–05–M

## 30 CFR Part 946

## Approval of Amendment to the Virginia Permanent Regulatory Program

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

**ACTION:** Final rule.

**SUMMARY:** OSM is announcing the approval of a proposed amendment submitted by the Commonwealth of Virginia as a modification to its permanent regulatory program (hereinafter refered to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of two new State regulatory definitions necessary to allow Virginia to require that all coal processing activities associated with surface coal mining and reclamation operations be permitted without regard to geographic proximity or whether the processing activity involves the separation of coal from its impurities. This action will not require that mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site be regulated.

After considering all comments from the public and other governmental agencies and the comments provided at the public meeting held on October 17, 1985, and after conducting a thorough review of the proposed amendment, the Director has determined that the proposed modifications meet the requirements of SMCRA and the Federal regulations. He is therefore, approving the amendment as submitted on September 4, 1985. The Federal

regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

**EFFECTIVE DATE:** November 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register** (46 FR 61088–61115). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 946.11 through 946.15.

## II. Submission of Amendment

On July 10, 1985, OSM published an interim final rule to clarify the effects of a judicial decision concerning the applicability of SMCRA to facilities that leach or chemically or physically process coal, or that result from or are incident to a surface or underground coal mining operation but are not located proximate to that operation (50 FR 28186–28188). In the July 6, 1984 (Round I) ruling in *In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144, the U.S. District Court for the District of Columbia held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The court also held that SMCRA's applicability to support facilities must be based on a functional test rather than a geographic proximity test.

OSM's interim final rule provided that all such facilities must comply with regulatory performance standards as of September 9, 1985. The rule also required each State to determine if any State statutory or regulatory provisions prohibit the permitting or regulation of these facilities under the approved State program, and to so notify OSM no later than November 7, 1985. By letter of August 19, 1985, Virginia notified OSM that it could not legally permit or regulate these facilities.

By letter dated September 4, 1985, Virginia submitted a proposed amendment adding definitions for "'coal preparation' or 'coal processing'" and "coal preparation plant" to the Virginia Coal Surface Mining Regulations at V700.5 (Administrative Record No. VA 560). The proposed definitions are identical to the Federal definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5, as amended on July 10, 1985. According to the letter, approval of these amendments would provide Virginia with the authority it needs to require permits for currently unpermitted and unregulated coal preparation and support facilities that fall under the jurisdiction of SMCRA. This action will not require that mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site be regulated.

The September 20, 1985 **Federal Register** announced receipt of the proposed definitions, requested public comment on their adequacy, and provided the opportunity for a public hearing (50 FR 38137–38139). Since only one request for a hearing was received, OSM instead held a public meeting on October 17, 1985, the minutes of which are available in the Virginia Administrative Record. The public comment period closed on October 21, 1985; no other comments were received.

## III. Director's Finding

In accordance with SMCRA and 30 CFR 732.17, the Director finds that the proposed amendment, as submitted by Virginia on September 4, 1985, meets the requirements of SMCRA and 30 CFR Chapter VIII. Since the two new definitions ("'coal preparation' or 'coal processing'") that Virginia proposes to add to its regulations at V700.5 are identical to the revised Federal definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5, the Director finds that the State definitions are no less effective than the Federal regulations.

## IV. Public Comments

The Director solicited public comment on the proposed amendment in the September 20, 1985 **Federal Register** (50 FR 38137–38139). Although no written comments were received prior to the close of the comment period on October 21, 1985, two individuals commented at the public meeting held on October 17, 1985, that they opposed the rule because the added burden it would place on their tipple could put them out of business. While the Director understands this concern, the Virginia rules would not impose a burden any more stringent than that required by the Federal law and regulations.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies, although none were received.

## V. Director's Decision

The Director, based on the above finding, is approving the proposed amendment to the Virginia program, as submitted on September 4, 1985. The Federal rules at 30 CFR Part 946 are being amended to implement this decision.

## VI. Procedural Requirements

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 for 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 946:**

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

Date: November 8, 1985.

**James W. Workman,**

*Acting Director, Office of Surface Mining.*

## PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

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

2. 30 CFR 946.15 is amended by adding a new paragraph (q) to read as follows:

**§ 946.15 Approval of regulatory program amendments.**

* * * * *

(q) The following amendment as submitted to OSM on September 4, 1985, is approved, effective November 18, 1985: The definitions of " 'coal preparation' or 'coal processing' " and "coal preparation plant" at V700.5 of the Virginia Coal Surface Mining Reclamation Regulations.

[FR Doc. 85–27177 Filed 11–15–85; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 103

### Amendments to Implementing Regulations; Currency and Foreign Transactions Reporting Act; Correction

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the inadvertent omission of the term "investment security" from the list of terms that received paragraph markings pursuant to the recent technical amendments to the implementing regulations for the Currency and Foreign Transactions Reporting Act which were published October 22, 1985 (50 FR 42691).

**FOR FURTHER INFORMATION CONTACT:** Robert J. Stankey, Jr., Financial Crimes and Frauds Advisor, Office of the Assistant Secretary (Enforcement and Operations), Department of the Treasury, Room 1458, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220, (202) 566–8022.

## PART 103—[AMENDED]

Accordingly, the Office of the Secretary is correcting 31 CFR 103.11 as follows:

**§ 103.11 [Corrected]**

Section 103.11 is amended by designating the terms Bank, Broker or dealer in securities, Currency, Domestic, Financial institution, Foreign bank, Foreign financial agency, Investment security, Monetary instruments, Person, Secretary, Transaction in currency, and United States, as paragraphs (a) through (m), respectively.

Dated: November 12, 1985.

**David D. Queen,**

*Acting Assistant Secretary (Enforcement and Operations).*

[FR Doc. 85–27348 Filed 11–15–85; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD2 84–03]**

### Drawbridge Requirements; Missouri River, Kansas and Missouri

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of Burlington Northern Railroad, the Coast Guard is adding regulations governing the A–S–B Highway and Railroad Bridge, Mile 365.6 Missouri River, between Kansas City, Kansas and Kansas City, Missouri. This change is being made because of a lack of direct communication between vessels and the bridge/train controller who authorizes bridge openings and train crossings, and a decrease in the number of daily bridge openings. This action will provide for faster opening of the bridge for navigation, more efficient handling of train traffic over the bridge, and relieve the owner of maintaining a drawtender at the bridge.

**EFFECTIVE DATE:** These regulations become effective on December 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314–425–4607.

**SUPPLEMENTARY INFORMATION:** On May 17, 1984, the Coast Guard published proposed rules (49 FR 20866) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated May 30, 1984. In each notice interested persons were given until July 2, 1984 to submit comments.

### Drafting Information

The drafters of these regulations are Roger K. Wiebusch, project officer, and Lieutenant R. E. Kilroy, project attorney.

### Discussion of Comments

There were no responses to the **Federal Register** publication. Two responses were received for the Public Notice. One respondent, a state agency, offered no objection to the proposal. The second respondent, a private party, objected to the proposal, commenting that the bridge would be unmanned in a heavily populated area, and the lift span would be easily accessible to unauthorized pedestrians. The individual also objected to an increase in the workload of tower personnel, and elimination of the bridgetender position at the A–S–B Bridge. Drawbridge Regulations do not require that the bridgetender be physically located at the bridge, only that the owner/operator provide personnel and equipment necessary to effect a prompt opening of the drawspan on receipt of proper signal. The latter objection is not within the scope of this regulation.

The Notice of Proposed Rulemaking (NPRM) stated that the bridge operating controls, the radiotelephone, closed circuit TV monitors for viewing the bridge, and controls for the directional microphone and horn located on the bridge would be handled by a bridge/train controller located in a tower facility on the Missouri bank about one mile from the bridge. Following publication of the Proposed Rule and Public Notice, Burlington Northern Railroad notified the Coast Guard that as a result of local labor work rules, it would be necessary to install the A–S–B Bridge's operating controls on the Hannibal Bridge, which is located 0.5 mille upstream of the A–S–B Bridge, but control of the A–S–B Bridge's operation and communications with river traffic would be with the bridge/train controller stationed in the tower facility, as indicated in the NPRM. Since placing the A–S–B bridge controls at the Hannibal Bridge instead of the tower facility differed from the proposed method that was published, known Missouri River users were informed of the change and provided an opportunity to comment. There were no objections to installing the A–S–B bridge controls at the Hannibal Bridge. One firm noted that the change seemed to give river interests an improved operating situation at the bridge, since the Hannibal bridge operator would remain on duty with improved mechanical controls, while the bridge/train controller managed traffic from the tower facility. The reason for the delay between the publication of the NPRM and publication of this final rule was the time necessary for Burlington Northern

to design, acquire, and install the equipment necessary to implement this regulation. Publication of the final rule was, therefore, delayed so that it would coincide with the initiation of the new system. Burlington Northern has completed installation of the various communications and operating components, and has reported the system for remotely operating the A–S–B bridge can be implemented November 1, 1985. Minor editorial changes have been made to the Final Rule to reflect the change in the location of the bridge operating controls. The regulation has also been assigned a second subpart number for inclusion with those regulations listed for the State of Kansas, as well as Missouri.

**Economic Assessment and Certification**

These regulations are considered to be non-major under executive order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulations impose no restrictions on navigation; the drawspan is still required to open on receipt of proper signal. These regulations merely describe the accessory equipment that has been installed, and the procedures for operating the bridge from a remote location. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for 33 CFR 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.411 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) as follows:

**§ 117.411 Missouri River.**

(a) * * *

(b) The lift span of the A–S–B highway and railroad bridge, Mile 365.6, between Kansas City, Kansas, and Kansas City, Missouri, is operated from a remote location. Radiotelephone contact may be established with the remotely located bridge/train controller to request bridge openings. The bridge is also equipped with a directional microphone and horn to receive and deliver signals to vessels not equipped with a radiotelephone. Closed circuit TV cameras located at the bridge enable the remotely located bridge/train controller to view both river traffic and the bridge itself.

(1) When an approaching vessel requires a bridge opening, contact shall be established with the bridge/train controller by radiotelephone or appropriate signals prescribed in § 117.15.

(2) The bridge/train controller will confirm by radiotelephone or sound signal that the bridge will open promptly.

(3) When rail traffic is on bridge, the bridge/train controller will inform the vessel that bridge cannot be opened and will also give an approximate time of bridge opening via radiotelephone. The bridge/train controller will indicate via sound signals that lift span cannot be opened if the vessel doesn't have a radiotelephone, or if radiotelephone is not used.

(4) When the bridge is clear of rail traffic, the bridge/train controller will advise the waiting vessel by radiotelephone or sound signal of the intended opening. The lift span will be raised to its full height, and the midchannel bridge lights will change from red to green.

(5) The bridge/train controller will monitor the vessel's passage via closed circuit TV and radiotelephone until it has cleared the bridge.

(6) When the vessel has cleared the draw, midchannel bridge navigation lights will change from green to red and the lift span will be lowered to the closed-to-navigation position.

3. Section 117.687 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 117.687 Missouri River.**

(a) * * *

(b) The lift span of the A–S–B highway and railway bridge, Mile 365.6, between Kansas City, Kansas, and Kansas City, Missouri, is operated from a remote location. Radiotelephone contact may be established with the remotely located bridge/train controller to request bridge openings. The bridge is also equipped with a directional microphone and horn to receive and deliver signals to vessels not equipped with a radiotelephone. Closed circuit TV cameras located at the bridge enable the remotely located bridge/train controller to view both river traffic and the bridge itself.

(1) When an approaching vessel requires a bridge opening, contact shall be established with the bridge/train controller by radiotelephone or appropriate signals prescribed in § 117.15.

(2) The bridge/train controller will confirm by radiotelephone or sound signal that the bridge will open promptly.

(3) When rail traffic is on bridge, the bridge/train controller will inform the vessel that bridge cannot be opened and will also give an approximate time of bridge opening via radiotelephone. The bridge/train controller will indicate via sound signals that lift span cannot be opened if the vessel doesn't have a radiotelephone, or if radiotelephone is not used.

(4) When the bridge is clear of rail traffic, the bridge/train controller will advise the waiting vessel by radiotelephone or sound signal of the intended opening. The lift span will be raised to its full height, and the midchannel bridge lights will change from red to green.

(5) The bridge/train controller will monitor the vessel's passage via closed circuit TV and radiotelephone until it has cleared the bridge.

(6) When the vessel has cleared the draw, midchannel bridge navigation lights will change from green to red and the lift span will be lowered to the closed-to-navigation position.

Dated: October 30, 1985.

**B.F. Hollingsworth,**

*Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.*

[FR Doc. 85-27426 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-14-M

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 84-231; FCC 85-575]**

### Increase the Availability of FM Broadcast Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action addresses 57 petitions for reconsideration filed in response to the 689 allotments made in the *First Report and Order* in Docket 84–231. The Commission has made channel additions, substitutions or deletions at

30 communities in response to the petitions and to matters raised on the Commission's own motion.

**EFFECTIVE DATE:** December 16, 1985.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Memorandum Opinion and Order**

In the matter of implementation of BC Docket 80-90 to increase the availability of FM broadcast assignments, MM Docket 84-231.

Adopted: October 28, 1985.
Released: November 8, 1985.
By the Commission.

**Introduction**

1. The Commission has before it the *First Report and Order*, 50 FR 3514, published January 25, 1985, in which the Commission allotted 689 new FM channels to various communities across the United States.[1] We have received 57 separate petitions for reconsideration concerning individual allotments.[2] These petitions are treated in detail in Appendix A alphabetically by state. This *Memorandum Opinion and Order* addresses the general issues that have been raised.

**Substitution of Channels**

2. Many parties have requested, either in the petitions for reconsideration or in new petitions for rule making, that we substitute channels or change site restrictions on the 689 allotments. Such changes would permit new or higher class allocations elsewhere or changes in transmitter sites for existing stations. In past allotment cases, substitutions for vacant channels have been routinely approved. However, the Commission has not considered the implementation of its new technical rules in this proceeding to be routine. Special acceptance and comparative criteria have been used, the amount of publicity and interest in the proposals has been extraordinary and the application process which uses a system of random selection by channel number is unique. This latter factor is particularly significant since the process of accepting applications on the 689 channel allotments assumes that channel numbers (and their place in line) will not change.

3. We would anticipate more than the usual confusion and disruption should the channels be subject to change not just at this stage but conceivably several times before the channel is ultimately made available for application. For example, in the case involving Homer, Ruston and Vivian, Louisiana and San Augustine, Texas (on page 14 of Appendix A), an existing Shreveport, Louisiana station requests that four channels at the above listed communities be changed in order to permit an upgrade in one station's facilities. It we permitted such "daisy chain" situations, we could expect a proliferation of these types of requests resulting in delays in service to the public and uncertainty by potential applicants.

4. Moreover, prospective applicants may be relying on the availability of a particular site location offered by a specified channel. The site availability area can change drastically when a different channel is substituted or when the site restriction on the channel is changed. We believe the public is better served by a policy that allows the channels to be used in an efficient and expeditious manner rather than delay service and create uncertainty by subjecting each allotment to countless changes. Therefore we shall not make such changes in the 689 channel allotments herein without a compelling showing of need or a showing of Commission error.[3] In this regard requests by an existing station for a site change or for a substitution of a higher class of channel to improve coverage do not meet the compelling showing of need standard.

5. The following types of cases evidence a compelling showing of need or Commission error. Thus, channel substitutions or other appropriate changes are warranted where (see Appendix A for a detailed analysis):

(a) Incorrect coordinates were used or computer error—

(1) Yuma, Arizona
(2) Earlimart, California
(3) East Hemet, California
(4) Century, Florida
(5) Royal Center, Indiana
(6) Alexandria, Louisiana
(7) East Prairie, Missouri

(b) Site availability was restricted to offshore locations—

(1) Edgewater, Florida
(2) Margate City, New Jersey
(3) North Cape May, New Jersey
(4) Wildwood Crest, New Jersey
(5) Wrightsville Beach, North Carolina
(6) Georgetown, South Carolina
(7) Rio Grande, Puerto Rico

(c) A higher class of channel was found to be available—

(1) Casey, Illinois
(2) Shreveport, Louisiana

(d) City grade coverage would not be provided from a restricted site—

(1) Everett, Pennsylvania
(2) Nicholasville, Kentucky

(e) An expression of interest was overlooked—

(1) Mt. Vernon, Kentucky

(f) Reevaluation of the weighting criteria was warranted—

(1) Ft. Oglethorpe and Trion, Georgia
(2) Banner Elk and Patterson, North Carolina
(3) Semora, North Carolina and South Boston, Virginia
(4) Crab Orchard and Graysville, Tennessee

(g) Further engineering analysis revealed an available channel—

(1) Cameron, Missouri

(h) A showing of compelling need was made—

(1) Pensacola, Florida

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[1] In the *Second Report and Order*, 50 FR 15558, published April 19, 1985, the Commission: (1) Accorded a preference for daytime-only AM licensees who apply for FM channels in the same community, provided certain preconditions are met; (2) announced a random selection system for making the 689 allotments available for application; and (3) lifted the restrictions on filing petitions for new allotments. Petitions for reconsideration are now pending on that action. In the *Third Report and Order*, 50 FR 31721, published August 6, 1985, the Commission allotted Channel 300A to East Ridge, Tennessee. Four sets of proposals to allot additional FM channels in the *Further Notice of Proposed Rule Making*, 50 FR 2835 (published January 22, 1985) are still pending. A petition for reconsideration of the East Ridge allotment is also pending. Finally, the Commission has begun implementation of its random selection of FM channels by issuing a *Public Notice* (May 8, 1985) setting forth the order in which applications will be accepted on each of the 80 FM channels.

[2] *Public Notices* of these petitions were given on March 20, 1985, Report No. 1503; April 12, 1985, Report No. 1508; and May 28, 1985, Report No. 1517.

[3] This policy of retaining new channels as originally allotted shall not extend to cases which do not involve the allotments made in this omnibus proceeding.

**City Grade Coverage**

6. The Commission considers Docket 80-90 to be a significant step in making more channels available throughout the country. However in the larger cities where demand is the greatest, channel availability continues to be scarce. A large percentage of the allotments made in this proceeding were Class A channels (3 kW at 100 meters HAAT) granted to smaller communities. We determined that for large cities (population 300,000 or more), a Class A channel could not adequately cover the entire city with a 70 dBu (3.16 mV/m) signal in compliance with § 73.315 of the Commission's Rules. Thus, having found no higher class channels available, we denied Class A channels to the following:

Phoenix, Arizona
Tucson, Arizona
Indianapolis, Indiana
Omaha, Nebraska
Albuquerque, New Mexico
Columbus, Ohio

In response to the large number of comments expressing interest in these cities and given our desire in this type of proceeding to provide additional service to larger communities where possible, we have reconsidered *sua sponte* our city grade coverage requirements and for this proceeding only, we have taken a more lenient approach.[4] As a result of further evaluation we have determined that five of the six communities are eligible for Class A channels because only a small amount of area in each case would receive less than a 70 dBu signal.[5] A discussion of each situation and the amount of area lacking city grade coverage is discussed under the above city's section in Appendix A.

**Other Matters**

7. Petitions for reconsideration have been denied in 34 cases as discussed in Appendix A. In the majority of the denials, the petitioner attempted to argue that its community should prevail over another even though the acceptance criteria or the weighting factors were not in its favor. Other petitions were denied because they relied on economic impact arguments to justify deleting the allotment. Such matters are considered more appropriate for consideration at the application stage. In three instances the petitioner asserted that interference would occur even though the spacing requirements were met. However, interference allegations are not pertinent where FCC spacing requirements are met. Requests by existing licensees for channel substitutions or deletions to improve coverage at their stations were denied because such requirements failed to meet the acceptance criteria for new channel proposals. In one case a request to reserve a commercial allotment for noncommercial educational use was denied because such use is not foreclosed by the allotment. A few petitions were denied where the petitioner alleged, but failed to clearly establish, that certain allocations were inadequate to provide city grade coverage. Finally, some petitions were denied because petitioners requested, but failed to show, that higher class channels were available for particular communities.

8. As a general matter, several parties suggested that since some allotted channels were different from those previously proposed, an opportunity to comment should have been afforded before the change took place. Generally, in the FM Table of Allotment rule making cases, the scope of the Notice provides the Commission with the ability to make channel changes for the subject community. Any unanticipated adverse effects that a channel change may have can be appropriately analyzed when raised in a petition for reconsideration as has been done in several instances herein. To follow any other procedure, the Commission would have to issue a new document (*Further Notice of Proposed Rule Making*) each time it considered changing a channel. The resulting effect on the administrative process and the delay of service to the public would be too great to justify.

9. Since this *Memorandum Opinion and Order* makes a significant number of changes to the Public Notice of May 8, 1985, *Notice of Random Selection of FM Channels*, we have reprinted that list with the changes included as Appendix C. Interested parties should note that even though the channel number of a previously listed community may have changed, its place on the schedule does not change.

10. Finally we have received concurrence from the Canadian and Mexican Governments in all of the original channel allotments as set forth in Appendix A of the *First Report and Order* [except Yuma, Arizona (see page 3 of Appendix A herein)]. However, four of the new allotments made in this *Memorandum Opinion and Order* are also subject to Canadian concurrence (Columbus, Ohio and Everett, Pennsylvania) or Mexican concurrence (Tucson, Arizona and East Hemet, California).

11. Authority for the action taken herein is contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended.

12. It is ordered that § 73.202(b) of the Commission's Rules is amended as set forth in Appendix B.

13. It is further ordered that this action is effective December 16, 1985.

14. For further information concerning this proceeding contact Mark Lipp, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*

**Appendix A**

In connection with the discussion of the individual petitions for reconsideration, references are made to the six acceptance factors and to the weights assigned thereto. These criteria are as follows:

(1) First aural service—4
(2) Second aural service—3
(3) First local service—3
(4) First fulltime local service—2
(5) Minority service—2
(6) Public radio service—2

Where two or more communities accumulated the same numerical value, the selection was made according to the higher population. Enhanced weights were given to proposals which fit into two or more categories by adding the lower weights as a fraction of the higher category.

*Bay Minette, Alabama*

Stewart Broadcasting Company, Inc. ("Stewart"), licensee of daytime-only AM Station WHEP, Foley, Alabama seeks reconsideration of the allotment of FM Channel 293A to Bay Minette, Alabama, alleging that Foley is entitled to a higher ranking factor.

Bay Minette (population 7,455), is served by Stations WBCA(AM) (daytime-only) and WWSM(FM). Foley (population 4,003) has daytime-only AM Station WHEP. Stewart argues that Bay Minette should have received a minority factor of 2.0, while Foley should have received a factor of 3.0 for a second aural service, plus additional weight for a first fulltime local service and for a minority population of 25%, for a total of 3.4. Additionally, Stewart claims that even though both communities are located in Baldwin County, Foley is in the more populous segment and receives less service than does Bay Minette.

[4] See footnote 7 of the *First Report and Order*, supra.

[5] In the case of Phoenix we determined that no part of the community could be provided with a city grade signal.

Foley is entitled to a ranking factor of 2.0 for a first fulltime local service. Since no minority need was previously identified at Foley, it is not now entitled to an additional .2 rating. In addition, no showing of a second aural service was demonstrated. Rather, it appears that Stewart misconstrues this factor as that of a second local service which receives no weight. Since both communities have the same weight of 2.0, our decision to select Bay Minette was premised on its larger population. Moreover, according to Commission policy, the reception of non-local signals received in Bay Minette is not considered as a substitute for local service. Thus, we uphold our previous decision awarding Channel 293A to Bay Minette.

*Homewood, Alabama*

MetroSouth Broadcasting, Inc. ("MetroSouth"), licensee of daytime-only AM Station WGTT, Alabaster, Alabama, seeks reconsideration of the allotment of FM Channel 247A to Homewood, Alabama. Opposition comments were filed by William and George Chapman ("Chapman") to which the petitioner responded.

Originally, the Commission proposed the allotment of Channel 247A to Alabaster as a first fulltime local service. However, in response to a counterproposal, Homewood was granted the allotment as that community's first local service. In comparing the two communities, pursuant to our priority ranking factors, a first local service at Homewood was to be preferred over a first fulltime local service at Alabaster.

On reconsideration MetroSouth alleges that we failed to consider the application of Station WCRT(AM) to change its city of license from Birmingham to Homewood, and to operate fulltime there. On December 19, 1984, the date of our decision in this docket, there were no channels allotted to Homewood. Station WCRT's application was viewed as not material to our decision since although the application was on file during the pendency of this proceeding, it was not granted until April 5, 1985, substantially later than our action. To rely on the possibility of an outcome of a pending application would have been speculative at that time.

As to MetroSouth's assertion that we should now consider the grant of WCRT's application, the Commission is not required to reopen its proceedings to accommodate changing circumstances. To do so would simply add a substantial element of instability to our orderly administrative processes.

*Phoenix, Arizona*

On our own motion, the Commission's staff revisited its denial of an FM channel to Phoenix for lack of city grade coverage. We have determined that no FM channels are available which can provide the requisite coverage over any portion of the community and still comply with the distance separation requirements. Therefore we uphold our previous denial of an allotment to Phoenix.

*Sierra Vista, Arizona*

Richter Broadcasting Company, Inc. ("Richter"), licensee of Station KTAZ(FM) (Channel 265A), Sierra Vista, seeks the deletion of Channel 269A at Sierra Vista. It alleges that the community is already well served by its station as well as by Station KZMK(FM), Bisbee, Arizona. Richter claims the Commission did not identify in its *Report and Order* which ranking criteria governed the Sierra Vista allotment and it does not appear that any of the categories apply. Richter claims that there is no indication we considered its opposition comments, in violation of section 4(c) of the Administrative Procedure Act.

Channel 269A was allotted to Sierra Vista on the basis of a stated need for minority service by the National Black Media Coalition. All opposition comments, including Richter's, were considered. However, due to the volume of comments received in the proceeding, we did not elaborate on allegations raised if, as was the case here, a proposal demonstrated compliance with our designated ranking factors.

*Tucson, Arizona*

On our own motion, the Commission's staff has determined that Channel 281A can be allotted to Tucson with a site restriction of 6.8 km (4.2 miles) north and provide city grade coverage to approximately 95% of the city. As discussed in paragraph 4, of the *Order, supra,* due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of the Rules so as to allot Channel 281A to Tucson. Mexican concurrence in the allotment has been requested. The community of Tucson, Arizona will receive numerical sequence No. 20 for filing of applications on Channel 281A.

*Yuma, Arizona*

On our own motion, we are reconsidering the allotment of Channel 250A to Yuma, Arizona. When this allotment was made our records did not accurately reflect the existence of Channel 250A at Algodones, Mexico. Yuma is located only 11 kilometers from Algodones and all allotments made to U.S. communities within 320 kilometers (199 miles) of the United States-Mexico border, must meet the spacing standards required by the Mexican-United States FM Broadcasting Agreement (see § 73.207(b)(3) of the Commission's Rules). Accordingly the Mexican Government objected to this allotment.

Our staff conducted additional engineering studies which failed to determine the existence of any other alternate channel for allotment at Yuma. Therefore we shall reverse our decision and delete the allotment of Channel 250A to Yuma.

*Earlimart, California*

On our own motion, we are considering a late pleading from KLOK Radio, Ltd., licensee of Station KFIG–FM (Channel 266), Fresno, California. KLOK Radio ("KLOK") seeks reconsideration of the allotment of FM Channel 265A to Earlimart, California in an effort to remove severe restrictions on its transmitter relocation plans.

KLOK Radio alleges that since the lease on its present site atop a downtown Fresno office building will soon expire, it has diligently searched for a suitable site to relocate. It desires to relocate in order to correct an interference problem from other co-located facilities. However, it claims that Channel 265A at Earlimart now precludes its relocation south of Fresno, while it is constrained to the north by FAA restrictions on tower placement by two major airports located near the center of Fresno. KLOK Radio adds that zoning restrictions and urban sprawl further limit tower placement in the latter area.

Moreover, KLOK Radio claims that moving to a more northerly direction to avoid FAA and other restrictions would fail to place a useable signal into downtown Fresno due to the relatively flat terrain. KLOK Radio adds that even though it was previously located northeast of Fresno, it relocated to its present downtown site to eliminate shadowing effects.

We previously attempted to accommodate KLOK Radio's pending application to relocate in the *Report and Order* by allotting Channel 263A instead of Channel 265A at East Porterville. However, in doing so, the same channel was placed in Earlimart, which is only slightly further south of Fresno than is East Porterville and still precludes the proposed relocation.

We recognize that KLOK Radio complied with all Commission procedures in applying to relocate its transmitter and that the staff inadvertently failed to take the correct steps to accommodate the move. Since Channel 228A can be substituted for Channel 265A at Earlimart consistent with the minimum distance separation requirements of our Rules, we believe that action is warranted. In accordance with the Public Notice of May 8, 1985, the community of Earlimart will retain its numerical sequence of No. 75 and applications will be accepted for Channel 228A in that order rather than No. 71 assigned to original Channel 228 allotments.

*East Hemet, California*

On our own motion, we are reconsidering the allotment of Channel 277A to East Hemet, California, based on a letter from John J. Davis, which questions the Commission's specified site coordinates of 7.4 kilometers southwest of the community. Davis claims that the restricted site should be 18.3 kilometers (11.3 miles) and that from this distance the 70 dBu contour for a Class A station could not provide city grade coverage. Accordingly, Davis seeks either waiver of § 73.315 or reallotment of Channel 277A to another community within the permissible area of the present site restriction.

A staff engineering study reveals that the coordinates utilized at the East Hemet site are in error. Consequently, we have determined that another channel (225A) can be allotted to East Hemet with a site restriction of 4.1 kilometers south to protect Stations KCMJ(FM), Indio, and KWDJ(FM), Riverside, California. Since East Hemet is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government has been requested. In accordance with the *Public Notice* of May 8, 1985, the community of East Hemet, California, will retain its numerical sequence of No. 60 and applications will be accepted for Channel 225A in that order (rather than No. 4 assigned to original Channel 225 allotments).

*Madera, California*

Randolph L. Johnston, licensee of Station KAAT(FM) (Channel 296A), Oakhurst, California, requests reconsideration of the allotment of Channel 297A to Madera, California, alleging it will cause severe interference to his operation in both his primary and secondary service areas and will thereby cause him to cease operation. According to Johnston, his station's 60 dBu contour falls within 9 miles of downtown Madera, since the transmitter height is much greater than Madera's elevation in the valley.

In support, Sunrise Media, Inc., licensee of Station KLTK (Channel 298A), Hanford, California, claims that both it and Station KAAT provide quality signals to Madera. However, it argues, if Channel 297A remains in Madera, it will cause disruption not only to Madera residents, but would also create similar problems for listeners of Stations KAAT and KLTK in Fresno, which is approximately 10 miles southeast of Madera. According to Sunrise, this interference matter would affect 58,000 people in Madera County and 450,000 in Fresno County. Sunrise claims it already experiences some interference to its station in Fresno by the proximity of Station KAAT and in the Visalia area by Station KKXX, Bakersfield, California (Channel 300).

The Commission's rules provide for protection from interference to a station's 1 mv/m contour based on minimum distance separation standards. In this regard terrain factors are not considered. Thus, interference caused to the reception of the existing stations *beyond* their normally protected service areas due to terrain factors is an inappropriate basis for declining to allot the channel to Madera. Therefore we uphold our decision allotting Channel 297A to Madera.

*Shafter, California*

Community Service Broadcasters, Inc. ("CSB"), licensee of Station KLYD(FM) (Channel 249A), Shafter, California, seeks reconsideration of the allotment of Channel 282A to that community. CSB originally requested that Channel 263B1 be allotted to Shafter as a counterproposal to a proposal at Bakersfield, California, in order to serve the largely Hispanic population of that community. However, Channel 263B1 could not be allotted to Shafter in compliance with the minimum distance separation requirements of our Rules. A staff engineering analysis revealed there were no other Class B1 channels available. Therefore, in order to accommodate the stated need for minority service, a Class A channel was allotted.

CSB asserts it does not have an interest in a Class A channel, nor does a search of our records reveal any other interest, except that of the Corporation For Public Broadcasting ("CPB"), which urged that either a Class A at Bakersfield or a B1 at Shafter be allotted and reserved for noncommercial educational use. In addition, Eric Hilding also favors deletion of Channel 282A at Shafter, since the allotment creates siting problems with his proposed site in a pending application.

Given the unavailability of a Class B1 channel to serve Shafter, the apparent need of a channel to serve the largely Hispanic population at Shafter, and absent any specific expression of interest to reallocate the channel elsewhere, we believe that the channel should be retained at Shafter.

*Visalia, California*

Brown Broadcasting Co. ("Brown"), licensee of Class B Station KYNO-FM (Channel 239), Fresno, seeks reconsideration of the allotment of Channel 241A at Visalia, which it states precludes its proposed transmitter relocation. Brown advises that in June 1982, we granted a request to substitute Channel 239 for 238 at Fresno and modified the license of KYNO to permit it to relocate its transmitter out of downtown Fresno to an area that would offer it greater flexibility for maximizing coverage. Brown claims on reconsideration that Channel 241A at Visalia now precludes any meaningful relocation.

Further, Brown asserts that its application to modify its facilities, filed August 30, 1984, should have been considered without regard to potential conflicts with proposed allotments, pursuant to the Commission's announced application processing procedures. Accordingly, Brown alleges the Visalia allotment violates those procedures.

In addition to its desire to expand its coverage area, Brown claims that its relocation efforts were prompted by "alleged intermodulation problems" to educational Station KSJV(FM) (Channel 218B), Fresno. In light of the recited circumstances, Brown seeks deletion of Channel 241A at Visalia, as that community's fourth local service (3d FM) and its reallotment to Strathmore, California, as that community's first local service.

In its *Public Notice* of March 27, 1984, the Commission stated that while applications would be processed without regard to potential conflicts with allotments proposed in this proceeding, it also stated that it would attempt to resolve any conflict that may occur between the final allotment list and applications pending or granted. Since Brown's application was filed on August 30, 1984, the processing of the application was not possible before the final list of 689 new allotments was ready for review by the Commission (on December 19, 1984). Therefore, we had to decide between a new service at Visalia *vis-a-vis* a site preference at

Fresno, which presently enjoys a multiplicity of services. Accordingly, we believed that public interest factors clearly dictated the choice of a new service at Visalia for the presentation of diverse viewpoints. Furthermore, petitioner has failed to present any evidence documenting its "intermodulation problems" with Station KSJV(FM). Nor do we believe it is appropriate to reallot Channel 241A to Strathmore since we have no stated interest by any party in pursuing such a proposal. On the basis of the facts presented and our findings herein we find no error in granting the Visalia allotment.

*East Lyme, Connecticut*

*Somersworth, New Hampshire*

*Ocean Acres, New Jersey*

RKO General, Inc. ("RKO"), seeks reconsideration of the allotment of Channel 254A to East Lyme, Connecticut and to Somersworth, New Hampshire and Channel 253A to Ocean Acres, New Jersey. It claims that objectionable interference would result to the current coverage area of its Stations WROR(FM), Boston, Massachusetts, and WRKS–FM, New York City, New York. It further states that there is no indication in the *Report and Order* that the Commission considered its previous arguments of interference.

Although RKO's interference allegations were considered, a staff engineering study shows that these allotments meet the spacing requirements to Stations WROR (Channel 253) and WRKS–FM (Channel 254). The Commission's rules do not protect against interference *per se* as long as the distance separation requirements are met. See § 73.209 of the Commission's Rules. Therefore we find no error in the allotment of Channel 254A to East Lyme.

*Century Village, Florida*

On our own motion, the Commission's staff has determined that Century Village (located in Palm Beach County), was inadvertently designated for the allotment of Channel 286A rather the appropriate listing should have been Century, Florida (located in Escambia County).

*Edgewater, Florida*

On our own motion, the Commission's staff has determined that the site restriction of 1.2 km northeast for Channel 226A at Edgewater is unnecessary and that the allotment can be made without a site restriction.

*Key West, Florida*

Florida Keys Radio Association submitted a petition for reconsideration of the Commission's action allotting three additional channels to the Florida Keys (Key West—Channel 300C1, Summerland Key—Channel 257A and Key Colony Beach—288A). It argues that this isolated area of Florida does not have the economic base to support additional stations and suggests that the Commission impose a freeze on further allotments to the Keys area. National Radio Broadcasters Association filed comments in support.

Generally, the Commission's policy is to provide additional channels to a community where a demand is shown. Where allegations are raised concerning the adverse impact of another station in the area, we have held that such matters are more appropriately raised in connection with the filing of an application. See *e.g. Grand Junction, Colorado*, 26 R.R. 2d 513 (1973). See *Carroll Broadcasting Co. v. F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958). Here two of the communities (Key Colony Beach and Summerland Key) would be receiving a first local service. As for Key West, potential applicants can take into account the amount of competition already existing when they make their decision to apply.

*Pensacola, Florida*

Capitol Broadcasting Corporation ("Capitol"), licensee of Station WKSJ–FM, Mobile, Alabama, filed a petition for reconsideration requesting the Commission to reconsider the allotment of Channel 291A to Pensacola, Florida in order to enable Station WKSJ–FM to relocate its transmitter site and achieve full Class C facilities. Capitol proposes to substitute Channel 254A for Channel 291A at Pensacola and to substitute Channel 291A for Channel 237A at Gulf Breeze, Florida.

Capitol states that it has tried unsuccessfully for two and one-half years to locate a non short-spaced site that would allow WKSJ to upgrade to minimum Class C facilities. Capitol points out that the FAA has disapproved at least twelve proposed sites and that the FAA will not allow WKSJ to construct an adequate antenna anywhere within WKSJ's 10 mile buffer zone. The proposed site which is satisfactory to the FAA is short-spaced to the recent allotment of Channel 237A at Gulf Breeze, Florida, for which there are 18 applications pending.

Capitol contends that the proposed substitutions at Pensacola will provide a substitute channel at Gulf Breeze and benefit the public interest by upgrading WKSJ to a minimum Class C facility, improving service to the Mobile area and providing an allotment of an unrestricted channel to Gulf Breeze for the pending applicants. Responding to concerns that Channel 254A cannot provide city grade coverage to all of Pensacola, Capitol notes that WUWF–FM, Channel 201 in Pensacola limits the coverage area of Channel 254A. Therefore, Capitol has reached an agreement with Station WUWF to relocate that station's antenna site and to pay the expenses connected with the move. Capitol claims that this move will allow an applicant for Channel 254A to cover virtually all of Pensacola.

Generally, our policy is to retain the channels originally allotted unless a compelling need is shown or the Commission made an error in its original decision. See paragraph 2 of the *Memorandum Opinion and Order*. We believe that due to the nature and extent of the problems cited by Capitol in locating an acceptable site, the requested substitution is warranted and possible under certain conditions.

The requested substitutions must be conditioned on the grant of a pending application for Station WPMO, Channel 256, Pascagoula, Mississippi, which has requested a site change and a downgrading of its class of channel to 256C1. Secondly, Station WUWF–FM, Channel 201, must relocate to the site as proposed. A staff study confirms that satisfaction of the above conditions will allow a Channel 254A facility to provide city grade service to 98% of the city of Pensacola and over 99% of the total population of Pensacola with a 70 dBu signal or greater. Based on the showing of need made by Capitol for its site relocation and the minor loss of city grade coverage, we believe that it would be in the public interest to make the proposed substitutions.[1] The substitution of channels at Gulf Breeze will be made in a separate *Memorandum Opinion and Order* in connection with that separate proceeding. In the event the above conditions are not met we will issue a Public Notice announcing the status of Capitol's request.

In accordance with our Public Notice of May 8, 1985, the community of Pensacola, Florida, will retain its numerical sequence of No. 54 and

[1] In this regard, see also *Third Report and Order* in MM Docket 84–231, 50 FR 31721, published August 6, 1985, where Channel 300 was allotted to East Ridge, Tennessee, as a Class A instead of a Class C2 channel in order to permit a Birmingham, Alabama, station to relocate. The Birmingham station had made a showing that FAA considerations precluded the use of any other sites.

applications will be accepted for Channel 254A in that order (rather than No. 47 assigned to original Channel 254 allotments).

*Quincy, Florida*

Big Bend Broadcasting Corp., licensee of Stations WCNH(AM) and WWSD(FM), Quincy, Florida, requests reconsideration of the Commission's action allotting Channel 274A to Quincy, Florida. Big Bend contends that Quincy is a poverty area and cannot support a third station in the city.

The decision to allot Channel 264A to Quincy reflects the Commission's policy of providing new service to communities where there is a specified demand. Big Bend's arguments relating to economic impact of an additional station in its service area is generally considered to be more appropriately raised when an application is filed for the Quincy channel. See *Grand Junction, Colorado*, 26 R.R. 2d 513 (1973). See *Carroll Broadcasting Co. v. F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958).

*Tallahassee, Florida*

*Omega, Georgia*

Terry A. Posey ("Posey") requests the Commission to reconsider its action allotting Channel 291A to Tallahassee, Florida, and 298A to Omega, Georgia. Posey claims that his comments to the *Notice* fully demonstrated that a Class C1 station at Tallahassee would provide a first and second nighttime aural service, meeting the Commission's highest priority. In contrast, no such showing was made for Omega which precludes a Class C1 channel for Tallahassee. Additionally, Posey claims that the Commission provided no documentation or reason for its decision. Tiftarea Radio, Inc., proponent for Omega, Georgia, filed an opposition in which it argues that the Commission's action granting a Class A allotment to two communities rather than a Class C1 channel to Tallahassee alone was appropriate. Tiftarea contends that the first nighttime aural service claimed by Posey is greatly exaggerated, and that a Class C1 station at Tallahassee would provide no better than second aural service to any listeners.

Every effort was made to allot the highest class of channel where an interest was expressed. The Commission did not allot the Class C1 channel to Tallahassee due to a short spacing with several other existing stations. A staff study found no other Class C1 channels available. As a result, a Class A channel was allotted and no verification was attempted on the first aural service showing. Therefore, we find the allotments to Tallahassee and Omega were proper.

*Fort Oglethorpe, Georgia*

*Trion, Georgia*

John W. Abbott and Terry R. Adams, d/b/a Safe Broadcasting ("Safe"), request reconsideration of the allotment of Channel 239A to Fort Oglethorpe, Georgia, arguing that it should have been allotted to Trion, Georgia, instead. Safe claims that Channel 239A at Trion would render a first and second aural service (4.0 and 3.0 respectively) and a first fulltime local service (2.0), whereas Fort Oglethorpe would provide only a first local service (3.0). It also argues that it was not provided an opportunity to compare the need for this channel at these communities because the Commission did not previously identify a conflict at these locations. Bedros D. Daghlian filed an opposition to the reconsideration.

The staff's engineering study reveals two small areas which would receive a second nighttime aural service. The areas contain the communities of Lyerly and Chesterfield, Georgia, and Curryville and Rosedale, Georgia. The only fulltime service currently received in these areas is from Station WSB(AM), Atlanta, Georgia. In addition, a number of daytime-only AM stations provide service to these areas. The additional factor of a second aural service, when added to the provision of a first fulltime local service (3.2) at Trion, outweighs the provision of only a first local service to Fort Oglethorpe (3.0). Therefore, we shall reverse our previous decision and allot Channel 239A to Trion while deleting that channel from Fort Oglethorpe. Our staff failed to find an alternate channel available for allotment to Fort Oglethorpe. The community of Trion, Georgia, will receive numerical sequence No. 34 for the filing of applications on Channel 239A.

*Hogansville, Georgia*

Radio Station WKEU, Inc. ("WKEU"), Griffin, Georgia, petitions for reconsideration of the allotment of Channel 248A to Hogansville, Georgia, aruging that its application, filed November 14, 1984, to relocate its transmitter site is precluded thereby. WKEU requests that the Hogansville allotment be deleted or in the alternative a site restriction imposed.

WKEU's application was filed too late to be considered a conflict to the Hogansville allotment (30 days prior to adoption of *Report and Order*). The Commission's general priority is to provide for a first local service rather than to allow an existing station to relocate based on a site preference. Therefore, we find insufficient reason to either delete Channel 248A from Hogansville or to place a site restriction on the channel. See paragraph 2 of the *Memorandum Opinion and Order, supra.*

*Mableton, Georgia*

McDougald Broadcasting Corporation (licensee of Station WQTU(FM), Rome, Georgia), William J. Taylor, Jr. and Ann Marie Baker ("McDougald") filed a joint petition requesting reconsideration of the allotment of Channel 237A to Mableton, Georgia. McDougald claims that the Commission's action: (1) Unjustifiably awards yet another channel to the Atlanta urbanized area, (2) will penalize communities such as Fayetteville and Peachtree City, Georgia, in favor of Mableton, (3) will preclude Station WQTU(FM), Rome, Georgia, from upgrading to Channel 274C2, which could provide a first and second nighttime aural service, and (4) will cause noncommercial educational Station WGHR (Channel 273D), Marietta, Georgia to terminate service. Buford Broadcasting, Inc. ("BBI"), licensee of Station WGCO(FM), Buford, Georgia, submitted comments in support of the joint reconsideration. BBI claims that the allotment of Channel 273A to Fayetteville or Peachtree City would allow Station WGCO(FM) to relocate its transmitting facility approximately 6 miles south of its present location, thereby providing service to a larger population. DKM Broadcasting Corp., Lind Carl Voth and Simon Rosen, filed an opposition.

First, we have no difficulty finding Mableton to be a community. It is listed in the U.S. Census and has the requisite indicia. Since Mableton (population 25,111), Fayetteville (population 2,715) and Peachtree City (population 6,429) are all without local service, the most populous community was chosen to receive the allotment. With regard to Station WQTU(FM), Rome, desiring to upgrade, our study indicates that Channel 274C2 at Rome would be short spaced to the buffer zones for Stations WVEE(FM), Atlanta, Georgia,[2] WYCQ(FM), Shelbyville, Tennessee, and WWWB–FM, Jasper, Tennessee.[3]

[2] Station WVEE has filed an application to relocate its transmitter to a location which would be 7 kilometers short to the Rome proposal (at its current site).

[3] An application is now pending to upgrade the Jasper station's facilities at a site which would not cause a short spacing to the Rome proposal.

McDougald requests a waiver of the buffer short spacing based on its provision of first and second aural services. We believe it preferable to give each station the full three (3) year period (until March 1, 1987) to decide whether it desires to make changes. Here, if the protected stations do make changes, it could affect the showing of service to unserved and underserved areas. Therefore, we do not believe that the deletion of a first local service at Mableton could be justified by relying on the first aural service claimed by the Rome station upgrading at this time. Finally, the Commission's Rules do not protect secondary services such as Class D FM stations from interference when a full service FM operation is proposed. It is possible that Station WGHR could operate on another channel with its current facilities.

*Casey, Illinois*

Ford FM, Inc. ("Ford") states that it filed comments requesting that 282B1 be allotted to Casey instead of the proposed Channel 286A. Ford seeks reconsideration based on the apparent failure by the Commission to consider its counterproposal or state any reason for denial of the requested allotment. A staff evaluation of Ford's engineering study reveals that Channel 282B1 may be allotted to Casey as Ford suggests. It was the Commission's policy in the *First Report and Order* to allot the highest class of channel available where an interest was shown. Thus, based on the facts presented by the petitioner and our findings herein, we shall grant the allotment of Channel 282B1 in lieu of Channel 286A.

In accordance with the *Public Notice* of May 8, 1985, the community of Casey, Illinois, will retain its numerical sequence of No. 8 and applications will be accepted for Channel 282B1 in that order (rather than No. 48 assigned to the original Channel 282 allotments).

*Indianapolis, Indiana*

William S. Poorman ("Poorman") requests reconsideration of the Commission's failure to allot Channel 242A to Indianapolis, Indiana, based on its determination that a Class A facility could not provide the entire city with the requisite city grade signal (70 dBu). Poorman argues that the Commission erred because separate, nearby, communities were included in the required coverage area. In support, Poorman submitted demographic data identifying the communities and engineering studies purporting to demonstrate that a Class A facility could provide the "required 70 dBu signal coverage" to the entire city of Indianapolis.

On reconsideration, the Commission's staff has determined that Channel 242A can be allotted at a center city reference point and provide city grade coverage to approximately 80% of the community. As discussed earlier in paragraph 4, due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of the Rules so as to allot Channel 242A. In accordance with the *Public Notice* of May 8, 1985 the community of Indianapolis, Indiana will retain its numerical sequence No. 78 and applications will be accepted for Channel 242A in that order.

*Royal Center, Indiana*

Jeff Hancock ("Hancock") requests reconsideration of the allotment of Channel 241A to Royal Center arguing that his counterproposal to allot Channel 279A would provide "superior service" to the community. In support, Hancock submitted engineering data demonstrating that Channel 279A can be allotted to Royal Center in compliance with the minimum distance separation requirements.

Additional staff engineering studies indicate that incorrect center city reference coordinates for Royal Center had been considered and that Channel 279A can be allotted to Royal Center without a site restriction. Currently Channel 241A requires a site restriction and wherever possible, we attempted to select channels which minimized the site restriction. The Commission is, therefore, deleting Channel 241A and allotting Channel 279A to Royal Center, Indiana. In accordance with the *Public Notice* of May 8, 1985, the community of Royal Center, Indiana, will retain its numerical sequence No. 18 and applications will be accepted for Channel 279A in that order.

*Herington, Kansas*

Donald Dean Willis ("Willis") requests reconsideration of the Commission's action allotting Channel 242A to Herington, Kansas, as a Class A channel rather than a Class C2. The Commission denied Willis' original proposal to allot a Class C2 at Herington because it conflicted with a concurrent proposal to allot Channel 242A to Augusta, Kansas. On reconsideration, Willis argues that it is "not interested in what channel is allocated to Herington as long as it is upgraded to a Class C2" so that it can serve an area large enough to generate sufficient revenue to operate a station.

Commission engineering studies have determined that no Class C2 channels can be allotted to Herington in compliance with our separation and coverage requirements. The decision to grant Class A channels to Herington and Augusta, Kansas, rather than a Class C2 to Herington only, reflects the Commission's primary goal in this proceeding to provide new local service to as many communities as possible in compliance with the minimum distance separation requirements. Therefore the petition for reconsideration is denied.

*Topeka, Kansas*

Osage Radio, Inc. ("Osage") requests reconsideration of the allotment of FM Channel 223A to Topeka, Kansas, alleging that the requisite city grade signal (70 dBu) cannot be placed over the entire city of Topeka from the site restriction (4.5 miles north) imposed upon FM Channel 223A.

Commission engineering studies have confirmed this information. However, our studies also indicate that Channel 223A can be allotted with the 4.5 mile site restriction and provide coverage to approximately 90% of the area of Topeka, Kansas. As previously discussed, due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of the Rules so as to allot FM Channel 223A. (See paragraph 4, *supra.*) Therefore, the petition for reconsideration is denied.

*Beaver Dam, Kentucky*

Butler County Broadcasting Company ("Butler") requests reconsideration of the allotment of FM Channel 274A to Beaver Dam, Kentucky, rather than to Morgantown, Kentucky, as proposed in its counterproposal. Butler argues that Beaver Dam is adequately served by AM and FM facilities licensed to nearby Hartford, Kentucky, and that comparative consideration should have been afforded its counterproposal for Morgantown which would provide better first and second nighttime aural service.

Commission engineering studies indicate the alleged first and second nighttime aural service areas claimed by Butler already receive nighttime service from at least two fulltime FM stations.[4] Therefore no such first or second nighttime aural service would be provided. With respect to Butler's claim of adequate aural service at Beaver Dam, the Commission's policy continues to be that a community's need for a first

[4] Station WAKQ, Channel 286C, Russellville, Kentucky, and Station WKYA(FM), Channel 270C, Central City, Kentucky.

local service cannot be met by other stations not licensed to that locality. See *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). Beaver Dam has no locally licensed service while Morgantown is presently served by Station WLBQ(AM). The weighting factors set forth in the *Notice* and adopted in the *First Report* favor Beaver Dam with no locally licensed service (3.0) over a first fulltime locally licensed service (2.0) at Morgantown, Kentucky. Thus the petition for reconsideration is denied.

*Louisville and Nicholasville, Kentucky*

Keeneland Broadcasting Co., Inc. ("Keeneland") seeks reconsideration of the allotment of Channel 263C2 to Louisville, Kentucky. Keeneland states that the site restriction imposed on Channel 263C2 at Louisville, Kentucky (15.4 miles, southeast), will preclude the use of FM Channel 264A allotted in this proceeding to Nicholasville, Kentucky. In support, Keeneland submitted engineering data indicating that a construction permit (BPH–840829AY) recently issued to Station WQXE, Elizabethtown, Kentucky will require Channel 263C2 at Louisville to move to a site further east southeast in the direction of Nicholasville. Keeneland concludes that this will effectively preclude the location of a transmitter which could provide city grade coverage (70 dBu) on FM Channel 264A at Nicholasville.Therefore, Keeneland requests the deletion of Channel 263C2, Louisville, Kentucky, since the weighting factors favor a first local service at Nicholasville, Kentucky.

Commission engineering studies confirm that both channels cannot be allotted in compliance with the minimum distance separation requirements. However, rather than delete the Class C2 channel at Louisville and remove the opportunity for additional local service in that community, the Commission has determined that alternate Channel 273A can be allotted to Nicholasville, Kentucky, with a site restriction 5.1 km (3.2 miles) southeast to avoid short spacing to Station WCYN–FM, Channel 272A, Cynthiana, Kentucky, and newly allotted Channel 274A, Springfield, Kentucky. In accordance with the *Public Notice* of May 8, 1985, the community of Nicholasville, Kentucky, will retain its numerical sequence No. 7 and applications will be accepted for Channel 273A in that order (rather than No. 24 assigned to original Channel 273 allotments).

*Mt. Vernon, Kentucky*

Cochran-Smith Broadcasting, Inc. ("Cochran-Smith") seeks reconsideration of the Commission's failure to allot Channel 259A to Mt. Vernon, Kentucky, based on no expressions of interest in the proposal. In support, Cochran-Smith submitted copies of original documents in which it alleges the Commission failed to consider its expression of interest in the proposed allotment.

The Commission has determined that Cochran-Smith submitted a timely filed expression of interest in applying for a channel at Mt. Vernon, Kentucky, and that a channel should have been allotted there. However, the allotment of Channel 259A is now in conflict with a pending proposal filed in response to the *Further Notice of Proposed Rule Making*[5] in this proceeding to allot Channel 258C2 to Corbin, Kentucky. The Commission, therefore, has determined that alternate Channel 275A can be allotted to Mt. Vernon with a site restriction 9 kilometers (5.6 miles) northwest to avoid short-spacing to Station WWXL, Channel 276A, Manchester, Kentucky. In accordance with the *Public Notice* of May 8, 1985, applications will be accepted for Channel 275A in numerical sequence No. 13.

*Wilmore, Kentucky*

L.M. Communications, Inc. ("L.M.") seeks reconsideration of the allotment of Channel 242A to Wilmore, Kentucky, in order to permit the upgrading of its facilities, Station WNCW(FM), Channel 244A, Paris, Kentucky, to Channel 245C2 to provide "new reception service" in the area. L.M. argues that it had no previous opportunity to file its counterproposal because the *Notice* did not propose the allotment of Channel 242A to Wilmore, Kentucky.

L.M.'s proposal to upgrade its facilities would not have met the strict criteria limiting proposals for consideration in this proceeding since it did not meet any of the categories set forth in the *Notice*. Thus the petition for reconsideration is denied. See also paragraph 2 of the *Memorandum Opinion and Order, supra.*

*Alexandria, Louisiana*

On its own motion the Commission is reconsidering its action allotting Channel 289A to Alexandria, Louisiana. Recent Commission engineering studies indicate that the reference coordinates for Channel 289, McComb, Mississippi, had been entered into the computer data bank incorrectly. As correctly entered, Channel 289A, Alexandria, Louisiana, is short-spaced to Channel 289, McComb, Mississippi. However our engineering study has determined that alternate Channel 230A can be allotted to Alexandria, Louisiana.

In accordance with our *Public Notice* of May 8, 1985, the community of Alexandria, Louisiana, will retain its numerical sequence No. 38 and applications will be accepted for Channel 230A in that order (rather than No. 50 assigned to original Channel 230 allotments).

*Homer, Ruston, and Vivian, Louisiana, and San Augustine, Texas*

Mid American Media Company ("Mid American"[6]), licensee of Station KCOZ(FM), Shreveport, Louisiana, seeks reconsideration of channels allotted to Homer, Louisiana (Channel 260A); Ruston, Louisiana (Channel 258A); Vivian, Louisiana (Channel 239A); and San Augustine, Texas (Channel 260A). Mid American argues that the channel allotments preclude its plans to upgrade its facilities for Station KCOZ(FM) (from Channel 261A to Channel 259C1, 259C2 or 260) to provide "improved service" to its listening audience. In support, Mid American points out that there was "no opportunity" outside of this omnibus proceeding to petition to upgrade its facilities because the Commission imposed a "freeze" on new petitions prior to the effective date of the *Order* which created Class C1 and Class C2 facilities.

Mid American's proposal to upgrade its facilities would not have met the strict criteria limiting proposals for consideration in this proceeding since it did not meet any of the categories set forth in the *Notice* in this proceeding. In view of the foregoing, the petition for reconsideration is denied. See also paragraph 2 of the *Memorandum Opinion and Order, supra.*

It should be noted that although Mid American cannot upgrade on either of the channels requested, the Commission has allotted FM Channel 275C2 to Shreveport, Louisiana, in response to a separate petition for reconsideration in this proceeding. (See *Shreveport, Louisiana, infra.*) Thus Mid American, along with other qualified applicants, can apply for a Class C2 station on Channel 275.

[5] 50 FR 2835, published January 22, 1985.

[6] Mid America's license was assigned to James A. Reeder, individually, on June 5, 1985 (BALH–850401GI).

*Shreveport, Louisiana*

Willie Jefferson ("Jefferson") requests reconsideration of the allotment of Channel 279A to Shreveport, Louisiana, urging instead the allotment of channel 275C2 as originally proposed in the *Notice* in this proceeding. Jefferson submitted technical studies demonstrating the feasibility of allotting Channel 275C2 to Shreveport. Jefferson also argues that due to technical considerations it would be impossible for Class A facilities to provide city grade coverage (70 dBu) to the entire city of Shreveport as required by the Rules.

The Commission has conducted additional engineering studies and determined that Channel 275C2 can be allotted to Shreveport, Louisiana, with a site restriction of 21.89 kilometers (13.6 miles) southeast [7] to avoid short spacing to Station KOSY–FM, Texarkana, Texas. Thus the Commission will substitute Channel 275C2 for Channel 279A at Shreveport, Louisiana.

In accordance with the *Public Notice* of May 8, 1985, the community of Shreveport, Louisiana, will retain its numerical sequence No. 27 and applications will be accepted for Channel 275C2 at Shreveport, Louisiana, in that order (rather than No. 13 assigned to original Channel 275 allotments).

*Spring Arbor, Michigan*

Spring Arbor College requests reconsideration of the allotment of Channel 295A to Spring Arbor seeking to have the channel reserved for noncommercial educational use so that it can switch from its present Channel 207. Spring Arbor alleges that this substitution would eliminate Channel 6 interference and enable a number of other colleges to get a noncommercial educational channel.

Each channel allotment granted in this proceeding is available for application to be used as a noncommercial educational station. The comparative need for this type of programming versus commercial programming is more appropriately determined in the hearing context. For the above reasons we have not exclusively reserved any commercial channels for noncommercial educational use in this proceeding.

*Eden Prairie, Minnesota*

Fresh Air, Inc., licensee of educational FM Station KFAI, has filed a petition for reconsideration of the Commission's decision to allot Channel 289A to Eden Prairie, Minnesota. They request the allotment of Channel 289A be made to Minneapolis, Minnesota, instead of Eden Prairie. They state that the allocation to Minneapolis would improve public radio service by providing a new frequency for which KFAI could apply and thus eliminate the interference which currently exists between Stations KFAI and KMOJ, Minneapolis, and would also permit expansion of both stations to serve a larger area. The allotment of Channel 289A to Minneapolis would preclude the allotments made to Eden Prairie and Lakeville in this proceeding. Since Minneapolis is served by 7 commercial and 4 noncommercial stations, and the new channels will provide a first local service for Eden Prairie and Lakeville, the Commission does not find sufficient reason to grant Fresh Air's request.

*Bay St. Louis, Mississippi*

Jo Anne Yates requests reconsideration of the allotment of Channel 233A to Bay St. Louis. Yates argues that Long Beach, Mississippi, should have been preferred because the channel would provide a first local service to Long Beach whereas Bay St. Louis already has a daytime-only AM station.

The Long Beach proposal was denied because the allotment would be short-spaced to the buffer zone protection given to Station WKSJ(FM), Mobile, Alabama. At that time Station WKSJ had an application to relocate which would eliminate the short-spacing. However, that application has since been returned. A petition for reconsideration of that action is now pending. The Commission also has pending a petition for reconsideration in Docket 83–493 concerning the allotment of Channel 237A to Gulf Breeze, Florida, which precluded the grant of the Mobile site relocation. In view of the fact that the Mobile station's buffer zone still must be protected, we can not allot the requested channel to Long Beach at this time.

*Cameron, Missouri*

Cameron Radio, Inc. ("CRI") requests reconsideration of the allotment of Channel 223A to Richmond, Missouri. CRI argues that Channel 222A can be allocated to Cameron with a site restriction. We agree with CRI that Channel 222A can be allotted to Cameron with a site restriction 7.7 kilometers (4.8 miles) northwest of the community. The site restriction will prevent short spacing to Channel 223A, Richmond, Missouri.

The community of Cameron, Missouri, will receive numerical sequence No. 58 for the filing of applications on Channel 222.

*East Prairie, Missouri*

The Commission originally proposed Channel 287A for East Prairie, Missouri, in the *Notice of Proposed Rule Making*. The *First Report and Order* omitted Channel 287A from consideration, and stated in an Appendix that the channel was short-spaced with an existing station on Channel 289, McComb, Mississippi.

Barney L. Webster ("Webster") has filed a Petition for Reconsideration of this decision. Webster has furnished an engineering report that shows that the allotment of Channel 287A to East Prairie, Missouri complies with all of the mileage requirements of the Rules. It appears that the coordinates for McComb, Mississippi, Station WAKH–FM, were incorrectly entered into the Commission's records. (See also the discussion for Alexandria, Louisiana at page 13).

A staff engineering study shows that Channel 287A can be allocated to East Prairie, Missouri, in compliance with the Commission's mileage requirements. East Prairie will be given numerical sequence No. 64 for the filing of applications on Channel 287A.

*Kirksville, Missouri*

Vera F. Burk ("Burk"), General Manager of Station KIRX(AM) and KRXL(FM), Kirksville, Missouri, has filed a petition for reconsideration of the allocation of FM Channel 300C1 to Kirksville, Missouri. Burk states that the *Notice* proposed a Class A station for Kirksville and feels that an opportunity for comments should have been given on the possibility of allocating a higher class of channel.

Burk states that Kirksville is a community of approximately 18,000 and is served by a Class IV AM station, one Class C FM station and one Class A FM station. Burk further states that the market is very intensely competitive in a sparsely populated farm area and she questions whether the existing Class C station could survive another higher class station being operated in this area.

The Commission attempted to allocate a higher class channel to any community with a population over 10,000. Economic arguments are more appropriately raised in connection with an application filed for the channel. See *Grand Junction, Colorado*, 26 R.R. 2d 513 (1973).

[7] It should be noted that the site restriction includes a 10 mile buffer zone for Station KOSY–FM. Allegations that the station may not be able to utilize the buffer zone are speculative at this time.

*Omaha, Nebraska*

On our own motion, the Commission's staff has determined that Channel 290A can be allotted to Omaha without a site restriction and provide city grade coverage (70 dBu) to approximately 100% of the city. As discussed earlier in paragraph 4, *supra*, due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of the Rules so as to allot Channel 290A. The community of Omaha, Nebraska, will receive numerical sequence No. 3 for the filing of applications on Channel 290A.

*Margate City, New Jersey*

*North Cape May, New Jersey*

*Wildwood Crest, New Jersey*

Group Six Communications, Inc. filed a petition for reconsideration stating that the transmitter locations for the channels allotted to North Cape May and Wildwood Crest would have to be located in the Atlantic Ocean in order to comply with the distance separation requirements and therefore the channels should be deleted.

The Commission's staff found that the only available sites for channels allotted to North Cape May, Wildwood Crest and also Margate City were offshore. Therefore, the staff undertook to find alternate channels for these communities as follows: North Cape May—Channel 294A with a site restriction 1.4 kilometers south; Wildwood Crest—Channel 226A; Margate City—Channel 241A with a site restriction 7.1 kilometers southwest.

In accordance with the *Public Notice* of May 8, 1985, the community of North Cape May will retain its numerical sequence No. 78 for applications on Channel 294A, Wildwood Crest and will retain No. 58 for applications on Channel 226A and Margate City will retain No. 32 for applications on Channel 241A.

*Albuquerque, New Mexico*

On our own motion the Commission's staff has determined that Channel 267A can be allotted to Albuquerque with a site restriction of 6.7 km (4.2 miles) southwest and provide city grade coverage to approximately 90% of the city. As discussed earlier in paragraph 4, *supra*, due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of the Rules so as to allot Channel 267A. The community of Albuquerque will receive numerical sequence No. 22 for the filing of applications on Channel 267A.

*Los Lunas, New Mexico*

A petition for reconsideration has been filed by Victor S. Lopez and Antoinette S. Lopez requesting the allotment of FM Channel 267C2 instead of 292A to Los Lunas, New Mexico.

A staff study indicates that FM Channel 267C2 could be allotted to Los Lunas only if Albuquerque, New Mexico, in denied Channel 267A (See *Albuquerque, New Mexico, supra.*). We believe it would be in the public interest to provide channels to both communities rather than a higher class to Los Lunas.

*Mechanicville, New York*

Mechanicville Broadcasting Company, licensee of daytime-only AM Station WMVI, Mechanicville, New York, filed a petition for reconsideration of the allocation of Channel 283A to Mechanicville. Mechanicville Broadcasting argues that the community cannot economically support another radio station and therefore requests that the channel be allocated to any nearby larger community. If the channel is not reallocated, Mechanicville Broadcasting asks that no applications be accepted for Mechanicville until the Commission's decision in consolidated Dockets 84–850/862, *Central Bucks Broadcasting, et al.*, is resolved. In that proceeding Station WMVI is seeking to improve to fulltime facilities on 1160 kHz.

The Commission proposed the allocation at Mechanicville as its first fulltime local facility. Expressions of interest in applying for the frequency were received. Petitioner's argument regarding a declining economy in Mechanicville is not a sufficient justification for denial of the allocation. As we have held on numerous occasions, if the community's status is not questionable and a proponent believes that there is a need for an additional service, the Commission has no reason to question such judgment. See *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982), and *Sacramento, California*, 50 R.R. 2d 951 (1982). As to Mechanicville Broadcasting's request that no applications be accepted until the conclusion of its AM application hearing, we find such an approach would be unfair to other interested persons. However, we note that Channel 283 is scheduled to be the last (No. 80) Docket 84–231 channel open for applications. See *Public Notice* of May 8, 1985 *Notice of Random Selection of FM Channels.*

*Banner Elk and Patterson, North Carolina*

Action Publishing Company ("Action") and Richard Foster and Dempsey Wilcox ("Foster-Wilcox") separately request reconsideration of the Commission's decision to allocate Channel 264A to Patterson, North Carolina urging instead that the channel should be allocated to Banner Elk, North Carolina. Action raises the issue of Patterson's community status. Foster-Wilcox states that the population figures on which the Commission based its decision were not accurate.

The Commission based its decision to allot Channel 264A to Patterson on the category of need and population. As Banner Elk and Patterson fit the same category, each providing a first local service, the greater population was the deciding factor. The population for Banner Elk was listed in the U.S. Census as 1,087. Patterson was not listed in the U.S. Census. Population figures for "the Patterson area" were provided by the petitioner as 2,500. We attributed this information to Patterson itself. Foster-Wilcox indicates that the 1985 Rand McNally Commercial Atlas and Marketing Guide lists Patterson as having 400 persons. Therefore, in the absence of the U.S. Census data for Patterson or any other population data provided we shall rely on the Rand McNally figure. In accordance with our established guidelines, we herein reverse our earlier decision and allot Channel 264A to Banner Elk, North Carolina based on its higher population. The community of Banner Elk will receive numerical sequence No. 7 for the filing of applications on Channel 264A.

*Jacksonville, Camp Lejeune, Belhaven, and Nags Head, North Carolina*

Winfas, Inc. and Winfas of Belhaven jointly filed a petition for reconsideration of the Commission's rejection of its counterproposal to substitute Channel 254C2 for its Channel 221A at Jacksonville, N.C.; substitute Channel 266C2 for its Channel 221A at Belhaven, N.C.; substitute Channel 222C2 for the proposed Channel 266A at Camp Lejeune, N.C.; and allocate Channel 222A to Nags Head, N.C., as its first local FM service. Winfas' request for the allocation of Channel 254C2 at Jacksonville is being considered in the *Further Notice of Proposed Rule Making* in this proceeding (see footnote 1 of the *Memorandum Opinion and Order*) and therefore will not be discussed herein. Winfas did not state any intention to apply for the Camp Lejeune channel, if allocated. In the *First Report and Order*

herein, no channel was allocated to Camp Lejeune as it was found that only a Class A would meet the spacings but that a Class A could not provide the requisite city-grade coverage to any part of the community. As to its requests for a new allocation at Nags Head and the upgrading of its Belhaven Channel 221A operation, these channels can be allotted without requiring any other changes in the Table of Allotments. These requests were not acceptable as counterproposals in this proceeding since the Belhaven proposal did not meet any of the categories and the Nags Head channel is not contingent on the deletion of Channel 221A from Belhaven. Thus we have accepted the proposals as new petitions and they will be dealt within a separate rulemaking (RM-5061, 5062).

*Semora, North Carolina*

*South Boston, Virginia*

Ansun Broadcasting Company ("Ansun") seeks reconsideration of the allotment of Channel 294A to South Boston, Virginia, suggesting the channel should be allotted instead to Semora, North Carolina. Roxboro Broadcasting Company, Roxboro, North Carolina, and Halifax Broadcasting Company, Inc., South Boston, Virginia, filed an opposition and supporting comments, respectively, seeking to avoid the competition a new FM channel would bring to either community. Ansun states that Channel 294A could be sited at Semora, in order to provide that community with its first local FM service. The Semora proposal was denied because the grant of an application for Station WRDX, Channel 293, Salisbury, North Carolina, precluded a reasonable site restriction for Semora. However, on further review Channel 294A can be sited at Semora with a restriction of 9.75 kilometers (6.1 miles) northeast.* In comparing South Boston, Virginia, receiving its second FM channel for minority service (2.0), and Semora, North Carolina, receiving its first local service (3.0), Semora should be preferred. Therefore, in accordance with the comparative criteria set forth in this proceeding, we herein reverse our earlier decision and allot Channel 294A to Semora, North Carolina, instead of to South Boston, Virginia. As noted, the allotment of Channel 294A to Semora is conditioned on the issuance of a license to Station WRDX, Salisbury, at the new site.

*This site is based on the issuance of a permit for Station WRDX, Salisbury, to change its transmitter location. The allotment of Channel 294A will depend on the issuance of a license to Station WRDX at the new site.

The community of Semora, North Carolina, will receive numerical sequence No. 15 for the filing of applications on Channel 294A.

*Wrightsville Beach, North Carolina*

On our own motion, the Commission's staff has determined that the site restriction of 0.8 km northeast of Channel 229A, Wrightsville Beach, is unnecessary and that the allotment can be made without a site restriction.

*Columbus, Ohio*

On our own motion, the Commission's staff has determined that Channel 298A can be allotted to Columbus without a site restriction and provide city grade coverage to approximately 98% of the community. As discussed earlier, in paragraph 4, *supra*, due to the nature of this proceeding in attempting to provide additional service to large communities, the Commission is willing to waive § 73.315 of its Rules so as to allot Channel 298A. Canadian concurrence in the allotment has been requested. The community of Columbus will receive numerical sequence No. 21 for the filing of applications on Channel 298A.

*Lancaster-Upper Arlington, Ohio*

John Garber and Associates ("Garber") filed a counterproposal for Lancaster, Ohio, which was returned as it did not meet any of the stated categories of need. Garber now seeks reconsideration of the allocation of Channel 255A to Upper Arlington, Ohio, arguing the channel should be allocated to Lancaster instead. Garber questions the status of Upper Arlington as a community for allocation purposes, contending that it is essentially a "bedroom" for Columbus, Ohio, populated by affluent commuters, without any local industry and wholly dependent upon the city of Columbus for the employment and well-being of its residents. It also states that any Upper Arlington station would be perceived as another Columbus station, not as a local Upper Arlington facility.

Mid-State Media filed an opposition stating Upper Arlington has its own local newspaper, The Upper Arlington News, its own public schools, fire department and police department. In addition, it contends the community has many professional office-research complexes, financial institutions and retail firms. Mid-State also states that there are numerous social and service organizations, the largest of which is the Upper Arlington Civic Association.

We believe that Upper Arlington is a community for allocation purposes. It is a community of substantial size, with a 1980, U.S. Census population of 35,648 persons, and we have been provided with additional data showing that Upper Arlington does in fact meet our definition of a community, that it is an identifiable population grouping. Therefore we reaffirm our earlier decision.

*Lindsay, Oklahoma*

*Shawnee, Oklahoma*

Edwards Investment Company ("Edwards") filed a petition for reconsideration of the allotment of Channel 286A to Lindsay, Oklahoma. Edwards states that Channel 286A should have been allotted to Shawnee instead as its first local FM service. The counterproposal was previously returned as not meeting the categories of need specified in the *Notice*. Shawnee currently receives fulltime local service from AM Station KGFF. Further, petitioner did not specify that the FM allocation at Shawnee would provide any first or second aural service, minority radio service, or public radio service. We note that Shawnee has recently been allocated FM Channel 236 by the *Report and Order*, MM Docket 84-508, 50 FR 34465 (published August 26, 1985), and that by letter of June 14, 1985, Edwards stated an intention to apply for that frequency. The window period for filing applications on that channel has been announced as September 27, 1985, through October 28, 1985.

*Everett, Pennsylvania*

Radio Everett, Inc. ("REI") filed a petition for reconsideration requesting the allocation of Channel 282A to Everett in lieu of Channel 298A, as allocated in the *First Report and Order*. Channel 298A requires the imposition of a 2.8-mile north site restriction and REI contends that due to the intervening terrain it would not be possible to provide line-of-sight service to all parts of the community from such a site. REI has provided us with a convincing showing that use of Channel 298A, sited in the restricted area, would indeed result in severe shadowing. Thus, we shall substitute Channel 282A for Channel 298A at Everett. Channel 282A can be allocated to Everett in compliance with the Commission's mileage separation requirements without the imposition of any site restriction. Canadian concurrence in the allotment has been requested. In accordance with the *Public Notice* of May 8, 1985, the community of Everett, Pennsylvania, will retain its numerical sequence of No. 21 and applications will be accepted for Channel 282A in that

order rather than No. 48 assigned to original Channel 282 allotments.

*Georgetown, South Carolina*

Based on our own study, the site restriction for Channel 229A at Georgetown has been changed to 8.7 km (5.4 miles) south in order to allow site availability on land.

*Marion and Charleston, South Carolina*

Andrews-Intermart Broadcasting Company, licensee of FM Station WQSC(FM), Andrews, South Carolina ("WQSC"), seeks reconsideration of the Commission's decision denying its counterproposal to substitute Channel 263C2 for 265A at Andrews, South Carolina, because it did not specify one of the categories of need as outlined in the omnibus *Notice*. In this regard it argues that the Andrews proposal could provide a first and second aural service. It also argues that a first FM channel could be allotted to Lake View, South Carolina, rather than a second service at Marion, South Carolina. We have studied WQSC's showing of first and second aural service and find that the showing is inadequate in that it did not take into account AM stations in the area but only FM. Therefore, its showing depicts areas which lack only FM service, not aural service. Proponents claiming first or second aural service were advised that the showing should be done pursuant to the method set forth in *Roanoke Rapids, N.C.*, 9 F.C.C. 2d 672 (1967) and *Anamosa, Iowa*, 46 F.C.C. 2d 520 (1974), which specifies that AM service must be taken into account in "white" and "gray" area showings. Therefore, we uphold the staff's determination that WQSC's counterproposal as concerns Andrews is not acceptable.

As to its request, on behalf of Willard Payne, that Channel 277A be allocated to Lake View, our engineering study shows that this proposal is also not acceptable in this proceeding. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without conflicting with any of the Docket 84-231 proposals. Therefore, the Lake View proposal will be the subject of a separate *Notice of Proposed Rule Making* (RM-5120).

*Sumter and Marion, South Carolina*

Winfas of South Carolina, Inc. and Swamp Fox Broadcasting Corporation ("Winfas") jointly filed a counterproposal requesting that Channel 263C2 be allotted to Marion in lieu of our proposal to assign Channel 263A and that Channel 262A be allotted to Sumter in lieu of our proposed Channel 234A. Winfas is the licensee of Station WKXS(FM), Marion. Winfas's proposal was returned by the Commission as not meeting the requirements for acceptable counterproposals as set forth in the *Notice*. Winfas seeks reconsideration of that action, stating that although we claim that it may resubmit its request at the conclusion of this proceeding, in reality it will be foreclosed from doing so.

As was stated in the *Notice*, acceptable counterproposals had to specify one of the categories of "need" as listed in paragraph 12 therein. Station WKXS(FM) already provides Marion with its first fulltime local service and its second local service, as the community has assigned to it AM Station WATP. The Commission also stated that counterproposals which specified service to unserved or underserved areas or for minority or public radio service would also be acceptable. Winfas, however, provides no such showings. Therefore, we uphold the staff's rejection of Winfas' counterproposal. See also paragraph 2 of the *Memorandum Opinion and Order, supra.*

*Spencer, Tennessee*

Plateau Broadcasting, Inc. ("Plateau"), licensee of Station WXVL (Channel 257A), Crossville, Tennessee, petitioned for reconsideration of the decision to allot Channel 254A to Spencer, Tennessee. Plateau states that the allotment to Spencer would forever foreclose WXVL from upgrading its facilities.

Plateau failed to provide a showing that its proposal met any of the categories of need outlined in the *Notice of Proposed Rule Making*, 49 FR 11214, published March 26, 1984. Therefore, we properly dismissed the proposal of Plateau Broadcasting, Inc.

*Graysville, Tennessee*

*Crab Orchard, Tennessee*

Millard V. Oakley ("Oakley") requests reconsideration of the allotment of Channel 230A to Spring City, Tennessee, instead of Graysville, Tennessee. Oakley states the weighting criteria given Graysville and Spring City should have favored Graysville. Oppositions were filed by Govan Broadcasting and Walter Hooper III.

Originally, Graysville was accepted as a counterproposal to the Spring City proposal. However, we determined that Channel 230A could not be allotted to Graysville due to a short spacing to Station WKQD (Channel 227) at Tullahoma, Tennessee. Therefore, we found no need to compare the communities of Graysville and Spring City when making the allotment to Spring City. We then searched for another channel for allotment to Graysville and determined that Channel 239A was available. This would enable Spring City to retain Channel 230A. However, Channel 239A was also available at Fort Oglethorpe, Georgia and in comparing the two communities, Fort Oglethorpe was selected. As a result of the Graysville denial, we were also able to allot Channel 239A to Crab Orchard, Tennessee. However, on page 8 of this Appendix, *supra*, the Fort Oglethorpe allotment has been deleted making the channel available for consideration at Graysville. The allotment of Channel 239A at Graysville would conflict with the allotment of Channel 239A to Crab Orchard, as indicated. Thus a comparison of these communities is necessary. Both communities would receive its first local service. The selection will be made favoring the larger populated community. Graysville's population is 1,380 as opposed to Crab Orchard's 1,065. In accordance with the comparative criteria set forth in this proceeding, we herein delete Channel 239A from Crab Orchard and reallot the channel to Graysville. A staff engineering study reveals that there is no other available channel for allotment to Crab Orchard, Tennessee. The allotment of Channel 239A to Graysville requires a site restriction 3.4 kilometers (2.1 miles) north of the community, in order to avoid short spacing to the allotment of the same channel to Trion, Georgia. The community of Graysville will receive numerical sequence No. 34 for the filing of applications on Channel 239A.

*Torrey, Utah*

Ceja Corporation ("Ceja") seeks a Class C1 FM channel allotment at Torrey, Utah, in lieu of the allotment of Channel 253A. Subsequently Ceja requested the withdrawal of its petition for reconsideration. Thus the petition is dismissed.

*Charlottesville, Virginia*

CAV Corporation ("CAV") seeks reconsideration of the allotment of Channel 298A to Charlottesville, Virginia. CAV seeks to have the originally proposed Channel 241A allotted to Charlottesville instead of Channel 298A. The petition was filed late and was inadvertently listed on public notice. In accordance with section 405 of the Communications Act of 1934, as amended, a petition for reconsideration must be filed within

thirty days from the date upon which public notice is given of the order. The Commission does not have the discretion to waive this statutory requirement. Therefore, the petition of CAV shall not be considered.

*Kewaunee, Wisconsin*

Harbor Cities Broadcasting, Inc. ("Harbor Cities"), licensee of Station WAUN–FM (Channel 224A), Kewaunee, Wisconsin, seeks a substitution of channels allocated to Seymour, Brillion and Plymouth, Wisconsin. The substitutions would permit Harbor Cities to upgrade its facilities in a future proceeding. Harbor Cities has since withdrawn its petition for reconsideration and asks that we treat their request as a new petition for rulemaking. Therefore, we shall dismiss the reconsideration and will consider the request in RM–4914 at a later date.

*Whitewater, Wisconsin*

John G. Weitzel and Chuck Ingle ("Weitzel-Ingle") seeks reconsideration of the allotment of Channel 283A to Whitewater, Wisconsin. Weitzel-Ingle states that placement of Channel 283A should be made to provide as many people as possible with service in Walworth County. Weitzel-Ingle believes this would be best accomplished by allotting the channel to Delavan, Wisconsin, rather than Whitewater. There were six mutually exclusive proposals seeking the allotment of Channel 283A for use in the communities of Harvard, Illinois, and Oconomowoc, Lake Geneva, Delavan, Elkhorn and Whitewater, Wisconsin. Therefore, the selection was made based on criteria which established a higher priority for a community receiving its first local service and favoring the larger populated community. Whitewater's population is 11,520 as opposed to the other communities without local service—Oconomowoc's 9,909, Delavan's 5,684 and Elkhorn's 4,605.

In accordance with the comparative criteria set forth in the *Report and Order*, we chose Whitewater as the largest populated community without local service. The need for reception service in other parts of a county was not a factor. A staff engineering study reveals that there is no alternate available channel for allotment to Delavan, Wisconsin. In view of the above, we find no valid argument to require a reversal of the decision to allot Channel 283A to Whitewater.

*Rio Grande, Puerto Rico*

Radio Musical, Inc. ("RMI"), licensee of Station WBRQ–FM (Channel 249A), Cidra, Puerto Rico, seeks reconsideration of the allotment of Channel 247B1 to Rio Grande. Thereafter, RMI requested dismissal of its petition for reconsideration.

However, our own study of Channel 247B1 indicates that there is no land area available for site selection in compliance with the Commission's minimum distance separation requirements. In view of that fact we shall lower the class of channel to Channel 247A so that Rio Grande can obtain its first local service.

Hector M. Rivera Rios, President for the Grupo Pro Estacion de Radio en Naguabo, seeks reconsideration of the aforementioned allotment to Rio Grande, Puerto Rico, suggesting Naguabo as the preferred community. An opposition was filed by Radio Musical, Inc. As either Rio Grande or Naguabo could have received its first local service, the selection was made favoring the larger populated community. Rio Grande's population is 12,047 as opposed to Naguabo's 2,056. Based on the criteria established in this proceeding the allocation of Channel 247A to Rio Grande was properly decided. In a separate proceeding (MM Docket No. 85–209), the Commission has proposed to allot Channel 268A to Naguabo, Puerto Rico. In light of that proposal we believe no further action is necessary here.

## PART 73—[AMENDED]

### Appendix B

Accordingly, it is ordered that § 73.202(b) of the Commission's Rules is amended for the following communities:

| City | Channel No. |
|---|---|
| Tucson, Arizona | 225, 229, 235, 241, 258, 261A, 298. |
| Yuma, Arizona | 226, 236, 265A. |
| Earlimart, California | 228A. |
| East Hemet, California | 225A. |
| Century, Florida | 286A. |
| Century Village, Florida | |
| Pensacola, Florida | 254A. |
| Ft. Oglethorpe, Georgia | |
| Trion, Georgia | 239A. |
| Casey, Illinois | 282B1. |
| Indianapolis, Indiana | 226, 234, 238, 242A, 277, 283, 289, 300. |
| Royal Center, Indiana | 279A. |
| Mt. Vernon, Kentucky | 275A. |
| Nicholasville, Kentucky | 273A. |
| Alexandria, Louisiana | 226, 230A, 245, 262. |
| Shreveport, Louisiana | 229, 233, 243, 261A, 266, 275C2. |
| Cameron, Missouri | 222A. |
| East Prairie, Missouri | 287A. |
| Omaha, Nebraska | 222, 231, 241, 290A. 253, 260, 264, 283. |
| Margate City, New Jersey | 241A. |
| North Cape May, New Jersey | 294A. |
| Wildwood Crest, New Jersey | 226A. |
| Albuquerque, New Mexico | 222, 227, 231, 242, 258, 262, 267A, 277, 300. |
| Banner Elk, North Carolina | 264A. |
| Patterson, North Carolina | |
| Semora, North Carolina | 294A. |
| Columbus, Ohio | 222, 234, 242, 246, 250, 259, 265A, 298A. |
| Everett, Pennsylvania | 282A. |
| Crab Orchard, Tennessee | |
| Graysville, Tennessee | 239A. |
| South Boston, Virginia | 248. |
| Rio Grande, Puerto Rico | 247A. |

### Appendix C

Pursuant to the public notice of May 8, 1985, Random selection of FM channels, the 689 allocations, as revised by the M.O.&O., will be available in the following order. Dates will be announced by future public notices.

**1**

| | |
|---|---|
| England, AR | 243A |
| Colusa, CA | 243A |
| Marseilles, IL | 243A |
| Corydon, IN | 243A |
| Breaux Bridge, LA | 243A |
| Portage, MI | 243A |
| Sparta, MO | 243A |
| Clarksdale, MS | 243A |
| West Yellowstone, MT | 243A |
| Fredonia, NY | 243A |
| Pine Ridge, SD | 243A |
| Harrogate, TN | 243A |
| Algoma, WI | 243A |
| Moundsville, WV | 243A |

**2**

| | |
|---|---|
| Elba, AL | 266A |
| Bloomfield, IN | 266A |
| Girard, KS | 266A |
| Jonesville, LA | 266A |
| Vicksburg, MS | 266A |
| White Rock, NM | 266A |
| Fort Plain, NY | 266A |
| Grove City, OH | 266A |
| Suthlerlin, OR | 266A |
| Hardeeville, SC | 266A |
| Port Isabel, TX | 266A |
| Richmond, VA | 266A |

**3**

| | |
|---|---|
| Oakridge, OR | 221A |
| Reedsport, OR | 221A |
| Carrizo Springs, TX | 221A |
| Ruckersville, VA | 221A |

**4**

| | |
|---|---|
| Anchorage, AK | 225C |
| Cordova, AL | 225A |
| Montecito, CA | 225A |
| Smyrna, DE | 225A |
| Erath, LA | 225A |
| Belzoni, MS | 225A |

**5**

| | |
|---|---|
| Crisfield, MD | 245A |
| Standish, MI | 245A |
| Indianola, MS | 245A |
| Arlington, NY | 245A |
| Troy, OH | 245A |
| Wauseon, OH | 245A |
| Willard, OH | 245A |
| Ridgebury, PA | 245A |
| Pittsburg, TX | 245A |
| Mount Jackson, VA | 245A |
| Naches, WA | 245A |

**6**

| | |
|---|---|
| Salisbury, CT | 251A |

| | |
|---|---|
| Van Buren, ME | 251A |
| Laurel, MS | 251A |
| Las Vegas, NM | 251C |

**7**

| | |
|---|---|
| George, CA | 264A |
| Gretna, FL | 264A |
| Cuthbert, GA | 264A |
| Milledgeville, GA | 264A |
| Coal City, IL | 264A |
| Nicholasville, KY | 273A |
| Mexico, ME | 264A |
| Banner Elk, NC | 264A |
| Utica, NY | 264A |
| Charleston, SC | 264A |
| Mission, SD | 264A |
| Bowie, TX | 264A |
| Palacios, TX | 264A |
| Christiansburg, VA | 264A |

**8**

| | |
|---|---|
| Kearny, AZ | 286A |
| Century, FL | 286A |
| Sac City, IA | 286A |
| Casey, IL | 282B1 |
| Harlan, KY | 286A |
| Lancaster, KY | 286A |
| Shepherdsville, KY | 286A |
| Great Barrington, MA | 286A |
| Lakeville, MN | 286A |
| Tracy, MN | 286A |
| Lindsay, OK | 286A |
| Johnsonville, SC | 286A |
| Robstown, TX | 286A |
| Bridgewater, VA | 286A |

**9**

| | |
|---|---|
| Lafayette, LA | 238A |
| Topsham, ME | 238A |
| New Prague, MN | 238A |
| Broadway, VA | 238A |

**10**

| | |
|---|---|
| Oraibi, AZ | 252A |

**11**

| | |
|---|---|
| Orlando, FL | 255A |
| Jefferson, IA | 255A |
| Dwight, IL | 255A |
| Salisbury, MD | 255A |
| Grand Rapids, MI | 255A |
| Kingsford, MI | 255A |
| Vassar, MI | 255A |
| Windsor, NC | 255A |
| Upper Arlington, OH | 255A |
| Millersburg, PA | 255A |
| Lawrenceville, VA | 255A |

**12**

No cities listed for Channel 261

**13**

| | |
|---|---|
| Linden, AL | 275A |
| Flagstaff, AZ | 275C2 |
| Cartago, CA | 275A |
| McFarland, CA | 275A |
| Summerland Key, FL | 275A |
| Statesboro, GA | 275A |
| Delphi, IN | 275A |
| Mt. Vernon, KY | 275A |
| Raleigh, NC | 275A |
| Curwensville, PA | 275A |
| Orangeburg, SC | 275A |

**14**

| | |
|---|---|
| Oxford, AL | 250A |
| Yuba City, AZ | 250A |
| Crescent North, CA | 250A |
| Salinas, CA | 250A |
| Enfield, CT | 250A |
| Selbyville, DE | 250A |
| Ft. Valley, GA | 250A |
| Wiggins, MS | 250A |
| Bayboro, NC | 250A |
| Gaston, NC | 250A |
| Beulah, ND | 250A |
| Grants, NM | 250C2 |
| Milton-Freewater, OR | 250A |
| Edinboro, PA | 250A |
| Beeville, TX | 250A |

**15**

| | |
|---|---|
| Trumann, AR | 294A |
| Grinnell, IA | 294A |
| Mt. Vernon, IN | 294A |
| Berea, KY | 294A |
| Cave City, KY | 294A |
| North Fort Polk, LA | 294A |
| Rayne, LA | 294A |
| Babbitt, MN | 294A |
| Mt. Vernon, MO | 294A |
| Perryville, MO | 294A |
| Semora, NC | 294A |
| Irondequoit, NY | 294A |
| Churchville, VA | 294A |
| Matewan, WV | 294A |

**16**

| | |
|---|---|
| N. Crossett, AR | 274A |
| China Lake, CA | 274A |
| Quincy, FL | 274A |
| Sparta, GA | 274A |
| Beaver Dam, KY | 274A |
| Cumberland, KY | 274A |
| Marion, KY | 274A |
| Springfield, KY | 274A |
| La Crescent, MN | 274A |
| Webster, NY | 274A |
| Narragansett Pier, RI | 274A |
| New Ellenton, SC | 274A |
| Mannington, WV | 274A |

**17**

| | |
|---|---|
| Westernport, MD | 224A |
| Nephi, UT | 224A |

**18**

| | |
|---|---|
| Florence, AL | 241A |
| Montgomery, AL | 241A |
| San Jacinto, CA | 241A |
| Visalia, CA | 241A |
| Royal Center, IN | 279A |
| Le Sueur, MN | 241A |
| Center Moriches, NY | 241A |
| Poughkeepsie, NY | 241A |
| Huron, OH | 241A |
| Madisonville, TX | 241C2 |
| Odessa, TX | 241C2 |

**19**

| | |
|---|---|
| Eureka, IL | 253A |
| Burkesville, KY | 253A |
| Rocky Mount, NC | 253A |
| Ocean Acres, NJ | 253A |
| Catskill, NY | 253A |
| Waterloo, NY | 253A |
| Clarksville, TX | 253A |
| Rockdale, TX | 253A |
| Torrey, UT | 253A |

**20**

| | |
|---|---|
| Tucson, AZ | 281A |
| Reidsville, GA | 281A |
| American Falls, ID | 281A |
| Fredonia, KS | 281A |
| Antlers, OK | 281A |
| Calhoun, TN | 281A |
| Tyler, TX | 281C2 |
| Bridgeport, WV | 281A |

**21**

| | |
|---|---|
| Omega, GA | 298A |
| Des Moines, IA | 298C2 |
| Galena, IL | 298A |
| Evansville, IN | 298A |
| Columbus, OH | 298A |
| Fort Shawnee, OH | 298A |
| Everett, PA | 282A |
| Charlottesville, VA | 298A |

**22**

| | |
|---|---|
| Pine Bluff, AR | 267A |
| Idyllwild, CA | 267A |
| Milford, DE | 267A |
| Gooding, ID | 267A |
| Shelbyville, KY | 267A |
| South Fort Polk, LA | 267A |
| Albuquerque, NM | 267A |
| Stillwater, NY | 267A |
| Altamont, OR | 267C |
| Cameron, TX | 267A |
| Narrows, VA | 267A |

**23**

| | |
|---|---|
| Bethel, AK | 300A |
| Key West, FL | 300C1 |
| New Haven, IN | 300A |
| Midway, KY | 300A |
| Muskegon, MI | 300A |
| Kirksville, MO | 300C1 |
| West Point, NE | 300A |
| Delaware, OH | 300A |
| Tobyhanna, PA | 300A |
| West Point, VA | 300A |

**24**

| | |
|---|---|
| Dothan, AL | 273A |
| Cabot, AR | 273A |
| Mableton, GA | 273A |
| Galva, IL | 273A |
| Mitchell, IN | 273A |
| North Fort Riley, KS | 273C2 |
| Lexington, MS | 273A |
| Louisburg, NC | 273A |
| Edgewood, OH | 273A |
| Canton, SD | 273A |
| Beaumont, TX | 273C2 |

**25**

| | |
|---|---|
| Mendota, CA | 272A |
| Cresco, IA | 272A |

**26**

| | |
|---|---|
| Helena, AR | 233A |
| Hanford, CA | 233A |
| Hayden, ID | 233A |
| Bay St. Louis, MS | 233A |
| Silver City, NM | 233A |
| Ravena, NY | 233A |
| Murrell's Inlet, SC | 233A |

**27**

| | |
|---|---|
| San Carlos, AZ | 279A |
| Irwinton, GA | 279A |
| Leesburg, GA | 279A |
| Royston, GA | 279A |
| Shreveport, LA | 275C2 |
| Hartford, MI | 279A |
| Alamogordo, NM | 279C1 |
| Wilburton, OK | 279A |
| McConnellsburg, PA | 279A |
| Fisher, WV | 279A |

**28**

| | |
|---|---|
| Kingman, KS | 232A |
| Eldorado, OK | 232A |

**29**

| | |
|---|---|
| Clarendon, AR | 297A |
| Chinle, AZ | 297A |
| Madera, CA | 297A |

| | |
|---|---|
| Las Animas, CO | 297A |
| Lake Arthur, LA | 297A |
| Sleepy Eye, MN | 297A |
| Warrenton, NC | 297A |
| Atlantic City, NJ | 297B1 |
| Highland, NY | 297A |
| Crooksville, OH | 297A |
| Swanton, OH | 297A |
| Lawton, OK | 297C2 |
| Northumberland, PA | 297A |
| Nolanville, TX | 297A |
| Post, TX | 297A |
| Coeburn, VA | 297A |
| Kemmerer, WY | 297A |
| **30** | |
| Winfield, AL | 290A |
| Paradise Valley, AZ | 290A |
| Lewes, DE | 290A |
| Englewood, FL | 290A |
| Arco, GA | 290A |
| Lakeland, GA | 290A |
| Honolulu, HI | 290C |
| Mahomet, IL | 290A |
| Marshall, IL | 290A |
| Whitley City, KY | 290A |
| Berwick, LA | 290A |
| Opelousas, LA | 290A |
| Ava, MO | 290A |
| Ohaha, NE | 290A |
| Rochester, NY | 290A |
| Syracuse, NY | 290A |
| Philipsburg, PA | 290A |
| Loris, SC | 290A |
| St. Stephen, SC | 290A |
| San Diego, TX | 290A |
| Stanton, TX | 290A |
| Lynchburg, VA | 290A |
| Evansville, WI | 290A |
| **31** | |
| San Luis Obispo, CA | 246B1 |
| Coal Grove, OH | 246A |
| **32** | |
| Monticello, FL | 270A |
| Greenwood, MS | 270A |
| Margate City, NJ | 241A |
| San Angelo, TX | 270C1 |
| **33** | |
| Buras Triumph, LA | 231A |
| New Bern, NC | 231A |
| Whitehall, NY | 231A |
| Myrtle Point, OR | 231A |
| Kingstree, SC | 231A |
| Ripley, TN | 231A |
| Tazewell, TN | 231A |
| Pearsall, TX | 231A |
| **34** | |
| Trion, GA | 239A |
| Belle Plaine, IA | 239A |
| Winterset, IA | 239A |
| Farmington, IL | 239A |
| Attica, IN | 239A |
| Nappanee, IN | 239A |
| Vivian, LA | 239A |
| Oscoda, MI | 239C2 |
| Langdon, ND | 239A |
| Farmington, NM | 239C1 |
| Gibsonburg, OH | 239A |
| Shadyside, OH | 239A |
| Olyphant, PA | 239A |
| Graysville, TN | 239A |
| **35** | |
| Key Colony Beach, FL | 288A |
| Wichita Falls, TX | 288A |
| **36** | |
| Sacramento, CA | 278A |
| Radcliff, KY | 278A |
| Plattsburgh, NY | 278A |
| Sodus, NY | 278A |
| Berwick, PA | 278A |
| New Boston, TX | 278A |
| **37** | |
| Atwater, CA | 223A |
| Alachua, FL | 223A |
| Lyons, GA | 223A |
| Montezuma, GA | 223A |
| Topeka, KS | 223A |
| Arcadia, LA | 223A |
| Richmond, MO | 223A |
| Heavener, OK | 223A |
| Hollis, OK | 223A |
| Barnesboro, PA | 223A |
| Mexico, PA | 223A |
| Susquehanna, PA | 223A |
| Abilene, TX | 223C2 |
| Elgin, TX | 223A |
| Navasota, TX | 223A |
| Dayton, WA | 223A |
| Danville, WV | 223A |
| **38** | |
| Orange Beach, AL | 289A |
| Dermott, AR | 289A |
| Avenal, CA | 289A |
| Watertown, FL | 289A |
| Ashburn, GA | 289A |
| Bicknell, IN | 289A |
| Eminence, KY | 289A |
| Hawesville, KY | 289A |
| Alexandria, LA | 230A |
| Eden Prairie, MN | 289A |
| Springfield, MN | 289A |
| Elizabethtown, NC | 289A |
| Marysville, OH | 289A |
| Portage, PA | 289A |
| Rockwood, TN | 289A |
| Raymondville, TX | 289A |
| Yakima, WA | 289C1 |
| Salem, WV | 289A |
| **39** | |
| Medicine Lodge, KS | 240A |
| Columbia Falls, MT | 240A |
| **40** | |
| Winslow, ME | 237A |
| Mora, MN | 237A |
| Tahoka, TX | 237A |
| Medical Lake, WA | 237A |
| **41** | |
| S. Yarmouth, MA | 280A |
| **42** | |
| Vancleve, KY | 260A |
| Homer, LA | 260A |
| Athol, MA | 260A |
| Lamar, MO | 260A |
| Warrenton, MO | 260A |
| Taos, NM | 260A |
| Uhrichsville, OH | 260A |
| San Augustine, TX | 260A |
| Chase City, VA | 260A |
| Rudolph, WI | 260A |
| **43** | |
| Hamburg, AR | 258A |
| Little Rock, AR | 258A |
| Eldora, IA | 258A |
| Ruston, LA | 258A |
| Pittsfield, ME | 258A |
| Republic, MO | 258A |
| St. James, MO | 258A |
| Ripley, OH | 258A |
| Mount Union, PA | 258A |
| Reynoldsville, PA | 258A |
| Scranton, PA | 258A |
| Bryan, TX | 258A |
| Emporia, VA | 258A |
| Point Pleasant, WV | 258A |
| **44** | |
| Bakersfield, CA | 257A |
| **45** | |
| Plainville, KS | 244A |
| **46** | |
| E. Porterville, CA | 263A |
| Rohnerville, CA | 263A |
| Henry, IL | 263A |
| Louisville, KY | 263C2 |
| Carrollton, MI | 263A |
| Walker, MI | 263A |
| Willard, MO | 263A |
| Lebanon, NH | 263A |
| Warrensburg, NY | 263A |
| Elizabethville, PA | 263A |
| Marion, SC | 263A |
| Columbus, WI | 263A |
| **47** | |
| Winton, CA | 254A |
| East Lyme, CT | 254A |
| Anderson, IN | 254A |
| Somersworth, NH | 254A |
| Winchester, NH | 254A |
| Villas, NJ | 254A |
| Crestline, OH | 254A |
| Nyssa, OR | 254A |
| Spencer, TN | 254A |
| **48** | |
| Eutaw, AL | 282A |
| Gonzales, CA | 282A |
| Shafter, CA | 282A |
| Pinckneyville, IL | 282A |
| Charlestown, IN | 282A |
| Williamsburg, KY | 282A |
| Bunkie, LA | 282A |
| Two Harbors, MN | 282A |
| Bonne Terre, MO | 282A |
| State College, MS | 282A |
| Murphy, NC | 282A |
| Old Fort, NC | 282A |
| Surgoinsville, TN | 282A |
| Seymour, WI | 282A |
| **49** | |
| Palmyra, NY | 256A |
| Paulding, OH | 256A |
| Commerce, OK | 256A |
| Mt. Carmel, PA | 256A |
| Wakefield-Peacedale, RI | 256A |
| Clinchco, VA | 256A |
| Black River Falls, WI | 256A |
| Mayville, WI | 256A |
| **50** | |
| Modesto, CA | 230A |
| Berne, IN | 230A |
| Clinton, IN | 230A |
| Nobelsville, IN | 230A |
| Turners Falls, MA | 230A |
| Granite Falls, MN | 230A |
| Dansville, NY | 230A |

| | |
|---|---|
| Conway, SC | 230A |
| St. Matthews, SC | 230A |
| Selmer, TN | 230A |
| Spring City, TN | 230A |
| Roosevelt, UT | 230A |

**51**

| | |
|---|---|
| Merced, CA | 299A |
| Santa Barbara, CA | 299B1 |
| Pawcatuck, CT | 299A |
| Valdosta, GA | 299A |
| Polo, IL | 299A |
| Cleveland, MS | 299A |
| Loudonville, OH | 299A |
| N. Baltimore, OH | 299A |
| Nelsonville, OH | 299A |
| Tunkhannock, PA | 299A |
| Alberta, VA | 299A |

**52**

| | |
|---|---|
| Brundidge, AL | 234A |
| Gifford, FL | 234A |
| Manchester, IA | 234A |
| Caledonia, MN | 234A |
| Staples, MN | 234A |
| Santa Fe, NM | 234C |
| Seaside, OR | 234A |
| Erie, PA | 234A |
| Patton, PA | 234A |
| Sumter, SC | 234A |
| Williston, SC | 234A |
| Corpus Christi, TX | 234A |
| Camas, WA | 234A |
| Mt. Gay-Shamrock, WV | 234A |

**53**

| | |
|---|---|
| Edmonton, KY | 256A |
| Buchanan, MI | 256A |
| Campwood, TX | 256A |
| Gloucester, VA | 256A |

**54**

| | |
|---|---|
| Pensacola, FL | 254A |
| Tallahassee, FL | 291A |
| Oregon, IL | 291A |
| Newburgh, IN | 291A |
| Irvine, KY | 291A |
| Charleston, MO | 291A |
| Carlsbad, NM | 291C2 |
| Gallup, NM | 291C2 |
| Kershaw, SC | 291A |
| Laredo, TX | 291A |
| Exmore, VA | 291A |
| Saltville, VA | 291A |

**55**

| | |
|---|---|
| Beebe, AR | 268A |
| Isadora, AR | 268A |
| Malvern, AR | 268A |
| Gridley, CA | 268A |
| Fort Branch, IN | 268A |
| Buffalo, KY | 268A |
| Water Valley, MS | 268A |
| Clovis, NM | 268C |
| Homer, NY | 268A |
| Celina, TN | 268A |
| Jackson, TN | 268A |
| Vinton, VA | 268A |

**56**

| | |
|---|---|
| Rio Dell, CA | 296A |

**57**

| | |
|---|---|
| Ft. Rucker, AL | 226A |
| Edgewater, FL | 226A |
| Decatur, IL | 226A |
| Lima, OH | 226A |
| Renovo, PA | 226A |

**58**

| | |
|---|---|
| Macon, GA | 222A |
| Peoria, IL | 222A |
| Ft. Wayne, IN | 222A |
| Olathe, KS | 222A |
| Louisa, KY | 222A |
| Coushatta, LA | 222A |
| Allegan, MI | 222A |
| Cameron, MO | 222A |
| Wildwood Crest, NJ | 226A |
| Killeen, TX | 222A |
| Victoria, TX | 222A |
| Payson, UT | 222A |
| Wautoma, WI | 222A |

**59**

| | |
|---|---|
| New Hampton, IA | 236A |
| Carterville, IL | 236A |
| Kankakee, IL | 236A |
| Morrison, IL | 236A |
| Electra, TX | 236A |
| Friona, TX | 236A |
| Midland, TX | 236A |
| Bloomer, WI | 236A |

**60**

| | |
|---|---|
| E. Hemet, CA | 225A |
| Lindsay, CA | 277A |
| Sharon, CT | 277A |
| Holly Hill, FL | 277A |
| Spring Valley, IL | 277A |
| Bastrop, LA | 277A |
| St. Marys, OH | 277A |
| Johnsonburg, PA | 277A |
| Greer, SC | 277A |

**61**

| | |
|---|---|
| Ford City, CA | 271A |
| Oxnard, CA | 271A |
| Graceville, FL | 271A |
| Sylvester, GA | 271A |
| Lawrenceburg, KY | 271A |
| Basile, LA | 271A |
| Dexter, ME | 271A |
| Cuba, MO | 271A |
| Meridian, MS | 271A |
| Monticello, MS | 271A |
| Mound Bayou, MS | 271A |
| Hampton, NH | 271A |
| Phoenix, NY | 271A |
| Wagoner, OK | 271A |
| Pamplico, SC | 271A |
| Chesap-Ports-Va Bea., VA | 271A |

**62**

| | |
|---|---|
| Independence, CA | 292A |
| Kingsburg, CA | 292A |
| Brush, CO | 292A |
| South Bend, IN | 292A |
| Los Lunas, NM | 292A |
| Tishomingo, OK | 292A |

**63**

| | |
|---|---|
| Marked Tree, AR | 229A |
| Sebastopol, CA | 229A |
| Tice, FL | 229A |
| New Iberia, LA | 229C2 |
| Yazoo City, MS | 229A |
| Conrad, MT | 229A |
| Wrightsville Beach, NC | 229A |
| Clyde, NY | 229A |
| Cordell, OK | 229A |
| Bishopville, SC | 229A |
| Georgetown, SC | 229A |
| Jacksboro, TX | 229A |
| Uvalde, TX | 229A |
| Nekoosa, WI | 229A |

**64**

| | |
|---|---|
| Selma, AL | 287C2 |
| Soledad, CA | 287A |
| Chattahoochee, FL | 287A |
| Lake Charles, LA | 287C2 |
| Monroe, LA | 287C2 |
| Jackson, MN | 287A |
| East Prairie, MO | 287A |
| Fairbluff, NC | 287A |
| Wilmington, NC | 287A |
| Bixby, OK | 287A |
| Walterboro, SC | 287A |
| Loudon, TN | 287A |
| Roanoke, VA | 287A |

**65**

| | |
|---|---|
| Talladega, AL | 248A |
| Hogansville, GA | 248A |
| Jeffersonville, GA | 248A |
| Madison, ME | 248A |
| Hoosick Falls, NY | 248A |
| Greenfield, OH | 248A |
| Union City, OH | 248A |

**66**

| | |
|---|---|
| Window Rock, AZ | 276A |
| Firebaugh, CA | 276A |

**67**

| | |
|---|---|
| Sierra Vista, AZ | 269A |
| Edna, TX | 269A |

**68**

| | |
|---|---|
| Millen, GA | 235A |
| Reserve, LA | 235A |
| Benton Harbor, MI | 235A |
| Wurtsmith, MI | 235A |
| Stewartville, MN | 235A |
| Columbus, MS | 235C2 |
| Holly Springs, MS | 235A |
| Ada, OH | 235A |
| Oliver, PA | 235A |
| Port Allegany, PA | 235A |

**69**

| | |
|---|---|
| Hardy, AR | 284A |
| Texarkana, AR | 284A |
| Bushnell, IL | 284A |
| Nashville, IL | 284A |
| Washington, LA | 284A |
| Chaffee, MO | 284A |
| Greenville, MS | 284C2 |
| Rose Hill, NC | 284A |
| Roswell, NM | 284C2 |

**70**

| | |
|---|---|
| El Dorado, AR | 227A |
| Chowchilla, CA | 227A |
| Marianna, FL | 227A |
| Fairfield, ME | 227A |
| Cassville, MO | 227A |
| Avon, NY | 227A |
| New Paltz, NY | 227A |
| Meyersdale, PA | 227A |
| White Sulphur Springs, WV | 227A |

**71**

| | |
|---|---|
| Hawthorne, NV | 228A |
| Barnesville, OH | 228A |

**72**

| | |
|---|---|
| Orange Cove, CA | 262A |
| Sibley, IA | 262A |
| Champaign, IL | 262B1 |
| Larose, LA | 262A |

| | |
|---|---|
| Southwest City, MO | 262A |
| Delhi, NY | 262A |
| Elloree, SC | 262A |
| Pawley's Island, SC | 262A |
| Petersburg, VA | 262A |
| **73** | |
| Byesville, OH | 249A |
| Redfield, SD | 249A |
| **74** | |
| Bay Minette, AL | 293A |
| Vernon, AL | 293A |
| Bella Vista, AR | 293A |
| Horseshoe Bend, AR | 293A |
| Lucerne Valley, CA | 293A |
| Orland, CA | 293A |
| Ledyard, CT | 293A |
| Pocomoke City, MD | 293A |
| Plattsmouth, NE | 293A |
| Farmington, NH | 293A |
| Delta, OH | 293A |
| Holdenville, OK | 293A |
| Rogersville, TN | 293A |
| Muenster, TX | 293A |
| **75** | |
| Earlimart, CA | 228A |
| **76** | |
| Lenwood, CA | 285A |
| South Oroville, CA | 285A |
| **77** | |
| Marianna, AR | 295A |
| Buckeye, AZ | 295A |
| La Junta, CO | 295A |
| Rock Valley, IA | 295A |
| Newton, IL | 295A |
| Woodlawn, IL | 295A |
| Spring Arbor, MI | 295A |
| Lucedale, MS | 295A |
| St. Pauls, NC | 295A |
| Masontown, PA | 295A |
| Bloomington, TX | 295A |
| Daingerfield, TX | 295A |
| Plainview, TX | 295C2 |
| Bedford, VA | 295A |
| **78** | |
| Austin, IN | 242A |
| Indianapolis, IN | 242A |
| Augusta, KS | 242A |
| Herington, KS | 242A |
| Wilmore, KY | 242A |
| North Cape May, NJ | 294A |
| Lewisburg, PA | 242A |
| Brillion, WI | 242A |
| **79** | |
| Homewood, AL | 247A |
| Globe, AZ | 247A |
| Litchfield, CT | 247A |
| Chiefland, FL | 247A |
| Salyersville, KY | 247A |
| Orange, MA | 247A |
| Essexville, MI | 247A |
| Natchez, MS | 247A |
| Lebanon, OH | 247A |
| Oak Harbor, OH | 247A |
| Spangler, PA | 247A |
| Rio Grande, PR | 247A |
| Parsons, TN | 247A |
| Longview, TX | 247C2 |
| Pecos, TX | 247C |
| **80** | |
| Glenwood, AR | 283A |
| Lake Isabella, CA | 283A |
| Searles Valley, CA | 283A |
| Pueblo, CO | 283C1 |
| Carrier Mills, IL | 283A |
| Lexington-Fayette, KY | 283C2 |
| Saginaw, MI | 283A |
| Washington, MO | 283A |
| Mechanicville, NY | 283A |
| Montpelier, OH | 283A |
| Knoxville, TN | 283A |
| Jefferson, TX | 283A |
| Plymouth, WI | 283A |
| Whitewater, WI | 283A |

[FR Doc. 85-27163 Filed 11-15-85; 8:45 am]
BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 84-787; Rm-4725]**

## FM Broadcast Station in Palm Desert, CA; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; Correction.

**SUMMARY:** Action taken herein corrects the *Report and Order* regarding the allotment of noncommercial educational FM channel 219A to Palm Desert, California, by omitting reference to the window procedures for filing applications.

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

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

### Erratum

In the matter of amendment of § 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations. (Palm Desert, California); MM Docket No. 84-787, RM-4725.

Released: November 13, 1985.

By the Chief, Policy and Rules Division.

On August 13, 1985, the Commission adopted the *Report and Order*, 50 FR 34467, published August 26, 1985, allotting noncommercial educational FM Channel 219A to Palm Desert, California. Paragraph 5 of the *Report and Order* specified a window filing period for acceptance of applications therefor. However, in MM Docket No. 84-750, *Amendment of §§ 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, the Commission determined that the new window procedures would not apply to the filing of applications for noncommercial educational channels. Accordingly, paragraph 5 of the *Report and Order* herein should be deleted in its entirety.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 85-27415 Filed 11-15-85; 8:45 am]
BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 50, No. 222
Monday, November 18, 1985

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 962

### Byproduct Material; Extension of Comment Period

**AGENCY:** Department of Energy.

**ACTION:** Proposed Rule; extension of comment period and rescheduling of public hearing.

**SUMMARY:** On November 1, 1985, the Department of Energy (DOE) published a Notice of Proposed Rulemaking (50 FR 45736) to clarify the application of the term Byproduct Material, as defined in section 11e(1) of the Atomic Energy Act of 1954, to DOE-owned or produced radioactive waste substances. In response to several requests, DOE is today extending the deadline for submitting written comments on the Proposed Rule, and is rescheduling the date on which a public hearing on the Proposed Rule will be held, if a hearing is requested by any interested person.

**DATES:** Written comments must be received on or before January 2, 1986. Requests for a public hearing must be in writing, and must be received on or before November 25, 1985. A public hearing, if one is requested, will be held on December 2, 1985, at 9:00 a.m. e.s.t.

**ADDRESSES:** Written comments, and requests for a public hearing, should be addressed to: Henry K. Garson, Esq., Assistant General Counsel for Environment, GC-11, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

A public hearing, if one is requested, will take place in Room 1E-245, the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** In accordance with guidance from the Environmental Protection Agency, DOE is using the definition contained in the Proposed Rule as the basis for its compliance with the Resource Conservation and Recovery Act (RCRA), particularly in the preparation of the RCRA Part B permit applications required to be submitted by November 8, 1985.

Additionally, DOE is currently the defendant in a lawsuit in the United States District Court for the District of South Carolina concerning RCRA compliance at DOE's Savannah River Plant. The Definition contained in the Proposed Rule is relevant to some of the issues raised in that lawsuit.

Notwithstanding DOE's desire to promulgate this rule quickly to help resolve a number of uncertainties, including those mentioned above, DOE has decided to comply with the requests, by rescheduling the public hearing for December 2, 1985, and extending the comment period to January 2, 1986.

Persons wishing to request a public hearing must do so on or before November 25, 1985 by written request to the address set forth above.

Issued in Washington, D.C., November 12, 1985.

J. Michael Farrell,
*General Counsel.*

[FR Doc. 85-27434 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 353

### Reports of Crimes Affecting Insured Nonmember Banks; Notification of Change in Fidelity Bond Coverage

*Correction*

In FR Doc. 85-25070 beginning on page 43209 in the issue of Thursday, October 24, 1985, make the following correction:

On page 43209, second column, first complete paragraph, fourth line, "182" should have read "1828".

BILLING CODE 1505-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 85-NM-117-AD]**

### Airworthiness Directives; Gates Learjet Models 23, 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25D, 25F, 28, 29, 35, 35A, 36, and 36A Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise an existing airworthiness directive (AD) applicable to certain Gates Learjet airplanes, which currently requires repetitive inspections of Stall Warning Accelerometers. This proposed amendment would extend the inspection interval from 165 hours to 220 hours time-in-service. This would permit operators to perform this inspection in conjunction with other airplane maintenance schedules. In addition, this proposed amendment would limit the applicability of the AD to those airplanes in which certain equipment has not been incorporated.

**DATE:** Comments must be received on or before January 6, 1986.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277, or may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road,

Mid-Continent airport, Wichita, Kansas 67209; telephone (316) 946-4419.

**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 FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

**Discussion**

Airworthiness Directive (AD) 82-01-05 R1, Amendment 39-4746, requires an initial and repetitive inspection of the Stall Warning System on certain Gates Learjet series airplanes. The repetitive inspection interval presently required is 165 hours time-in-service. Since the AD was adopted, Gates Learjet Corporation has revised its maintenance and inspection schedules. This proposed amendment would extend the repetitive inspection interval required by the existing AD from 165 hours time-in-service to 220 hours time-in-service; this interval would coincide with the Gates Learjet maintenance inspection schedule and the FAA Approved Aircraft Inspection Programs. The FAA has determined that this inspection interval can be extended without compromising safety.

This proposal would also change the applicability of the existing AD regarding the Model 35 and 36 series airplanes. The effectivity of the proposal would be limited to Model 35 airplanes with serial numbers 35-001 to 35-505, and Model 36 airplanes with serial number 36-001 to 36-053. Models with later serial numbers have incorporated the Jet Electronics and Technology (JET) FC 530 autopilot with a pre-flight checkable Stall Warning Accelerometer; the requirements of this AD would not be applicable to airplanes with this modification incorporated. Model 35 airplanes incorporating Gates Learjet Aircraft Accessory Kit 83-2 would be exempt from this AD since those airplanes also have pre-flight checkable Stall Warning Accelerometer.

In addition, this proposed amendment would revise paragraph C. of AD 82-01-05 R1 to reflect the correct address of the Wichita Aircraft Certification Office.

It is estimated that 1017 airplanes of U.S. registry would be affected by this AD. It has been determined that the requirements of this proposed AD may actually reduce operators' costs since the required inspection may be accomplished in conjunction with other regularly scheduled airplane maintenance and inspections.

For these reasons, the FAA has determined that his document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 111034; 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, Gates Learjet Models 23, 24, 24A, 24B, 24B-A, 24C, 24D, 24D-A, 24E, 24F, 24F-A, 25D, 25F, 28, 29, 35, 35A, 36, or 36A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects: 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Rgulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

**§ 39.13 [Amended]**

2. By revising Airworthiness Directive (AD) 82-01-05 R1, Amendment 39-4746, as follows:

A. Change the applicability statement to reflect the following models and serial numbers:

| Model | Serial No. |
|---|---|
| 23 | 23-003 through 23-099. |
| 24, 24A | 24A-011, 24A-012, 24-015, 24-019, 24-031, 24-043, 24-050, 24-051, 24-055, 24-060, 24-065, 24-087, 24-096, and 24-100 through 24-180. |
| 24B, 24B-A | 24-181 through 24-217, 24-219 through 24-229. |
| 24C, 24D, 24D-A | 24-218, 24-230 through 24-328. |
| 24E, 24F, 24F-A | 24-329 through 24-357. |
| 25D, 25F | 25-206 through 25-336, 25-338 and on. |
| 28 | 28-001 and on. |
| 29 | 29-001 and on. |
| 35, 35A | 35-001 through 35-505. |
| 36, 36A | 36-001 through 36-053. |

B. Change paragraph A. to read as follows:

A. To assure proper operation of the Stall Warning Accelerometer Unit, unless previously inspected in the last 100 hours time-in-service before the effective date of this AD, within the next 50 hours time-in-service, and at intervals not to exceed 220 hours time-in-service thereafter, perform the inspection of the Stall Warning Accelerometer in accordance with Gates Learjet Service Bulletins SB 23/24/25-301B, SB 28/29-27-3B, or SB 35/36-27-12B, as appropriate. Model 35 airplanes incorporating Gates Learjet Airplane Accessory Kit 83-2 are exempt from the requirements of AD.

C. Change paragraph C. to read as follows:

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Airaraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this proposal who have not already received the applicable service information from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

Issued in Seattle, Washington, on November 7, 1985.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 85-27311 Filed 11-15-85; 8:45 am]

**BILLING CODE 4910-13-M**

14 CFR Part 39

[Docket No. 85-ANE-29]

## Airworthiness Directives: Pratt & Whitney Canada (PWC) Model PT6A-42 Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require removal and replacement of the PT6A-42 first stage compressor hub Part Number P/N 3030356 at or before 5,000 cycles in accordance with PWC Service Bulletin (SB) 3002, Revision 12. The proposed AD is needed to prevent first stage compressor hub failure and possible engine failure.

**DATES:** Comments must be received on or before January 27, 1986.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-ANE-29, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to the above address, Room 311.

Comments delivered must be marked: Docket No. 85-ANE-29.

Comments may be inspected at Room 311, New England Regional Office, Office of the Regional Counsel, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SBs may be obtained from Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9.

Copies of the SBs are contained in Rules Docket No. 85-ANE-29, in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Masachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

**SUPPLEMENTARY INFORMATION:** 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 will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 85-ANE-29". The post card will be date/time stamped and returned to the commenter.

The FAA has determined that the originally published low cycle fatigue (LCF) life limit for the stage 1 compressor hub Part Number 3030356 on PWC PT6A-42 series turboprop engines must be adjusted downward from 20,000 cycles to 5,000 cycles. The determination results from a change in the technique of the analysis to substantiate low cycle fatigue life due to minor changes in the PT6A-42 compressor hub geometry. This action is required to assure against hub, and possible engine, failures. Since this condition exists on other engines of the same type design, the proposed AD would require removal and replacement of first stage compressor hubs at or before 5,000 cycles on PWC PT6A-42 turboprop engines. The hourly life limit is not affected by this AD.

### Conclusion

The FAA has determined that this proposed regulation involves 10 engines installed on Beech Super King Air 200 series aircraft with engine cycles accumulating 500 or less cycles per year. Since only five aircraft are involved, a substantial number of small entities within the meaning of the Regulatory Flexibility Act will not be affected. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft 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

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

### The Proposed Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulation (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

**Pratt and Whitney Canada:** Applies to PWC PT6A-42 series turboprop engines.

Compliance is required as indicated unless already accomplished.

2. To prevent first stage compressor hub failure and possible engine failure, accomplish the following:

Remove P/N 3030356 first stage compressor hub of PWC PT6A-42 at or before 5,000 cycles in accordance with PWC SB 3002, Revision 12, dated September 3, 1975, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SBs identified and described in this document.

Issued in Burlington, Massachusetts, on November 5, 1985.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 85-27310 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-13-M

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## Coast Guard

### 46 CFR Part 67

[CGD 84-027]

### Documentation of Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is withdrawing a notice of proposed rulemaking (NPRM) published November 19, 1984, [49 FR 45623]. The NPRM proposed changing the marking requirements for vessels documented under the laws of the United States. The NPRM proposed eliminating the requirement to mark the vessel's

exterior with the hailing port and, in lieu thereof, requiring owners to mark the rear exterior of the vessel with the abbreviation "U.S." and the official number assigned by the Coast Guard. The purpose of the proposed marking system was to provide a more efficient means of identifying vessels. However, the proposed change would have placed a burden on the public which would not have been outweighed by the benefit of improved identification. The Coast Guard believes therefore, that rulemaking requiring the exterior marking of a vessel's official number is not necessary at this time.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Gregory L. Oxley (staff attorney), Office of Merchant Marine Safety, (202) 426–1492, or (202) 426–1493. Normal office hours are between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

**SUPPLEMENTARY INFORMATION:** The Vessel Documentation Act of 1980 (Pub. L. 96–594, 94 Stat. 3453, effective date July 1, 1982), repealed the Federal statutes that had specifically required the marking of a port, (i.e., a hailing port), on the exterior of vessels documented under the laws of the United States. 46 U.S.C. 12116(c) requires the owner to "affix to the vessel and maintain in the manner prescribed by the Secretary the number assigned and any other identification marking the Secretary may require." Pursuant to this grant of discretion, the Coast Guard sought information from the public to determine whether to retain exterior port markings.

An advance notice of proposed rulemaking (ANPRM) was published in the **Federal Register** on May 17, 1984 [49 FR 20872] asking the public to comment concerning hailing port marking requirements. The majority of the comments received in response to the ANPRM were in favor of continuing the requirement to mark documented vessels with a hailing port. The underlying rationale for the majority of the positive comments was that hailing port markings were useful for identification purposes. However, marking the hailing port is just one, and not necessarily the most accurate, means of making a vessel identifiable. Therefore, the Coast Guard proposed regulations designed to reduce mandatory marking requirements to the lowest possible level, while improving the ability to identify vessels.

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on November 19, 1984 [49 FR 45623]. The NPRM proposed elimination of the requirement to mark a hailing port and establishment of a new requirement to mark "U.S." and the official number of the vessel in four inch high characters on or near the vessel stern. Approximately 660 comments on the NPRM were received prior to the close of the comment period. All but 29 of these expressed at least some opposition to the proposed changes. The comments in favor of the proposed changes did point out that marking the vessel's unique official number on the exterior of the vessel would provide a more positive means of identifying a vessel without boarding. However, in light of the large amount of public opposition to the NPRM, no current compelling need for the proposed changes has been suggested.

The comments received do point out that a large segment of the public does not understand the proper procedure used to designate a hailing port. Regulations require owners of documented vessels to designate both a home port and a hailing port. The home port of a vessel is that place where the official records of the vessel are kept by the Coast Guard. The hailing port is that place which is marked on the exterior of the vessel for identification purposes.

46 CFR 67.13–3(b) requires a home port to be designated according to several rules. These rules provide for home port determinations based on the domicile of the owner or the owner's business address, dependent on the form of ownership. The place where a vessel is kept or operated is not necessarily the home port and is not the basis for designating a home port. In all cases the home port shall be the city of one of the fifteen regional port of documentation offices. 46 CFR 67.13–3(b)(1)–(10) should be consulted for the proper guidance.

46 CFR 67.13–7 requires owners of documented vessels to designate a hailing port that is either the vessel's home port or the place which the owner used to determine the home port. The hailing port must include the state, territory, or possession and must be a place recognized by the United States Post Office as a bona fide mailing address.

Current marking requirements for documented vessels consist of permanently marking the official number on an interior structural part of the hull, and marking the name and hailing port on the exterior of the hull. The exact location of the required exterior markings depends upon the type of vessel and the type of license endorsement held. For the present time, the Coast Guard believes that these requirements, found in 46 CFR Subpart 67.15, remain adequate. Accordingly, the Coast Guard has decided to terminate rulemaking action on the proposal.

November 13, 1985.

**J. W. Kime,**

*Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.*

November 13, 1985.

[FR Doc. 85–27424 Filed 11–15–85; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 15 and 76

**[Gen Docket No. 85–301]**

### Relating to Terminal Devices Connected to Cable Television Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Extension of time to file comments.

**SUMMARY:** In order to allow interested parties sufficient time to addess the issues involved in this proceeding relating to terminal devices connected to cable television systems (50 FR 42729; October 22, 1985,) the dates for filing comments are extended to December 9, 1985, for comments and December 27, 1985, for reply comments. This action is taken at the request of the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG).

**DATES:** Comments by December 9, 1985; Reply comments by December 27, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Briley, Mass Media Bureau (202) 632–6302.

**SUPPLEMENTARY INFORMATION:**

### Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of parts 15 and 76 relating to terminal devices connected to cable television systems, Gen. Docket No. 85–301.

Released: November 12, 1985.

Adopted: November 6, 1985.

By the Chief, Policy and Rules Divisions:

1. The Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) has requested that the time for filing comments in the above referenced proceeding be extended 30 days, from November 22, 1985, to December 20, 1985. In support of its request, EIA/CEG indicates that the initial comment date does not allow it sufficient time to survey its members,

develop a consensus position, and file comments.

2. We do not find that EIA/CEG has made a sufficient showing to justify a 30-day extension for the filing of comments in the above-captioned proceeding. However, in the interest of obtaining a complete record, we will extend the period of time for filing comment for approximately two weeks.

3. Accordingly, it is ordered, that the dates for filing comments and reply comments in the above-captioned proceeding are extended to December 9, 1985, and December 27, 1985, respectively.

4. This action is taken pursuant to authority contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's Rules.

5. For further information concerning this proceeding, contact Sharon A. Briley, Mass Media Bureau (202) 632-6302.

Federal Communications Commission.

**Charles G. Scholt,**

*Chief, Policy and Rules Division Mass Media Bureau.*

[FR Doc. 85-27412 Filed 11-15-85; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 50, No. 222
Monday, November 18, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### National Marketing Quotas for Maryland (Type 32) Tobacco and Cigar-Filler (Type 41) Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture, (USDA).

**ACTION:** Notice of Proposed Determination.

**SUMMARY:** The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to proclaim by February 1, 1986, national marketing quotas for Maryland (type 32) and cigar-filler (type 41) tobaccos for the 1986–87, 1987–88 and 1988–89 marketing years and the amounts of the quotas for such kinds of tobacco for the 1986–87 marketing year. The public is invited to submit written comments, views and recommendations concerning the determination of the national marketing quotas, the conduct of referenda, and other related matters which are discussed in this notice.

**DATE:** Comments must be received on or before January 10, 1986 to be assured of consideration.

**ADDRESS:** Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187.

Maryland tobacco growers have not had marketing quotas since 1965 and cigar-filler tobacco growers have never approved marketing quotas. Since neither Maryland nor cigar-filler tobacco growers are expected to approve quotas for the next three marketing years, a Preliminary Regulatory Impact Analysis has not been prepared. If growers of either kind of tobacco should approve quotas, a Final Regulatory Impact Analysis describing the options considered in developing the final notice and the impact of implementing each option would be made available on request from Robert Tarczy.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed in conformity with Execurive Order 12291 and Department Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases, Number–10.051, as set forth in the Catalog of Federal Domestic Assistance.

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

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that, with respect to Maryland tobacco and cigar-filler tobacco, the Secretary of Agriculture must, by February 1, 1986, proclaim national marketing quotas for the 1986–87, 1987–88 and 1988–89 marketing years and determine and announce the amount of the national marketing quota in effect for the 1986–87 marketing year.

In addition, the Secretary is required to conduct, within 30 days after the proclamation of such national marketing quotas, referenda of farmers engaged in the 1985 production of each of such kinds of tobacco in order to determine whether they favor or oppose marketing quotas for such years.

Producers of Maryland tobacco whose farms are located within the State of Pennslyvania were ineligible to vote in the referendum held in February 1983 but are eligible to vote in the upcoming referendum.

Section 312(a) of the Act (7 U.S.C. 1312(a)) provides that the Secretary shall, not later than February 1 of any marketing year with respect to these kinds of tobacco, proclaim a national marketing quota for each of the next three succeeding marketing years whenever the Secretary determines with respect to such kinds of tobacco—

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefor;

(2) That such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclaimed for such marketing year is not in effect because of disapproval by producers in a referendum: *Provided*, That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed in accordance with section 312(a) which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance

with such regulations as may be prescribed, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Producers of both Maryland (type 32) and cigar-filler (type 41) tobaccos have disapproved national marketing quotas for three successive years subsequent to 1952. Quotas for these kinds of tobacco were last proclaimed for the 1983–84, 1984–85 and 1985–86 marketing years (48 FR 7229). Producers of both Maryland (type 32) and cigar-filler (type 41) tobaccos disapproved marketing quotas in separate referenda held during February 28-March 3, 1983 (48 FR 28303).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (7 CFR Part 30) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23 and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37;
Burley tobacco, comprising type 31;
Maryland tobacco, comprising type 31;
Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54 and 55; and
Cigar-filler tobacco, comprising type 41.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1986, with respect to the kinds of tobacco specified in this notice of proposed determinations, the amount of the national marketing quota which will be in effect for the 1986–87 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of such 1986–87 national marketing quota may, not later than March 1, 1986, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketing in adjusting the total supply to the reserve supply level.

Section 312(c) of the Act (7 U.S.C. 1312(c)) provides that within 30 days after national marketing quotas are proclaimed in accordance with section 312(a) for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to such quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but the results shall in no way affect or limit the subsequent proclamation and submission to a referendum of national marketing quotas as otherwise authorized by section 312.

Section 313(g) of the Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment, less a reserve not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments.

### Proposed Determination

Accordingly, the Secretary proposes to make the following determinations with respect to Maryland (type 32) tobacco and cigar-filler (type 41) tobacco:

1. The amount of the national marketing quota for each kind of tobacco for the 1986–87 marketing year. With respect to Maryland (type 32) tobacco a national marketing quota within a range of 40 million to 55 million pounds is proposed. With respect to cigar-filler (type 41) tobacco a national marketing quota within a range of 20 million to 30 million pounds is proposed;

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of the national acreage allotments, less a reserve of not to exceed 1 percent, among old farms;

3. The amounts of the national acreage allotments to be reserved for new farms and for making corrections and adjusting inequities in old farm allotments; and

4. The date(s) or period(s) of the referenda on quotas for determining whether marketing quotas will be in effect for the 1986–87, 1987–88 and 1988–89 marketing years for Maryland (type 32) and cigar-filler (type 41) tobacco, and whether the referenda should be conducted at polling places rather than by mail ballot (See 7 CFR Part 717).

Signed at Washington, DC, on November 13, 1985.

**Everett Rank,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 85-27390 Filed 11-15-85; 8:45 am]

BILLING CODE 3410-05-M

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## Agricultural Stabilization and Conservation Service

## Commodity Credit Corporation

## 1986 National Marketing Quota and 1986 Price Support Level for Burley Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Notice of Proposed Determinations of 1986–87 Marketing Quota and Price Support Level.

**SUMMARY:** The Secretary of Agriculture is required by the Agricultural Adjustment Act of 1938, as amended, to announce by February 1, 1986, the amount of the national marketing quota for burley tobacco for the 1986–87 marketing year. In addition, the Secretary must, insofar as practicable, announce the level of price support for the 1986–87 marketing year in advance of the planting season. The public is invited to comment on the amount of the national marketing quota, other related quota factors, and level of support.

**DATE:** Comments must be received on or before December 31, 1985 in order to be assured of consideration.

**ADDRESS:** Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391.

**FOR FURTHER INFORMATION CONTACT:** Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the proposed quota set forth in this notice and the impact of implementing it is available on request from Robert L. Tarczy.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major"

since implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the ASCS nor the CCC is required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

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

**Marketing Quotas**

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that the Secretary proclaim by February 1, 1986, marketing quotas for the 1986–87, 1982–88 and 1988–89 marketing years and determine and announce the amount of the national marketing quota for the 1986–87 marketing year for burley tobacco. Since the 1985–86 marketing year is the last year of the three consecutive years for which marketing quotas previously proclaimed will be in effect for burley tobacco, a referendum of farmers engaged in the 1985 production of burley tobacco for the 1985 marketing year will be conducted within 30 days after proclamation of such national marketing quota to determine whether they favor or oppose marketing quotas for the three year period.

Section 319(c) of the Act provides that the national marketing quota for burley tobacco for a marketing year is the amount of that kind of tobacco produced in the United States which the Secretary estimates will be used domestically and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum downward adjustment is 10 percent of estimated domestic use and exports.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The phrase "normal supply" is defined in Section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in Section 301(b)(11)(B) of the Act as the yearly average quantity of burley tobacco produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined (1985–86), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the yearly average quantity produced in the United States that was exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined (1985–86), adjusted for current trends in such exports.

The reserve supply level for the 1985–86 marketing year was determined to be 1,542 million pounds. This was based on a normal year's domestic consumption of 450 million pounds and a normal year's exports of 140 million pounds (50 FR 21478). The proposed reserve supply level for the 1986–87 marketing year is 1,493 million pounds. This is based on a normal year's domestic consumption of 430 million pounds and a normal year's exports of 145 million pounds.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (October 1) plus the estimated production in the United State during the calendar year in which the marketing year begins. The total supply for the 1985–86 marketing year is 2,029 million pounds based on carryover of 1,469 million pounds and estimated marketings of 560 million pounds.

The amount of burley tobacco produced and utilized domestically during the 1984–85 marketing year is estimated to be 405 million pounds, and the amount exported is estimated to be 145 million pounds, farm sales weight basis. The national marketing quota for burley tobacco for the 1985–86 marketing year is 525 million pounds (50 FR 21478). For the 1986–87 marketing year, utilization in the United States is estimated to be approximately 390 million pounds and exports are estimated to be approximately 145 million pounds. Since the total supply for the 1985–86 marketing year is 536 million pounds more than the proposed reserve supply level for the 1986–87 marketing year, the maximum downward adjustment for effecting an orderly reduction of supplies to the reserve supply level of 53 million pounds is proposed. Accordingly, it is proposed that the national marketing quota be 482 million pounds for the 1986–87 marketing year.

For each marketing year for which marketing quotas are in effect in accordance with section 319(c) of the Act, the Secretary is authorized to establish a reserve (hereinafter referred to as the "national reserve") from the national maketing quota in an amount not in excess of 1 percent of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas and for establishing marketing quotas for new farms (i.e., farms for which farm marketing quotas have not been otherwise established). A reserve of 465,000 pounds was established for the 1985–86 marketing year (50 FR 21478). It is proposed that a national reserve be established for the 1986–87 marketing year.

Section 319(e) of the Act provides, in part, that each farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under section 319(c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for such succeeding marketing year. However, such national factor shall not be less than 90 percent. The national factor for the 1985–86 marketing year was .90 (50 FR 21478).

Section 319(h) of the Act provides that, effective with the marketing year beginning October 1, 1976, no marketing quota, other than a new farm marketing quota, shall be established for a farm on which no burley tobacco was planted or considered planted in any of the five years immediately preceding the year for which farm marketing quotas are being established.

**Price Support**

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers at a level which is determined in accordance with a formula prescribed in section 106 of the Agricultural Act of 1949, as amended (the "1949 Act"). With respect to the 1986 crop of burley tobacco, the level of support is determined in accordance with sections 106 (b), (d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1986 crop of burley tobacco, if marketing quotas are in effect or are not disapproved by producers, shall be the level in cents per pound at which the 1985 crop of burley tobacco was supported, plus or minus, respectively, the amount by which (A) the support level for the 1986 crop, as determined under section 106(b) of the 1949 Act, is greater or less than (B) the support level for the 1985 crop, as determined under section 106(b) of the 1949 Act, as that difference may be adjusted by the Secretary under section 106(d) of the 1949 Act if the support level under clause (A) is greater than the support level under clause (B). Accordingly, under section 106(f)(4) of the 1949 Act, if marketing quotas are in effect or are not disapproved by producers, the support level for the 1986 crop of burley tobacco will be the 1985 level, adjusted by the difference between (plus or minus) the 1986 "basic support level" and the 1985 "basic support level".

Section 106(b) of the 1949 Act provides that, if marketing quotas are in effect or are not disapproved by producers, that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of burley tobacco (57.2 cents per pound) by the ratio of the average of the index of prices paid by farmers including wage rates, interest and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest and taxes for the 1959 calendar year (298). For the 1986-crop year, the average parity indexes for the three previous years are: 1983—1104; 1984—1127; and 1985—1125 (estimated based on 9-month's data). The preliminary average of the parity indexes for these years is 1119 and the ratio of the 1983–85 index to the 1959 index is 3.76. Accordingly, the preliminary "basic support level" for the 1986 burley tobacco is estimated to be 215.1 cents per pound. For the 1985-crop year, the average parity indexes used to calculate the 1985 "basic support level" were: 1982—1078; 1983—1105; and 1984—1127. The ratio of the 1982–84 index to the 1959 index equalled 3.70. Thus, the "basic support level" for the 1985 crop of burley tobacco equalled 211.6 cents per pound. The difference between the "basic support levels" for the 1985 and 1986 crops of burley tobacco is estimated to be 3.5 cents per pound.

Section 106(d) of the 1949 Act provides that the Secretary may reduce the level of support which would otherwise be established for any grade of tobacco of a crop for which marketing quotas are in effect or are not disapproved by producers which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

As previously mentioned, supplies of virtually all grades of burley tobacco are excessive (i.e., 536 million pounds above the reserve supply level), with most of the excess supply consisting of tobacco pledged as collateral for price support loans.

Accordingly, if marketing quotas are in effect or are not disapproved by producers, it is proposed that the 1986 price support level for burley tobacco be 181.1 cents per pound. This is an increase of 2.3 cents per pound from the 1985 support level of 178.8 cents per pound, or 65 percent of the increase, i.e., 3.5 cents per pound, that otherwise would be established.

**Proposed Determinations**

Accordingly, comments are requested on the following proposed determinations with respect to burley tobacco for the 1986–87 marketing year:

1. A national marketing quota of 482 million pounds.

2. A reserve supply level in the amount of 1,493 million pounds.

3. A national reserve within the range of 500,000 to 5,000,000 pounds.

4. If marketing quotas are in effect or are not disapproved by producers, a price support level limited to 65 percent of the increase that would have been established otherwise in accordance with section 106 of the 1949 Act, which is currently estimated to be 181.1 cents per pound.

Comments are not requested with respect to the national factor for the 1986–87 marketing year since the national factor is determined as the result of a mathematical computation in accordance with the formula prescribed in section 319(e) of the Act and does not involve administrative decision making.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

Signed at Washington, DC, on November 13, 1985.

Everett Rank,

*Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 85-27389 Filed 11-15-85; 8:45 am]

BILLING CODE 3410-05-M

## Rural Electrification Administration

## Vigilante Electric Cooperative, Inc.

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Vigilante Electric Cooperative, Inc. (Vigilante Electric), of Dillon, Montana. The project consists of constructing approximately 54 km (34 miles) of 69 kV transmission line and two new substations. All facilities would be located in Silver Bow County, Montana.

**FOR FURTHER INFORMATION CONTACT:** REA's FONSI and Environmental Assessment (EA) and Vigilante Electric's Borrower's Environmental Report (BER) may be reviewed at or obtained from the office of the Director, Western Area-Electric, REA, Room Number 0207–S, 14th St. and Independence Avenue, SW., Washington, DC 20250, telephone number: (202) 382–8848, or the office of Vigilante Electric Cooperative, Inc. (Mr. Wilbur L. Anderson, Manager), P.O. Box 71, Dillon, Montana 59725, telephone number: (406) 683–2327, during regular business hours.

**SUPPLEMENTARY INFORMATION:** REA reviewed the BER submitted by Vigilante Electric and determined that it represent an accurate assessment of the environmental impact of the proposed project. The proposed project consists of constructing approximately 54 km (34 miles) of 69 kV transmission line between Silver Bow and Melrose and two new substations in Silver Bow County, Montana. Possible REA actions could include providing financing assistance to Vigilante Electric for the proposed project and approving construction contracts, power supply contracts, etc., related to implementation and utilization of the proposed facilities. The BER and EA adequately consider potential impacts of the proposed project to resources including threatened and endangered species, important farmland, prime forest land, prime rangeland, cultural resources, floodplains, and wetlands. REA independently evaluated the impact of the propose project and determined that the proposed project would not affect the above resources.

Alternatives examined included no action, energy conservation, purchasing and improving the existing Montana Power Company 69 kV line, alternative routes for transmission line construction, and underground construction. After reviewing these alternatives, REA determined that the proposed project is an acceptable alternative that meets Vigilante Electric's needs with a minimum of environmental impact.

In accordance with REA's Environmental Policies and Procedures, 7 CFR Part 1794, Vigilante Electric advertised the availability of its BER in the local newspaper. No comments were received.

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

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

Dated: November 12, 1985.

**Jack Van Mark,**

*Acting Administrator.*

[FR Doc. 85–27342 Filed 11–15–85; 8:45 am]

BILLING CODE 3410–15–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Apparel Products Produced or Manufactured in the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 19, 1985. For further information contact Jane Corwin, International Trade Specialist (202) 377–4212.

**Background**

A CITA directive dated December 21, 1984 (FR 50231) established limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1985. Under the terms of the Bilateral cotton, Wool and Man-Made Fiber Textile Agreements, effected by exchange of notes dated November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, the 1985 limits for Categories 331, 337–T, 341–NT, 348–T 445/446, 635–T, 635–NT, 645/646–NT, and 659–NT, are being adjusted, variously, by the application of swing, carryover and carryforward. To the extent the carryforward is used in 1985, it will be deducted from the affected category limits established for 1986. The limits for Categories 336–T, 342–NT and 659–T are being reduced to account for swing applied to other categories. The level for Category 669 is being increased to 400,000 pounds as a result of an agreement to increase the consultation level for 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1985).

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

November 13, 1985.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of the Philippines and exported during 1985.[1]

Effective on November 19, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for the following categories:

| Category | Adjusted 12-month restraint limit [1] |
|---|---|
| 331 | 719,916 dozen pairs. |
| 336–T | 390,384 dozen. |
| 337–T | 448,768 dozen. |
| 341–NT | 113,169 dozen. |
| 342–NT | 56,069 dozen. |
| 348–T | 259,078 dozen. |
| 445/446 | 19,236 dozen. |
| 635–NT | 148,552 dozen. |
| 635–T | 159,852 dozen. |
| 645/646–NT | 125,899 dozen. |
| 659–T | 3,837,513 pounds. |
| 659–NT | 1,735,485 pounds. |
| 669 | 400,000 pounds. |

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 85–27347 Filed 11–15–85; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Software; Meeting

**ACTION:** Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Sofware will meet in open session on December 11, 1985 and January 6, 1986 at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on Scientific and technical matters as they affect the perceived needs of the Department of Defense. The meetings on December 11 and January 22 will consist of discussions by the Task Force members on Various software initiatives.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, telephone (202) 695-7181, approximately one week prior to the scheduled meeting times.

Dated: November 13, 1985.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 85-27344 Filed 11-15-85; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Business and International Education Program; Application Notice for New and Noncompeting Continuation Awards for Fiscal Year 1986

Applications are invited for new and noncompeting continuation awards under the Business and International Education Program.

Authority for this program is contained in sections 611, 612, and 613 of Part B of Title VI of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1130-1130b)

The Secretary is authorized to make matching grants under this program to qualified institutions of higher education.

The purposes of the awards are as follows:

(1) To increase and promote the Nation's capacity for international understanding economic enterprise through the provision of suitable international education and training for business personnel in various stages of professional development.

(2) To promote institutional and noninstitutional educational and training activities that will contribute to the ability of United States business to prosper in an international economy.

**Closing Date for Transmittal of Applications:**

An application for a new grant must be mailed or hand delivered by February 18, 1986. An application for a noncompeting containuation grant, to be assured of consideration for funding, should be mailed or hand delievered by February 18, 1986. If the application for a noncompeting continuation grant is late, the Department of Education may lack sufficient time to review it with other noncompeting continuations an may decline to accept it.

**Applications Delivered by Mail**

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.153 (Business and International Education Program), 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 commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application in 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 applicant 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 for a new grant 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 3633, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**Program Information**

Under the Business and International Education Program, the Secretary is authorized to make grants to institutions of higher education to pay up to 50 percent of the cost of projects designed to promote linkages between institutions and American businesses engaged in international economic activities.

The purpose of each grant is both to enhance the international academic programs of institution of higher education and to provide appropriate services to the business community to enable it to expand its capacity to engage in commerce abroad.

Under section 612(b) of the HEA, eligible activities which the Secretary may support include, but are not limited to, the following:

(1) Innovation and improvement in international education curricual to serve the needs of the business community, including development of new programs for nontraditional, midcareer, or part-time students.

(2) Development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system.

(3) Internationalization of curricula at the junior and community college level, and at undergraduate and graduate schools of business.

(4) Development of area studies programs and interdisciplinary international programs.

(5) Establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations.

(6) Research for and development of specialized teaching materials, including language materials, and facilities appropriate to business-oriented students.

(7) Establishment of student and faculty fellowships and internships for training and education in international business activities.

(8) Development of opportunities for junior business and other professional school faculty to acquire or strengthen international business activities.

(9) Development of research programs on issues of common interest to institutions of higher education and

private sector organizations and associations engaged in or promoting international economic activity.

Section 612(c) of the HEA requires that an institutional grantee enter into an agreement with a business enterprise, trade organization, or association engaged in international economic activity, or a combination or consortium of such enterprises, organizations, or associations, for the purpose of establishing, developing, improving, or expanding activities eligible for assistance under this program. Section 612(c) further requires each institutional application for a grant to be accompanied by a copy of such an agreement.

Because of the planning time required to develop and implement curricula designed to both enhance the international academic programs of institutions of higher education and to provide appropriate services to the business community to enable it to expand its capacity to engage in commerce abroad, the Secretary of Education is accepting applications for new projects of up to two years' duration. Further, the Secretary strongly encourages applicants to select those authorized activities which are most useful in developing, enhancing, or promoting export trade programs.

**Available Funds**

Fiscal Year 1986 funds have not yet been appropriated for the Business and International Education Program. We estimate, however, that $200,000 will be available for this program once a final Fiscal 1986 appropriation bill is enacted. Of this amount, approximately $765,000 would be used to support 10 noncompeting continuation applications, and $1,435,000 would be used for new awards. This figure would permit the selection of between 24 and 28 new projects, with awards ranging from $30,000 to $150,000 per year. These estimates are provided for planning purposes and do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

**Application Forms**

Application forms and program information packages are expected to be ready for mailing by December 6, 1985. They may be obtained by writing to Susanna C. Easton, International Studies Branch, Center for International Education, U.S. Department of Education, (Room 3916, Regional Office Building 3), 400 Maryland Avenue SW., Washington D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary suggests that the narrative portion of an application not exceed 20 pages in length. The Secretary further urges that an applicant not submit information that is not requested.

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. The program forms are approved under the Paperwork Reduction Act of 1980. (Approved by the Office of Management and Budget under Control Number 1840–0068.)

**Applicable Regulations**

Regulations applicable to this program include the following:

(a) Regulations governing the Business and International Education Program, 34 CFR Part 661.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

**FOR FURTHER INFORMATION:** For further information, contact Susanna C. Easton, International Studies Branch, Center for International Education, U.S. Department of Education, (Room 3916, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245–2794.

(20 U.S.C. 1130–1130b)

Dated: November 12, 1985.

(Catalog of Federal Domestic Assistance Number: 84.153—Business and International Education Program)

William J. Bennett,

*Secretary of Education.*

[FR Doc. 85–27395 Filed 11–15–85; 8:45 am]

BILLING CODE 4000-01-M

## Indian Education Act, Part B; Indian Fellowship Program

**AGENCY:** Department of Education.

**ACTION:** Application notice for new Indian fellowships for fiscal year 1986.

**Programmatic and Fiscal Information**

Applications are invited for new fellowships under the Indian Education Act—Indian Fellowship Program. This program authorizes the award of fellowships to Indian students.

The purpose of these awards is to enable Indian students to pursue courses of study leading to: (a) Postbaccalaureate degrees in medicine, psychology, law, education, and related fields, or (b) Undergraduate or graduate degrees in business administration, engineering, natural resources, and related fields.

In Fiscal Year 1985, 216 new fellowships were awarded totaling $1,320,469. The average fellowship was $6,113.

It is estimated that $1,470,000 will be available for new awards.

The Secretary is not establishing any priorities among the allowable fields of study described in 34 CFR 263.4 of the final regulations.

The estimated maximum stipened allowed will be $750 per month. An estimated maximum allowance of $110 per month will be allowed for each dependent. Financial need and the applicant's resources will be taken into account in determining the amount of the fellowship award. The Secretary awards a fellowship in an amount up to but not more than the difference between the student's resources, including other sources of financial aid, and the student's expenses as defined in 34 CFR 263.3.

**Closing Date for Transmittal or Applications**

Applications for new fellowships must be mailed or hand-delivered on or before January 15, 1986.

**Applications Delivered by Mail**

Applications for new fellowships sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.087), 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 applicant should noted 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.

Each late applicant will be notified that its application will not be considered.

**Applications Delivered by Hand**

Applications that are hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, 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.

*Applicable Regulations*

Regulations applicable to this program are the Indian Fellowship Program Regulations in 34 CFR Part 263.

**Application Forms**

Application forms and program information packages are expected to be available by November 27, 1985. These may be obtained by writing to the Director, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., Room 2177, FOB-6, Washington, DC 20202.

(Approved by Office of Management and Budget under control number 1810-0020)

**FOR FURTHER INFORMATION CONTACT:**

For further information, contact Dorothea Perkins, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, FOB-6, Washington, D.C. 20202. Telephone: (202) 732-1924.

(20 U.S.C. 3385b)

Dated: November 12, 1985.

(Catalog of Federal Domestic Assistance No. 84.087; Indian Education—Fellowships for Indian Students (B))

**Lawrence F. Davenport,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 85-27394 Filed 11-15-85; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Office of Civilian Radioactive Waste Management

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Memorandum of Understanding for Transportation of Radioactive Materials, DOT/DOE

**AGENCIES:** Office of Civilian Radioactive Waste Management, DOE; Research and Special Programs Administration, DOT.

**ACTION:** Notice of DOT/DOE Memorandum of Understanding.

**SUMMARY:** The Office of Civilian Radioactive Waste Management of the U.S. Department of Energy and the Research and Special Programs Administration of the U.S. Department of Transportation of the two signatory organizations in implementing the Nuclear Waste Policy Act of 1982. The text of the Memorandum of Understanding is published below.

**FOR FURTHER INFORMATION CONTACT:**

Robert E. Philpott, U.S. Department of Energy, RW-33, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-9620

Richard C. Hannon, Office of Materials Transportation, Research and Special Programs Administration—DHM-60, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590

Issued in Washington, DC on November 13, 1985.

**Robert H. Bauer,**

*Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.*

**Memorandum of Understanding Between the Research and Special Programs Administration of the U.S. Department of Transportation and the Office of Civilian Radioactive Waste Management of the U.S. Department of Energy for the Transportation of Radioactive Materials Under the Nuclear Waste Policy Act**

*Introduction*

The passage of the Nuclear Waste Policy Act (NWPA) of 1982, which was signed into law by the President on January 7, 1983, established a national policy for the safe storage and disposal of spent nuclear fuel and high-level waste. The capability to transport these radioactive wastes is critical to implementation of the NWPA. This capability is contingent upon the availability of appropriate types and quantities of equipment and a stable regulatory and institutional environment. The NWPA places responsibility for transportation on the Department of Energy (DOE) and requires that transportation handled under the Act be subject to the regulations of the Department of Transportation (DOT).

I. Purpose

The purpose of this agreement is to delinate the respective responsibilities and establish common planning assumptions which DOT (hereinafter referred to as the Research and Special Programs Administration (RSPA)) and DOE (hereinafter referred to as the Office of Civilian Radioactive Waste Management (OCRWM)) will observe in the implementation of transportation requirements under the NWPA. This agreement will ensure that adequate procedures are established for consultation and exchange of information and will define the objectives and responsibilities that will govern the relationship between RSPA and OCRWM in managing transportation activities assigned by existing law.

II. Authority

The parties enter into this agreement under the authority of, *inter alia*, Section 8(c), 9, and 137 of the NWPA; the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Department of Energy Organization Act, as amended; the Department of Transportation Act, as amended; and the Hazardous Materials Transportation Act.

III. Responsibilities

To assure the safe and efficient transportation of spent fuel and high-level radioactive waste performed under the NWPA and to avoid duplication of effort, RSPA and OICRWM agree, subject to their respective statutory authorities, as follows:

A. Management of the transportation of spent fuel and high-level radioactive wastes under the NWPA resides with OCRWM. Transportation will be performed in full compliance with all applicable regulations as promulgated by DOT as part of its overall body of federal regulations governing the packaging and transportation of radioactive materials. Further, OCRWM recognizes the state and local interests in nuclear waste transportation and will comply with state or local laws and regulations pertaining to transportation that are not inconsistent with the Hazardous Materials Transportation Act or regulations promulgated thereunder.

B. Transportation of spent nuclear fuel and high-level radioactive waste resulting from atomic energy defense activities, research and development activities of the Secretary of Energy, or both, to any repository developed under the NWPA will be subject to applicable DOT regulations.

C. RSPA and OCRWM agree to exchange information, consult each other, and provide appropriate support within the areas of their responsibilities. Accordingly, both agencies will designate appropriate staff representatives and will establish joint working arrangements from time to time for the purpose of administering this agreement.

D. Timely response will be provided by each party to requests derived from this agreement and other relevant laws, regulations, and administrative procedures.

E. Development and execution of an effective transportation safety regulatory compliance and inspection policy shall be a common area of interest. It is expected that this policy will address the pre-shipment, enroute, and post-shipment phases of the transportation function and will allow for the utilization of state, as well as Federal, resources as appropriate.

F. Periodic management meetings will be held as necessary to review the status of the program, to discuss regulatory issues, and to consult on policy matters.

IV. Determination of the Availability of Private Industry

The NWPA (section 137(a)(2)) requires that OCRWM, in providing for transportation, shall utilize private industry to the fullest extent possible. However, the Act further states that OCRWM may use direct federal services for transportation upon a determination by the Secretary of Transportation, in consultation with the Secretary of Energy, that private industry is unable or unwilling to provide such transportation services at reasonable cost.

A. For the purpose of this memorandum of understanding, "transportation services" means function which include carriage of materials, procurement and maintenance of equipment, inspection of equipment and operations, and training of operating personnel.

B. It is agreed that studies to determine the availability of private industry to provide transportation services under the NWPA will be jointly funded and the Secretary of Transportation in consultation with the Secretary of Energy will be responsible for determing the ability of private industry to provide such transportation services at reasonable cost.

V. Limitations

A. Nothing in this agreement is intended to limit or expand the responsibility or authority of either RSPA or OCRWM as established by law.

B. This agreement is intended to facilitate the effective discharge by RSPA and OCRWM of their respective responsibilities under the NWPA.

C. Nothing in this agreement limits informal consultation not mentioned in this agreement.

VI. Public Information Coordination

Subject to the Freedom of Information Act, decisions on disclosure of information to the public regarding projects and programs implemented under the MOU will be made following consultation between DOE and DOT representatives.

VII. Amendment and Termination

This agreement may be modified or amended by written agreement between RSPA and OCRWM and terminated by mutual agreement of RSPA and OCRWM, or by either party upon 30 days written notice to the other.

VIII Effective Date

This memorandum of understanding shall be effective when signed by both parties.

Dated: September 16, 1985.

**Ben C. Rusche,**

*Director, Office of Civilian Radioactive Waste Management, U.S. Department of Energy.*

Dated: September 4, 1985.

**M. Cynthia Douglass,**

*Administrator, Research and Special Programs Administration, U.S. Department of Transportation.*

[FR Doc. 85-27433, Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Intent to Issue a Program Solicitation; District Heating and Cooling Research and Development

The Department of Energy (DOE) intends to issue Program Solicitation Number DE-PS01-86CE26534 on or about November 30, 1985, with a closing date for receipt of proposals approximately 75 days from actual release of the solicitation. This Program Solicitation is for the performance of research aimed at reducing costs and improving the efficiency of district heating and cooling (DHC) systems. The Department is interested in research relating to DHC components and systems, and to the rehabilitation of older district heat systems.

The Program Solicitation will solicit research in any of the following phases of development: basic and applied research; exploratory development; technology development; or engineering development. Topical areas may include, for example: systems development (district cooling, low density DHC, simultaneous heating and cooling); component development (piping, metering, control, building conversion equipment); local resources use (reject heat, water resources); rehabilitation of steam district heat systems.

Multiple awards for research are expected to be made in May, 1986. Subject to the availability of funds, up to $800,000 has been programmed for these awards. Of this amount, $300,000 will be specifically earmarked for research relating to the rehabilitation of older district heat systems.

All responsible entities may submit a proposal which will be considered by DOE. All requests for this Program Solicitation must be in writing. Requests for copies of this solicitation may be addressed to:

Ms. Susanne Hobbs—MA-453.2, Reference: DE-PS01-86CE26534, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

A source list has been developed from the preliminary notice of July 16, 1985. If you responded to that notice please do not submit a second request.

Issued in Washington DC, on November 8, 1985.

**Edward T. Lovett,**

*Acting Director, Contract Operations Division "B," Office of Procurement Operations.*

[FR Doc. 85-27337 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 81-29-NG]**

## Natural Gas Imports; Transcontinental Gas Pipe Line Corp.; Application for Authorization To Import and Export Natural Gas From and to Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of amendment to application to import natural gas from Canada and export into Canada a portion of that natural gas for storage and eventual re-importation into the United States.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on October 9, 1985, Transcontinental Gas Pipe Line Corporation (Transco) filed a third amendment to its pending application in ERA Docket No. 81-29-NG to import natural gas from Canada and later export a portion of that gas into Canada for storage and eventual re-importation. This revision is based on a new agreement dated August 16, 1985 between Transco and its Canadian supplier, TransCanada PipeLines Limited (TransCanada). The 1985 agreement supercedes their previous contractual arrangements and reflects new import arrangements which differ significantly from Transco's earlier proposal. Transportation arrangements under the 1985 agreement, including receipt and delivery points and related charges regarding Transco's storage quantities have not yet been finalized. Under the 1985 agreement, the gas will be purchased under a two-part demand/commodity pricing structure; the term of the importation has been extended; and the total quantity of gas proposed to be imported will increase.

The amended application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later then 4:30 p.m., on December 18, 1985.

**FOR FURTHER INFORMATION CONTACT:**

P.J. Fleming, Office of Natural Gas Programs, Economic Regulatory Administration, Forrestal Building, Room GA-098, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-9482

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6667.

**SUPPLEMENTARY INFORMATION:** On July 2, 1981, Transco requested authorization to import Canadian natural gas from TransCanada for sale to primarily high-priority markets in the Northeast and Mid-Atlantic states in accordance with a precedent agreement to enter into a gas purchase contract dated April 14, 1981. The proposal contemplated importing the gas from fields in Alberta to use as system supply and to provide a stored gas supply which would be sold incrementally to various customers of Transco during the winter months, all as more fully described in the notice of application issued by the ERA on July 31, 1981 (46 FR 40256, August 7, 1981). The storage service was made possible by two separate storage arrangements Transco entered into with ANR Storage Company (ANR) in Michigan and Union Gas Limited (Union), in Ontario, Canada.

This initial proposal was first amended on July 30, 1982, and further amended on July 22, 1983. The general effect of these amendments was to (1) shift the delivery point for the import to Niagara Falls, New York, (2) extend the term of the purchase and sale, and (3) reduce the daily maximum volumes to be imported. The ERA issued a single notice of the two application amendments on September 5, 1983 (48 FR 43075, September 21, 1983).

On October 9, 1985, Transco filed the present amendment to its original application revising its earlier import request to reflect changes contained in its third contract amendment to the 1981 agreement with TransCanada. According to Transco, the new 1985 agreement supercedes in their entirety the previous contractual arrangements contained in the 1981 agreement, as amended. Under the 1985 agreement, Transco proposes to purchase and import the following daily volumes of natural gas:

| Nov. 1 through Oct. 31—Mcf/day | | | | |
|---|---|---|---|---|
| 1987-88 | 1988-96 | 1996-97 | 1997-98 | 1998-99 |
| 130,000 | 150,000 | 135,638 | 75,000 | 37,500 |

The total quantities to be imported during the period are 576,451 MMcf. The agreement contains a provision for extending the term of the arrangement after October 31, 1999, to October 31, 2002, provided that applications for extension are filed by October 31, 1995, and U.S. and Canadian approvals received. In that event, the daily import volumes would be 150,000 Mcf during the period November 1, 1996 through October 31, 2002, with a corresponding increase in the term quantity to 814,530 MMcf. Transco will receive the gas at a point on the international boundary near Niagara Falls, New York, by means of the proposed new pipeline facilities of Niagara Interstate Pipeline System.

The 1985 agreement provides for a demand/commodity pricing structure for the volumes sold to Transco. The demand component, which is subject to adjustment, will consist of (1) the monthly demand charges payable to TransCanada for transporting the gas from the Alberta border to the Niagara Falls delivery point; (2) the average monthly costs per Mcf billed to TransCanada by NOVA, an Alberta Corporation, for transportation of the import quantities within the province of Alberta; and (3) the monthly fixed cost component of the price paid by TransCanada for gas purchased from producers in the province. Transco estimates that the demand charge for September 1985 would have been $28.8958 per Mcf. Under the agreement, the minimum monthly bill will be the monthly demand charge.

Transco states that the commodity component of the two-part rate represents a negotiated base price which will be adjusted monthly pursuant to a formula based on equally weighted changes in the prices of No. 2 distillate oil, No. 6 residual oil and city gate prices for natural gas in Transco's market area. In addition, the contract provides that if the demand charges are adjusted, an offsetting reduction is made in the commodity charge so that the 100 percent load factor price then in effect will not change. Transco estimates that the commodity charge would have been $2.1157 per MMBtu for September, 1985. At 100 percent load factor, the September average price would have been approximately $3.07 per MMBtu.

The contract requires Transco to take and pay for, or nevertheless pay for, an annual quantity of gas equal to 60 percent of the total daily contract quantity times the number of days in the contract year, less any volumes requested by Transco but not delivered by TransCanada. Transco is given one-year makeup period to take gas paid for but not previously taken. To ensure the marketability of the gas, Transco states that the contract provides for annual redetermination of the take-or-pay quantity and the contract pricing terms, including the price level, the price adjustment formula and the rate structure.

As noted above, Transco proposes to use a portion of its Canadian purchases to render a storage service to its customers for peak period deliveries. Up to 25.7 Bcf annually is to be stored during the summer months (April through October) at two locations: 15.7 Bcf at ANR's storage facilities in Grand Traverse County, Michigan, and 10 Bcf at Union' storage facilities near Dawn, Ontario. Any gas not nominated for injection into storage would be delivered by TransCanada to Transco at Niagara Falls. At this time, no final tansportation arrangements under the 1985 agreement pertaining to the storage quantities have been reached by the parties, including receipt and delivery points and related charges. According to

Transco, it will supplement its application when these arrangements are completed.

In the winter heating season (November through March), up to 250,000 Mcf per day of storage withdrawals from ANR would be transported through existing pipeline facilities to St. Clair, Michigan, for export and would then be transported by TransCanada to Union's system. There, those withdrawals would be added to quantities withdrawn from Union's storage fields for delivery to TransCanada near Kirkwall, Ontario. The total quantities available from storage, up to a maximum daily volume of 400,000 Mcf, along with up to 150,000 Mcf of purchased gas, would then be delivered by TransCanada for Transco's account at the Niagara Falls import point. Since the Transco proposal contemplates exporting and re-importing like annual volumes, there are no net annual or term volume exports associated with its application.

In support of its application, Transco asserts that the import arrangement is consistent with the Secretary of Energy's gas import policy guideline (49 FR 6684, February 22, 1984). Transco maintains that the two-part pricing structure established by the 1985 agreement substantially reduces the price of Canadian gas compared to the uniform border price. In addition, the renegotiation provisions allow flexibility to ensure that the gas is competitively priced in the market. Moreover, Transco contends that the proposed import is needed to provide a reliable long-term supply to augment declining production from domestic reserves.

At this time, it is not clear whether the issues raised previously in this case are still relevant. Therefore, the parties to this proceeding are requested to review their earlier comments on Transco's application and to submit any modifications to the ERA. If any party continues to oppose the application, it must restate the grounds for that opposition in order for it to be taken into consideration in the final decision. Parties may incorporate by reference comments previously filed. If any party wants additional procedures, even if a previous request was filed, the request for additional procedures should be included in the comments filed in response to this notice, together with the justification stipulated below and in the ERA's procedural rules set forth in 10 CFR Part 590.

The decision on this application will be consistent with the DOE policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. The objective of this policy, with its strong emphasis on competitive arrangements and contract flexibility, is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties who may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement with TransCanada is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Other Information**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention. Persons who have already intervened in ERA Docket No. 81-29-NG need not file new motions, but should submit additional comments as appropriate. All motions, for intervention filed in this docket up to this time shall be considered timely submissions. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., December 18, 1985.

A decision will be made on the basis of the information now in the record supplemented by comments filed in response to this notice. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues.

A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Transco's application is available for inspection and copying in the Natural Gas Division Docket Room in Room GA-076A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on November 6, 1985.

**Robert L. Davies,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 85-27339 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

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**[Docket No. ERA-C&E-85-014; OFP Case No. 67039-9277-20-24]**

## Simpson Paper Co.; Order Granting Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Correction to order granting to Simpson Paper Company exemption from prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

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**SUMMARY:** The September 13, 1985 **Federal Register** (50 FR 37401) referred to a "combined cycle" cogeneration facility at line 14 of the "**SUMMARY**" section and at lines 6 and 7 of the **SUPPLEMENTARY INFORMATION"** section. The Order should read "simple cycle" cogeneration facility.

Issued in Washington, D.C. on November 6, 1985.

Robert L. Davies,

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 85-27338 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-m

## Energy Information Administration

## Agency Collections 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 energy information collections, listed at the end of this notice, 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 collection number(s); (2) Collection 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 respond to the collection; and (9) A brief abstract describing the proposed collection.

**DATE:** Last Notice published Monday, September 16, 1985 [50 FR 37575].

**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 collection, 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., November 8, 1985.

Douglas Hale,

*Acting Director, Statistical Standards, Energy Information Administration.*

| Collection No. | Collection title | Type of request | Response frequency | Response obligation | Respondent description | Estimated number of respondents | Annual respondent burden hours | Abstract |
|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| EIA: | | | | | | | | |
| EIA-863 | Petroleum Product Sales Identification Survey. | New | Triennially | Mandatory | Firms involved in the sale of distillate fuel oil, residual fuel, and gasoline. | 18,333 | 18,333 | The EIA-863 collects information on the size, type and geographic location of firms involved in the sale of distillate fuel oil, residual fuel oil, and gasoline. Data are used to provide a comprehensive frame file for sampling. Data will not be published. Respondents are 55,000 firms. |
| FERC: | | | | | | | | |
| FPC-14 | Annual Report for Importers and Exporters of Natural Gas. | Extension | Annually | Mandatory | Importers/exporters of natural gas. | 34 | 136 | The purpose of this report filing requirement is to collect data used to assist in the monitoring and regulation of natural gas imports and exports in the United States. |
| FERC-587 | Indexes of Essential Power Site Withdrawals. | New | On occasion | Mandatory | Individuals or households; State or local governments; Businesses or other for profit; Non-profit institutions; Small businesses or organizations. | 1,000 | 25,000 | To assist the Bureau of Land Management in meeting the statutory requirements of 90 Stat. 2743, the Commission must track Federal lands withdrawn for licenses and permits and by applications, and determine whether Federal lands withdrawn for licenses and permits and by applications should remain withdrawn. |
| RW | | | | | | | | |
| RW-859 | Nuclear Fuel Data | Revision | Annually | Mandatory | Operators of all planned and operating nuclear powerplants. | 125 | 6,667 | The RW-859 collects data on reactor characteristics, spent fuel storage capability and inventory, operating history and projected fuel discharge of commercial nuclear electricity-generating plants. |

[FR Doc. 85-27442 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in

refunding to adversely affected parties $258,367 obtained as a result of a consent order which the DOE entered into with Oceana Terminal Corp., *et al.* (Cibro), a reseller-retailer of petroleum products with its home office located in the Bronx, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0142.

**FOR FURTHER INFORMATION CONTACT:** Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-0602.

**SUPPLEMENTARY INFORMATION:** In accordance with section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $258,367 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Oceana Terminal Corp., *et al.* (Cibro). The funds were provided to the DOE by Cibro to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of No. 6 fuel oil during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased No. 6 fuel oil from Cibro. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases from Cibro and to demonstrate that it was injured by Cibro's pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisified. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 12, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

November 12, 1985.

## Proposed Decision and Order of the Department of Energy

*Implementation of Special Refund Procedures*

*Name of Firm*: Oceana Terminal Corp., *et al.*

*Date of Filing*: October 13, 1983.

*Case Number*: HEF-0142.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Oceana Terminal Corp., Cibro Sales Corp., Cibro Petroleum Products, Inc., Cibro Terminal, Inc., Cibro Petroleum/Bronx, Inc., Cibro Petroleum/Brooklyn, Inc., Cibro Petroleum/L.I., Inc., Cibro Gasoline Corp., and Cibro Petroleum/Westchester, Inc. (hereinafter all of the above companies will be referred to collectively as "Cibro").

### I. Background

Cibro is a "reseller-retailer" of No. 6 fuel oil as that term was defined in 10 CFR 212.31 with its home office located in the Bronx, New York. A DOE audit of Cibro's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and April 30, 1974, Cibro committed possible pricing violations with respect to its sales of No. 6 fuel oil.

In order to settle all claims and disputes between Cibro and the DOE regarding the firm's sales of No. 6 fuel oil during the period covered by the audit, Cibro and the DOE entered into a consent order on August 22, 1979. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Cibro does not admit that it violated the regulations.

The consent order required that Cibro deposit $258,367 into an interest-bearing escrow account for ultimate distribution to its reseller and retailer customers by the DOE.[1] Cibro remitted this amount on August 19, 1980.[2]

### II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who were likely to have been injured by the alleged overcharges or easily ascertain the amount of any such injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by Cibro's pricing practices during the period November 1, 1973, through April 30, 1974. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

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[1] The original settlement amount totalled $600,000. This amount was divided according to the amount of restitution due Cibro's different purchaser categories. Cibro's "consumer barge class" was awarded $341,633 of the settlement amount. Those sales and that settlement amount are not involved in this Proposed Decision.

[2] As of September 30, 1985, the Cibro escrow account contained $472,236, representing $258,367 in principal and $213,869 in accrued interest

*A. Refunds to Identifiable Purchasers*

In the first stage of the Cibro refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Cibro's alleged overcharges. As we have done in many prior refund cases, we will propose certain presumptions designed to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we propose adoption of a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users of Cibro products were injured by Cibro's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Cibro times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.002618 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Cibro products seeking small refunds were injured by Cibro's pricing practices. There are a number of bases for this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges, unless they passed them all through. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed both the expected refund and the benefits from any additional precision. Consequently, without simplified procedures some injured parties would be effectively denied an opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this thresold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Speical Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

*Vickers*, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Cibro not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they

[3] The volumetric factor is derived by dividing the principal amount by the total number of gallons sold by the consent order company during the consent order period. In this case we were unable to determine the volumetric factor from the information contained in ERA's audit workpapers because they lacked any volume figures for Cibro's sales of No. 6 fuel oil. Accordingly, we contacted a representive of the company who supplied us with these sales volumes for a portion of the consent order period. *See* September 18, 1985 Memorandum concerning telephone conversation between Mr. Bill Scott, legal counsel to Cibro, and Ms. Sharon Dennis, OHA staff analyst. From these figures we extrapolated Cibro's total sales to its reseller/retailer customers for the entire consent order period (98,688,443 gallons). We then divided this amount into the portion of the consent order funds attributable to these customers ($258,367) to obtain the volumetric factor of $.002618.

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed proof of injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982)(Ada).

were injured as a result of their purchases of No. 6 fuel oil from Cibro during the consent order period.

As noted above, we are making a proposed finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[5] We propose, therefore, that end users of Cibro petroleum products need only document their purchase volumes from Cibro to make a sifficient showing that they were injured by the alleged overcharges.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Cibro's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would generally be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*); *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

*B. Applications for Refund*

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases from Cibro. Applicants should provide all relevant information necessary to support their claim in accordance with the presumptions stated above. In addition, a claimant must state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210, actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 C.F.R. § 205.9(d).

*C. Distribution of Remaining Consent Order Funds*

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Cibro pursuant to the consent order executed on August 22, 1979, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-27435 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

## Office of Hearings and Appeals

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $115,695.89 obtained as a result of a consent order which the DOE entered into with Richardson Ayres Jobber Inc., a reseller-retailer of petroleum products located in Alexandria, Louisiana. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0166.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

**SUPPLEMENTARY INFORMATION:** In accordance with section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $115,695.89 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Richardson Ayres Jobber, Inc. (Ayres). The funds were provided to the DOE by Ayres to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm

applied the federal price regulations with respect to its sales of motor gasoline and No. 2 diesel fuel during the period November 1, 1973 through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline and No. 2 diesel fuel from Ayres. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases from Ayres and to demonstrate that it was injured by Ayres' pricing practices. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual fund may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be permitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 12, 1985.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

November 12, 1985.

**Proposed Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

*Name of Firm:* Richardson Ayres Jobber, Inc.

*Date of Filing:* October 13, 1983.

*Case Number:* HEF–0166.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Richardson Ayres Jobber, Inc. (Ayres).

**I. Background**

Ayres is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Alexandria, Louisiana. A DOE audit of Ayres' records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and April 30, 1974, Ayres committed possible pricing violations amounting to $170,146.78 with respect to its sales of No. 2 diesel fuel and motor gasoline.

In order to settle all claims and disputes between Ayres and the DOE regarding the firm's sales of motor gasoline and No. 2 diesel fuel during the period covered by the audit, Ayres and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Ayres does not admit that it violated the regulations.

Under the terms of the consent order, Ayres was required, in a series of installments, to deposit $101,835, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Ayres made its final payment on July 25, 1983.[1]

**II. Proposed Refund Procedures**

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accpet claims from identifiable purchasers of motor gasoline and No. 2 diesel fuel who may have been injured by Ayres' pricing practices during the period November 1, 1973, throgh April 30, 1974. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

*A. Refunds to identifiable Purchasers*

In the first stage of the Ayres refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Ayres' alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volmetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making a proposed finding that end users of Ayres products were injured by Ayres' pricing practices.

The pro rata, or volumertric, refund presumption assumes that alleged overcharges by a consent order firm were spread equaly over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g. Sid Richardson*

[1] Ayres paid $115,695.89 including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Ayres account stood at $154,191.05 as of September 30, 1985.

*Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volmetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons it purchased from Ayres times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.013421 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Ayres products seeking small refunds were injured by Ayres' pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). These firms were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This precedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed both the expected refund and the benefits from any additional precision. As a result, without simplified procedures injured parties could effectively be denied the opportunity to receive a refund.

Under the small-claims presumption, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond volumes purchased from Ayres if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold, for example, the cost to the applicant and the government of compiling and analyzing information sufficient to show injury should not exceed the amount of any relevant refund. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate (i) that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and (ii) that as a result of market conditions, it did not pass through those increased costs.[3]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

*Vickers*, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Ayres not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 2 diesel fuel or motor gasoline from Ayres during the consent order period.

As noted above, we have concluded that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1982) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the petroleum product overcharges alleged by ERA. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Ayres' alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principal applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

*B. Applications for Refund*

Any purchaser claiming a portion of the consent order will be required to file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Ayres. Applicants should also provide all relevant information necessary to support their claim in accordance with the

[2] This figure is derived by dividing the $115,695.89 received from Ayres by 8,620,411 gallons of motor gasoline and No. 2 diesel fuel sold by Ayres during the consent order period.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

presumptions outlined above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownerhip, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE inforcement or private, § 210 action. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

*C. Distribution of Remaining Consent Order Funds*

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Richardson Ayres Jobber, Inc. pursuant to the consent order executed on September 29, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-27436 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Cases Filed; Week of October 18 Through October 25, 1985

During the Week of October 18 through October 25, 1985, the appeals and applications for temporary exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 7, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 18, 1985 through Oct. 25, 1985]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Oct. 21, 1985 | Theodore M. Ragsdale, Phoenix, AZ | KRH-0002 | Request for evidentiary hearing. If Granted: An evidentiary hearing would be convened in connection with the Statement of Objections submitted by Theodore M. Ragsdale in response to the Proposed Remedial Order issued to him and to Salem Ventures, Inc. (Case No. HRO-0270). |
| Oct. 23, 1985 | Arthur L. Scarla, Albuquerque, NM | KFA-0002 | Appeal of an information request denial. If granted: The Freedom of Information Request Denial issued by the The Department of Energy's Albuquerque Office would be rescinded, and Arthur L. Scarla would receive information regarding a contract proposal awarded to RCA Corporation. |
| Do | White Consolidated Industries, Washington, DC | KEL-0001 | Temporary exception from the Energy Conservation Program for Consumer Products. If granted: White Consolidated Industries would receive a temporary exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to Frigidaire Model FPC118TDWO. |
| Oct. 24, 1985 | Clark Oil & Refining Corporation, Washington, DC | KRX-0002, KRX-0003 | Special report orders review. If granted: The Office of Hearings and Appeals would review the October 10, 1985 Special Report Orders issued to Clark Oil & Refining Corporation and the Apex Oil Company (Case Nos. HRX-0125 & KRX-0001). |
| Oct. 25, 1985 | Economic Regulatory Administration, Washington, DC | KRZ-0001, KRZ-0002 | Interlocutory. If granted: The Office of Hearings and Appeals would issue subpoenas compelling J.R. Adams and Don Baxter to appear and testify at the evidentiary hearing regarding Consolidated Materials, Inc. (Case No. HRO-0107). |

REFUND APPLICATIONS RECEIVED

[Week of Oct. 18, through Oct. 25, 1985]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 10/21/85 | Harris/Frank Harding & Son | RF193-11 |
| 10/21/85 | Inland/Texas Discount Gas Company | RF176-17 |
| 10/21/85 | St. James/Walters' Oil Inc | RF180-33 |
| 10/21/85 | Harris/Central Oregon Oil Company | RF193-12 |
| 10/21/85 | Harris-Brooks Oil & Auto Parts | RF193-13 |
| 10/21/85 | Inland/Midwest Petroleum Company | RF176-16 |
| 10/21/85 | Gulf/Shelton's Gulf Service | RF40-3061 |
| 07/12/85 | Inland/Lieber Service Stations | RF176-18 |
| 10/18/85 | Lowe/Central Cooperatives, Inc | RF206-1 |
| 10/22/85 | Union Texas/BASF Wyandotte Corp | RF104-9 |
| 10/22/85 | Midway/Manary's North Star | RF207-1 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of Oct. 18, through Oct. 25, 1985]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 10/23/85 | Plateau/Roberts Oil Co., Inc | RF204-2 |
| 10/23/85 | Navajo/Roberts Oil Company | RF203-2 |
| 10/23/85 | Inland/Triad Management Corp | RF176-19 |
| 10/24/85 | Gulf/Henry S. Taylor | RF40-3062 |
| 10/03/85 | Champlain/Doc's Garage | RF187-10 |
| 10/25/85 | Gulf/Bahador's Gulf Service | RF40-3063 |
| 10/25/85 | Gulf/Livernois Davison Gulf Service | RF40-3064 |
| 10/25/85 | Gulf/Burroughs Gulf | RF40-3065 |
| 10/24/85 | Husky/Home Oil & Tire Co | RF161-72 |
| 10/24/85 | Husky/Self Enterprises, Inc | RF161-73 |
| 10/24/85 | Husky/Vern E. Herzog Oil Co | RF161-74 |

[FR Doc. 85-27441 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of October 7 Through October 11, 1985

During the week of October 7 through October 11, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Remedial Orders**

*Clark Oil & Refining Corporation/APEX OIL COMPANY, 10/10/85; HRO-0249*

Clark Oil & Refining Corporation and the Apex Oil Company (Clark) objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to Clark on August 1, 1984. In the PRO, the ERA found that Clark failed to reduce its crude oil costs to reflect $82,500 paid to it by Texaco Inc. for use of Clark's fee-free licenses to import foreign crude oil. With regard to Clark's objections, the DOE found no merit to arguments that the DOE regulations did not require Clark to deduct import ticket revenues from its crude oil cost. The DOE rejected as inappropriate the PRO's directive that Clark be issued interlocutory orders requiring it to document similar transactions involving its fee-free licenses from 1974 to 1980 and to perform recalculations of its crude oil costs to reflect the Texaco payment. Instead, the DOE issued two Special Report Orders to Clark. As so modified, the PRO was issued as a final Order.

*Knox Oil of Texas, Inc., MICHAEL L. REED, 10/11/85 HRO-0216*

On January 6, 1983, the ERA issued a PRO to Kelly Trading Corp., alleging that on 20 different occasions Kelly engaged in the practice of layering. Kelly failed to file a Statement of Objections to the PRO, which accordingly was issued as a final Remedial Order of the DOE. On March 26, 1984, the ERA issued a PRO to Knox Oil of Texas and Michael L. Reed, alleging that Knox and Reed were both responsible for and had benefited from the transactions cited in the Kelly Remedial Order. Accordingly, the PRO sought to hold Knox and Kelly jointly and severally liable with Kelly for the overcharges resulting from the violations committed in Kelly's name. The transactions in the Knox/Reed PRO were the same as those cited in the original PRO issued to Kelly.

The OHA examined the transactions in question and determined that they were in violation of the layering regulation, i.e., that the respondents had sold crude oil at prices in excess of their purchase prices without performing any service or other function traditionally associated with the resale of crude oil. OHA also determined that Knox and Reed should be held jointly and severally liable for the overcharges resulting from those violations. OHA's determination in this regard was based on its finding that Knox and Reed not only controlled Kelly in general, but that they were both responsible for and benefited from the specific transactions in question. Finally, OHA determined that Knox's and Reed's liability should not be limited to the sums they actually received, as this would mean that a substantial portion of the overcharge amount would not be refunded and returned to the parties injured by their violations.

**Request for Exception**

*J.H. SEALE & SON, INC. 10/8/85 HEE-0136*

J.H. Seale & Son, Inc. (Seale) filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Products Sales Report." In considering the request, the DOE found that Seale's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

**Motion for Discovery**

*Sherer Oil Company, Inc., Ringer Tri-State Oil Company, Inc., 10/8/85; HRD-0134*

On May 25, 1983, Sherer Oil Co., Inc. and Ringer Tri-State Oil Co., Inc. filed a joint Motion for Discovery in which the firm sought contemporaneous construction discovery of various DOE rules and regulations and discovery concerning certain DOE policies. In considering the motion, the DOE determined that contemporaneous construction discovery was unwarranted because the firms had failed to establish that the regulations challenged by the firm were ambiguous or inconsistently applied or interpreted. The DOE also denied discovery relating to the DOE's audit policy, the impact of DOE regulations on small businesses, and the DOE's policy of imposing interest on overcharges.

**Supplemental Orders**

*Clark Oil & Refining Corporation/Apex Oil Company, 10/10/85; HRX-0125*

In a Remedial Order issued concurrently to Clark Oil & Refining Corporation and the Apex Oil Company (Clark) in Case No. HRO-0249, the DOE found that the Economic Regulatory Administration had identified ten oil import exchange and sales agreements involving Clark's fee-free import licenses. It also found that there was nothing to indicate that Clark had properly reported as crude oil costs the cash payments received in connection with these exchanges or sales. The DOE concluded that additional information documenting any such exchanges or sales by Clark was needed to permit the ERA to determine whether to take remedial action against the firm. Accordingly, a Special Report Order was issued directing Clark to provide information and documentation on any such exchanges or sales from 1974 through 1980.

*Clark Oil & Refining Corporation/Apex Oil Company, 10/10/85; KRX-0001*

In a Remedial Order issued concurrently to Clark Oil & Refining Corporation and the Apex Oil Company (Clark) in Case No. HRO-0249, the DOE found that the Clark must treat the income acquired through its October 1973 Exchange Agreement with Texaco as a reduction in its cost of crude oil. The DOE also found that resubmissions by Clark of DOE forms reflecting Clark's crude oil costs were necessary to complete the Economic Regulatory Administration's file in this matter and to permit it to analyze the effect of the crude oil cost reduction that Clark was required to make. Accordingly, a Special Report Order was issued directing Clark to provide these recalculations relating to its transaction with Texaco.

*Cranston Oil Service Company, Inc., 10/8/85; HRX-0121*

The DOE issued a supplemental order directing that funds currently held in an escrow account for the repayment of overcharges by Cranston Oil Service Company, Inc., be remitted to the DOE Office of Departmental Accounting for eventual distribution in a Special Refund Proceeding pursuant to 10 C.F.R. Part 205, Subpart V. Under a February 8, 1977 consent agreement, Cranston and its successor-in-interest, Galego Oil Company, had agreed to repayment terms which established an escrow account to which periodic payments would be made. The DOE ordered Galego to deposit the contents of the escrow account with the DOE within 30 days, but allowed the firm to recover the sum of $454.07 plus accrued interest, which constitutes the amount of overdeposits made to the account.

**Implementation of Special Refund Procedures**

*Blaylock Oil Company, Inc., 10/10/85; HEF-0037.*

The DOE issued a Decision and Order establishing procedures for the disbursement of $9,719, plus accrued interest, obtained as a result of a consent order entered into by the DOE and Blaylock Oil Company, Inc. The funds will be available to purchasers of motor gasoline from Blaylock during the period October 1, 1979 through December 31, 1979 who demonstrate that they were injured by Blaylock's alleged overcharges. Resellers requesting $5,000 or less will not be required to provide a separate, detailed showing of injury. End-users need only specify volumes purchased. Specific information required in applications for refund, which must be filed no later than 90 days after publication of the Decision and Order in the **Federal Register**, are set forth in the Decision.

*Consumers Oil Company, 10/11/85; HEF-0055.*

On October 11, 1985, the OHA issued a final Decision and Order establishing procedures for the disbursement of $110,925 (plus accrued interest) obtained as a result of a Consent Order entered into by the DOE and Consumers Oil Company. Applications will be accepted from Powerine Oil Company, the only direct purchaser identified in the consumers Consent Order with respect to the designated consent order fund, and any customers who purchased No. 2 oils from Powerine during the period October 1, 1973 through June 30, 1976. To the extent that Powerine can make a detailed showing of injury, it will receive a refund proportionate to the amount it was allegedly overcharged by Consumers. In the event that Powerine is unable to show injury for the entire consent order amount, successful claimants who purchased No. 2 oils from Powerine during the consent order period will receive a refund based on their purchase volumes of Powerine No. 2 oils.

*Midway Oil Company, 10/9/85; HEF-0129.*

The DOE issued a Decision and Order implementing a plan for the distribution of $38,000 received as a result of a consent order entered into by Midway Oil Company and the DOE on August 31, 1981. The DOE determined that the Midway settlement fund should be distributed to customers who purchased motor gasoline from Midway during the November 1, 1973, through October

31, 1974 consent order period. The specific information required in refund applications is provided in the Decision.

**Refund Applications**

*Ayers Oil Company/Morrow Service Station, Elvins "66" Service, Modernaire 66 Service; 10/10/85: RF177-1, RF177-2, RF177-3*

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of Ayers refined products. All of the claimants applied for volumetric refunds based on the presumption of injury for small claims. *See Ayers Oil Company*, 13 DOE ¶ 85,066 (1985). After examining the evidence and supporting information submitted by the applicants, the DOE concluded that the applicants should receive refunds totalling $6,454.

*Gary Energy Corporation/LCL Oil Company, 10/8/85; RF47-17*

The DOE issued a Decision and Order concerning an Application for Refund filed by LCL Oil Company, a reseller of Gary NGLPs. Although the firm's purchases of Gary's propane during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*), LCL elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the *TOGCO* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that LCL should receive a refund of $5,000 in principal plus $530.03 in interest. With respect to the firm's claim for an additional refund of $307.22, the OHA determined that since LCL failed to submit cost bank data or to demonstrate that it suffered economic injury from its purchases of Gary NGLPSs, the firm was not entitled to the additional refund.

*Gulf Oil Corp./Transamerica Airlines, Inc., 10/9/85; RF40-3057*

The DOE issued a Supplemental Decision and Order concerning an Application for Refund filed by Transamerica Airlines, Inc. of Oakland, California. In its Decision, the DOE modified the refund amount granted to Transamerica in a Decision and Order issued on September 24, 1985. Transamerica's modified refund was granted under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), and amounts to $3,151.00, representing $2,746.00 in principal and $405.00 in interest.

DISMISSALS

| Name | Case No. |
|---|---|
| Bottled Gas Distributors | RF40-1766 |
| Franklin Oil Company | RF40-00518 |
| Rico Company | RF13-37 |
| Volpe, Boskey and Lyons | HFA-0312 |
| Watson Oil Co., Inc. | RF40-00523 |
| W. C. Knolle, Inc. | RF40-00526 |

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 7, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 85-27437 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of October 14 Through October 18, 1985

During the week of October 14 through October 18, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Requests for Modifications and/or Rescission**

*Economic Regulatory Administration, 10/17/85; HRR-0113, HRR-0115, HRR-0117.*

The Economic Regulatory Administration filed motions requesting the modifications of Remedial Orders issued to Charles M. Bryant d/b/a Bryant Chevron Service; Charles Gugino, Sr., d/b/a Gugino's Exxon; and Wallace Mays, Jr., d/b/a Wallie's Auto Center. The Remedial Orders held that each retailer had overcharged its customers, and the retailers were ordered to refund the overcharges by rolling back prices. The Economic Regulatory Administration stated that the retailers have not complied with the Remedial Orders, and that significantly changes circumstances since the issuance of the orders necessitated modification of the remedial provisions of the orders. The OHA granted the requested modifications of the Remedial Orders to provide for direct payment of overcharges to the DOE, for ultimate distribution through Subpart V proceedings, and for adjustment of the interest provisions to reflect the current DOE interest policy.

**Supplemental Order**

*Consolidated Materials Economic Regulatory Administration, 10/16/85; HRX-0126, HRZ-0270.*

Consolidated Materials, Inc. and the Economic Regulatory Administration (ERA) submitted motions concerning a Decision and Order in which the Office of Hearings and Appeals decided to convene an evidentiary hearing. *Consolidated Materials, Inc.*, 13 DOE ¶ 83,025 (1985). Pursuant to the Order, Consolidated was directed to submit a supplemental witness list. OHA approved the additional witness that the firm proposed to present. Further, the OHA denied the ERA's motion to compel the production of three additional witnesses by Consolidated, due to the expense to the firm. However, OHA found that two of the three withesses whose testimony ERA wished to compel possessed information relevant to the elucidation of the issues designated for hearing. Accordingly, OHA afforded the ERA an opportunity to present these witnesses' testimony at the evidentiary hearing.

**Refund Applications**

*Armour Oil Company/Southland Corporation et al., 10/17/85; RF167-3 et al.*

The DOE issued a Decision and Order granting three Applications for refund from a consent order fund made available by Armour Oil Company. The applicants, resellers of refined petroleum products, provided evidence that they purchased products from Armour during the consent order period and requested a refund at or below the $5,000 threshold level. The size of the refunds granted was based on a prorated portion of alleged overcharges to each applicant, as set forth in the Armour audit file. The total amount of refunds approved in this Decision is $19,764 ($11,117 in principal and $8,647 in interest).

*Collins Oil Company/Ackley Brothers, 10/15/85; RF168-1*

The DOE issued a Decision and Order granting an Application for Refund filed by Ackley Brothers from a consent order fund made available by Collins Oil Company. Ackley Brothers, a reseller of No. 2 heating oil, documented the volumes of its purchases from Collins during the consent order period and requested a refund below the $5,000 threshold level. The size of the refunds was based on a prorated portion of the alleged overcharges to Ackley Brothers, as set forth in the Collins audit file. The total refund amount approved in this Decision is $994 ($637 in principal and $357 in interest).

*Empire Oil Company/Inland Lumber, Servomation Corporation, 10/17/85; RF150-1, RF150-2.*

The DOE issued a Decision and Order concerning Applications for Refund from a consent order fund made available by Empire Oil Company. The applicants, Inland Lumber and Servomation Corporation, were two end-users of Empire motor gasoline. They each documented the volumes of Empire motor gasoline purchased and requested a refund at or below the $5,000 threshold level. In accordance with the procedures established in the Empire Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on the volume of motor gasoline it purchased from Empire during the consent order period. The total amount of refunds approved in this Decision is $213 ($170 in principal and $43 in interest).

*Hendel's, Inc./Connecticut College et al., 10/18/85; RF79-1 et al.*

The Office of Hearings and Appeals granted Applications for Refund filed by 18 claimants from a fund obtained through a consent order entered into with Hendel's, Inc. Five of the applicants were end-users and 13 applicants were resellers or retailers who requested refunds at or below the $5,000 threshold level. The total amount of refunds

granted was $60,011 ($35,679 in principal and $24,332 in interest).

*Ideal Gas, Inc./Economy Gas Company, Inc., Burns Propane Gas Service, 10/15/85: RF 186-1, RF186-2.*

The DOE issued a Decision and Order granting two Applications for Refund from a consent order fund made available by Ideal Gas, Inc. The applicants, Economy Gas Company, Inc. and Burns Propane Gas Service, two resellers of Ideal motor gasoline, provided purchase volume figures for the consent order order period and requested a refund at or below the $5,000 threshold level. The size of the refunds was based on a prorated portion of the alleged overcharges to the applicant, as set forth in the Ideal audit file. The total amount of refunds approved in this Decision is $10,784 ($6,209 in principal and $4,575 in interest).

*Independent Oil and Tire Company/Deichler Tire Center, 10/15/85; RF175-1.*

The DOE issued a Decision and Order concerning an Application for Refund from consent order fund made available by Independent Oil and Tire Company. The Applicant, Deichler Tire Center, a reseller of Independent motor gasoline, documented its purchase volumes of Independent motor gasoline and requested a refund below the $5,000 threshold level. The DOE therefore determined that Deichler should receive a refund based on the volume of motor gasoline it purchased from Independent during the consent order period. The total refund amount approved in this Decision is $136 ($92 in principal and $44 in interest).

*Texas Oil and Gas Corporation/Koch Industries, Inc., 10/17/85; RF42-3.*

Koch Industries, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOCCO). The DOE found that Koch paid above-market average prices for NGLPs during most of the months of the TOGCO consent order period. Using a three-step methodology, the DOE calculated a range of Koch's competitive disadvantage. A refund of $1,472,035.76 was found to equitably compensate Koch for any harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $813,435.77 for a total refund of $2,285,472.53.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

A. V. Shearman & Sons, RF 40-722;
B & H Self Service, RF 40-2869;
State of Iowa, RQ1-192;
State of Utah, RF1-156.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 12, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 27438 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; Period of October 7 Through November 1, 1985

During the period of October 7 through November 1, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that is intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: November 12, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*Holy Cross Hospital, Mission Hills, California; HEE-0163*

Holy Cross Hospital filed an Application for Exception from the provisions of 10 CFR Part 455. The exception request, if granted, would permit Holy Cross to qualify for the DOE's Institutional Grants Programs for schools and hospitals. On October 29, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception relief be granted.

*LBM Distributors, Inc., Lafayette, Louisiana; HEE-0162*

LBM Distributors, Inc., filed an Application for Exception from the Energy Information Administration reporting requirements. The exception request, if granted, would permit LBM to be relieved of the requirement that it file Form EIA-782B on a monthly basis. On October 30, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted for the period July 1985 through October 1985.

[FR Doc. 85-27439 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## Objection to Proposed Remedial Order; Period of September 16 Through October 18, 1985

During the period of September 16 through October 18, 1985, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 7, 1985.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

*C & H Refinery, Lake Charles, Louisiana; KRO-0100 Crude oil*

On October 18, 1985, C & H Refinery (C & H), 3708 Cobblestone Drive, Lake Charles, Louisiana 70605, filed a Notice of Objection to a Proposed Remedial Order which the DOE Washington, D.C. Office of Enforcement Programs issued to the firm on September 4, 1985. In the PRO the Washington, D.C. Office found that from November 1976 through January 1977 and from April though May

1977, C & H violated the Mandatory Petroleum Allocation Regulations, 10 C.F.R. Part 211 by claiming small refiner bias entitlements as a result of processing agreements with Hawaiian Independent Refinery, Inc. The PRO alleges that C & H never owned the oil in question or, alternatively, that C & H bought the oil from and sold it to the same firm in violation of 10 CFR 211.67(e)(2). According to the PRO the violation resulted in $2,004,079 of overcharges.

[FR Doc. 85-27440 Filed 11-15-85; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/48; PH-FRL 2911-5]

### Carbofuran; Special Review of Certain Pesticide Products

*Correction*

In FR Doc. 85-24646, beginning on page 41938 in the issue of Wednesday, October 16, 1985, make the following corrections:

1. On page 41941, in the first column, in the first complete paragraph, "6/250" should read "6/254".

2. On page 41942, in the first column, in the sixth line from the bottom, "isofesfos" should read "isofenfos".

BILLING CODE 1505-01-M

[OPTS-51597; FRL-2924-5]

### 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-eight PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 86-114, 86-115, 86-116, 86-117, 86-118, 86-119, 86-120, and 86-121—January 29, 1986;

P 86-122, 86-123, 86-124, 86-125, 86-126, 86-127, 86-128, 86-129, 86-130 and 86-131—February 1, 1986;

P 86-132, 86-133, 86-134, 86-135, 86-136, 86-137, 86-138, 86-139 and 86-140—February 2, 1986;

P 86-141—February 3, 1986.

Written comments by:

P 86-114, 86-115, 86-116, 86-117, 86-118, 86-119, 86-120 and 86-121—December 30, 1986;

P 86-122, 86-123, 86-124, 86-125, 86-126, 86-127, 86-128, 86-129,

P 86-130 and 86-131—January 2, 1986;

P 86-132, 86-133, 86-134, 86-135, 86-136, 86-137, 86-138, 86-139 and 86-140—January 3, 1986.

P 86-141—January 4, 1986.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51597]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Enviornmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**P 86-114**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Esterified aromatic carboxylic acid.

*Use/Production.* (G) Destructive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* No data submitted.

**P 86-115**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Esterified aromatic acyl halide.

*Use/Production.* (G) Destructive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* No data submitted.

**P 86-116**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Esterified aromatic carboxylic acid.

*Use/Production.* (G) Destructive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* No data submitted.

**P 86-117**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Esterified aromatic acyl halide.

*Use/Production.* (G) Destructive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**P 86-118**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Esterified polyamic acid.

*Use/Production.* (G) Open, non-dispersive use. Destructive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**P 86-119**

*Manufacturer.* Confidential.

*Chemical.* (G) Blocked polyurethane polyether.

*Use/Production.* (S) Industrial, Commercial and consumer general purpose coating and modifier for coatings and inks. Prod. range. 100,000—200,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

*Environmental Release/Disposal.* No release.

**P 86-120**

*Importer.* Confidential.

*Chemical.* (G) Further clarification needed before information can be released to the public files.

*Use/Import.* (G) Industrial resin for coatings. Prod. range. 200,000—400,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Processing and use: inhalation.

*Environmenal Release/Disposal.* No data submitted.

**P 86-121**

*Importer.* Confidential.

*Chemical.* (G) Saturated polyester based on terephthalic acid.

*Use/Import.* (G) Industrial resin used to prepare urethane powdered coatings. Import range. 400,000—1,000,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Processing and use: inhalation.
*Environmenal Release/Disposal.* No data submitted.

**P 86–122**

*Manufacturer.* AZS Corporation.
*Chemical.* (G) Reactive polyamide resin.
*Use/Production.* (G) Industrial epoxy curing agent used for cross-linking epoxy resins used as adhesives. Prod. range. Confidential.
*Toxicity Data.* No data on the PMN substance submitted.
*Exposure.* Manufacture: dermal, a total of 27 workers, up to 2.0 hrs/da, up to 0.42 da/yr.
*Environmenal Release/Disposal.* Trace released to water with 10 kg/batch to land. Dispoal by aeration ponds.

**P 86–123**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyd resin.
*Use/Production.* (G) Resin converted to paint. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmenal Release/Disposal.* Confidential.

**P 86–124**

*Manufacturer.* Koch Industries Inc.
*Chemical.* (S) Mehtyltris(1-methylethyl)benzene.
*Use/Production.* (S) Commerical and consumer solvent for leuco dye in carbonless copy paper. Prod. range. Confidential.
*Toxicity Data.* Acute oral: Male—4.28 g/kg, Female—2.18 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin—Severe; Eye—Slight; Inhalation: 0.018 mg/L.
*Exposure.* Manufacture: dermal and inhalation, a total of 4 workers, up to 1.0 hr/da, up to 50 da/yr.
*Environmental Release/Disposal.* 0.5 kg/yr released to air with 4.1 kg/da released to water. Disposal by navigable waterway.

**P 86–125**

*Manufacturer.* NL Chemicals/NL Industries, Inc.
*Chemical.* (G) Water-based polyurethane lacquer.
*Use/Production.* (G) A polyuethane lacquer to be used in an open, non-dispersive manner. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmenal Release/Disposal.* No release.

**P 86–126**

*Manufacturer.* E. I. du Pont de Nemours & Company, Inc.
*Chemical.* (G) Lactide.
*Use/Production.* (S) Industrial polymers for medical and nonmedical applications. Prod. range. Confidential.
*Toxicity Data.* Acute oral: 3,400 mg/kg; Irritation: Skin—Severe, Eye—Severe.
*Exposure.* Manufacture: dermal and inhalation.
*Environmenal Release/Disposal.* Release to water and land. Disposal by plant waste water treatment facility and landfill.

**P 86–127**

*Manufacturer.* R. T. Vanderbilt Company, Inc.
*Chemical.* (S) 1,3,4-thiadiazolidine-2,5-dithione, monosodium salt.
*Use/Production.* (S) Industrial intermediate. Prod. range. Confidential.
*Toxicity Data.* No data on the PMN substance submitted.
*Exposure.* Manufacture: dermal.
*Environmental Release/Disposal.* Release to air.

**P 86–128**

*Manufacturer.* Confidential.
*Chemical.* (G) Polymer of alkanedioic acid, alkanepolyol and benezene polycarboxylic acid.
*Use/Production.* (G) Precursor in the manufacture of polyurethanes. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 10 da/yr.
*Environmental Release/Disposal.* No release. Disposal by publicly owned treatment works (POTW).

**P 86–129**

*Importer.* Confidential.
*Chemical.* (S) Copper phthalocyanine, [4-sulfonamido-benezene-ethyl sulfonyl sodium sulfuric ester], sodium sulfonate.
*Use/Import.* (S) Reactive dye for textiles. Import range. 40,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No exposure.
*Environmental Release/Disposal.* No release.

**P 86–130**

*Importer.* Confidential.
*Chemical.* (S) Copper phthalocyanine, [3-chloro-5-methoxy-s-triazinylamino ethyl sulfonamido] sodium sulfonate.
*Use/Import.* (S) Reactive dye for textiles. Import range. 20,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No exposure.
*Environmental Release/Disposal.* No release.

**P 86–131**

*Importer.* Confidential.
*Chemical.* (G) Further clarificaiton needed before information can be released to the public files.
*Use/Import.* (S) Industrial sealant for mechanical vacuum pumps. Import range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Processing: dermal, a total of 1 worker.
*Environmental Release/Disposal.* No release.

**P 86–132**

*Manufacturer.* Confidential.
*Chemical.* (G) Amide imide.
*Use/Production.* (G) Amide imide wire enamel. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential. Disposal by POTW.

**P 86–133**

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted polyamine.
*Use/Production.* (G) Intermediate. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 30 workers, up to 3 hrs/da, up to 30 da/yr.
*Environmental Release/Disposal.* Release to air and land. Disposal by landfill or burned in accordance with the Clean Air Act, Clean Water Act and/or Resource Conservation and Recovery Act (RCRA).

**P 86–134**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyisobutenylsuccinamide.
*Use/Production.* (G) Contained use. Prod. range. Confidential.
*Toxicity Data.* Acute oral: > 10 gm/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.
*Exposure.* Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 70 da/yr.
*Environmental Release/Disposal.* Release to air and land. Disposal by landfill or burned in accordance with the Clean Air Act, Clean Water Act and RCRA.

**P 86–135**

*Manufacturer.* Confidential.
*Chemical.* (G) Metal polyisobutenylsuccinate.
*Use/Production.* (G) Destructive use. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 69 workers, up to 8 hrs/da, up to 15 da/yr.

*Environmental Release/Disposal.* Release to air and land. Disposal by landfill or burned in accordance with the Clean Air Act, Clean Water Act and RCRA.

**P 86-136**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl(heterocyclicyl)phenylazo-heteromonocyclicpolyone-,[(alkylimidazolyl)methyl] deriv.

*Use/Production.* (S) Site-limited intermediate. Prod. range. Confidential.

*Toxicity Data.* Acute oral—> 5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

*Exposure.* Manufacture: dermal and inhalation, a total of 6 workers, up to 2 hrs/da.

*Environmental Release/Disposal.* 5 to 10 lbs. released to water. Disposal by POTW.

**P 86-137**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl-[methylheterocyclicyl]phenylazo-[heteromonocyclolo]quinazolone.

*Use/Production.* (S) Site-limited intermediate. Prod. range. Confidential.

*Toxicity Data.* Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

*Exposure.* Manufacture: dermal, a total of 3 workers, up to 3 hrs/da, up to 10 da/yr.

*Environmental Release/Disposal.* 2 to 5 lbs. released to water. Disposal by POTW.

**P 86-138**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl-[methylheterocyclicyl]phenylazo-[heteromonocyclolo]quinazolone-[(alkylimidazololyl)methyl] derivative.

*Use/Production.* (S) Site-limited intermediate. Prod. range. Confidential.

*Toxicity Data.* Acute oral: > 5,000 mg/kg; Acute dermal: 0.5 g; Irritation: Skin—Non-irritant; Eye—Non-irritant.

*Exposure.* Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 18-27 da/yr.

*Environmental Release/Disposal.* 1 to 5 lbs. released to water.

**P 86-139**

*Importer.* The Dow Chemical Company.

*Chemical.* (G) Bisphenol glycidyl ether polyglycol reaction product.

*Use/Production.* (S) Industrial coating. Prod. range. Confidential.

*Toxicity Data.* Acute oral: > 2,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

*Exposure.* Manufacture: dermal.

*Environmental Release/Disposal.* Release to air.

**P 86-140**

*Importer.* Confidential.

*Chemical.* (G) Blocked aliphatic polyisocyanate.

*Use/Import.* (S) Crosslinker for industrial coil coatings and coatings for the transportation market. Import range. 10,000—100,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Processing: dermal, a total of 20 workers, up to ½ hr/da.

*Environmental Release/Disposal.* No release.

**P 86-141**

*Importer.* Confidential.

*Chemical.* (G) Carboxylated nitrile latex.

*Use/Import.* (S) Impregnating paper and fabrics. Import range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Processing: dermal, low probability of exposure.

*Environmental Release/Disposal.* No data submitted.

Date: November 12, 1985.

**Linda A. Travers,**

*Acting Director Information Management Division.*

[FR Doc. 85-27388 Filed 11-15-85; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-59740 FRL-2925-1]**

## 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). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

**DATES:** Close of Review Period: Y 86-26, 86-27, 86-28, 86-29, 86-30 and 86-31, November 24, 1985.

Y 86-32, November 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 86-26**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (G) Open, non-dispersive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal.

*Environmental Release/Disposal.* Release to water. Disposal by biological treatment system, incineration or approved landfill.

**Y 86-27**

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic copolymer.

*Use/Production.* (S) Industrial thermosetting decorative and protective coatings. Prod. range. 100,000-500,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 20 workers, only 2 workers/da.

*Environmental Release/Disposal.* No release. Disposal by incineration.

**Y 86-28**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (G) Open, non-dispersive use. Prod. range. Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal.

*Environmental Release/Disposal.* Release to water. Disposal by biological treatment system, incineration or approved landfill.

**Y 86–29**

*Manufacturer.* Confidential.
*Chemical.* (G) Water soluble urethane.
*Use/Production.* (S) Industrial paper saturant. Prod. range. Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential.

**Y 86–30**

*Manufacturer.* Confidential.
*Chemical.* (S) Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2¹-oxybis(ethanol), 2-ethyl hexanol, triphenylphosphite and Fascat 4100.
*Use/Production.* (S) Site-limited and industrial polymer for general metal finishing. Prod. range. 100,000–250,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacturer and processing: dermal, a total of 13 workers, up to 1 hr/da, up to 36 da/yr.
*Environmental Release/Disposal.* .5 to 40 kg/da released to air and/or land. Disposal by incineration or sanitary landfill.

**Y 86–31**

*Manufacturer.* Confidential.
*Chemical.* (S) Polymer of 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,2,4-trimethyl-1,3-pentanediol, isobenzo-1,3-furandione, hexanedioic acid, 1,3-benzenedicarboxylic acid and 1,4-benzenedicarboxylic acid.
*Use/Production.* (S) Industrial and commercial polymer for coil coating. Prod. range. 100,000–250,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Limited exposure.
*Environmental Release/Disposal.* Disposal by U.S. EPA regulations.

**Y 86–32**

*Manufacturer.* Confidential.
*Chemical.* (G) Cross-linked polymeric acrylic micro particles.
*Use/Production.* (S) Industrial thermosetting decorative and protective coatings. Prod. range. 92,078–368,312 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacturer and processing: dermal, a total of 20 workers, only 2 workers/da.
*Environmental Release/Disposal.* No release. Disposal by incineration.

Dated: November 12, 1985.

**Linda A. Travers,**

*Acting Director, Information Management Division.*

[FR Doc. 85–27382 Filed 11–15–85; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Allocations and Technical Subgroups of Radio Broadcasting Advisory Committee; Joint Meeting

The Allocations and Technical Subgroups of the Advisory Committee on Radio Broadcasting resume their continuing meetings in a joint session to be held on Wednesday, November 20, 1985, at 10:00 a.m. in the Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW. Washington, D.C.

The Subgroups will give consideration to two principal subjects. The first relates to the development of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band. In particular, the Subgroups will focus on the planning method to be used in developing the spectrum to become available through expansion of the AM band.

The second relates to an examination of possible steps which could be taken to improve the effective use of the AM band. This would include consideration of policy and technical changes to enhance the ability of AM stations to compete effectively in the radio marketplace.

The Subgroup meetings are continuing ones and may be resumed after the November 20, 1985, session at such time and place as may be decided at that session.

All meetings of the Allocations and Technical Subgroups are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call either the Chairman of the Allocations Subgroup, Jonathan David, at (202) 632–7792 or the Chairman of the Technical Subgroup, Wallace Johnson at (703) 541–0500.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 85–27417 Filed 11–15–85; 8:45 am]

BILLING CODE 6712–01–M

### DLBS Inc., et al.; Hearing Designation Order

Adopted: October 31, 1985.
Released: November 13, 1985.

In re applications of MM Docket No. 85–331.

| | File No. |
|---|---|
| DLBS Inc. | BPCT–840920KJ |
| TRG Broadcasting Systems, inc. | BPCT–841018KE |
| Montgomery County Media Network, Inc. et al. d/b/a/ Imagists. | BPCT–841129KF |
| Carmen Matias and Andrew N. Wimbish, Jointly. | BPCT–841129KK |
| Conroe Broadcasting, Limited Partnership. | BPCT–841129KV |
| Wood Broadcasting Co. | BPCT–841129KW |
| G—A Communications, Inc. | BPCT–841129LE |

For Construction Permit, Conroe, Texas.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it (1) the above-captioned mutually exclusive applications of DLBS, Incorporated (DLBS), TRG Broadcasting Systems, Inc. (TRG), Montgomery County Media, et al., d/b/a Imagists (Imagists), Carmen Matias and Andrew N. Wimbish, Jointly (Matias), Conroe Broadcasting, A Limited Partnership (Broadcasting), Wood Broadcasting Company (Wood), and G–A Communications, Inc. (G–A) for authority to construct a new commercial television station on Channel 55, Conroe, Texas; (2) an informal objection filed by the Association of Maximum Service Telecasters, Inc. (AMST) against DLBS, Matias and G–A, and related pleadings; (3) an amendment filed by DLBS, and a petition for leave to amend, and (4) an amendment and a petition for leave to amend filed by Matias. [1]

2. On January 16, 1985, AMST filed an informal objection against DLBS, Matias and G–A on the ground that DLBS and G–A would be short-spaced to the sites specified by the three applicants for Channel 48, Galveston, Texas, [2] and Matias would be short-spaced to the reference point for Channel 48 and to one of the two applicants for Channel 40, Crockett, Texas. [3] G–A's proposed

[1] The deadline for filing amendments to the above-captioned applications was January 16, 1985. DLBS filed an amendment March 18, 1985 to specify a different site. The amendment has been reviewed and good cause exists for accepting the amendment. On February 19, 1985, Matias filed a petition for leave to amend and an amendment to update the broadcast interests of the applicant. The amendment was required by § 1.65 of the Rules and it will, therefore, be accepted for filing.

[2] DLBS amended, its application to specify a different site. (See Footnote 1). Therefore, only G–A would be short-spaced to the sites specified in the applications filed for Channel 48, Galveston, Texas.

[3] Both of the applications for Channel 40, Crockett, Texas, were dismissed on May 7, 1985. However, Matias remains short-spaced to the reference point for Crockett, Texas.

site would be 51 miles from the sites proposed by the three applicants for Channel 48, Galveston, Texas, whereas § 73.610 of the Commission's Rules requires a minimum separation of 60 miles between a station operating on Channel 55 and one operating on Channel 48.[4] Accordingly, an issue will be specified with respect to G–A and Matias to determine whether circumstances exist warranting a waiver of the rules. Since an applicant proposing a short-spaced site must make the threshold showing that no suitable fully spaced site is available the Administrative Law Judge will, in assessing those circumstances, consider the fact that the other applicants in this proceeding have specified fully spaced sites.

3. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. G–A gave a negative response to Section III, FCC Form 301 but noted that it will shortly be in a position to certify. Additionally, Matias has indicated, in an amendment filed on January 16, 1985, that it has the ability "to secure bank letters and equipment letters of credit and that this written documentation in support of certification is in process". Such a statement is not an unqualified certification. Accordingly, the applicants will be given 20 days from the date of release of this Order to review its financial proposal in light of the Commission's requirements, to make any changes that may be necessary and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in section III, FCC Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. The rule was essentially codified by Congress in enacting section 613(a) of the Cable Communications Policy Act of 1984, as incorporated in the Communications Act (47 U.S.C. section 613(a)). Thomas Robert Gilchrist, President and 100% owner of TRG, is also 100% owner of numerous cable systems in different areas of Texas.[5] It appears that the cable systems in Centerville, Leona, Midway, and Normangee are all within Grade B contour of the proposed television station. TRG has not made a pledge that Thomas Robert Gilchrist will sever his connections with the cable system prior to commencement of operation of the television stations if TRG is the successful applicant. Accordingly, TRG will be given twenty (20) days from the releae of this Order to submit to the presiding Administrative Law Judge the appropriate certification. *See Golden West Associates, L.P.*, FCC 85–541, released October 11, 1985.

5. No determination has been made that the tower height and location proposed by each applicant would not constitute a hazard to air navigation.[6] Accordingly, an appropriate issue will be specified.[7]

6. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degrees corresponds to True North and tabulated at least every 10 degrees, plus any minima or maxima. TRG has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy of each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

7. TRG states in its environmental narrative statement, that the height of the proposed tower will be 950 feet above ground level. All other mention of heights in the application show 1,636 feet AGL. TRG will be required to submit an amendment showing the correct height above ground level to the presiding Administrative Law Judge within 20 days after the release date of this Order.

8. Section V–C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Neither DLBS nor G–A has specified these figures. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. DLBS and G–A will each be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the stautory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the application of G–A Communications, Inc. and Carmen Matias and Andrew N. Wimbish, Jointly, are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the Rule.

2. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

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[4] The three pending applications in hearing in Docket Nos. 80–445–7 for a new television station on Channel 48, Galveston, Texas, are: The Old Time Religion Hour, Inc., Bluebonnet Broadcasting Co., and Alden Communications of Texas, Inc.

The Galveston applications were cut off September 9, 1978; G–A's application was filed November 24, 1984. G–A, is therefore required to meet the separation requirements to all of the proposed Galveston sites.

[5] The following are the cable systems owned by Robert Gilchrist:

Centerville Cable T.V., Inc., Centerville, Texas. Oakwood Cable T.V., Inc., Oakwood, Texas. Leona Cable T.V., Inc. Leona, Texas. Midway Cable T.V., Inc. Midway, Texas. Normangee Cable T.V., Inc. Normangee, Texas. New London Cable T.V., Inc. New London, Texas. Turnertown Cable T.V. Turnertown, Texas. Laneville Cable T.V., Inc. Laneville, Texas. New Summerfield Cable T.V., Inc. New Summerfield, Texas. Mount Enterprise Cable T.V., Inc. Mount Enterprise, Texas. Leakey Cable T.V., Inc. Leakey, Texas.

[6] In its application to the FCC, DLBS has specified the overall height of its proposed tower above ground level (AGL) as 642 feet (975 feet above mean sea level). The Federal Aviation Administration, however, has approved a tower height AGL of only 599 feet (939 feet AMSL). Therefore, DLBS must either amend its application to the FCC to reduce height to that approved by the FAA or refile with the FAA requesting the higher tower height.

[7] Matias shows the North Latitude in Section V–C, item 4, FCC Form 301 to be 30 degrees 29' 17", but all other references in the application pertaining to the North Latitude show 30 degrees 39' 17". We are assuming that the correct coordinates are North Latitude 30 degrees 29' 17". If this assumption is not correct, Matias will need to amend her application to provide the correct coordinates.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That the Association of Maximum Service Telecasters, Inc. is made a party respondent to the proceeding with respect to issue one.

12. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

13. It is further ordered, That the amendment filed on March 18, 1985, by DLBS Incorporated is accepted for filing for § 1.65 purposes only.

14. It is further ordered, That DLBS, Incorporated, shall amend its application to reduce its tower height AGL to that approved by the FAA or refile with the FAA requesting the higher tower height, within 20 days after the release of this Order.

15. It is further ordered, That Carmen Matias and Andrew N. Wimbish's February 19, 1985, Petition for Leave to Amend is granted and the accompanying amendment is accepted for filing for § 1.65 purposes only.

16. It is further ordered, That within 20 days of the release of this Order, G–A Communications, Inc. and Carmen Matias and Andrew N. Wimbish, Jointly, shall submit financial certifications in the form required by section III, FCC Form 301, or advise the Administrative Law Judge that the required certification cannot be made, as may be appropriate.

17. It is further ordered, That TRG Broadcasting Systems, Inc., shall submit an amendment showing the correct tower height above ground level to the presiding Administrative Law Judge within 20 days after the release date of this Order.

18. It is further ordered, That TRG Broadcasting shall certify to the presiding Administrative Law Judge, within twenty (20) days from the release of this Order, that if it is the successful applicant in this proceeding, that prior to commencement of operation of the proposed station, its principal, Thomas Robert Gilchrist will sever all connections with the Cable television system in Centerville, Leona, Midway and Normangee, Texas.

19. It is further ordered, That TRG Broadcasting Systems, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after the release date of this Order.

20. It is further ordered, That DLBS, Incorporated, and G–A Communications, Inc. shall each submit an amendment providing the information required by Section V–C, Item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

21. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85–27418 Filed 11–15–85; 8:45 am]

BILLING CODE 6712–01–M

## Terry Jan King et al.; Hearing Designation Order

Adopted: October 31, 1985.
Released: November 13, 1985.
In re applications of

| | File No. |
|---|---|
| Terry Jan King | BPCT–850607KL |
| Mid South Broadcasting | BPCT–850725KG |
| Colom-Rowe General Partnership. | BPCT–850725KH |

For Construction Permit, Holly Springs, Mississippi.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Terry Jan King (King), Mid South Broadcasting (Mid South), and Colom-Rowe General Partnership, for authority to construct a new commercial television station on Channel 40, Holly Springs, Mississippi.

2. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission programs designed to provide equal employment opportunities. King indicates that she will employ five or more full-time employees, but she has not submitted an EEO program. Accordingly, King will be required to submit a copy of her EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

3. Mid South indicated that it is a limited partnership. The applicant has identified the general partner; however, none of the limited partners have been disclosed. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d (1984), *recon. granted in part*, FCC 85–252, released June 24, 1985, the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Mid South can submit the necessary certification and showing that its limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Mid South will be required either to state that its limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

4. Section V–C, item 10, FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Mid South has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each

applicant proposes to serve. Mid South will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

5. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. King has not submitted such a certification. Accordingly, King will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, she shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That Terry Jan King shall file a copy of her EEO program with the presiding Administrative Law Judge, within 20 days after this Order is released.

10. It is further ordered, That Terry Jan King shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

11. It is further ordered, That Mid South Broadcasting shall submit the certification, statement and/or information required by paragraph 3, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

12. It is further ordered, That Mid South Broadcasting shall submit an amendment providing the information required by Section V–C, item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

13. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85–27422 Filed 11–15–85; 8:45 am]

BILLING CODE 6712–01–M

## Jasper County Broadcasting Co. et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant City, and State | File No. | MM Docket No. |
|---|---|---|
| A. James M. Lout, et al., d.b.a. Jasper County Broadcasting Co Jasper, TX. | BPH–841205MC | 85–239 |
| B. Helen S. Whorry d.b.a. Jaslex Broadcasting Co.; Jaspar, TX. | BPH–850227MD | |
| C. Sidney Eugene Turney; Jasper, TX. | BPH–850228ML | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Apendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632–6334.

**W. Jan Gay,**

*Assistant Chief, Audio Service Division, Mass Media Bureau.*

[FR Doc. 85–27491 Filed 11–15–85; 8:45 am]

BILLING CODE 6712–01–M

## Magdalene Gunden Partnership et al.; Hearing Designation Order

Adopted: October 30, 1985.

Released: *November 13, 1985.*

In re Applications of: MM Docket No. 85–328

| | File No.: |
|---|---|
| Magdalene Gunden Partnership. | BPCT–850607KK |
| Novato Broadcasting Corp... | BPCT–850725KY |
| Josie Moore..... | BPCT–850725KZ |
| Novato Television, General Partnership. | BPCT–850725LA |

| | File No. |
|---|---|
| North Bay Television, Inc. ... | BPCT-850725LC |
| North Bay Broadcasting ..... | BPCT-850725LD |
| Marin TV Partners, Limited. | BPCT-850725LE |

For Construction Permit Novato, California.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 68, Novato, California; a petition to accept a late-filed amendment *nunc pro tunc*, filed by Josie Moore; and two petitions to accept late-filed amendments *nunc pro tunc*, filed by Navato Television.

2. The deadline for filing applications in this proceeding was July 25, 1985 ("A" cut-off date). Josie Moore and Novato Television each filed an application on July 25, in response to the "A" cut-off list. However, neither application had an original signature. On July 26, Navato Television submitted a petition to accept amendment *nunc pro tunc*, accompanied by an application with an original signature. Similarly, on August 6, 1985, Josie Moore filed a petition to accept amendment *nunc pro tunc*, accompanied by a properly executed application. Furthermore, on September 13, 1985 ("B"' cut-off date), Novato Television submitted an unexecuted copy of an amendment to its application. Counsel for the applicant indicated that the signed amendment did not reach his office in time for filing. He indicated that the signed copy would be filed immediately upon receipt. A petition to accept amendment *nunc pro tunc*, accompanied by the signed amendment, was filed on September 17. In view of the fact that all parties were put on timely notice concerning the contents of the amendments, none were prejudiced. These circumstances are governed by a long-standing Commission policy which dicates that the signature be accepted *nunc pro tunc. Bocanegro/Gerald Broadcasting Group*, Mimeo No. 1470, released December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hart*, 44 FCC 2088 (1960). Accordingly, the signed originals of the applications and the amendment will be accepted *nunc pro tunc*.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBU (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Section V–C, item 10(e) FCC Form 301, requires an applicant to submit the area and population within its predicated Grade B contour. Josie Moore has not submitted this information. Accordingly, Ms. Moore will be required to submit an amendment with the response to item 10(e), to the presiding Administratie Law Judge, within 20 days after this Order is released.

5. No determination has been reached that the tower height and location proposed by Magdalene Gunden Partnership, Novato Broadcasting Corporation, Josie Moore, Novato Television, and Marin TV Partners each will not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degrees corresponds to True North and tabulated at least every 10 degrees plus any minima or maxima. North Bay Broadcasting has not supplied this data. Accordingly, North Bay Broadcasting will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

7. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be availale to them. Magdalene Gunden partnership and Novato Broadcasting Corporations, each has not submitted such a certifications. Accordingly, each applicant will be given 20 days from the date of release of this order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If an applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

8. Section 73.2080 of the Commission's Rules requires an applicant for a new commercial television station to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. Pursuant to these requirements, an applicant who proposes to employ at least five full-time employees must establish a program, which must be submitted to the Commission, designed to assure equal employment opportunity for women and minority groups. Magdalene Gunden partnership has indicated that it will employ at least five full-time persons. However, it has not submitted a copy of its equal employment opportunity program. Accordingly, Magdalen Gunden Partnership will be required to submit an amendment which corrects this omission, to the presiding Administrative Law Judge, within 20 days after this order is released.

9. Joy A. Fields-Harrell, the President, Secretary, Treasurer, Director, and holder of 100 percent of the stock of Novato Broadcasting Corporation, is Program Director of the local access channel of Chambers Cable of Novato, a cable television system serving the community of Novato and Marin Counties, California. Ms. Fields-Harrell's employment may violate our cross-interest policy. However, Novato Broadcasting Corporation has represented to the Commission that Ms. Fields-Harrell will resign her position at the cable company if it is the successful applicant in this proceeding. Accordingly, any grant of a construction permit to Novato Broadcasting Corporation will be appropriately conditioned.

10. North Bay Broadcasting indicates that the applicant is a limited partnership. The general partner has been identified; however, the limited partners have not been identified. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, In *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no

need to provide information as to the limited partners if North Bay Broadcasting can submit the necessary certification and showing that limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area *Id.* at 1030. Accordingly, North Bay Broadcasting will be required either to state that the limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

11. Ruby Visek Petersen, the sole general partner of North Bay Broadcasting, is currently employed in an unidentified capacity by Station KTVU–TV, San Francisco, California. San Francisco is within the applicant's predicted Grade B contour. Consequently, Ms. Petersen's connection with the station may be inconsistent with the Commission's cross-interest policy. However, we cannot make this determination since we have no information regarding the nature of Ms. Petersen's position at KTVU–TV. Accordingly, an issue will be specified to determine if North Bay Broadcasting's proposal is consistent with the Commission's cross-interest policy and, if not, whether grant of its application would be consistent with the public interest.

12. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Magdalene Gunden Patnership, Novato Broadcasting Corporation, Josie Moore, Novato Television, and Marin TV partners, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to North Bay Broadcasting, whether the employment of Ruby Visek Petersen at Station KTVU–TV, San Francisco, California, is consistent with the Commission's cross-interest policy and, if not, whether a grant of the North Bay Broadcasting application would be in the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

14. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

15. It is further ordered, That the August 6, 1985, petition to accept amendment *nunc pro tunc*, filed by Josie Moore, is granted and the accompanying amendment is accepted.

16. It is further ordered, That the July 26, 1985, and the September 17, 1985, petitions to accept amendment *nunc pro tunc*, filed by Novato Television, are granted and the accompanying amendments are accepted.

17. It is further ordered, That Jose Moore shall submit an amendment that contains the information required by section V–C, item 10(e), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That North Bay Broadcasting shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

19. It is further ordered, That North Bay Broadcasting shall submit the certification, statement and/or information required by paragraph 10, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, That Magdalene Gunden Partnership and Novato Broadcasting Corporation each shall, within 20 days after the release of this Order, file a site availability certification, in the form required by the Commission, with the presiding Administrative Law, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

21. It is further ordered, That Magdalene Gunden Partnership shall submit, as an amendment, an equal employment opportunity program, to the presiding Administrative Law Judge, within 20 days after this Order is released.

22. It is further ordered, That, in the event that Novato Broadcasting Corporation is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Joy A. Fields-Harrell has severed all connection with Chambers Cable of Novato.

23. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

24. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3549 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85–27420 Filed 11–15–85; 8:45 am]

BILLING CODE 6712-01-M

## Minority Broadcasters of Alaska et al.; Hearing Designation Order

Adopted: October 30, 1985

Released: November 13, 1985

In re Applications of MM DOCKET NO. 85–327

For Construction Permit, Anchorage, Alaska.

| | File No. |
|---|---|
| Minority Broadcasters of Alaska. | BPCT–850522KH |
| Fireweed Television | BPCT–850710KE |
| Native Alaska Broadcasting. | BPCT–850711KH |

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial

television station to operate on Channel 5, Anchorage, Alasks;[1] a petition to deny Minority Broadcasters of Alaska's (Minority) application, filed by Northern Television Inc., licensee of Station KTVA–TV, Anchorage, Alaska; an informal objection to Minority's application filed by KTBY, Inc., licensee of Station KTBY(TV), Anchorage, Alaska; and related pleadings.

2. Minority proposes to mount its antenna on the existing tower of Northern Television, Inc. (Northern), licensee of Station KTVA(TV). On July 11, 1985, Northern filed its petition to deny Minority's application based on the fact that Northern had never been contacted by Minority to inquire whether the tower was available for use. Therefore, Northern states that Minority has misrepresented the availability of its transmitter site. In its response to the petition, Minority states that its proposal will not cause any interference to KTVA (TV)'s, operation and that if a problem arises with respect to the availability of its proposed site, it will relocate to a different site. The response does not address the petitioner's allegation that Minority does not now have, and did not have reasonable assurance of its proposed transmitter site when its application was filed. In view of the above, a question is raised as to whether Minority has reasonable assurance of the availability of its specified transmitter site. The Commission has held that although an applicant need not have a binding agreement or absolute assurance of the availability of its proposed site, an applicant must show that it has obtained reasonable assurance that its proposed site is available. *Alabama Citizens for Responsive Television, Inc.*, 59 FCC 2d 1, 2–3 (1976). Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary. A mere possibility that the site will be available willl not suffice. *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev. Bd. 1974). Accordingly, an appropriate issue will be specified.

3. The specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. A failure to inquire as to the availability of a site until after the application is filed in inconsistent with such a representation and, therefore, warrants a character qualifications issue. See *William K. Wallace, supra.* Furthermore, Northern alleges that Mr. Mahoney may have falsely certified that statements in the application are true, complete and correct, since the site photographs in Figures 7A–D of the application have not been taken from the Northern site. Accordingly, a misrepresentation issue will also be specified.[2]

4. No determination has been reached that the tower height and location proposed by Native Alaska Broadcasting (Native Alaska) would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. As noted, Minority proposes to mount its antenna on the tower used by Station KTVA(TV). That tower is also shared by AM Station KBYR, Anchorage, Alaska. Consequently, if Minority is the successful applicant in this proceeding, and if it establishes that this site is available to it, the construction permit will be conditioned to ensure the KBYR's radiation patterns will not be adversely affected.

6. In responding to section II, item 1, FCC Form 301, Minority indicates that it is a general partnership. However, section II, item 5(a), shows Dan Mahoney as the 100 percent owner of Minority. Consequently, we are unable to determine the nature of the applicant. Accordingly, Minority will be required to submit an amendment which clarifies the nature of the applicant, to the presiding Administrative Law Judge, within 20 days after this Order is released. Furthermore, if Minority is a partnership, the amendment should contain the names of each partner, as well as the legal qualifications of each partner. Finally, the amendment should also address whether or not Minority is licensed to do business in the State of Alaska as required by Alaskan State Law.

7. Section 73.685(e) of the Commission's Rules states that stations operating on Channels 2–13 with transmitters delivering a peak visual power output of more than 1 kW may employ directional transmitting antennas with a maximum to minimum radiation in the horizontal plane of not more than 10 dB. Native Alaska proposes to employ a directional antenna with a peak power which will exceed the allowable maximum to minimum radiation. Accordingly, an issue will be specified to determine if circumstances exist to warrant waiver of § 73.685(e).

8. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degrees corresponds to True North and tabulated at least every 10 degrees plus any minima or maxima. Native Alaska has not supplied this data. Accordingly, Native Alaska will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Minority Broadcasters of Alaska:

(a) Whether the applicant has reasonable assurance that its specified site will be available to it;

(b) Whether the applicant had reasonable assurance at the time it filed its application that its specified site would be available to it;

[1] Section 73.685(a) of the Commission's Rules requires a television station operating on Channel 5 to place a 74 dBu (City Grade) contour over its entire principal community. Fireweed Television (Fireweed) requests a waiver of § 73.685(a) because, although its City Grade contour does encompass the City of Anchorage, it does not encompass the Municipality of Anchorage Borough, which Fireweed states is also the City of Anchorage. Examination of the applications before us shows that each of the applicant's City Grade contours covers the entire City of Anchorage but not the entire Municipality. Additionally, most of the uncovered area appears to be unpopulated. Accordingly, we believe that good cause exists for waiver of § 73.685(a) of the Commission's Rules.

[2] On July 11, 1985, KTBY, Inc., licensee of Station KTBY (TV), Anchorage, Alaska, filed a letter opposing grant of Minority's application. The letter raises questions regarding the authenticity of information contained in Minority's application. The letter also refers to allegations contained in the petition to deny filed by Northern. We have reviewed the objection filed by KTBY, Inc., and have addressed all of its contentions in connection with our disposition of Northern's petition or elsewhere in thos Order. Additionally, contrary to KTBY's asertion, Channel 5 is now available for application in Alaska. See §§ 73.602 and 73.606(b) of the Commission Rules. The informal objection will be granted to the extent indicated herein and denied in all other respects.

(c) Whether, in light of the evidence adduced pursuant to the foregoing issues, the applicant misrepresented to the Commission the availability of its specified site; and

(d) If issue 1(c), above, is resolved in the affirmative, the effect thereof on the applicant's comparative or basic qualifications.

2. To determine, with respect to Native Alaska Broadcasting, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine, with respect to Native Alaska Broadcasting, whether circumstances exist to warrant a waiver of § 73.685(e) of the Commission's rules.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That § 73.685(a) of the Commission's Rules is waived, with respect to all of the applicants.

12. It is further ordered, That the petition to deny and the informal objection filed against Minority Broadcasters of Alaska are granted to the extent indicated herein and denied in all other respects.

13. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

14. It is further ordered, That Northern Television, Inc. and KTBY, Inc. are made parties respondent to this proceeding.

15. It is further ordered, That, in the event that Minority Broadcasters of Alaska is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM Station KBYR, Anchorage, Alaska, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

16. It is further ordered, That Minority Broadcasters of Alaska shall submit an amendment which clarifies the nature of the applicant, to the presiding Administrative Law Judge within 20 days after this Order is released.

17. It is further ordered, That Native Alaska Broadcasting shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

18. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

19. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 85-27421 Filed 11-15-85; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-747-DR]**

### Connecticut; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the States of Connecticut [FEMA-747-DR], dated October 11, 1985, and related determinations.

Dated: November 6, 1985.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616..

### Notice

The notice of a major disaster for the State of Connecticut, dated October 11, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 11, 1985:

Litchfield County for Public Assistance.

**Samuel W. Speck,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency*

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 85-27355 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-752-DR]**

### Louisiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-752-DR), dated November 1, 1985, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

### Notice

Notice is hereby given that, in a letter of November 1, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from Hurricane Juan, beginning on or about October 27, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance, if necessary, in the affected areas, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public

facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster and are designated eligible:

Jefferson, Lafourche, St. Bernard, St. Charles, St. John the Baptist, and Terrebonne Parishes for Individual Assistance.

Dated: November 1, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Robert H. Morris,**

*Acting Director, Federal Emergency Management Agency.*

[FR Doc. 85-27356 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-02-M

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[FEMA-752-DR]

## Louisiana; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Louisiana (FEMA-752-DR), dated November 1, 1985, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

### Notice

The notice of a major disaster for the State of Louisiana, dated November 1, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1985:

Livingston and St. Tammany Parishes for Individual Assistance.

Tangipahoa, Ascension and Plaquemines Parishes, and Ward 9 of Orleans Parish as adjacent areas for Individual Assistance.

Dated: November 8, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Joseph A. Moreland,**

*Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 85-27357 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-02-M

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[FEMA-746-DR]

## Puerto Rico; Amendment to Notice of a Major-Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-746-DR), dated October 10, 1985, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

### Notice

The notice of a major disaster for the Commonwealth of Puerto Rico, dated October 10, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 10, 1985:

The Municipalities of Aibonito, Arroyo, Guayama, Guayanilla, Humacao, Maunabo, Naguabo, Patillas, and Yabucoa for Public Assistance.

The Municipalities of Adjuntas, Aguas Buenas, and Ciales for Individual Assistance.

Dated: November 4, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Samuel W. Speck,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 85-27358 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-02-M

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[FEMA-753-DR]

## West Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA-753-DR), dated November 7, 1985, and related determinations.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

### Notice

Notice is hereby given that, in a letter of November 7, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, landslides, and flooding, beginning on or about November 3, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance, if necessary, in the affected areas, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 408(b) of PL 93-288, you are authorized to advance to the State its 25-percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster and are designated eligible:

Grant, Greenbrier, Hardy, Harrison, Pendleton, Pocahontas, Preston, and Tucker Counties eligible for Individual Assistance.

Dated: November 7, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

*Deputy Director, Federal Emergency Management Agency.*

[FR Doc. 85-27359 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-02-M

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[Docket No. FEMA-REP-3-PA-4]

## Pennsylvania Radiological Emergency Response Plan

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of receipt of plan.

**SUMMARY:** For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the Commonwealth of Pennsylvania has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Pennsylvania, and include those of local governments near the Philadelphia Electric Company's Peach Bottom Atomic Power Station, located in Peach Bottom Township, York County, Pennsylvania.

**DATE PLANS RECEIVED:** October 17, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul P. Giordano, Regional Director, Federal Emergency Management Agency Region III, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106, (215) 597-9419.

Notice: In support of the Federal requirement for emergency response plans, FEMA has promulgated a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350.8), "Review and Approval of State and Radiological Emergency Plans and Preparedness," 48 FR 44338, the State Radiological Emergency Plan for the Commonwealth of Pennsylvania was received by the Federal Emergency Management Agency Region III Office on October 17, 1985.

Plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone of the Peach Bottom Atomic Power Station were received on August 14, 1985, and October 17, 1985. Plans are included for Chester, Lancaster and York counties and municipalities and school districts in those counties.

Copies of the Plan are available for review at the FEMA Region III Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart *C of 44 CFR Part 5*. There are 1572 pages in the county, municipality and school district documents.

Comments on the Plan may be submitted in writing to Mr. Paul Giordano, Regional Director, at the above address within thirty days of this Federal Register notice.

FEMA Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plans. Details of the meeting were contained in local newpapers at least two weeks prior to the meeting. Local radio stations also announced the meeting, which was conducted on Thursday, May 9, 1985.

Paul P. Giordano,

*Regional Director.*

[FR Doc. 85-27354 Filed 11-15-85; 8:45 am]

BILLING CODE 6718-01-M

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## FEDERAL MARITIME COMMISSION

## Automated Tariff Filing and Information System (ATFI); Formation of an Advisory Committee

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of formation of an advisory committee.

**SUMMARY:** The Commission hereby announces the establishment of an advisory committee to make continuing recommendation on the implemention of an automated tariff filing and information system. The Committee will be comprised of representatives of interests affected by an automated tariff filing and information system, including representatives of conferences, ocean common carriers, non-vessel operating common carriers, ocean freight forwarders, shippers, shippers' associations, ports and transportation support firms.

**DATE:** The Advisory Committee Charter will be filed with the Secretariat, General Services Administration 15 days after the date of this notice.

**ADDRESS:** The first meeting of the Advisory Committee will be held in a hearing room at the offices of the Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573, on a date to be announced.

**FOR FURTHER INFORMATION CONTACT:**

*Committee Chairperson,* Commissioner Edward J. Philbin, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573, (202) 523-5715

*Committee Executive Secretary,* John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street NW, Washington, DC 20573, (202) 523-5866.

### Background

On April 12, 1985, the Commission published in the **Federal Register** (50 FR 14453) a notice of its intent to form an Automated Tariff Filing and Information System (ATFI) Advisory Committee pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 1). The notice indicated that the Commission was seeking public comment "on the formation of the Advisory Committee including the interests represented, the scope of its functions and the needs of the public that should be addressed." The Commission further indicated that any persons wishing to participate in the Advisory Committee should so indicate in their comments and advise "as to the interest they wish to represent and why they can adequately represent that interest."

The notice indicated that the Advisory Committee would consist of 15 to 20 persons (in addition to agency representatives) representing:

Conferences
Common Carriers by Water (VOCCs and NVOCCs)
Other Common Carriers
Freight Forwarders
Shippers' Associations
Other Shippers
Ports and
Transportation Support Firms.

In response to that notice, the Commission received comments from 26 entities. Comments were received from three conferences, three ports, three shippers and a shippers' association, three VOCCs, one NVOCC, one freight forwarder, one NVOCC/Freight Forwarder and a freight forwarder association. Also, nine transportation support firms, including one association whose membership includes such firms, responded. The response received indicate wide support for the Commission's efforts. A few commenters provided extensive comments as to the scope of the Advisory Committee's functions and the needs of the public that should be addressed. Specific discussion of these comments follows:

*Conferences*

There were three conference responses—the U.S. Atlantic & Gulf/Australia-New Zealand Conference, the

Inter-American Freight Conference (IAFC) and the United States-European Carrier Association (USECA).[1] All three commenters fully support the formation of the Advisory Committee and request membership on the Committee. IAFC indicates that the ATFI will enable conferences and common carriers, etc., to have a greater access to the rate system and eliminate all middle handling of tariff information. USECA suggests that the paramount general purpose of the ATFI plan should be to facilitate trade and commerce and to provide for modernized filing procedures and tariff integrity with a minimum of government intervention and regulatory costs. U.S. Atlantic & Gulf/Australia-New Zealand Conference sees automated tariffs as a major cost saving proposal for carriers and conferences.

*Ocean Common Carriers*

Three vessel operating ocean common carriers, Sea-Land Service Inc. (Sea-Land), American President Lines, Ltd. (APL) and Moller Steamship Company, Inc. (Moller), filed comments. Sea-Land states that it is a major tariff filer with the Commission and is a pioneer in tariff automation. Moller indicates that it is actively pursuing establishing an automated tariff system. All three carriers request appointment to the Advisory Committee.

*Freight Forwarders/NVOCCs*

Two freight forwarders, Harper Robinson and Company and George S. Bush & Co., Inc., filed comments. These firms have requested to participate on the Advisory Committee, but did not provide detailed comments. Harper Robinson operates both as an ocean freight forwarder and as an NVOCC. An NVOCC, Zephyr Container Line, volunteered to serve on the Committee to represent the interests of small NVOCCs. The National Customs Brokers and Forwarders Association of America Inc. also requested representation on the Committee.

*Shippers*

Three shippers and an association of shippers filed comments in support of the ATFI Advisory Committee. Two of these firms and the association offered to participate. B.F. Goodrich (Goodrich) believes that the composition of the Committee should be made up mainly of shippers and VOCCs since these are the two groups that will benefit the most from any program that is developed and are also the two groups that will have the greatest impact on the automation process. E.I. Du Pont DeNemours & Company (DuPont) believes that an automated tariff system offers the Commission the only cost effective means of achieving its statutory responsibility regarding tariff maintenance that is consistent with the Administration's objective of reducing the size of government. Such a system would have the potential for providing administrative and financial relief to forwarders, carriers and shippers and will result in other benefits such as a uniform interpretation of tariff applications and tariff simplification. The American Importers and Exporters Association (AIEA) also expressed support for the Advisory Committee. Goodrich, DuPont and AIEA requested representation on the Committee.

Rohm and Haas Company, in its capacity as an export and import shipper, stated that there is a requirement for a new, common, universal tariff-item-numbering system which would allow access by tariff item number as well as by commondity name or tariff page. The firm did not request Committee representation.

*Ports*

Three comments were received from port interests. A comment was received from a Port of San Francisco representative who is also the Chairman of the Tariff and Practices Committee for the California Association of Port Authorities. The Association requests that one of its members be allowed to represent the Association or, perhaps ports in general on the Advisory Committee. The Philadelphia Port Corporation and the Virginia Port Authority also filed comments urging prompt tariff automation and requesting representation on the Committee.

*Transportation Support Firms*

Eight transportation support firms and one trade association of such firms submitted comments. All but one requested to participate on the Advisory Committee. These entities include the following:

Distribution Sciences
Lightyear Resources of Oregon
The Journal of Commerce, Inc.
Transax Data Corporation
Starcom International, Inc.
Tariff Resources, Inc.
Data Resources, Inc.
Distribution Publications, Inc. And
The Information Industry Association

The specific interests these entities represent are also quite varied. Transax Data Corporation is a traditional tariff publishing and watching firm; Lightyear Resources of Oregon, Distribution Publications, Inc., Distribution Sciences, and Data Resources, Inc., appear to be consulting firms; Tariff Resources, Inc., Starcom International, Inc., and The Journal of Commerce, Inc., appear to be tariff information companies; the Information Industry Association (IIA) is a trade association serving those interested in business opportunities associated with the generation, distribution and use of information. The IIA represents nearly 400 information publishers and information service organizations.

This group of commenters contributed the most detailed of the comments received. Regarding the scope of functions for the Advisory Committee, Distribution Publications, Inc., believes that the evaluation to be undertaken should identify the needs of the Commission, private sector users and other governmental agencies and insure that the fundamental goals, including the 12 stated "policy goals," are met by the final systems. Additionally, evaluation in regard to compatibility with automated systems currently in use should be undertaken. The Advisory Committee function should also extend beyond the "design and implementation phases." User education would be one area in which the Advisory Committee could be of considerable value to the Commission. In addition, ongoing evaluation of the system to insure that it continues to meet the needs of the Commission, users and the public in our changing regulatory and business environment could also be undertaken.

The Journal of Commerce does not wish to be directly represented on the committee but recommends that any Advisory Committee established examine closely the responses the FMC received to its 1983 request for information/proposals and the issues raised by those submissions. In addition, any Advisory Committee established by the Commission should be charged with consideration of OMB's draft circular issued on March 15, 1985, that is designed, *inter alia*, to guide all federal agency information, collection and dissemination activities.

The IIA submitted a copy of its testimony before the United States House of Representatives Committee on Government Operations, Subcommittee on Government Information, Justice and Agriculture, which was delivered on April 29, 1985. While not addressed specifically to the FMC's automated

[1] The United States Flag-Far East Discussion Agreement (FMC Agreement 10050) filed a response requesting representation on the Advisory Committee through one of its member lines. Because Sea-Land Services, Inc. and American President Lines, Ltd. are members of that conference and separately asked to participate, the Commission will honor this request.

tariff system, it does delve into the overall problems facing the Federal Maritime Commission and the Securities and Exchange Commission in developing an automated system. The IIA presented eight basic points which represent the consensus of its members on electronic filing. These points are:

First, as each agency commences its planning and preparation, it should determine its own functional requirements or demand. It should then make the same determination for outside users in the interested public and compare the results.

Second, government agencies should place primary reliance on the private sector for fulfillment of their own requirements or demand as well as outside requirements or demand.

Third, in procuring services from the private sector, agencies should consider separate contracts for basic and value-added functions.

Fourth, in line with the multiple functions of electronic filing systems, agencies should expect to fund their operations from a mix of filing fees, appropriations, and user charges. Any reliance on barter should be limited in scope.

Fifth, Congressional oversight should focus on the maintenance of open, nonrestrictive information policies, with any exceptions clearly authorized should they prove necessary.

Sixth, agencies should be careful not to create the appearance or possibility of conflict of interest with the primary vendor or vendors.

Seventh, agencies should certify electronically filed database records as official.

Eight, to provide needed outside perspective, agencies should seek the advice of the interested and expert groups which will be providing and using the relevant systems and information.

In commenting on the Commission's intention to form an Advisory Committee, IIA indicates that the composition is too narrow:

> Although filers and outside users will be well represented, suppliers of the operating technology and value-added information vendors will not. We believe it should be possible, even with the stakes created by competition for government procurement dollars, to find a fair and ethical way for the government to draw on needed expertise in these areas. In this regard, professional and trade associations can be of service.

*Committee Membership*

The substantive and critical comments received in response to the Commission's **Federal Register** Notice primarily concentrated on the membership and interests represented on the Advisory Committee. The primary concern was best expressed by IIA: ATFI system users would be over-represented but private sector vendors of the services would be under represented. However, a review of the responses indicates that the contrary appears to be true. Approximately half the responses were received from transportation support firms, specifically those firms with a present interest in providing automated tariff services. The immediate concern, in light of this pattern of responses, is that Committee proceedings would be dominated by firms who have a special interest in ensuring that the ATFI system would be designed to conform to their own particular service currently offered. While this is indeed a legitimate concern of the Committee, it is but one policy goal that should not overshadow or inhibit ample examination of the remaining policy goals.

Nevertheless, the Commission has determined that it is necessary to take some additional precautions to ensure objectivity in Advisory Committee proceedings. Accordingly, prior to the publication of this Notice, the Commission invited all commenters who expressed an interest to become members on the condition that they agree to be barred from bidding on any subsequent procurement solicitation associated with the ATFI project. Those members that accepted this condition of membership should have a more objective frame of reference in Committee proceedings. On this basis the Commission finds that the establishment of an ATFI Advisory Committee is in the public interest.

Accordingly, the following organizations are represented by the 19 non-agency members of the Committee:

1. U.S. Atlantic & Gulf/Australia-New Zealand Conference.
2. Inter-American Freight Conference.
3. United States-European Carrier Associations.
4. Sea-Land Service, Inc.
5. American President Lines, Ltd.
6. Moller Steamship Company, Inc.
7. Harper Robinson and Company.
8. George S. Bush & Co., Inc.
9. National Customs Brokers and Forwarders Association of America, Inc.
10. Zephyr Container Line.
11. B.F. Goodrich Company.
12. E.I. DuPont de Nemours and Company.
13. American Association of Exporters & Importers.
14. Port of San Francisco.
15. California Association of Port Authorities.
16. Philadelphia Port Corporation.
17. Virginia Port Authority.
18. Information Industry Association.
19 Tariff Resources, Inc.
20. Distribution Publications, Inc.

Communications to any Committee member concerning Advisory Committee matters may be addressed to: [Name of Member], ATFI Project Advisory Committee, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

By the Commission.

**Bruse A. Dombrowski,**

*Acting Secretary.*

[FR Doc. 85-27340 Filed 11-15-65; 8:45 am]

BILLING CODE 6730-01-M

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**[Agreement No. 217-010612-002]**

## Linabol-CSAV Vessel Space Charter Agreement; Erratum

The **Federal Register** Notice of October 21, 1985 (Vol. 50, No. 203, page 42598) stated that the proposed amendment would delete the Great Lakes from the scope of the agreement. The parties have since notified the Commission that it was their intention to delete only Canadian Great Lakes ports from the agreement.

By Order of the Federal Maritime Commission.

Dated: November 13, 1985.

**Bruce A. Dombrowski,**

*Acting Secretary.*

[FR Doc. 85-27391 Filed 11-15-85; 8:45 am]

BILLING CODE 6730-01-M

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## FEDERAL RESERVE SYSTEM

## Bancorp of Mississippi, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-26085), published at page 45666 of the issue for Friday, November 1, 1985.

The correct Reserve Bank for this application is St. Louis.

Board of Governors of the Federal Reserve System, November 12, 1985.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 85-27331 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

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## Louisiana Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in the notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of 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 December 4, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to engage *de novo* through its subsidiary, LINC Switch, Inc., Baton Rouge, Louisiana, in establishing, promoting and adminstering a regional electronic funds transfer network for interchanging financial transactions between and among participating depository institutions pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, November 12, 1985.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 85-27334 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

## United Missouri Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.*, Kansas City, Missouri; to acquire United Missouri Brokerage Services, Inc., Kansas City, Missouri, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, November 12, 1985.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 85-27333 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

## Operating Schedule for Wire Transfer of Funds

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Operating Schedule for Wire Transfer of Funds.

**SUMMARY:** The Board of Governors has approved two modifications to the curent FedWire operating schedule. The deadline for interdistrict third-party wire transfers has been changed from 1630 to 1700 Eastern Time, and FedWire will now open not later than 0900 Eastern Time.

**EFFECTIVE DATE:** January 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Earl G. Hamilton, Assistant Director (202/452-3879), or Julius F. Oreska, Manager, Division of Federal Reserve Bank Operations (202/452-3878), or Joy W. O'Connell, Telecommunication Device for the Deaf (202/452-3244), Board of Governors of the Federal Reserve System, Washigton, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Board of Governors of the Federal Reserve System ("Board") has approved policy changes in the Federal Reserve Banks' operating schedule for the wire transfer of funds ("FedWire"). The deadline for intradistrict third-party wire transfers is changed from 1630 to 1700 Eastern time, and FedWire will now open not later than 0900 Eastern Time.

In 1981, the Federal Reserve adopted the following operating schedule for FedWire.[1]

Interdistrict Third-Party Transfer Deadline: 1630 Eastern Time[2]

Bank to Bank Transfer Deadline: 1830 Eastern Time

Early this year, the California Bankers Clearing House Association requested the Federal Reserve to review FedWire operating hours. A study was made to determine if a change in the operating schedule was desirable or necessary. First, a survey was conducted to

[1] The Reserve Banks have the option of permitting depository institutions to send intradistrict transfers until 1800.

[2] Unless otherwise indicated, all time references are stated in terms of Eastern Time.

determine the views of depository institutions about the current operating schedule. The survey was conducted in eight Federal Reserve Districts, and included the views of 100 institutions. Second, an economic impact analysis was performed to determine the impact of changing the operating schedule. The survey of depository institutions presented seven alternative operating schedules to be ranked, along with the current schedule, in order of preference. Although the current operating schedule, including the 1630 deadline for interdistrict third-party transfers, received the greatest support, West Coast institutions preferred a later deadline for such transfers. The later deadline would enable West Coast banks to send transfers later in their business day. The result of the economic impact analysis was that the proposed revisions will not have a major economic impact on depository institutions.

The Board approved the change in the interdistrict third-party deadline to 1700 from 1630 to provide additional processing time for West Coast institutions. This change will not significantly affect institutions in other sections of the country. Currently, nine districts permit intradistrict third-party tansfers to be sent at least until 1700.

The issue of the opening time for FedWire was raised by several institutions responding to the survey. Currently, opening hours range from 0800 to 1100, with the majority of Reserve Banks beginning operations by 0900. Survey respondents believed that more uniform opening hours would enable them to operate more efficiently and allow better management of their intra-day funds positions. In response, the Board adopted an opening time of no later than 0900 Eastern time.

By order of the Board of Governors of the Federal Reserve System, November 12, 1985.

William W. Wiles,

*Secretary.*

[FR Doc. 85-27330 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

## Supervisory Policy Statement on Repurchase Agreement Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Policy statement.

**SUMMARY:** On October 21, 1985, the Federal Financial Institutions Financial Council approved detailed supervisory guidelines on repurchase agreement transactions and recommended their adoption by federal regulatory authorities. The Board of Governors adopted these guidelines on October 31, 1985. The policy statement is intended to provide financial institutions with minimum safety and soundness guidelines for managing credit risk exposure. It also provides guidance related to the possession or control of securities involved in repurchase agreement transactions.

**EFFECTIVE DATE:** November 15, 1985.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Plotkin, Assistant Director, or Michael J. Schoenfeld, Senior Securities Regulations Analyst, (202) 452-2782, Division of Banking Supervision and Regulation, or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD), (202) 452-3244, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Certain financial institutions engaging in repurchase agreement transactions have failed to adopt appropriate prudential policies and procedures to prevent or minimize losses when repurchase agreement counterparties become insolvent. Following the collapse of a Florida-based government securities firm in early 1985, the Federal Reserve Bank of New York, on behalf of the System, initiated a program of educating market participants as to prudent practices and pitfalls in the repo market. Seminars have been and are being held throughout the country at each of the Federal Reserve Banks. Voluntary capital adequacy guidelines for unregulated nonbank government dealers, developed by the Federal Reserve Bank of New York, were adopted in May 1985.

The policy statement is intended to provide financial institutions with minimum safety and soundness guidelines for managing credit risk exposure to conterparties and providing for the appropriate countrol of securities involved in repurchase agreement transactions. Federal examiners will review written policies and procedures of depository institutions to determine their adequacy in light of these minimum guidelines and the scope of each depository institution's repurchase agreement transactions.

Financial institutions are advised to develop written policies addressing key factors related to repurchase agreements, such as prior approval and the periodic credit evaluations of repurchase agreement counterparties, maximum position and temporary exposure limits, and specific identification of authorized counterparties (e.g., regulated affiliate of unregulated government security dealer). Depository institutions doing business with unregulated government securities dealers are urged to request verification that such dealers voluntarily comply with the Federal Reserve Bank of New York's minimum capital guidelines.

The policy statement discusses the need for full collateralization, frequent mark-to-market procedures and the need for maintaining agreed upon collateral margins. Depository institutions are cautioned that failure to obtain control of collateral when lending cash may be considered an unsecured extension of credit subject to lending restrictions, and that substantial losses are likely to be incurred in the event of insolvency of the counterparty. State-chartered banks are encouraged to consult with their counsel or state banking authorities as to the applicability of state lending restrictions to repurchase agreements. Finally, depository institutions are advised to consult their counsel about state law governing control of securities and custodial agreements, and to contact their District Federal Reserve Banks with questions concerning the procedures for obtaining control of repurchase agreement securities through the book-entry system.

Acting pursuant to its supervisory's authority over State member banks contained in section 9 (12 U.S.C. 321, *et seq.*) and section 11 (12 U.S.C. 248) of the Federal Reserve Act and the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b)) and related provisions of law, the Board of Governors adopted the following policy statement:

### Statement of Supervisory Policy Concerning Repurchase Agreements of Depository Institutions With Securities Dealers and Others

*Purpose*

Depository institutions and others involved with the purchase of United States Government and Agency obligations under agreements to resell (reverse repurchase agreement),[1] have

[1] In order to avoid confusion among market participants who sometimes use the same term to describe different sides of the same transaction, the term "repurchase agreement" will be used in the balance of this statement to refer to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities acquires funds by transferring the securities to another party under an agreement to repurchase the securities at an agreed upon future date. A reverse repurchase (resale) agreement is one in which a party provides funds by acquiring securities pursuant to an agreement to resell them at an agreed upon future date.

sometimes incurred significant losses. The most important factors causing these heavy losses have been inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions.[2]

The following minimum guidelines address the need for managing credit risk exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions, and should be followed by depository institutions that enter into repurchase agreements with securities dealers and others.

Depository institutions that actively engage in repurchase agreements are encouraged to have more comprehensive policies and controls to suit their particular circumstances. The examining staffs of the Federal bank, thrift and credit union supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy in light of these minimum guidelines and the scope of each depository's operations.

I. Credit Policy Guidelines

The apparent safety of short-term repurchase agreements which are collateralized by highly liquid, U.S. Government and Federal agency obligations has contributed to an attitude of complacency. Some portfolio managers have underestimated the credit risk associated with the performance of the counterparty to the transaction, and have not taken adequate steps to assure control of the securities covered by the agreement.

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. At a minimum, those policies and procedures should cover the following:

A. *Written policies* should establish "know your counterparty" principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is a dealer in the underlying securities. Some firms which deal in the markets for U.S. Government and Federal agency securities are subsidiaries of, or related to, financially stronger and better known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express guarantee, the stronger firm's financial position cannot be relied upon in assessing the creditworthiness of a counterparty.

It is important to know the legal entity that is the actual counterparty to each repurchase agreement transaction. A depository institution should know about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations depository institutions may use, or serve as, brokers or finders in order to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent the names of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

B. *Dealings with unregulated securities dealers.* A dealer in U.S. Government and Federal agency obligations is not necessarily a Federally insured bank or thrift, or a broker/dealer registered with the Securities and Exchange Commission. Therefore, the dealer firm may not be subject to any Federal regulatory oversight.

A depository institution doing business with an unregulated securities dealer should be certain that the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guideline, which currently calls for liquid capital to exceed measured risk by 20 percent (that is, the ratio of a dealer's liquid capital to risk of 1.2:1). This ratio can be calculated by a dealer using either the Securities and Exchange Commission's Net Capital Rule for Brokers and Dealers (Rule 15c3–1) or the Federal Reserve Bank of New York's Capital Adequacy Guideline for United States Government Securities Dealers. To ensure that an unregulated dealer complies with either of those capital standards, it should certify its compliance with the capital standard and provide the following three forms of certification:

(1) A letter of certification from the dealer that the dealer will adhere on a continuous basis to the capital adequacy standard;

(2) audited financial statements which demonstrate that as of the audit date the dealer was in compliance with the standard and the amount of liquid capital; and

(3) a copy of a letter from the firm's certified public accountant stating that it found no material weaknesses in the dealer's internal systems and controls incident to adherence to the standard.[3]

C. *Periodic evaluations* of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Prior to engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings (if any) from its counterparties, and should insist that similar information be provided on a periodic and timely basis in the future. Recent failures of government securities dealers have typically been foreshadowed by delays in producing these statements. Many firms are registered with the Securities and Exchange Commission as broker/dealers and have to file financial statements and should be willing to provide a copy of these filings.

The counterparty credit analysis should consider the financial statements of the entity that is to be the depository institution's counterparty as well as those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. As part of this analysis, the depository institution should make inquiry about the counterparty's general reputation and whether there have been any formal enforcement actions against the counterparty or its affiliates by State or Federal securities regulators.

D. *Maximum position* and temporary exposure limits for each approved counterparty should be established based upon credit ananlysis performed. Periodic reviews and updates of those limits are necessary.

Individual repurchase agreement counterparty limits should consider overall exposure to the same or related counterparty throughout the depository institution. Repurchase agreement

[2] Throughout this document repurchase agreements are generally discussed in terms of secured credit transactions. This usage should not be deemed to be based upon a legal determination.

[3] This letter should be similar to that which must be given to the SEC by registered broker/dealers.

counterparty limitations should include the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

E. *Lending Limitations.* Federally-chartered savings institutions and Federal credit unions are subject to all Federal regulations in this area. State-chartered banks or savings institutions should consult with their counsel and/or state banking or thrift authorities as to the applicability of state lending restrictions to repurchase transactions.

Except as otherwise provided in applicable agency regulations and State law, it should be assumed that unless the depository institution's interest in securities held as collateral under a repurchase agreement is assured, a repurchase agreement transaction with any single counterparty will be subject to the lending limitations applicable to that institution. Conversely, the market value of securities sold under a repurchase agreement in excess of the amount of proceeds received by the depository institution could be viewed as an unsecured extension of credit to the repurchase agreement counterparty subject to the depository institution's lending limits.

The application of lending limitations on loans by national banks to certain types of repurchase transactions is currently under review by the Comptroller of the Currency. Until this review is completed, national banks as a matter of prudent banking should treat repurchase agreements as if they are subject to the lending limit unless the bank has control of the underlying securities.

## II. Guidelines for Controlling Repurchase Agreement Collateral

Repurchase ageements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution negotiates written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis. If prudent management control requirements of repurchase agreements are too burdensome for a depository institution, other asset/liability management tools should be used.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid Government securities. However, experience has shown that the collateral securities will probably *not* serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see "C. Control of Securities," page 6). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. Management should obtain a written legal opinion as to the adequacy of the procedures utilized to establish and protect the depository institution's interest in the underlying collateral.

### *General Requirements*

A. *A written agreement* specific to a repurchase agreement transaction or master agreement governing all repurchase agreement transactions should be entered into with each counterparty. The written agreement should specify all the terms of the transaction and the duties of both the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. The repurchase and custodial agreements should specify, but should not be limited to, the following:

- Acceptable types and maturities of collateral securities;
- Initial acceptable margin for collateral securities of various types and maturities;
- Margin maintenance, call, default and sellout provisions;
- Rights to interest and principal payments;
- Rights to substitute collateral; and
- The persons authorized to transact business on behalf of the depository institution and its counterparty.

B. *Confirmations.* Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. The confirmation should identify specific collateral securities.

C. *Control of Securities.* As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities.The legal steps necessary to protect its interest may vary with applicable facts and law and accordingly should be undertaken with the advice of counsel. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve Bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve Bank for the District in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of the book entry securities, making appropriate entries in the books of a third party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of a third party custodian acting pursuant to a tripartite agreement with the depository institution and the counterparty, ensuring adequate segregation and identification of either physical or book-entry securities.

Where control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of the insolvent counterparty. In such instance, *substantial losses are likely to be incurred.* Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed: (1) It is completely satisfied as to the creditworthiness of the counterparty; (2) the transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty; (3) periodic credit evaluations of the counterparty are conducted; and (4) the depository institution has ascertained that collateral segregation procedures of the counterparty are adequate. Unless prudential internal procedures of these types are instituted and observed, the depository institution may be cited by its financial supervisory agency for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third party deliveries

should be confirmed in writing directly by the custodian. It is not acceptable to receive confirmation from the counterparty that the securities are segregated in a depository institution's name with a custodian; the depository institution should, however, obtain a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, payment for securities should not be made until the securities are actually delivered to the depository institution or its agent. The custodial contract should provide that the custodian takes delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third party custodian. Any substitution of securities should take into consideration the following discussion of "margin requirements."

D. *Margin Requirements.* The amount paid by a depository institution under the repurchase agreement should be less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. Factors to be considered in establishing an appropriate margin include the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. Government and Federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures should require daily mark-to-market of repurchase agreement securities to the bid side of the market. Repurchase agreements should provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. *Prudent management* procedures should be followed in the administration of any repurchase agreement. Longer term repurchase agreements require management's daily attention to the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or prinicipal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values and adjusting collateral margin may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

F. *Overcollateralization.* A depository institution should use current market values, including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract should provide that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

By order of the Board of Governors, this 12th day of November, 1985.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 85-27328 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

## Mellon Bank Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

November 8, 1985.

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 concentation of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation,* Greenburg, Pennsylvania; to acquire 100 percent of the voting shares of Commonwealth National Financial Corporation, Harrisburg, Pennsylvania, thereby indirectly acquiring The Commonwealth National Bank, Harrisburg, Pennsylvania.

Applicant has also applied to acquire Commonwealth National Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life ad credit accident and health insurance on extensions of credit by Commonwealth's banking subsidiary, pursuant to section 4(c)(8)(A) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.25(b)(9) of Regulation Y (12 CFR 225.25(b)(9)).

2. *Newco,* Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Commonwealth National Financial Corporation, Harrisburg, Pennsylvania, thereby indirectly acquiring The Commonwealth National Bank, Harrisburg, Pennsylvania.

Applicant has also applied to acquire Commonwealth National Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsuring credit life ad credit accident and health insurance on extensions of credit by Commonwealth's banking subsidiary, pursuant to section 4(c)(8)(A) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.25(b)(9) of Regulation Y (12 CFR 225.25(b)(9)).

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Midland American Corporation,* San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Crocker National Bank, San Francisco, California.

Applicant has also applied to acquire each of the following companies and engage in the listed activities:

(1) Crocker Mortgage Company, Inc., San Diego, California ("CMC"), which originates, purchases and services loans secured by real estate, and it services loans and other extensions of credit for third parties. It also sells packaged loans to financial institutions throughout the United States. Applicant relies on the authority of § 225.25(b)(1) of Regulation Y for the continuation of CMC's activities.

(2) Crocker Trust Company of California, Hawthorne, California ("CTC"), a trust company incorporated in California, whose three principal types of business are furnishing services to security holders, brokers, dealers and issuers as an agent of the Crocker National Bank; furnishing data processing services to the Crocker National Corporation and its subsidiaries; and furnishing computer software services to the Crocker National Corporation and its subsidiaries. Applicant hereby seeks authority to broaden the geographic scope of such activities in order to be able to conduct them a nationwide basis and relies on § 225.25(b)(3) and 225.25(b)(7) of Regulation Y as authority to do so. No other change in the nature of such activities is contemplated.

(3) Crocker Financial Corporation, Limited Honolulu, Hawaii ("CFC"), which operates as an industrial loan company making secured and unsecured loans to individuals. CFC also acts as agent for the sale of credit life, accident and health insurance. CFC will conduct its activities throughout the United States. Applicant relies on the authority of §§ 225.25(b)(2) and 225.25(b)(8) of Regylation Y for the continuation of these activities.

(4) Crocker Life Insurance Company, San Francisco, California ("CLIC"), which underwrites credit life and disability insurance for borrowing customers of Crocker National Corporation and its subsidiaries throughout the United States. Applicant relies on § 225.25(b)(9) as authority for the continuation of CLIC's activities.

(5) Crocker Investment Management Corp., San Francisco, California ("CIMCO") which provides portfolio investment advice and general economic and financial information and advice. CIMCO serves trusts, fiduciaries, individuals and companies throughout the United States. Applicant relies on § 225.25(b)(4) of Regulation Y as authority for the continuation of CIMCO's activities.

(6) CNC Insurance Agency, Inc., San Francisco, California ("CIA") which is an agent for the sale of credit life and disability insurance directly related to extensions of credit by subsidiaries of the Crocker National Corporation. CIA's customers are individuals to whom credit has been granted by subsidiaries of the Crocker National Corporation. CIA operates throughout the United States. Applicant relies on § 225.25(b)(8) of Regulation Y as authority for the continuation of this activity.

(7) Crocker Holdings, Inc., Memphis, Tennessee ("CHI"), which engages in the liquidation of real estate loans and collateral. Applicant relies on the authority of § 255.22(a) of Regulation Y for the continuation of CHI's activities.

(8) Crocker Pacific Trade Corporation, San Francisco, California ("CPTC") which conducts activities as an export trading company. Applicant relies on the authority of section 4(c)(14) of the Bank Holding Company Act for the continuation of CPTC's activities. Comments on this application must be received not later than November 29, 1985.

Board of Governors of the Federal Reserve System, November 8, 1985.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 85-27357 Filed 11-15-85; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 83P-0003 et al.]**

### Availability of Approved Variances for Sunlamp Products

*Correction*

In FR Doc. 85-25203, beginning on page 43006 in the issue of Wednesday, October 23, 1985, make the following correction in the table on page 43006. The first entry should read:

| Docket No. | Organization granted the variance | Sunlamp product | Paragraph in 21 CFR 1040.20 pertaining to the variance | Effective date/ termination Date |
|---|---|---|---|---|
| 83P-0003 (amendment) | UVATEC, Inc., 13135 Ventura Blvd., Suite 306, Studio City, CA 91604. | Osram or Philips ultraviolet lamps intended to be used only in UVATEC sunlamp products. | (d)(2) | July 25, 1985-Feb. 24, 1989. |

BILLING CODE 1505-01-M

[Docket No. 84N-0266]

## Policy Statement; Class II Medical Devices

*Correction*

In FR Doc. 85-25084 beginning on page 43060 in the issue of Wednesday, October 23, 1985, make the following corrections:

1. On page 43063, in the third column, in the fourteenth line, insert "378" at the end of the line.

2. On page 43064, in the first column, in the fourteenth line from the bottom, "1476" should read "1479".

3. On page 43065, in the second column, in the paragraph numbered "7", insert the following sentence at the end of the paragraph: "These comments concluded that FDA does not have authority to substitute voluntary standards for performance standards established under section 514 of the act."

4. On page 43066, in the first column, in the fifth line, "with" should read "wish".

BILLING CODE 1505-01-M

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## Centers for Disease Control

## National Instutute for Occupational Safety and Health; NIOSH/MSHA Testing and Certification of Positive-Pressure Closed-Circuit Self-Contained Breathing Apparatus

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Notice acceptance of applications for approval of positive-pressure closed-circuit self-contained breathing apparatus.

**SUMMARY:** NIOSH will now accept applications for approval of positive-pressure closed-circuit self-contained breathing apparatus for use in mines and mining. In addition, this notice specifies the performance requirements for such apparatus to be certified as approved by the Mine Safety and Health Administration (MSHA) and NIOSH and the precautions and limitations on use of certified apparatus.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy J. Bollinger, Chief, Certification Branch, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone: (304) 291-4331 or FTS 923-4331.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of Title 30, Code of Federal Regulations, Part 11 (30 CFR 11), MSHA and NIOSH presently test and certify closed-circuit self-contained breathing apparatus. Unlike the certification of open-circuit breathing apparatus under the requirements of 30 CFR 11 (Subpart H), which may be for demand (negative pressure) or pressure-demand (positive pressure) apparatus, the closed circuit certifications are classified as to whether they are negative or positive pressure.

NIOSH was asked to develop new performance requirements for certification of positive-pressure closed-circuit self-contained breathing apparatus. Positive-pressure closed-circuit apparatus are now available, and there is a need for such apparatus for use in mines and mining atmospheres where long duration apparatus are required. On July 24, 1984, NIOSH sent a letter to interested persons, soliciting their comments on the practicability, safety, and need for such certification, requesting recommendations for performance criteria for such apparatus, and seeking suggestions which MSHA and NIOSH might apply to limitations on and cautions for safe use of such apparatus.

NIOSH reviewed the replies to that letter and determined, jointly with MSHA, that with certain limitations on safe use of the positive-pressure closed-circuit self-contained breathing apparatus, such apparatus should be certified as approved by MSHA and NIOSH. These certifications of approval will be issued in accordance with the provisions of 30 CFR 11.63(c). These provisions permit MSHA and NIOSH to develop the additional performance requirements that are necessary to establish the quality, effectiveness, and safety for types of devices not described in 30 CFR 11 when used as protection against hazardous atmospheres. MSHA and NIOSH will issue certifications of approval for positive-pressure closed-circuit self-contained breathing apparatus which meet the following new performance requirements as well as the existing applicable performance requirements of 30 CFR 11 for use in mines and mining.

### Types of Positive-Pressure Closed-Circuit Self-Contained Breathing Apparatus To Be Certified by NIOSH/MSHA

NIOSH has determined that there are two basic types of positive-pressure closed-circuit self-contained breathing apparatus which may be certified: (1) Apparatus which use a breathing gas of pure oxygen, and (2) apparatus which use a breathing gas in which the oxygen concentration is greater than 23 percent by volume under normal pressure and temperature conditions.

### Requirements For Certification of Positive-Pressure Closed-Circuit Self-Contained Breathing Apparatus

1. Where the apparatus uses a breathing gas in which the oxygen concentration is greater than 23 percent by volume under normal pressure and temperature conditions as measured from the breathing gas container, the breathing gas will be respirable and not contain more than 30 percent by volume of oxygen under normal temperature and pressure conditions.

2. The positive-pressure closed-circuit self-contained breathing apparatus will meet all applicable requirements of 30 CFR 11 as prescribed for closed-circuit self-contained breathing apparatus, including those designed as demand-flow devices.

3. The positive-pressure closed-circuit self-contained breathing apparatus will maintain a positive pressure in the facepiece during all pressure and flow tests.

### Limitations on and Precautions for Safe Use of Positive-Pressure Closed-Circuit Self-Contained Breathing Apparatus

Available information does not demostrate to the satisfaction of NIOSH that positive-pressure closed-circuit self-contained breathing apparatus which use a breathing gas of pure oxygen can be used during direct exposure to open flames and/or high radiant heat and assure the wearer's safety. Therefore, NIOSH has determined that until it has been demonstrated to the satisfaction of NIOSH that those devices can be worn under such conditions, it is prudent to presently limit the use of positive-pressure closed-circuit self-contained breathing apparatus which use pure oxygen breathing gas to mines and mining atmospheres which do not involve exposure to open flames or high radiant heat.

Under the conditions of approval as specified in the performance requirements, NIOSH has determined that a concentration between 19.5 and 30 percent oxygen in mixed breathing gas must be used in positive-pressure closed-circuit self-contained breathing apparatus to maintain a concentration of not less than 19.5 percent oxygen in the wearer's breathing zone under all conditions of use. NIOSH has reviewed the available literature on the safety of using mixed gas with this oxygen concentration. It appears that although

the number of materials that are flammable and the flammability of materials generally increases, while the ignition temperature of materials decreases, in breathing gas mixtures containing more than 23 percent oxygen, these effects are most significant when the oxygen concentration exceeds 30 percent. With the requirement of not more than 30 percent oxygen and the careful selection of component materials, NIOSH believes that where breathing gas mixtures with up to 30 percent oxygen are used in atmospheres containing open flames or high radiant heat, there will be no significant increased hazard to the wearer. Further, the design of positive-pressure closed-circuit self-contained breathing apparatus is such the oxygen concentration in the wearer's breathing zone is normally less than the concentration of oxygen in the breathing gas container.

**Approval Label Specifications**

The following minimum limitations and conditions apply to positive-pressure closed-circuit self-contained breathing apparatus and will appear on the approval label for each device:

*Limitations*

1. Do not use this apparatus where there is direct exposure to open flames or in high radiant heat. (This limitation applies to 100 percent oxygen apparatus only.)

2. Provide proper care, training, and maintenance of the apparatus as specifically described in the manufacturer's instructions and maintenance manuals.

3. After each use of this apparatus, a fully charged breathing gas container and a recharge of carbon dioxide scrubber shall be installed.

4. Thorough cleaning and disinfecting of facepiece, breathing tube, and breathing bag must be done in accordance with the manufacturer's instructions.

*Cautions*

1. Keep exposed hair to a minimum when using apparatus near open flames or in high radiant heat.

2. A good facepiece seal is important since facepiece leakage will seriously reduce service time.

3. Use of pure oxygen or oxygen enriched air increases flammability and lowers the ignition temperature of most materials.

Dated: November 8, 1985.

**J. Donald Millar, M.D.,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 85-27336 Filed 11-15-85; 8:45 am]

BILLING CODE 4160-19-M

## Food and Drug Administration

## Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**Meetings**

The following advisory committee meetings are announced:

**Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents**

*Date, time, and place.* December 12 and 13, 9 a.m., Auditorium, 330 Independence Aveune SW., Washington, DC.

*Type of meeting and contact person.* Open committee discussion, December 12, 9 a.m. to 12 p.m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 4 p.m., December 13, 9 a.m. to 12 p.m.; Mary C. Custer, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

*General function of the committee.* The committee will review and evaluate available information relevant to adverse reactions in humans associated with the use of food constituents.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss the use of sulfites in food and the adverse responses resulting from this use. The topics that the committee will consider will include the technical effects of sulfites in food, the minimum level of sulfites necessary to accomplish certain technical effects, the availability of substitutes for sulfites, what uses of sulfites are essential, the minimal provoking dose of sulfites in the sensitive population, the prevalence of sulfite sensitivity, whether labeling would be efficacious, the possibility of a targeted or a general ban, and the need for future studies to better define the issues.

**Cardiovascular and Renal Drugs Advisory Committee**

*Date, time, and place.* December 16 and 17, 9 a.m., Auditorium, Lister Hill Center, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, December 16, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; December 17, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss Guanfacine HCl for hypertension, NDA 19-032, A.H. Robins Co.; Procardia (nifedipine) for the immediate reduction of dangerously high blood pressure, NDA 18-482, Pfizer Pharmaceuticals; Enalapril plus Hydrochlorothiazide for hypertension (Vasoretic NDA 19-221, Merck & Co.); Labetolol plus Hydrochlorothiazide for hypertension (Tranzide, NDA 19-147, Glaxo and Co.; Normozide, NDA 19-406, Schering Corp.).

Fire regulations for the auditorium require that attendance be limited to 165 persons. Persons planning to attend this meeting should preregister with Mae Brooks, Advisory Committee technician, 301-443-4695 or Vera Parks, 301-443-4730.

**Fertility and Maternal Health Drugs Advisory Committee**

*Date, time, and place.* December 18 and 19, 9 a.m., Conference Rm. 6, Bldg. 31C, National Institutes of Health, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, December 18, 9 a.m. to 10 a.m. unless public participation does not last that long; open committee discussion, 10 a.m. to 5

p.m.; open committee discussion, December 19, 9 a.m. to 12 m.; A.T. Gregoire, Center for Drugs and Biologics (HFN–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1869.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in obstetrics and gynecology.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* On December 18, the committee will discuss the following: (1) Metrodin for ovulation induction in polycystic ovarian disease and (2) Pergonal for follicular stimulation for in vitro fertilization. On December 19, the committee will discuss Estraderm (TTS) for postmenopausal replacement therapy.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14), on advisory committees.

Dated: November 12, 1985.

Mervin H. Shumate,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85–27324 Filed 11–15–85; 8:45 am]

BILLING CODE 4160–01–M

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[Docket No. 85P–0446]

## Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Stayton Canning Company Cooperative and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptence of the food.

**DATES:** The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

**FOR FURTHER INFORMATION CONTACT:** Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF–214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0121.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Stayton Canning Company Cooperative, 930 West Washington, St., Stayton, OR 97383–0458, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Stayton Canning Company Cooperative in Stayton, OR.

The principal display panel of the label states the product name as "Cut Green Beans," and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

Dated: October 7, 1985.

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85–27318 Filed 11–15–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P-0447]

## Canned Green Beans Deviating From Indentity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Michigan Fruit Canners, A Division of Curtice-Burns, Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

**DATES:** The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

**FOR FURTHER INFORMATION CONTACT:** Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0121.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Michigan Fruit Canners, A Division of Curtice-Burns, Inc., P.O. Box 68, Benton Harbor, MI 49022, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Michigan Fruit Canners' plant in Fennville, MI.

The principal display panel of the label states the product name as "Cut Green Beans," and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

Dated: October 7, 1985.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-27321 Filed 11-15-85; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 85P-0445]

## Canned Green Beans Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Draper Canning Co., Inc., and Continental Can Co., Inc., to market test experimental packs of canned green beans containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

**DATES:** The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

**FOR FURTHER INFORMATION CONTACT:** Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0121.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Draper Canning Co., Inc., King Cole Dr., Milton, DE 19968, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904-2004.

The permit covers limited interstate marketing tests of experimental packs of canned green beans. The test product deviates from the standard of identity for canned green beans prescribed in 21 CFR 155.120 (canned green beans and canned wax beans) in that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the test product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.120, with the exception of the variation.

The permit provides for the temporary marketing of 210,000 cases of number 303 cans and 190,000 cases of number 10 cans of the test product. The experimental packs of the test product will be distributed in the continental United States. The test product is to be manufactured at the Draper Canning Co., Inc., plant in Milton, DE.

The principal display panel of the label states the product name as "Cut Green Beans," and each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. The permit is effective for 15 months, beginning on the date the test product is introduced or caused to be introduced into interstate commerce, but no later than February 18, 1986.

Dated: October 7, 1985.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-27323 Filed 11-15-85; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 85M-0508]

## Davis & Geck, American Cyanamid Co.; Premarket Approval of NOVAFIL® Monofilament Polybutester Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue)

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Davis & Geck, American Cyanamid Co., Wayne, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the NOVAFIL® Monofilament Polybutester Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue). After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by December 18, 1985.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Callahan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7238.

**SUPPLEMENTARY INFORMATION:** On September 17, 1984, Davis and Geck, American Cyanamid Co., Wayne, NJ 07470, submitted to CDRH an application for premarket approval of NOVAFIL® Monofilament Polybutester Suture, Nonabsorbable Surgical Suture, U.S.P. (Clear or Blue) available in U.S.P. sizes 7/0 through 02 for clear sutures and 10/0 through 02 for blue sutures. The device is indicated for use in all types of soft tissue approximation, including use in cardiovascular and ophthalmic surgery, but not in microsurgery and neural tissue. It is recommended for use where the possibility of reduced suture reaction is desired. On May 9, 1985, the General and Plastic Surgery Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. In the **Federal Register** of April 25, 1985 (50 FR 16227), FDA published a final rule listing the color additive [phthalocyaninato(2-)]copper (21 CFR 74.3045) for use in coloring polybutester nonabsorbable sutures. The regulation became effective May 29, 1985. The use of [phthalocyaninato (2-)]copper in coloring NOVAFIL® Monofilament Polybutester Suture, Nonabsorbable Surgical Suture, U.S.P. (Blue) conforms to the color additive listing requirement specified in the rule. On September 30, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ–410), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 18, 1985, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 8, 1985.

**John C. Villforth,**

*Director Center for Devices and Radiological Health.*

[FR Doc. 85–27322 Filed 11–15–85; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 85M–0398]**

## International Hydron Corp.; Premarket Approval of Hydron® (Polymacon) Zero 4® Hydrophilic Contact Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by International Hydron Corp., Woodbury, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Hydron® (polymacon) Zero 4® Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by December 18, 1985.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Land, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Lippmann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On July 27, 1984, International Hydron Corp., Woodbury, NY 11797, submitted to CDRH a supplemental application for premarket approval of the Hydron® (polymacon) Zero 4® Hydrophilic Contact Lens. The spherical lens ranges in powers from plano to −10.00 diopters (D) and is indicated for extended wear from 1 to 30 days between removal for cleaning and disinfecting, or as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic and may exhibit astigmatism of 1.50 D or less which does not interfere with visual acuity. On February 8, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On August 9, 1985, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the Hydron® (polymacon) Zero 4® Hydrophilic

Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 18, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 8, 1985.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 85-27325 Filed 11-15-85; 8:45 am]

BILLING CODE 4160-01-M

## INTER-AMERICAN FOUNDATION

### Fellowship Advisory Committee; Establishment

In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, the Inter-American Foundation is establishing a Fellowship Advisory Committee. This advisory committee is both necessary and in the public interest. The committee will provide advice on a continuing basis as requested by the President of the Foundation on general policy matters relating the Foundation's fellowship programs. This includes:

a. Reviewing fellowship program objectives in light of the Foundation's Congressional mandate and the Foundation's learning priorities.

b. Evaluating publications generated by Foundation fellowship programs.

c. Promoting an equitable and efficient screening and selection process for awarding fellowships.

d. Communicating Foundation fellowship program goals to academic, development, and philanthropic institutions.

e. Suggesting appropriate ways for increasing the involvement of fellowship recipients in Foundation funding, learning, and dissemination activities.

**Robert W. Mashek,**

*Executive Vice-President.*

[FR Doc. 85-27313 Filed 11-15-85; 8:45 am]

BILLING CODE 7025-01-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Alaska Land Use Council; Meeting

The quarterly meeting of the Alaska Land Use Council scheduled for November 26, 1985 in Anchorage, Alaska, has been cancelled. The Council's next regularly scheduled meeting would be in Febraury 1986.

For further information contact:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 100120, Anchorage, AK 99510, (907) 272–3422, (FTS) 271–5485.

Alaska Land Use Conncil, Office of the State Cochairman Designee, Pouch AM, Juneau, AK 99811, (907) 465–3562

2600 Denali St, Suite 700, Anchorage, AK 99503, (907) 274–1581

Dated: November 13, 1985.

**Willam P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85-27362 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-10-M

### Bureau of Land Management

**[N-32651]**

### Nevada; Conveyance and Order Providing for Opening of Lands

The following described lands were reconveyed to the United States in an exchange and title was accepted on October 31, 1985:

**Mount Diablo Meridian, Nevada**

T. 37 N., R. 56 E.,
5Sec. 27, NW¼, S½.
T. 38 N., R. 56 E.,
Sec. 1;
Sec. 11, N½;
Sec. 12, S½SW¼, SW¼SE¼;
Sec. 13, N½;
Sec. 14, SE¼NE¼, S½;
Sec. 29.
T. 38 N., R. 57 E.,
Sec. 7;
Sec. 8, S½SW¼;
Sec. 17;
Sec. 19;
Sec. 20, NE¼SE¼.

The area described contains approximately 4,891.78 acres. The land lies in Elko County, approximately 25 miles northeast of Elko, Nevada.

All minerals are in private ownership.

On the 30th day, commencing with the date of this publication, the land described above will be open to the operation of the public land laws, subject to valid existing rights, existing classifications, and the requirements of applicable laws. All valid applications received from the date of this publication and until the opening of business on the 30th day, will be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing.

In exchange for the above-described lands, the following described lands were transferred to Andrew M. Boyd, et al.:

**Mount Diablo Meridian, Nevada**

T. 34 N., R. 57 E.,
Sec. 1, lots 1, 2, S½NE¼, SE¼.
T. 35 N., R. 57 E.,
Sec. 36, E½NE¼, SE¼.
T. 34 N., R. 58 E.,
Sec. 4, lot 4, SW¼NW¼, SW¼, W½SE¼;
Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
Sec. 6, lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 35 N., R. 58 E.,
Sec. 16, SW¼;
Sec. 20;
Sec. 28;
Sec. 30, E½NW¼, E½;
Sec. 32;
Sec. 34, W½NW¼, SE¼NW¼, SW¼, NW¼SE¼.

The area described contains 4,985.21 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance documents.

Inquiries concerning this exchange should be addressed to District Manager, Bureau of Land Management, P.O. Box 831, Elko, NV 89801.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 85-27349 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-HC-M

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**[AZ-027-86-4]**

## Lower Gila North, Black Canyon, Middle Gila, Silver Bell Draft Management Framework Plan Amendment/Decision Record Phoenix District, Arizona Availability and Public Comment

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Availability of the Management Framework Plan Amendment, Decision Record and Public Comment Period.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, a draft Management Framework Plan Amendment/Environmental Assessment (MFP Amendment/EA) was prepared for the Lower Gila North, Black Canyon, Middle Gila and Silver Bell Planning Areas. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is available for public comment for 30 days from the date of publication upon which the Decision will become final.

The Decision amends the Land Tenure Adjustment section of the Lower Gila North MFP by adding the statement: "this amendment will make public lands in Lower Gila North available for private exchange proposals within the following designated townships and ranges—." The Black Canyon, Middle Gila and Silver Bell MFPs have been changed to identify public lands that are potentially suitable for exchange or application under the Recreation and Public Purposes Act as amended.

Copies of the Decision Record and FONSI are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-4464.

The Decision Record and FONSI will be available for 30 days from the date of publication in the Federal Register for public review. Written comments should be sent by that date to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For further information contact: William T. Childress and Arthur E. Tower, Area Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863-4464.

Dated: November 6, 1985.

**Marlyn V. Jones,**

*District Manager.*

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## Bureau of Reclamation

## Westlands Water District, San Luis Unit, Central Valley Project, California; Intent To Negotiate a Contract

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation announces the intent to negotiate a contract with the Westlands Water District, San Luis Unit, Central Valley Project, for the repayment of a loan to prepare feasibility studies for alternative solutions to improve the quality of agricultural wastewater in the Central Valley of California.

The Secretary of the Interior, acting through the Bureau of Reclamation, intends to execute a contract to secure repayment of a loan for up to $3,700,000 to the Westlands Water District for the preparation of feasibility studies for alternative solutions to improve the quality of agricultural wastewater in the Central Valley Project, California. Such funds shall be repaid within 20 years at an appropriate interest rate. The studies shall include: economic feasibility studies (including water trading and marketing opportunities); technical feasibility studies; pilot testing of selenium removal; and economic feasibility studies and pilot testing of deep well injection and solar pond brine management.

All meetings scheduled by the Bureau with the Westlands Water District for the purpose of discussing terms and conditions for the proposed contract will be open to the general public as observers. Advance notice of meetings will be furnished only to those parties who have submitted a written request for notification. Requests should be addressed to the Regional Director, Bureau of Reclamation, Attention: Code 440, 2800 Cottage Way, Sacramento, California 95825. All written correspondence concerning the proposed contract will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The Public is invite to submit written comments on the form of the proposed contract for a 15-day period after the completed contract draft is made available to the public. However, in the event that little or no public interest in the negotiations is generated in response to this notice and local news releases, the availability of the proposed form of contract for public review and comment may not be formally published through the **Federal Register** or other media.

For further information on the contract negotiations, contact Mr. John Budd, Contracts and Repayment Specialist, at the above address, or telephone (916) 978-5034.

Dated: November 12, 1985.

**Clifford I. Barrett,**

*Acting Commissioner of Reclamation.*

[FR Doc. 85-27345 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-09-M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Receipt of Application for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT 698685

**Applicant: Riverside County et al., Riverside, CA 92501-3656**

The applicant, Riverside County and nine cities therein, requests a permit to take Coachella Valley Fringe-toed Lizards (*Uma inornata*), a species listed as threatened, incidental to certain development and conservation activities proposed to be conducted in the area

pursuant to a multi-party agreement (Agreement) implementing the Coachella Valley Fringe-toed Lizard (CVFTL) Habitat Conservation Plan (HCP). The permit is being applied for in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended and 50 CFR 17.22(b)(1).

A basic element of the application is the Agreement which legally binds all parties to carry out the elements of the HCP. In addition, the Agreement creates a funding mechanism that is able to support the research, enhancement, maintenance, management monitoring and other conservation and mitigation measures provided for in the HCP. Funding is to be provided through mitigtion fees, assessments and other devices. The Agreement would establish a permanent institutional structure to insure uniform protection and conservation of the habitat throughout the area despite the division of the habitat by the overlapping jurisdictions and complex pattern of public and private ownership.

The HCP was developed to insure the long term conservation of the species by minimizing and mitigating the impacts development would have on the CVFTL by permanently preserving the species habitat through transfer of private lands to the public, providing funding in perpetuity through the limited development which would be allowed, improving existing habitat and reclaiming former habitat and researching and monitoring various aspects of the areas ecology.

Copies of this application, its supporting documents, Habitat Conservation Plan and implementing Agreement are on file at the following locations and are available for inspection by the public during normal business hours: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201 (703/235-1903); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance; Lloyd 500 Building, Suite 550, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6134); U.S. Fish and Wildlife Service Sacramento Office of Endangered Species, 2800 Cottage Way, Room #1823, Sacramento, CA 95825 (916/484-4935) and Riverside County Planning Department, 4080 Lemon Street, 9th Floor, Riverside, CA 92501 (714/787-6181).

Interested persons may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to PRT 698685 when submitting comments.

Dated: November 12, 1985.

**R. K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 85-27416 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Outer Continental Shelf, Eastern Gulf of Mexico; Leasing Systems, Sale 94

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register:**

1. Identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

The Notice is published pursuant to these requirements.

1. **Bidding systems to be used.** In the Outer Continental Shelf (OCS) Sale 94, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding with a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding with a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Eastern Gulf of Mexico (Sale 94) because these blocks are expected to require substantially higher exploration, develoment, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the some blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. **Designation of Blocks.** The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost ares as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Eastern Gulf of Mexico Lease Sale 94 Bidding Systems and Bidding Units, Final." This map is available from the Minerals Management Service, Gulf of Mexico Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

**Wm D. Bettenberg,**

*Director.*

Approved:

**Donald Paul Hodel,**

*Secretary of the Interior.*

November 13, 1985.

[FR Doc. 85-27430 Filed 11-15-85; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Women's Rights National Historical Park Advisory Commission; Meeting

**AGENCY:** Women's Rights National Historical Park Advisory Commission, National Park Service, Interior.

**ACTION:** Meeting.

**SUMMARY:** This notice sets forth the date of the forthcoming meeting of Women's Rights National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATE:** December 3, 1985, 9:00 a.m. to 4:00 p.m. December 4, 1985, 9:00 a.m. to 1:00 p.m.

**ADDRESS:** Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148.

**FOR FURTHER INFORMATION CONTACT:** Judy Hart, Superintendent, Women's Rights National Historical Park, 116 Fall

Street, P.O. Box 70, Seneca Falls, New York 13148, (315) 568–2991.

Steven H. Lewis,

*Deputy Regional Director, North Atlantic Region.*

November 5, 1985.

[FR Doc. 85–27432 Filed 11–15–85; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

### Richard E. Karamatsu et al. v. United States; Notice of Settlement in Class Action Lawsuit

In *Richard E. Karamatsu, et al.* v. *United States*, Claims Court No. 224–85C, attorneys for plaintiffs and the United States have entered into a settlement agreement. On October 4, 1985, the Court ordered that a copy of the following be published in the Federal Register.

**To: Current and Former Federal Employees Entitled to a Territorial Cost-of-Living Allowance**

Most federal civilian employees in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands receive a cost-of-living allowance ("COLA") from the United States as a supplement to their pay. (For purposes of this notice, "COLA" includes the Territorial Cost-of-Living Allowance or "TCOLA" that Postal Service employees receive). COLA is intended to compensate employees for differences in living costs between the local area and Washington, D.C. From time to time, the United States has increased or decreased the COLA rates in the various areas in accordance with its measurements of changes in living costs. Federal employees have not been afforded an opportunity to comment on changes in COLA rates or methodology.

In 1981, federal employees in Anchorage, Alaska, filed a class action lawsuit challenging reductions which had been made in their COLA rates. *Alaniz et al.* v. *Office of Personnel Management*, 545 F. Supp. 1182 (D. Alaska 1982), 728 F.2d 1460 (Fed. Cir. 1984). Although earlier COLA cases in Alaska, Puerto Rico and Hawaii had been unsuccessful for the employees involved, the plaintiffs prevailed in the *Alaniz* case. The United States Court of Appeals for the Federal Circuit held that any reductions in COLA rates instituted after January 10, 1979 (the effective date of the Civil Service Reform Act of 1978) without formal notice to the employees and opportunity for comment were invalid. The Anchorage employees are now receiving back pay to restore the invalid COLA reductions. Other issues in the *Alaniz* case remain to be decided.

After the court of appeals decision in *Alaniz*, demand was made upon the United States to restore the COLA reductions in the other COLA areas as well. The United States refused to do so, citing different circumstances in the other areas and also various defenses, including delay by employees in the other areas in making their claims and the failure of the earlier suits. Employees in the other areas therefore organized steering committees and retained the attorneys who had represented the *Alaniz* class to file a new class action lawsuit against the United States. That suit was commenced on April 18, 1985. *Karamatsu et al.* v. *United States*, United States Claims Court No. 224–85C. The *Karamatsu* case applies to all COLA areas which have experienced COLA reductions since January 10, 1979, except Anchorage, Alaska; *i.e.*, it applies to the Hawaiian Islands, Guam, Puerto Rico, the Virgin Islands, and Juneau and Fairbanks, Alaska. The complaint in *Karamatsu* seeks back pay for COLA reductions since January 10, 1979, plus interest, attorney's fees, and expenses of litigation.

The United States opposed class certification in *Karamatsu*. In addition, on June 17, 1985, the United States filed its answer to the complaint in *Karamatsu*, denying liability for the reasons mentioned above and asserting a counterclaim. The counterclaim alleges that federal employees are liable to the government for the amount of any COLA *increases* since January 10, 1979. The United States argues that, if COLA reductions without notice and comment are void, as held in *Alaniz*, COLA increases withoiut notice and comment must be void as well. In some areas, the COLA increases substantially exceed the decreases.

During the past several months, the attorneys for the plaintiffs and the defendant in *Karamatsu* and *Alaniz* have conducted intensive negotiations in an attempt to reach a settlement. Numerous meetings and conferences have also been held between plaintiffs' attorneys and the steering committees. A settlement has now been reached. It has been approved by the attorneys for the parties but it will not become effective unless and until it is approved by the courts following a period for comment by class members. The purpose of this notice is to explain the proposed settlement and to explain how affected persons can obtain more information and provide their views regarding the settlement.

The basic terms of the settlement are set forth in a document executed by the attorneys for the parties and filed in court on October 3, 1985, entitled "AMENDED TERMS OF SETTLEMENT." The document provides as follows:

**Amended Terms of Settlement**

The parties, by and through their counsel, propose to settle this matter on terms and conditions summarized as follows:

1. The defendant will withdraw its opposition to class certification, and the parties stipulate to certification of the following class:

All persons employed by the United States or an agency, establishment or instrumentality thereof, or by a corporation owned by the United States, including the United States Postal Service, the Administrative Office of the United States Courts, the General Accounting Office, and Non-Appropriated Fund Agencies, who are or were entitled to receive a cost-of-living allowance or a like payment as part of basic pay ("COLA") pursuant to 5 U.S.C. 5941, 5 CFR 591.201–.213, and/or Executive Orders 10,000 and 11,137, or pursuant to other statute, regulation, administrative practice, or contract at the rate established pursuant to any of those provisions, at any time after January 10, 1979, and before the end of the Back Pay Period (as subsequently defined) except to the extent such persons were or are employed within 50 road miles of Anchorage, Alaska.

2. The defendant will pay back pay to class members as a consequence of prior changes in the COLA rate, as described below.

3. For purposes of this settlement, a "COLA overpayment" is a COLA payment made using a COLA rate exceeding the COLA rate in effect in the relevant location on January 10, 1979, and the amount of the overpayment is the difference between the COLA paid and that which would have been paid using the January 10, 1979 COLA rate. A "COLA underpayment" is a COLA payment made using a COLA rate less than the COLA rate in effect in the relevant location on January 10, 1979, and the amount of the underpayment is the difference between the COLA paid and that which would have been paid using the January 10, 1979 rate.

4. For purposes of this settlement, in determining whether a class member in Puerto Rico received an overpayment or an underpayment after December 2, 1979, the COLA rate on January 10, 1979 for all areas of Puerto Rico will be deemed to be 10 percent, and for areas outside San Juan, the COLA rate will be assumed to have been reduced to 7.5

percent on December 2, 1979, instead of 5 percent.

5. Defendant will make net COLA payments (*i.e.*, COLA underpayments less COLA overpayments) to all class members in accordance with procedures and a timetable incorporated into a stipulation and order. These payments shall be made out of the judgment fund if available, or otherwise out of agency appropriations or other funds as appropriate. The net COLA payments will cover the entire period from January 10, 1979 until the first pay period commencing on or after a date to be specified in the stipulation and order (the "Back Pay Period"). Effective at the end of the Back Pay Period, COLA rates will be set at the higher of the current COLA rate then in effect or the January 10, 1979 COLA rate and will remain at that level until a change is promulgated in accordance with regular reevaluation procedures.

6. Defendant's counterclaim against class members will be dismissed with prejudice. Defendant will be permitted to set off COLA overpayments against COLA underpayments with respect to such class members.

7. Plaintiffs will establish a non-profit corporation for each COLA area (or group of similar areas). Defendant will make a one-time, lump sum payment of $100,000 to be used for the common benefit of all class members in Oahu, Maui, Molokai, the Virgin Islands, and Guam. Such payment will be prorated among the non-profit corporations for the areas concerned and will be used for the benefit of Federal employees in the areas for purposes approved by the Court.

8. Class members will dismiss or waive all remaining claims, whether pending or inchoate, for additional relief including, but not limited to, claims for additional back pay (*e.g.*, based on methodology or setoffs of COLA overpayments against COLA underpayments), prejudgment interest, postjudgment interest, sanctions, attorneys' fees, and declaratory relief. Such waiver does not apply to claims for additional entitlement under the Fair Labor Standards Act resulting from COAL adjustments, or to claims not related to COLA.

9. Class members will be barred from making any challenges to the methodology used to compute COLA or COLA rates which have been promulgated by the Office of Personnel Management ("OPM") and utilized during the Back Pay Period. Neither the previous sentence nor paragraph 8 is intended to prevent class members from challenging any methodology or actual COLA rates which OPM uses in connection with future COLA determinations, even if such methodology is unchanged from that utilized during the Back Pay Period.

10. Notwithstanding their waiver of prejudgment interest, class members will be entitled to such interest in the event any statute authorizing such interest on claims of this kind is enacted after July 1, 1985.

11. This settlement is made in connection with the settlement in the case of *Alaniz et al.*, v. *Office of Personnel Management, et al.*, No. A81-072 Civ. (D. Alaska) ("*Alaniz*"). *Alaniz* is proposed to be settled upon terms essentially identical to those in this case. The *Alaniz* class consists of Federal employees in the Anchorage, Alaska, COLA area. Under this settlement, the *Alaniz* class members, who have already received back pay, will also give up claims for additional relief to the extent described in paragraphs 8, 9, and 10 above.

12. In addition to the payments of back pay described in paragraph 5 above, the defendant will reimburse the members of the *Alaniz* class and the *Koramtsu* class with an amount of money to be determined as follows: The Court in *Alaniz* has previously determined that 15 percent of each class member's recovery in that case will be withheld and paid as attorney's fees. Under this settlement, the defendant will reimburse the *Alaniz* class members for ⅔ of that amount (or 10% of each recovery), so that the net reduction in back pay on account of attorneys' fees for *Alaniz* plaintiffs will be 5%. Similarly, in this case, 5 percent of the amount due to class members will be withheld as attorneys' fees and the defendant will pay a matching 5 percent (subject to a maximum). The payments and reimbursements described in this paragraph are in full satisfaction of all claims relating to attorneys' fees and other claims as described paragraphs 8 and 9 above.

13. The defendant will reimburse members of the class or their attorneys for all reasonable costs of litigation actually incurred, up to a maximum of $50,000. In addition, 1.0% of the amounts of back pay due under paragraph 5 above will be withheld and paid into a separate escrow account to cover litigation costs not covered by the defendant's reimbursement. Any amounts remaining in the escrow account after payment of all expenses shall be utilized as approved by the Court. Counsel for the class expect that it will best serve the interests of class members to distribute such excess, if any, pro rata to the nonprofit corporations for the respective COLA areas to be used for the benefit of federal employees in the areas.

14. Judgments will be entered for all members of the class who cannot be located by a date to be specified in the stipulation and order, based upon the calculations of the United States and its agencies. The judgment amounts allocable to attorneys' fees and costs of litigation, including all amounts due under paragraph 12 above, will be paid promptly after entry of such judgments, regardless of whether the portion of the judgment to be paid to the employee has actually been paid.

15. OPM will permit a minimum of 60 days for public comment in connection with its upcoming rulemaking proceeding relating to the methodology to be used in the future to establish COLA rates.

16. This settlement is subject to the approval of the courts in both of the cases. Should either court disapprove any term of the settlement, neither party will be bound by any other term of the settlement.

Under the terms of the settlement as stated above, the United States has agreed to pay to federal employees in all COLA areas the entire net amount by which their COLA has been reduced from its January 10, 1979 level. From employees in some categories [1] and areas, COLA rates have been reduced below their January 10, 1979 level and have not subsequently exceeded that level, and these employees will receive back pay without any setoff for overpayments. These include, for example, employees in the local-retail/private-housing category in San Juan, Kaui, and the Island of Hawaii. For employees in areas where the COLA rate has at times exceeded its January 10, 1979 level, the settlement means that overpayments will be offset against underpayments in arriving at the net amount due. For example, in the local-retail/private-housing category, increases greatly exceeded decreases in Oahu, Maui, Molokai, and the Virgin Islands, and therefore persons who were continuously employed in those areas since January 10, 1979 will not receive back pay. (A special rule is provided for Puerto Rico because of the consolidation

[1] Employees in each COLA area are classified into four categories, depending on whether they have the use of federal housing and/or a federal commissary or PX. COLA rates and changes thereof usually differ between categories within the same COLA area. An employee who wishes further information about his or her category and COLA history, including rates and dates of changes in rates, should contact his or her agency's local personnel office.

of two COLA areas.)[2] However, any amount by which increases exceed decreases will be waived by the United States, and class members will not have any liability to the government for the difference. Also, a person employed in any COLA area during the period of a reduction will be entitled to receive back pay if he or she was not employed during a period of increased COLA long enough to offset the reduction.

A cutoff date for the end of the Back Pay Period will be determined and set forth in a Stipulation to be presented to the court at the time the settlement is presented for final approval. The cutoff date, which will be after the settlement becomes effective, will mark the end of the Back Pay Period, and COLA rates will then be set at their then-current level or the January 10, 1979 level, whichever is higher in each area.

The Stipulation will also contain detailed procedures to govern the back pay process. It will provide a method for determining the gross amount of additional COLA due to each individual past, present or future employee, placing upon the employee's agency the duty of making the initial computation and sending it to the employee for verification. The Stipulation will provide a method for the United States to set off, from the back pay of an employee, the amount of any claim which the government may have against that employee due to other debts, such as defaulted student loans or home loans. It will provide a method of resolving disagreements over computations or setoffs. It will contain methods for dealing with changes of address, employees who cannot be located, and other administrative issues. The Stipulation also will specify the manner in which the United States will make payments, which will occur over an extended period of time on an agency-by-agency basis. Payments will come from the Judgment Fund in most cases. It is not possible to estimate at this time how long the back pay process might take, but experience with the *Alaniz* case indicates that it may take a year or longer to process payments for the majority of employees in most agencies.

A total of 6 percent of the gross amount of each employee's back pay will be deducted to pay attorneys' fees and expenses. The balance of 94 percent will be paid to the employee in accordance with the Stipulation. Of the 6 percent, 5 percent will be paid to the plaintiffs' attorneys as compensation for obtaining the back pay award and administering its distribution,[3] and the remaining 1 percent will be paid into an escrow account to cover out-of-pocket costs of this litigation. The United States has also agreed to pay $50,000 toward the costs of this litigation. It is anticipated that any amounts remaining in the 1 percent escrow account after utilizing the $50,000 and paying other expenses will be distributed pro rata to nonprofit corporations which will be established for each COLA area or group of similar areas. The distribution is expected to be made according to the number of employees in each area. In addition, a $100,000 lump sum payment will be made by the United States and prorated among the nonprofit corporations for areas which have had COLA increases exceeding decreases. The nonprofit corporations are intended to assist in disseminating information about the back pay process, to play an active role in the COLA rulemaking process in the future, and to provide general organization and assistance with respect to issues concerning the compensation of federal employees. The purposes and powers of all the nonprofit corporations and the particular manner of proration will be specified in the Stipulation and approved by the court.

The plaintiffs will dismiss their remaining claims against the United States. These include claims for statutory attorneys' fees, prejudgment[4] and postjudgment interest, and additional COLA for the Back Pay Period over the January 10, 1979 level.

Class members may comment upon or object to the proposed settlement. Objections must be made in writing by December 1, 1985 and be directed to the attorneys for the plaintiffs at the following address: Robert G. Mullendore and Bennet A. McConaughy, Roberts & Shefelman, 4100 Seafirst Fifth Avenue Plaza, Seattle, Washington 98104–3178.

The attorneys will make copies of all objections available to the court. The complete file in this case may be examined at the United States Claims Court, Office of the Clerk, 717 Madison Place, N.W., Washington, D.C. 20005, under case number 224–85C.

Class members who have questions or comments may call the following toll-free number: 1–800–438–COLA (1–800–438–2652). The number will be in operation Monday through Friday beginning October 23, 1985, during the hours of 9:00 A.M.–12:00 noon and 2:00–5:00 P.M., Pacific Time.

This notice is published by order of the United States Claims Court filed on October 4, 1985.

Dated: November 12, 1985.

**Richard K. Willard,**

*Assistant Attorney General, Civil Division.*

[FR Doc. 85–27423 Filed 11–15–85; 8:45 am]

BILLING CODE 4410–01–M

[2] Puerto Rico formerly consisted of two COLA areas: San Juan, and all parts of the island except San Juan. On January 10, 1979, the COLA rate was 10 percent in San Juan and 5 percent outside San Juan. Later in 1979, the two allowance areas were consolidated into one area, and the rate for the consolidated area was set at 5 percent on December 2, 1979. The rate increased to 7.5 percent on November 16, 1980. The settlement allows federal employees outside San Juan to receive back pay for the entire Back Pay Period, but in a lesser amount than San Juan employees for the period December 2, 1979 through November 16, 1980.

[3] The agreement between the attorneys and the class representatives provides for a contingent fee of 10 percent of the amounts recovered. The United States had agreed to pay an amount to the attorneys which will be utilized to satisfy the remaining 5 percent.

[4] The agreement preserves the right of class members to recover prejudgment interest in the event any statute authorizing such interest on claims of this kind is enacted after July 1, 1985. The attorneys for the class have, over the last eighteen months, drafted possible legislative bills and discussed them with various Congressional representatives, but there is no assurance that Congress will act. If a statute is enacted and prejudgment interest becomes available, unless Congress provides otherwise, it is expected that the interest will be distributed to class members in a judicially approved manner, without further notice to class members. The court may make simplifying assumptions concerning the dates of accrual and payment of back pay claims and may provide for the payment of amounts of interest to the respective nonprofit corporation instead of the employee.

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Fellowships Section) to the National Council on the Arts will be held on December 2–3, 1985, from 9:00 a.m.–6:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 3, from 4:00–6:00 p.m. for a recap and policy discussion.

The remaining sessions of this meeeting on December 2, from 9:00 a.m.-6:00 p.m. and on December 3, from 9:00 a.m.-4:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grants applicants. In accordance with

the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4)(6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Beth Louise Law,

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 85-27350 Filed 11-15-85; 8:45 am]

BILLING CODE 7537-01-M

## Literature Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on December 5-6, 1985, from 9:00 a.m.-6:00 p.m. and on December 7, from 9:00 a.m.-1:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7, from 12 noon-1:00 p.m. for a policy discussion.

The remaining sessions of this meeting on December 5-6, from 9:00 a.m.- 6:00 p.m. and on December 7, from 9:00 a.m. - 12 noon are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC. 20506, or call (202) 682-5433.

Beth Louise Law,

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 85-27351 Filed 11-15-85; 8:45 am]

BILLING CODE 7537-01-M

## Music Advisor Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber/New Music Ensembles Section) to the National Council on the Arts will be held on December 3-6, 1985, from 9:30 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 6, from 1:30-3:30 p.m. to discuss policy, Music Guidelines and the Five-Year Planning Document.

The remaining sessions of this meeting on December 3-5, from 9:30 a.m.- 6:00 p.m., December 6, from 9:30 a.m. - 1:30 p.m. and December 6, from 3:30 p.m. - 6:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC. 20506, or call (202) 682-5433.

Beth Louise Law,

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 85-27352 Filed 11-15-85; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[DD-85-18; Docket Nos. 50-352; 50-353]**

## Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2); Director's Decision Under 10 CFR 2.206

On October 1, 1985, Robert L. Anthony (Petitioner) filed a petition with the Nuclear Regulatory Commission (NRC) asking the NRC to take certain actions with respect to applications filed by the Philadelphia Electric Company (Licensee) with the Delaware River Basin Commission (DRBC) related to the operation of its Limerick Nuclear Generating Station, Unit 1 (the facility). Principally, Petitioner requested that the NRC stay DRBC consideration of the Licensee's applications and require that the applications be withdrawn until Licensee complies with certain environmental license conditions imposed by the NRC. The Commission has referred this matter to the Office of Nuclear Reactor Regulation for its consideration pursuant to 10 CFR 2.206. For the reasons stated in this decision, the Petitioner's request is denied.

On September 20, 1985, the Licensee filed with the DRBC applications to modify current restraints established by the DRBC upon the Licensee regarding the withdrawal of water from the Schuylkill River associated with the operation of the Limerick facility. Petitioner seeks to have the NRC stay consideration by the DRBC of the Licensee's applications to the DRBC. The DRBC is a regional agency created by an intergovernmental compact and given federal ratification by a joint resolution of Congress.[1] The NRC has no authority over the activities of the DRBC and consequently may not stay any of its activities nor cause any applications before the DRBC to be withdrawn. The NRC is thus not in a position to grant the relief sought by Petitioner regarding this aspect of its petition.[2] *See Wabash Valley Power Association* (Marble Hill Nuclear Generating Station, Units 1 & 2), 14 NRC 925, 927 (1981).

Petitioner also has concerns regarding the Licensee's compliance with certain environmental license conditions appended to Facility Operating License No. NPF-27 which the NRC issued to the Licensee on October 26, 1984 to authorize operation of the Limerick facility. License No. NPF-27 was superseded by Facility Operating License No. NPF-39, which was issued on August 8, 1985 to permit full power operation of the facility. License No. NPF-39 includes the same environmental license conditions as were contained in License No. NPF-27. Petitioner appears to be concerned that the Licensee will receive authorizations from the DRBC regarding water usage which permit it to operate in a manner in violation of the environmental license conditions. Such a course of action by the Licensee is certainly a possibility, albeit highly speculative at this point in time. Petitioner alleges no present violations by the Licensee of any NRC

[1] *See* Philadelphia Electric Company (Limerick Nuclear Generating Station, Units 1 and 2), DD-82-13, 16 NRC 2115, 2117 N.3 (1982).

[2] Petitioner has recognized the need to file his concerns directly with the DRBC by submitting a written document to the DRBC on October 1, 1985.

requirements including the license conditions. I have recently addressed in a Director's Decision adherence by this Licensee to its environmental license conditions.[3] The issue in that matter was the potential use by the Licensee of alternate sources of supplemental cooling water for the Limerick facility and a concern on the part of that Petitioner that such alternate use would not receive NRC scrutiny. I noted there that the requirements placed upon the Licensee by the terms of its Environmental Protection Plan (EPP) to assure that activities undertaken by the Licensee affecting the environment would receive appropriate review. The language of that Decision is appropriate in this matter and bears repeating here:

> The requirements of the EPP are triggered at the time of the Licensee proposed action. The Licensee must meet these requirements and take appropriate actions prior to taking the action itself. Compliance with these requirements in a timely manner so as to gain the relief of any changes sought is a matter for the Licensee's consideration. Consequently, to the extent that the Licensee wishes to operate the Limerick facility in a mode different from that presently represented in its license application, it must examine that proposed change in light of the terms of the license conditions set out above. It must make the appropriate determinations and, should the activity involve an unreviewed environmental question, the Licensee must obtain prior NRC approval. Should the activity involve a change in the EPP, a license amendment is required. These provisions of the license for the Limerick Unit 1 facility provide adequate assurance that any change contemplated by the Licensee having potential environmental implications will be appropriately dealt with. DD-85-8, 21 NRC at 1566.

In summary, the NRC is without authority to stay DRBC considerations with respect to water quality matters placed before it by this Licensee. Furthermore, in the absence of any present violation of any regulation or license condition, I do not consider it appropriate to take any action in this matter. I do, however, fully expect the Licensee to adhere to all NRC requirements and license conditions, including those which specifically govern the types of changes which might be forthcoming from any consideration given by DRBC to the Licensee's current proposal regarding water use for its Limerick facility.

Accordingly, the Petitioner's request for action pursuant to 10 CFR 2.206 is *denied*. As provided by 10 CFR 2.206, a copy of this Decision will be filed with the Secretary for the Commission's review.

Dated at Bethesda, Maryland, this 12th day of November 1985.

**James P. Knight,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 85-27408 Filed 11-15-85; 8:45 am]

BILLING CODE 7590-01-M

[3] Philadelphia Electric Company (Limerick Nuclear Generating Station, Units 1 & 2), DD-85-8, 21 NRC 1561 (1985).

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**[Docket Nos. 50-443 and 50-444]**

## Public Service Company of New Hampshire, et al.[1] Seabrook Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the Public Service Company of New Hampshire, et. al. (the applicants), for the Seabrook Station, Units 1 and 2, located at the applicants' site in Seabrook, New Hampshire.

### Environmental Assessment

*Identification of Proposed Action*

The Exemption would permit eliminating the need to install the pipe whip restraints and jet impingement shields and their dynamic effects associated with postulated pipe breaks in eight locations per loop in the Seabrook Units 1 and 2 primary coolant systems, on the basis of advanced calculational methods for assuring that piping stresses would not result in rapid piping failure; i.e., pipe breaks.

*Need for Proposed Action*

The proposed Exemption is needed because GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double=ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals the applicants have provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas such as the double ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the applicant's conclusion. Therefore, the NRC staff agrees that the double-ended guillotine break in the primary pressure coolant loop piping need not be required as a design basis accident for pipe whip restraints and jet shields, and their associated dynamic effects, i.e., the restraints and jet shields are not needed. Accordingly, the NRC staff agrees that a partial exemption from GDC 4 is appropriate.

*Environmental Impact of the Proposed Action*

The proposed exemption would not affect the environmental impact of the faciity. No credit is given for the barriers to be eliminated in calculating accident doses to the environment. While the jet impingement barriers would minimize the damage from jet forces from a broken pipe, the calculated limitation on stresses required to support the Exemption assure that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet shields would have no significant effect on the overall plant accident risk.

The Exemption does not otherwise affect radiological plant effluents. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints and jet impingement shields would tend to lessen the occuptional doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with this Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with the proposed Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with the Exemption, any alternatives would not provide any significant additional

[1] The current construction permit holders for Seabrook Station are: Bangor Hydro-Electric Company, Canal Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation, Connecticut Light & Power Company, Fitchburg Gas & Electric Light Company, Hudson Light & Power Department, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, New Hampshire Electirc Cooperative, Inc., Public Service Company of New Hampshire, Taunton Municipal Lighting Plant, United Illuminating Company, Vermont Electric Generation and Transmission Cooperative, Inc., and Washington Electric Cooperative, Inc.

protection of the environment. The alternative to the compliance would be to require literal compliance with GDC 4.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement (operating license) for Seabrook Units 1 and 2.

*Agencies and Persons Contacted*

The NRC staff reviewed the applicants' request and applicable documents referenced therein that support the Exemption for Seabrook Units 1 and 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, refer to the applicants' request for exemption dated August 9, 1984, February 1, 1985 and July 10, 1985. These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03833. The staff's technical evaluation of the exemption request will be published with the exemption (if the exemption is granted) and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 12th day of November, 1985.

For the Nuclear Regulatory Commission.

**Thomas M. Novak,**

*Assistant Director for Licensing, Division of Licensing.*

[FR Doc. 85-27406 Filed 11-15-85; 8:45 am]

BILLING CODE 7510-01-M

## Philadelphia Electric Co. (Limerick Generating Station, Unit 1); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision concerning a petition dated October 1, 1985 submitted by Robert L. Anthony. The petitioner requested that the Nuclear Regulatory Commission take certain actions with respect to applications filed by the Philadelphia Electric Company (PECo) with the Delaware River Basin Commission (DRBC) regarding water usage for the Limerick Nuclear Generating Station, Unit 1. Principally, the petition requested that the Nuclear Regulatory Commission stay DRBC consideration of the PECo applications and require withdrawal of these applications until PECo complies with certain environmental license conditions imposed by the NRC.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the petition. The reasons for this decision are explained in the "Director's Decision Under 10 CFR 2.206", DD-85-18, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Pottstown Public Library, 500 High Street, Pottstown, PA.

A copy of the Decision will be filed with the Secretary for the Commission' review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 12th day of November 1985.

For the Nuclear Regulatory Commission.

**James P. Knight,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 85-27409 Filed 11-15-85; 8:45 am]

BILLING CODE 7590-01-M

## POSTAL RATE COMMISSION

**[Order No. 643; Docket No. MC86-1]**

## Destination-BMC Parcel Post Classification and Rate Changes (Experiment), 1985; Filing of Proposed Changes in Parcel Post Classifications and Rates and Order Designating Officer of the Commission and Fixing Procedural Dates

Issued November 12, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Notice is hereby given that on November 8, 1985, the United States Postal Service, pursuant to sections 3622, 3623 of title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on proposed changes in rates of postage and certain classification provisions for Parcel Post service. This filing has been designated Docket No. MC86-1.

The Postal Service indicates that it wishes the filing considered as an experimental one, within the meaning of sections 67-67d of the Commission's rules of practice (39 CFR 3001.67-67d).

In the filing the Postal Service proposes a new rate structure for machinable parcels entered directly at and destinating in the service area of a participating Bulk Mail Center. The proposed structure features unzoned (flat) rates. In addition, the Service proposes that it be allowed to vary the rates within defined limits. Specifically, it might use either of two structures:

| | | |
|---|---|---|
| A. | From one to 15 lbs | 41.24 |
| | From 16 to 35 lbs | 2.59 |
| or | | |
| B. | From one to five lbs | $1.13 |
| | From six to 15 lbs | 1.67 |
| | From 16 to 35 lbs | 2.59 |

In addition to a choice of two structures, the Service proposes that it have flexibility to vary the individual rates. Within rate structure "A", the rates could vary between $1.17 and $1.32 and between $2.47 and $2.71 for the respective weight cells. In the alternative structure "B", the ranges would be $1.06-1.20, $1.58-1.75, and $2.47-2.71. Finally, the Service proposes to begin the experiment at three BMCs of its choice, with latitude to expand it to five over the life of the project. The proposed duration of the experiment is two years.

The proposal was accompanied by filing of two Library References. The Service has not filed the testimony of any witnesses at this time.

*Motion for waiver of rule 64(h).* Simultaneously with the filing of the case, the Postal Service moved for waiver of § 64(h) of the rules of practice [39 CFR 3001.64(h)]. That provision requires that a classification filing be accompanied by information corresponding to that filed with a rate case. The Service states that its proposal will not significantly affect rates or cost-revenue relationships; that no existing rate or service is abolised; that the proposal is a temporary experiment, based on cost avoidance rather than built up from attributable costs; that the effect of the experiment is likely to be minimal; and that much of the data called for by the rule would be unavailable in any event.

*Intervention.* Hearings will be held on the proposal submitted by the Service. The Commission will sit en banc. Persons desiring to participate as a

party should file a notice of intervention with the Secretary of the Commission, on or before November 22, 1985, in accordance with § 20 of the rules of practice (39 CFR 3001.20). Notices of intervention shall affirmatively state whether the person filing requests a hearing, or in lieu thereof, a conference; whether such person intends to participate actively in a hearing; and shall set forth the nature of such person's interest in the issues, to the extent such interest is known. Persons seeking limited participation but not party status may, on or before November 22, 1985, file a written notice of intervention as a limited participator, pursuant to § 20a of the rules of practice (39 CFR 3001.20a). In addition, persons wishing to express their views informally, but not to become a party or limited participator, may file comments pursuant to § 20b of the rules of practice (39 CFR 3001.20b).

Persons filing notices of intervention should recall that, under present rules, status as full or limited participator is acquired immediately upon filing, thus permitting the person filing to commence discovery from the date of the notice. Parties retain the right to oppose such notices, and the Commission retains the authority to determine that participation by a party filing notice is not consistent with the Act.

In view of the Postal Service's invocation of §§ 67–67d of the rules of practice, maximal expedition becomes of particular significance in this proceeding. Those filing notices of intervention should be aware that procedural deadlines will be correspondingly rigorous, and that the Commission or Presiding Officer may be unable to grant extensions of time that in other circumstances might be accorded.

*Prehearing conference; responses to motion for waiver.* A prehearing conference will be held in this proceeding in the Commission's hearing room, 1333 H Street NW., Suite 300, Washington, D.C. 20268–0001, at 10:00 a.m. on November 26, 1985. In addition to other matters properly addressed at such conference, parties are to file, on or before the date of the conference, statements of the type called for by § 67a(b) of the rules of practice [39 CFR 3001.67a(b)]. Because of the connection between this last matter and the Service's motion for waiver of rule 64(h), responses to that motion are due on or before November 22, 1985.

*Officer of the Commission.* The officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision (39 CFR 3001.8). The officer of the Commission shall supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this case.

In this case the officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

*The Commission orders:* (A) The Commission will sit en banc in the above-captioned proceeding.

(B) Notices of intervention as full or limited participator in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, on or before November 22, 1985.

(C) A prehearing conference, as described above, will be held on November 26, 1985, at 10:00 a.m., in the Commission's hearing room.

(D) Responses to the Postal Service's motion for waiver of § 64(h) of the rules of practice shall be due on or before November 22, 1985.

(E) Stephen A. Gold is designated officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the officer of the Commission, who shall separately be served three copies of all documents.

(F) The Secretary shall cause this Notice and Order to be published in the **Federal Register.**

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 85–27399 Filed 11–15–85; 8:45 am]

BILLING CODE 7715-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 14791; (File No. 812–6218)]**

## Compagnie Financiere de Credit Industriel et Commercial and CIC Finance (Delaware) Inc.; Notice of Application for an Order Exempting Applicants From all Provisions of the Act

November 8, 1985.

Notice is Hereby Given That Compagnie Financiere de Credit Industriel et Commercial ("Compagnie Financiere") and CIC Finance (Delaware) Inc. ("CIC Finance") (Compagnie Financiere and CIC Finance, collectively, "Applicants") c/o Steven M. Lucas, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036, filed an application on October 7, 1985, and an amendment thereto on November 5, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that Compagnie Financiere is a bank holding company having the status of a commercial bank under French law, and that it is subject to extensive regulation by French and other banking authorities. Applicants further represent that as of December 31, 1984, Compagnie Financiere had approximated assets of $27,910,000 and ranked as the 75th largest banking organization in the world and the sixth largest in France. According to the application, Compagnie Financier conducts its commercial banking activities in France primarily through two wholly-owned bank subsidiaries, and 12 other commercial bank subsidiaries ("Operating Subsidiaries"), all but one of which are majority or more owned by Compagnie Financiere. Applicants state that all the issued voting share capital of Compagnie Financiere is owned by the Republic of France.

Applicants represent that CIC Finance was formed on July 30, 1985, to serve as a financing vehicle for Compagnie Financiere and its Operating Subsidiaries, and that all the outstanding shares of capital stock of CIC Finance will be owned by Compagnie Financiere. The Applicants also state that because the sole business of CIC Finance will be the provision of funds to Compagnie Financiere and its Operating Subsidiaries for use in current transactions, virtually all of its assets will consist of amounts receivable from Compagnie Financiere or its Operating Subsidiaries.

Presently, Applicants propose that CIC Finance will issue and sell in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes"), the proceeds of which (except for amounts needed to repay maturing securities of CIC Finance) will be made

available solely to Compagnie Financiere or its Operating Subsidiaries in the form of loans or deposits for use in funding their finance-related banking activities. The Applicants state that payment of the Notes will be unconditionally guaranteed by Compagnie Financiere such that holders may look directly to Compagnie Financiere for payment thereon. Applicants represent that in the future Compagnie Financiere may choose to issue and sell the Notes directly without using CIC Finance.

According to the application, the Notes will be issued in minimum denominations of $100,000 and will be direct liabilities of CIC Finance and the guarantees thereof will rank *pari passu* with all other unsecured indebtedness of Compagnie Financiere. Applicants state that the Notes will be sold through one or more major commerical paper dealers only to institutional and other sophisticated investors that ordinarily participate in the United States commercial paper market and that the Notes will not be advertised or otherwise offered for sale to the general public. As an express condition of any order granting the requested relief, Applicants undertake that each dealer in the Notes will provide each offeree, prior to any sale of the Notes, a memorandum describing the business of the Applicants that contains the most recent publicly available official financial statements of Compagnie Financiere examined by its statutory auditors in accordance with generally accepted accounting standards in France. The memorandum and financial statements will describe any material differences between French accounting standards applicable to Compagnie Financiere and generally accepted accounting principles employed by similar institutions in the United States. Applicants represent that the memorandum will be updated as promptly as practicable to reflect material changes in the business and financial status of the Applicants and will be at least as comprehensive as those customarily used in issuances of commercial paper in the United States.

Applicants assert that the Notes will qualify for exemption from registration under section 3(a)(3) of the Securities Act of 1933 (the "1933 Act") and represent that they will not issue and sell the Notes until they have received an opinion of United States legal counsel that the proposed issuance is entitled to such exemption. Applicants further represent that, prior to issuance, the Notes shall have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and that their United States counsel will certify to the Commission that such rating has been received. However, no such rating will be required if, in the opinion of Applicants' United States counsel, an issuance of the Notes is exempted from registration pursuant to section 4(2) of the 1933 Act.

Applicants state that a bank or trust company (including a branch of a foreign bank) in the United States will be appointed authorized agent to issue the Notes from time to time, and that Applicants will appoint such bank, trust company or branch, or an appropriate corporate entity, to accept service of process in any state or federal action by the holder of any Note against either or both of the Applicants based on the Notes or the guarantees relating thereto. Applicants represent that they will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering or otherwise. Applicant further represent that the appointment of an agent to accept service of process and the consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect to the Notes have been paid.

Applicants state that in the future, either of them or both may, from time to time, offer other long, intermediate or short-term debt securities for sale in the United States, but will not, pursuant to the order herein, offer equity securities for sale in the United States without a further order of the Commission. Such debt securities may be sold in denominations of less than $100,000 and may be sold to other than sophisticated investors. According to the application, any obligations issued by CIC Finance will be unconditionally guaranteed by Compagnie Financiere in the same manner as the Notes. In connection with any such future offering, Applicants undertake (1) to ensure that offerees will be provided, prior to any sale of such debt securities, with disclosure documents equivalent in all respects to the documents to be provided in connection with the offer and sale of the Notes, (2) to cause the appointment of an agent to accept service process and to consent to jurisdiction pursuant to the same terms and conditions applicable to the offering of the Notes, (3) to obtain an opinion of United States legal counsel as to compliance with, or availability of exemption from, the 1933 Act, (4) with respect to a registered offering of securities, to refrain from selling any such securities until the registration statement filed with the Commission has been declared effective. Applicants further undertake that all future issues of debt securities offered for sale in the United States by Compagnie Financiere or CIC Finance shall be subject to the same investment grade ratings requirements as the Notes.

Applicants assert that deeming Compagnie Financiere an investment company subject to the provisions of the Act would effectively preclude it from access to the United States commercial paper market, a major financing source, to its competitive disadvantage in comparison with many large United States and foreign banks. Applicants contend that such inequity of treatment between domestic and foreign institutions would be inconsistent with the United States public policy as expressed by the United States Congress in enacting the International Banking Act of 1978. Applicants further assert that the rationale for granting section 6(c) exemption to Compagnie Financiere extends to CIC Finance as well because the sole business of CIC Finance will be to operate as a financing vehicle for Compagnie Financiere's current transactions, and because the obligations of CIC Finance will be guaranteed unconditionally by Compagnie Financiere. Accordingly, they assert that the requested exemption would be appropriate, in the public interest and consistent with the protection of investors.

Notice is Further Given that any interested person wishing to request a hearing and on the application may, not later than December 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

*Secretary.*

[FR Doc. 85-27377 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-14792; 812-6181]

## New England Life Government Securities Trust; Application for an Order Granting Exemption From Section 19(b) of the Act, and Rule 19b-1 Thereunder

November 8, 1985.

Notice is Hereby Given that New England Life Government Securities Trust ("Applicant"), 501 Boylston Street, Boston, Massachusetts 02117, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 14, 1985, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of section 19(b) of the Act, and Rule 19b-1 thereunder, to permit Applicant to make quarterly distributions of long-term capital gains from certain transactions in options, in futures contracts and in options on futures contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions.

Applicant states that it is designed for investors who seek a high level of current income with frequent, periodic distributions; Applicant pursues its investment objective by investing in securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, authorities or instrumentalities ("U.S. Government Securities"), and by engaging in transactions in options, futures and options on futures, all relating to U.S. Government Securities. The application indicates that these transactions may include purchasing options and writing covered options with respect to certain U.S. Government Securities, entering into closing purchase and sale transactions with respect to those options, buying and selling interest rate futures contracts, purchasing and writing call and put options on futures contracts traded on a U.S. exchange or board of trade, and entering into closing transactions with respect to those options.

Applicant represents that it will pay dividends from net investment income monthly; distributions of net short-term capital gains will be made quarterly. Applicant further represents that distribution of any net long-term capital gains recognized on investments and transactions other than transactions in options, futures and options on futures during a fiscal year will be made with the first quarterly distribution after such fiscal year closes.

The application indicates that the Economic Recovery Tax Act of 1981 added section 1256 to the Internal Revenue Code ("Section 1256"), and that section provided that 60% of the gain or loss realized with respect to futures contracts or options thereon was to be treated as long-term capital gain or loss and 40% as short-term gain or loss. The application also indicates that the Tax Reform Act of 1984 extended this 60/40 long-term/short-term treatment to capital gains realized with respect to options on securities. Prior to those two acts, Applicant states that gain or loss recognized on futures contracts was treated as short-term or long-term capital gain or loss, depending upon how long the taxpayer had held the contract in question, and gain or loss on options on securities and options on futures was treated as short-term capital gain or loss. Since, under section 1256, as amended, 60% of the gain or loss recognized by Applicant with respect to options, futures and options on futures will be treated as long-term capital gain or loss, and, since Applicant, pursuant to section 19 of the Act and Rule 19b-1 thereunder, is permitted to make distributions of long-term capital gains only once for each fiscal year, Applicant seeks an exemption that would permit it to distribute long-term capital gains on transactions in options, futures and options on futures on a quarterly basis.

Applicant submits that no purpose embodied in section 19(b), or Rule 19b-1, would be served by a strict application of those provisions to 60% of the capital gain on transactions in options, futures and options on futures which under section 1256, as amended, is treated as long-term capital gain. Applicant states that its stated objective is high current income rather than capital appreciation so that there need be no concern that the distribution of gains more than once a year will interfere with any stated policy of long-term fund growth or will affect the investment decisions of Applicant. Applicant asserts that since it intends to distribute short-term capital gains on those transactions on a quarterly basis, merely including in these regular quarterly distributions that portion of gains on options, futures and options on futures which is now classified as long-term under section 1256 would not tend to lead Applicant's shareholders to confuse those quarterly distributions with Applicant's regular monthly dividend distributions. Moreover, Applicant undertakes to clearly differentiate between long-term and short-term capital gains distributions and distributions out of net interest income in the notice to shareholders which will accompany each distribution.

Applicant contends that quarterly distribution of capital gains on options, futures and options on futures is not only consistent with the shareholders interests that section 19(b) and Rule 19b-1 seek to protect, but also that quarterly distribution is indeed fairer and more beneficial to Applicant's shareholders than annual distributions would be. Applicant states that annual distribution of long-term gains would: (1) Confer on those shareholders who happened to hold shares on the record date of the distribution a windfall tax benefit attributable to the characterization of the amount so distributed as long-term capital gain; and (2) deprive those shareholders who held shares earlier in the year (but sold them before the record date for the annual distribution) of the benefit of long-term capital gain treatment of gains on options, futures and options on futures, notwithstanding that those gains are likely, in fact, to have been realized at various times throughout the year. Quarterly distribution, by contrast, would more equitably distribute the benefit of long-term capital gain treatment among the shareholders who held shares at the various times during the year when options gains were actually realized. In addition, Applicant submits that quarterly distribution of gains on options, futures and options on futures, including long-term gains, would better suit the needs of shareholders who seek a more or less steady current return on their investment than would a distribution schedule that included three smaller quarterly distributions of short-term gains followed by a single disproportionately large distribution including a whole year's accumulation of long-term gains on options, futures and options on futures.

Applicant represents that, because a quarterly distribution of short-term gains from transactions in options, futures and options on futures will be made any way, little or no additional administrative expense will result from also distributing long-term gains from such transactions quarterly. Finally, Applicant states that there is no

evidence that Congress intended the adoption or amendment of section 1256 to limit the frequency with which registered investment companies distribute capital gains from transactions in options, futures and options on futures.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27378 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-22600; File No. SR-NASD-85-32]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASDAQ-Issuer Reporting Regulations

November 7, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on October 28, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes to Part 2 of Schedule D of the NASD By-Laws will require NASDAQ System issuers to provide three (3) copies of all required filings.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change*

The purpose of the proposed rule change is to make information about publicly traded companies more available to the public. Copies of all filings provided by NASDAQ System issuers will be made available to the public at the NASD's newly established public reference room.

The NASD has adopted the proposed rule changes pursuant to section 15A(b)(6) of the Act. The NASD believes that by facilitating the provision of information to the public about publicly traded companies the proposed rule changes protect investors and the mechanism of a free and open market.

*A. Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

### III. Dates of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 7, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27379 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-23901; 70-7180]**

## Middle South Utilities, Inc., et al., Proposal To Continue System Money Pool and to Sell Short-Term Notes to Banks and Commercial Paper Dealers; Request for Exception From Competitive Bidding

November 7, 1985.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its service company subsidiary, Middle South Services, Inc. ("Services"), 225 Baronne Street, New Orleans, Louisiana 70112, its principal operating subsidiaries, Arkansas Power & Light Company ("Arkansas"), First Commercial Building, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142

Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company ("Mississippi"), Electric Building, Jackson, Mississippi 39201, New Orleans Public Service, Inc. ("New Oleans"), 317 Baronne Street, New Orleans, Louisiana 70112 (collectively, "Operating Companies"), their fuel supply subsidiary, System Fuels, Inc. ("SFI"), and Middle South Energy, Inc. ("Energy"), 225 Baronne Street, New Orleans 70112 have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 50(a)(2), (3), and (5), thereunder.

With the exception of Energy, the applicants-declarants were previously authorized to establish and participate in a system money pool as set forth in File No. 70-6739. It is now proposed that during the period ending December 31, 1987, such companies, including Energy, continue their participation in the pool and that the Operating Companies be authorized to issue and sell short-term notes to banks and to commercial paper dealers. Total outstanding short-term borrowings made by the Operating Companies during this period would not exceed 10% of the sum of (a) the total principal amount of all outstanding secured indebtedness issued or assumed by an individual operating company, and (b) the then current capital and surplus of such company. Based on this 10% charter restriction, Arkansas, Louisiana, Mississippi, and New Orleans, would have been permitted, as of September 30, 1985, to effect total borrowings in aggregate amounts up to $223,320,000 $287,000,000, $75,200,000, and $23,400,000, respectively.

It is also proposed that total borrowings through the money pool by Services and SFI would not exceed, at any one time, outstanding amounts equal to the aggregate unused portions of authorized lines of credit (currently $30 million for Services and $15 million for SFI). Middle South and Energy may lend to the pool, but are authorized to borrow therefrom. Funds available for lending are first available to the Operating Companies on an equal allocation basis. Services and SFI will be permitted to borrow only after the daily needs of the Operating Companies have been satisfied.

Arkansas, Louisiana, Mississippi, and New Orleans would issue short-term notes to various commercial banks under presently authorized individual lines of credit up to maximum aggregate principal amounts of $59,000,000 (Arkansas) and $99,160,000 (Louisiana), and other lines to be filed by post-effective amendment. The notes proposed to be issued and sold will be in the form of unsecured promissory notes customarily used by the lending bank, will be payable on demand of the lending bank or not more than 270 days from the date of issuance, will bear interest at a rate per annum no greater than the prime commercial bank rate or the Daily Advance Rate in effect at the lending bank on the date of issuance or renewal, or from time to time depending upon the arrangements with the lending bank, and will, under certain circumstances be prepayable, in whole or in part, at any time without premium or penalty. The effective interest cost will be approximately 10.0% per annum.

The proposed commercial paper notes will have varying maturities not to exceed 270 days, will not be prepayable, and will be sold directly to a dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commissions of fees will be payable by the Operating Companies in connection with the sale of commercial paper. The dealer may reoffer the notes to not more than 200 of its customers at the customary discount rate for commercial paper in such manner as not to constitute a public offering.

An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance of commercial paper notes on the grounds that (1) it is impractical to invite competitive bids for commercial paper, and (2) such paper will mature in 270 days or less. The proceeds from the borrowings will be used for general corporate purposes, including business operations, the repayment of bank borrowings, and, in the case of the Operating Companies, deferred costs of construction programs and the funding of maturing long-term debt.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 2, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27380 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-22602; File No. SR-NASD-85-20]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Comment Period Relating to Proposed Corporate Governance Rules

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 16, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend the NASD By-Laws to require issuers of NASDAQ National Market System securities to adopt and adhere to certain corporate governance standards.

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22506 (October 4, 1985), 50 FR 41769 (October 15, 1985). In that release, the Commission requested public comment on the proposal within twenty-one days from the date of publication in the **Federal Register**.

The Commission has received a number of requests to extend the deadline for public comment on this proposed rule change. The Commission believes that such an extension is warranted because the proposal raises important issues affecting shareholder protections and the structure of the securities markets.

The following is the full text of a new subdivision D to Schedule D, Part II of the NASD's By-Laws.

D. Rules for Issuers of NASDAQ National Market System Securities.

1. Applicability

a. This Part II D shall apply to any NASDAQ/NMS issuer.

b. For purposes of this PART II D, "NASDAQ/NMS issuer" shall mean the issuer of a security included in the NASDAQ System which has been designated as a national market system security pursuant to Rule 11Aa2-1 under the Securities Exchange Act of 1934

c. No provision of this Part II D shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. The Corporation shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

2. Eligibility

No security shall be eligible for inclusion in the NASDAQ National Market System unless the issuer of said security is in compliance with this Part II D.

3. Distribution of Annual and Interim Reports

a. Each NASDAQ/NMS issuer shall distribute to shareholders copies of an annual report containing audited financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the Corporation at the time it is distributed to shareholders.

b. (i) Each NASDAQ/NMS issuer which is subject to SEC Rule 13a–13 shall distribute copies of quarterly reports including statements of operating results to shareholders either prior to or as soon as practicable following the company's filing of its Form 10–Q with the Securities and Exchange Commission. If the form of such quarterly report differs from the Form 10–Q, the issuer shall file one copy of the report with the Corporation in addition to filing its Form 10–Q pursuant to Section B.3.c. of this Part II. The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of unusual or nonrecurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

C. (ii) Each NASDAQ/NMS issuer which is not subject to SEC Rule 13a–13 and which is required to file with the Securities and Exchange Commission, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall distribute to shareholders reports which reflect the information contained in those interim reports. Such reports shall be distributed to shareholders either before or as soon as practicable following filing with appropriate regulatory authority. If the form of the interim report provided to shareholders differs from that filed with the regulatory authority, the issuer shall file one copy of the report to shareholders with the Cororation in addition to the report to the regulatory authority that is filed with the Corporation pursuant to Section B.3.c. of this Part II.

4. Independent Directors

Each NASDAQ/NMS issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

5. Audit Committee

Each NASDAQ/NMS issuer shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.

6. Shareholder Meetings

Each NASDAQ/NMS issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the Corporation.

7. Quorum

Each NASDAQ/NMS issuer shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33⅓ percent of the outstanding shares of the company's common voting stock.

8. Solicitation of Proxies

Each NASDAQ/NMS issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the Corporation.

9. Conflicts of Interest

Each NASDAQ/NMS issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the company's Audit Committee or a comparable body for the review of potential conflict of interest situations where appropriate.

10. Listing Agreement

Each NASDAQ/NMS issuer shall execute a Listing Agreement in the form designated by the Corporation.

11. Effective Date

This Part II D shall apply to any issuer which first has a security designated as a national market system security after [the effective date of this rule change] and shall become effective as to any other NASDAQ/NMS issuer on [eighteen months after the effective date].

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30.3(a)(12).

Dated: November 7, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85–27361 Filed 11–15–85; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–14793; File No. 812–6205]**

## Application and Opportunity for Hearing; Pruco Life Insurance Co. et al.

November 12, 1985.

Notice is hereby given that Pruco Life Insurance Company ("Pruco Life"), on its own behalf and as sponsor and depository of the Pruco Life Insurance Company Single Premium Variable Annuity Account (the "Arizona Account"), Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey"), on its own behalf and as sponsor and depositor of the Pruco Life of New Jersey Single Premium Variable Annuity Account (the "New Jersey Account"), Pruco Life Series Fund, Inc. (the "Series Fund"), The Prudential

Insurance Company of America ("Prudential"), and Pruco Securities Corporation ("Prusec") (referred to collectively as "Applicants") filed an application on September 20, 1985, and an amendment thereto on November 1, 1985, for an order of the Commission pursuant section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the Applicants from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act. All Interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

Applicants state that Pruco Life is a stock life insurance company organized under the laws of the State of Arizona and is a wholly owned subsidiary of Prudential and that Pruco Life is the sponsor-depositor of the Arizona Account, a separate account of Pruco Life. Applicants state that Pruco Life of New Jersey is a stock life insurance company organized under the laws of New Jersey and is a wholly owned subsidiary of Pruco Life and that Pruco Life of New Jersey is the sponsor-depositor of the New Jersey Account, a separate account of Pruco Life of New Jersey. The Accounts were established in connection with the proposed issuance of certain single payment variable annuity contracts ("Contracts"). The Accounts are registered under the Act as unit investment trusts. Prusec, a registered broker-dealer is the principal underwriter of the Contracts. Applicants represent that assests of each of the investment subaccounts of the Accounts will be invested in shares of corresponding portfolios of the Series Fund, a Maryland corporation that is registered under the Act as a diversified, open-end management investment company. The Contract is purchased by a payment of a least $10,000. Applicants represent that the purchase payment made under a Contract will be allocated as directed by the conractholder to one or more of the subaccounts of the Account and/or, pursuant to a fixed-rate option, to the general account of Pruco Life or Pruco Life of New Jersey, as applicable. Pruco Life and Pruco Life of New Jersey will hereinafter be referred to collectively as the "Company." The Arizona Account and New Jersey Account will hereinafter be referred to collectively as the "Account."

Applicants state that there is an administrative charge to reimburse the Company for the expenses it incurs in administering the Contracts, which include such things as issuing the Contract, establishing and maintaining records, processing transfer requests, providing reports, and paying benefits. This charge will be assessed by deducting daily, from the assets of each of the subaccounts, a percentage of these equal to an effective annual rate of 0.35%. The rate of this charge is guaranteed never to be increased.

Applicants state that the Company assumes mortality and expense risks under the Contracts. The Company assumes a mortality risk by virtue of guaranteed annuity rates incorporated into the contracts. Applicants assert that the longevity estimates upon which the guaranteed annuity rates are based may not be borne out. Applicants assert that the company assumes an expense risk in that the charges for administrative and sales expenses may be insufficient to cover actual expenses. Applicants state that the administrative charge is based upon certain expectations as to the length of time contractholders will maintain their Contracts and the number of Contracts sold and that these expectations may not be realized. Applicants assert that the change may also prove insufficient because, although an asset based charge is designed to protect against inflation, there is no assurance that inflated expenses will be accompanied by comparable inflation in net values. To compensate for assuming the mortality and expense risks, the Company will make a daily charge at an effective annual rate of 0.90% of the value fo the assets held in the subaccounts. This charge is allocable 0.60% for mortality risks and 0.30% for expense risks.

Applicants state that the Company does not impose a sales charge at the time of purchase of a Contract. If a Contract is partially or totally surrendered during the first six contract years, however, a contingent deferred sales load is deducted as a means for the Company to recover its sales expenses. The maximum deferred sales charge is 9% of the amount invested under the Contract and declines by 1% each year until it reaches 4% in the sixth contract year. There is no sales charge upon surrender or withdrawals after the sixth contract year. For the first withdrawal in a year when sales charges apply, the withdrawal of an amount up to 10% of the purchase payment may be made without incurring a surrender charge. In addition, while the sales charge is basically assessed as a percentage of the amount invested under the Contract that is being withdrawn, it is in no event more the 8½% of the first $25,000 or the purchase payment, 7½% of the next $25,000 and 6½% of the amount of the purchase payment in excess of $25,000. Applicants acknowledge the the contingent deferred sales charge may be insufficient to cover all distribution expenses. However, an defciency, they state, will be met from the Company's general corporate funds, which may include amounts derived from the mortality and expense risk charge.

Applicants request relief from section 26(a)(2)(c) and 27(c)(2) to the extent necessary to permit the deduction of the mortality and expense risk charge. Applicants assert that the mortality and expense risk charge meets the standard set forth in section 6(c) because it is reasonable in amount as determined by industry practice with respect to comparable annuity products. The Company states that this representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as current charges for other than mortality and expense risks, the existence of charge guarantees, and guaranteed annuity purchase rates. The Company represents that, as a further condition for this relief, it will maintain at its principal office and make available to the Commission a memorandum setting forth in detail the products analyzed and the methodology used and results of the comparative survey made to support this representation.

The Company also represents that it has concluded that there is a reasonable likelihood that the possible use of the asset charge for distribution expenses has a reasonable likelihood of benefiting the Account and the contractholders. As a further condition of relief, Applicants represent that a memorandum, setting forth the basis for this representation, will be maintained at the Company's principal office and be available to the Commission. Applicants also represent that as a condition of this relief, the Account will invest only in an underlying mutual fund which undertakes to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b-1 of the Act to finance distribution expenses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 9, 1985, at 5:30 p.m., do so by submiting a written request setting forth the nature of his interest, the

reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler

*Secretary.*

[FR Doc. 85-27365 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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[File No. 1-7477]

## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; CRS Sirrine, Inc., Common Stock, $1.00 Par Value

November 8, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer has determined to list its common stock on the New York Stock Exchange.

Any interested person may, on or before November 29, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

*Secretary.*

[FR Doc. 85-27371 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 35-23900; 70-7171]

## Central Power & Light Co., Proposal To Issue and Sell Prefered Stock; Amend Restated Articles of Incorporation; Order Authorizing Solicitation of Proxies

November 7, 1985.

Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration in this proceeding with this Commission pursuant to sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50, 50(a)(5), 62, and 65 thereunder.

CP&L proposes to issue and sell prior to December 31, 1986, up to 750,000 shares of Preferred Stock, par value $100 per share. CP&L requests authority to issue Preferred Stock at competitive bidding with fixed or adjustable dividend rates (New Preferred) or, in the alternative, to issue money market preferred stock ("MMP") in a negotiated underwriting. CP&L also proposes to amend its Restated Articles of Incorporation to vary the terms of the Preferred Stock to allow the flexibility to issue the MMP. Additionally, CP&L seeks authority to solicit proxies for approval of the amendments to the Restated Articles of Incorporation.

CP&L proposes to issue its New Preferred Stock at not less than $100 per share nor more than $102.75 per share, plus accured dividends from the date of issue. CP&L requests the flexibility to set the terms, timing and amount of New Preferred. It is anticipated that the dividend rate and applicable underwriting discounts and commissions will be established pursuant to competitive bidding.

As an alternative to the issuance of New Preferred, CP&L proposes to issue up to 750,000 shares of MMP. MMP is a type of adjustable rate preferred stock, with an initial dividend rate established by CP&L and thereafter determined by a bidding process ("Auction") held every 49 days among holders and potential purchasers of the MMP. Dividends are payable, as declared by CP&L's Board of Directors on the last day of each 49-day period. The MMP will rank on a parity with the other series of Preferred Stock of CP&L in all respects.

The maximum dividend rate of the MMP will be 110% to 150% (depending upon the rating of the MMP) of a composite rate determined by reference to the interest equivalent to the 60-day rate on commercial paper placed on behalf of issuers whose corporate bonds are rated "AA" by Standard & Poor's Corporation or its successor, or the equivalent of such rating by another rating agency, (the "AA" Composite Commercial Paper Rate") (i) as such rate is made avaliable on a discount basis or otherwise by the Federal Reserve Bank of New York on the business day preceding the relevant date or (ii) in the event the Federal Reserve Bank of New York does not make available such a rate, then the average of such rates as quoted on a discount basis or otherwise by certain commercial paper dealers to be specified in the prospectus for the MMP to the Trust Company (as hereinafter defined) for the close of business of the business day immediatley preceding such data, or (iii) if no rate is quoted by such dealers, the rates determined by such other dealers as selected by CP&L's. The 110%–150% range is that believed necessary by the underwriter's to sell the MMP of varying ratings. Based upon the current rating of CP&L's Preferred Stock, the maximum rate applicable to the MMP would be 120% of the "AA" Composite Commercial Paper Rate. The "AA" Composite Commercial Paper Rate provides the rate which, in the opinion of the underwriter, will most closely approximate that of the MMP.

In the event that CP&L defaults in the payment of dividends or fails to make a redemption payment when due, the Auction will be discontinued. The dividend rate will then convert to the rate equal to LIBOR plus an additional rate per annum determined when the MMP is issued.

The MMP is redeemable as a whole or in part, on the second business day preceding any dividend payment date at 103%, 102%, and 101% of par plus accrued dividends in the first, second, and third years respectively, after original issuance and at par plus accrued dividends thereafter. The MMP is also redeemable as a whole at par if the dividend rate set in the Auction exceeds 100% of the "AA" Composite Commercial Paper Rate. Redemption or purchase of the MMP will be restricted by the provisions of CP&L's Restated Articles of Incorporation which prohibit redemption of any shares of Preferred Stock when the corporation is in default in the payment of dividends on any

series of Preferred Stock unless such dividends are paid prior to or concurrently with such redemption or purchase unless such redemption or purchase has been ordered by the Commission under the Act. The holders of the MMP will have the same voting rights as all holders of Preferred Stock of the Company and the shares of MMP shall rank on a parity with the other series of Preferred Stock on the dissolution or liquidation of the Company. The dividend rate for each dividend period will be determined through the Auction process. This process involves the submission of bids to buy or continue to hold shares of MMP at par at designated dividend levels through broker-dealers to a bank or trust company (the "Trust Company"). The Trust Company assimilates all the bids, determines the winning bid rate and arranges with a clearing corporation for the book entry transfer of the owenership of the MMP shares. If insufficient bids are received for the full amount of the MMP, then the dividend rate for the succeeding 49-day dividend period would be the maximum rate, (*i.e.*, the applicable percentage of the "AA" Composite Commercial Paper Rate). If all existing holders of MMP submit hold orders, then the dividend rate will be 59% of the "AA" Composite Commercial Paper Rate. As a condition to purchasing shares of MMP in an initial offering or otherwise, potential purchasers will be required to sign and deliver to the Trust Company and broker-dealer a purchaser's letter in which the potential purchaser will agree: to participate in the Auction upon the terms set forth in the prospectus and in the letter; to sell, transfer, or otherwise dispose of shares of the MMP only in 5,000 share increments; to sell, transfer or otherwise dispose of shares of MMP only pursuant to a bid or sell order in the Auction, or to or through a broker-dealer or to a person that has has delivered a signed purchaser's letter to the Trust Company so long as the dividend rate is determined by Auction; to advise the Trust Company of any transfer other than pursuant to an Auction; and to have ownership of the shares of MMP maintained in book entry form with a specified securities depository. The certificate for shares of MMP will bear a legend that transfer is restricted, and CL&P will issue stop transfer instructions to the transfer agent for the MMP. Holders of shares of MMP will not receive a certificate for such shares so long as the dividend rate is based upon the results of the Auction.

In connection with the MMP, CL&P will enter into a contract under which the Trust Company will receive not more than $35,000 per year for services and will agree to abide by the Auction in determing the dividend rate. The Trust Company will enter into agreements with one or more broker-dealers to conduct the Auctions. Annual fees and expenses to be paid by CP&L will be up to ¼ of 1% of the principal amount of Money Market Preferred Stock outstanding. CP&L will also pay up to $5,000 to the securitied depository which will hold record ownership of the shares of MMP and will maintain lists of the beneficial ownership of the shares.

CP&L intends to use the proceeds from the New Preferred or MMP to finance portions of its construction program and to retire short-term debt incurred and expected to be incurred primarily to finance construction expenditures. CP&L requests an exemption from the competitive bidding requirements of Rule 50 and proposes to enter into a negotiated underwriting agreement with Shearson Lehman Brothrs, Inc. ("Shearson"). CP&L will pay Shearson up 1¾% of the dollar amount of MMP offered.

There proposals are subject to shareholder approval. CP&L therefor proposes to solicit in this regard, has filed its proxy solicitation material, and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 2, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case or an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearings, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that National's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 64 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27370 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 1-8422]**

## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Countrywide Credit Industries, Inc. Common Stock, Par Value $.05 Per Share

November 8, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Countrywide Credit Industries, Inc. considered the direct and indirect costs and expenses on maintaining a dual listing of its common stock on the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. and, therefore, does not see any particular advantage in the dual trading and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before November 29, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determined to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27373 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14307]

**Application and Opportunity for Hearing; Chevron Corp., Chevron Capital U.S.A. Inc. and Chevron U.S.A. Inc.**

November 13, 1985.

Notice is hereby given that Chevron Corporation, Chevron Capital U.S.A. Inc. and Chevron U.S.A. Inc. (collectively the "Applicant" or the "Companies") have filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (herein sometimes referred to as the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of the Chase Manhattan Bank (National Association) ("Chase Manhattan") as successor Trustee under two indentures previously qualified under the Act is not so likely to involve a material conflict of interest with the trusteeship of Chase Manhattan under one other indenture previously qualified under the Act as to make it necessary in the public interest or for the protection of investors to disqualify Chase Manhattan from acting as trustee under any of said indentures (collectively the "Indentures").

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act, seeks to exclude the Indentures from the operation of section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the Indentures may be excluded from the operation of section 310(b)(1) of the Act if the Companies shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeships under the qualified Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any Indenture.

The Applicant alleges that:

(1) The Chase Manhattan Bank (National Association) ("Chase Manhattan") currently is acting as Trustee under the following indentures relating to securities of the Companies:

(a) An indenture dated as of June 1, 1968 between Gulf Oil Corporation (now "Chevron U.S.A. Inc.") and Morgan Guaranty Trust Company of New York, as original Trustee, relating to Gulf Oil Corporation's 6⅝% Debentures due 1993 in the aggregate principal amount of $200,000,000;

(b) An indenture dated as of June 1, 1979 between Gulf Oil Corporation and Morgan Guaranty Trust Company of New York, as original Trustee, relating to Gulf Oil Corporation's Variable/Fixed Rate Debentures due 2009 in the aggregate principal amount of $250,000,000;

(c) An indenture dated August 1, 1984 among Chase Manhattan, as Trustee, Chevron Capital U.S.A. Inc., and Chevron Corporation, as Guarantor, relating to the following Chevron Capital U.S.A. Inc. Guaranteed Notes:

(i) 12¾% Guaranteed Notes due 1987, in the aggregate principal amount of $1,000,000,000;

(ii) 11¾% Guaranteed Notes due 1988, in the aggregate principal amount of $500,000,000;

(iii) 12% Guaranteed Notes due 1994, in the aggregate principal amount of $500,000,000;

(iv) 11% Guaranteed Notes due 1990, in the aggregate principal amount of $500,000,000; and

(v) 10¾% Guaranteed Notes due 1995, in the aggregate principal amount of $300,000,000.

(d) An indenture dated June 15, 1985 between Chase Manhattan, as Trustee, and Chevron Corporation, filed with the Commission as Exhibit 4.1 to Post-Effective Amendment No. 2 to Registration Statement No. 2-98466. However, no securities have yet been issued under this indenture.

(2) Gulf Oil Corporation became an indirect, wholly owned subsidiary of Chevron Corporation ("Chevron") in the second quarter of 1984. On June 1, 1985, Chevron unconditionally guaranteed all of Gulf's obligations as to payment of principal, interest and any redemption premium under the Gulf Indentures. On July 1, 1985, Chevron U.S.A. Inc., a wholly owned subsidiary of Chevron, merged with and into Gulf in a statutory merger under Pennsylvania law. Gulf was the surviving corporation of the merger, and changed its name immediately following the merger to "Chevron U.S.A. Inc." On August 14, 1985 and August 15, 1985, Chase Manhattan became successor Trustee under the 1979 and 1968 Gulf Indentures, respectively, replacing Morgan Guaranty Trust Company of New York. The Chevron Capital Indenture and the Gulf Indentures (collectively, the "Indentures") have all been qualified under the Act.

(3) Section 7.08 of the Chevron Capital Indenture, section 7.08 of the 1968 Gulf Indenture and section 7.08 of the 1979 Gulf Indenture contain in part the requisite provisions of Section 310(b)(1) of the Trust Indenture Act of 1939.

(4) Chase Manhattan's status as successor Trustee under the 1968 Gulf Indenture may involve Chase Manhattan in a "conflicting interest" within the definition of section 7.08 of the Chevron Captial Indenture with respect to the 1968 Gulf Indenture.

(5) Chase Manhattan's status as successor Trustee under the 1979 Gulf Indenture may involve Chase Manhattan in a "conflicting interest" within the definition of section 7.08 of the Chevron Capital Indenture with respect to the 1979 Gulf Indenture.

(6) Chase Manhattan's trusteeship under all of the Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify it from acting as trustee under any of the Indentures. As qualified indentures, the Indentures contain the provisions required by section 310 through 318 of the Act for the protection of securityholders. In particular, the provisions of section 310(b) (2) through (7), which prevent trustees from acquiring certain financial interests in obligors under indenture securities, and of Section 311, which guards against preferential collection of claims by trustees as creditors of obligors, greatly reduce any potential for conflict of interest.

(7) The Indentures are wholly unsecured and the debt securities secured thereby rank *pari passu*. The only material differences between the Indentures and the rights of holders of the debt securities secured by the Indentures relate to aggregate principal amounts, interest rates, date of issue and of interest payments, maturity and similar items which commonly change with separate financings.

(8) No default has at any time existed under any Indenture.

(9) Such differences as exist between the Gulf Indentures and the Chervon Capital Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors

to disqualify Chase Manhattan from acting as Trustee under any of the Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14307, at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission any time on or after December 3, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, no later than December 3, 1985, at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission, his or her views or any additional facts bearing upon this application or the desirability of a hearing thereon or request notification if the Commission should order a hearing. Any such comments or requests should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application that he desires to controvert. At any time after such date, the Commission may issue an order granting the application, upon such terms and conditions as it may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27369 Filed 11-15-85; 8:45 am]

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**[Release No. 34-22610; File No. SR-Amex-85-29]**

## Self-Regulatory Organizations; Approval of Proposed Rule Change by the American Stock Exchange, Inc.

The American Stock Exchange, Inc. ("Amex" or "Exchange") submitted on August 2, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to implement an automatic execution system ("AUTONAMOS") for the execution and reporting of certain Major Market Index ("XMI") orders. Amex proposes to implement the automatic execution feature of AUTOAMOS as a three month pilot program, commencing in late November 1985. The Commission solicited comments on the proposal [1] but none have been received.

AUTOAMOS is an electronic system developed by the Exchange in 1983, which permits Amex member firms to electronically route options orders of a certain size directly to the specialist's post for execution, and to receive back confirmations of trades by the same route. AUTOAMOS accepts market and marketable limit orders up to 10 contracts, and operates on a floorwide basis for all Amex-listed options. All orders entered into the system are executed manually by the appropriate specialist, who upon execution of the order, enters the relevant trade information [*e.g.*, the number of contracts executed, the price, and the identity of the contra-broker(s)] into the system.[2] An execution report is then automatically sent to the firm which placed the orders.[3]

Amex's current proposal requests Commission authorization for a three month pilot utilizing AUTOAMOS to automatically execute and report certain XMI orders. Under the pilot, XMI orders of 10 contracts or less which are entered into AUTOAMOS will receive automatic, rather than manual, executions. Orders routed through the system will be executed automatically at the best prevailing price at the time the order is entered into AUTOAMOS. The system will accept market and marketable limit orders, and will send an instantaneous report back to the member firm upon execution of the order. In addition, reports of last sale, price and volume will be generated for dissemination to the public.

AUTOAMOS will differentiate between limit orders on the book and all other bids and offers in the marketplace. If the best bid or offer is represented by the book, AUTOAMOS will route the incoming order to the touch-screen terminal at the specialist's post for manual execution against the limit order book. If the AUTOAMOS order is for a larger number of contracts than the number of contracts bid or offered on the book, the specialist will have the affirmative obligation to fill the balance of the order at the same price as the quoted market. Thus, the AUTOAMOS order will receive an execution at a single price at the quoted market.

If the best bid or offer is not on the book, AUTOAMOS will automatically execute the order at the best prevailing price. The contra side of the trade will be assigned on a rotational, trade-by-trade basis to one of the Amex market makers (Registered Options Traders) who has signed on to the system, or to the specialist, who will participate with the market makers in the rotation. Participating market makers will not be permitted to place limit orders on the specialist's book.

In Amendment No. 1 to the rule filing,[4] Amex proposes that all market makers who wish to participate in the pilot satisfy a minimum net capital requirement of $100,000. In addition, market makers must demonstrate a prior commitment to XMI options by meeting a minimum trading volume requirement of 3,000 XMI contracts in the calendar month prior to their participation. Moreover, market makers who wish to participate in the pilot will be obligated to participate on a weekly basis and on the near-term expiration Friday.

Amendment No. 1 also states that market makers will be required to sign on to the system daily to verify their presence on the Exchange floor. In the absence of extenuating personal circumstances approved by two Floor Governors, the failure of a market maker to fulfill his participation commitment will result in the market maker being prohibited from participating in the rotation system for both the duration of the current expiration cycle and for the following expiration month. Amex states that this penalty is designed to prevent market makers from signing off the system is response to adverse market conditions.

Finally, the Exchange proposes in Amendment No. 1 that the initial pilot program be limited to the two strike prices currently bracketing the index value in the most recent expiration month. Accordingly, only four series

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[1] The proposed rule change was noticed in Securities Exchange Act Release No. 22306 (August 9, 1985), 50 FR 32930 (File No. SR-Amex-85-29). Thereafter, on October 16, 1985, Amex filed Amendment No. 1 to the proposed rule change.

[2] Orders entered into AUTOAMOS are displaced on touch screens at the specialist's post.

[3] Amex estimates that AUTOAMOS has reduced order turnaround time from over 2 minutes to an average of 35 seconds.

[4] *See* note 1, *supra.*

(two puts and two calls) will be included in the automatic execution system. Amex states that it may increase the number of series in the pilot at some future time, as experience with the system is gained.[5]

In the filing, Amex expresses the opinion that the proposed rule change is consistent with the requirements of the Act, particularly section 6(b)(5), because the pilot may result in more efficient handling of XMI orders. Specifically, Amex anticipates increased order flow in XMI and believes that the present operation of AUTOAMOS, which requires the specialist to manually enter trade data into the system for each order, may result in operational inefficiencies for XMI orders. Amex believes that the pilot program, by providing automatic, rather than manual executions, will reduce substantially the operational burdens associated with executing and reporting XMI AUTOAMOS orders during heavy trading.

The Commission believes that the proposed rule change, by offering the potential of increased order handling efficiencies and providing for firm quotes, should benefit public customers and Amex member firms and specialists. First, retail firms and public customers will have the benefit of receiving immediate executions and nearly instantaneous confirmations. In addition, they will have for the first time the advantage of a firm quote for up to 10 contracts, because the AUTOAMOS pilot will guarantee the price of an XMI order at the displayed market quote at the time the order was entered into AUTOAMOS.[6] Moreover, Amex specialists should benefit from the reduced operational burden presently associated with manual executions of all AUTOAMOS XMI orders. The fact that specialists will no longer be required to manually enter trade confirmation data into the system, except in those instances where the book represents the best bid or offer, should be particularly helpful on peak volume days.

The Commission also believes that the proposed rule change, by ensuring the protection of public customer limit orders on the specialist's book, is consistent with the Act's mandate to protect investors and the public interest. The Amex proposal permits public limit orders on the book that are at the best bid or offer to interact with incoming AUTOAMOS XMI orders. Because the pilot offers the benefit of increased efficiencies and ensures the traditional priority accorded public customer orders, the Commission has determined that it is appropriate for the pilot program to commence operation at a time determined by the Amex.[7]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with sections 6(b)(5) and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27364 Filed 11-15-85; 8:45 am]

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[5] The Commission's approval today of the pilot program extends only to the four XMI series identified above. If the Amex desires during the course of the pilot to expand the number of series, or to change the series on an interday basis, it must give prior, appropriate notice to the Commission.

[6] The Commission previously has expressed concern about exchange execution systems (such as AUTOAMOS) which do not expose orders to trading interest in the crowd and thereby deny those orders an opportunity for an execution at a price better than the quoted market (*see* Securities Exchange Act Release Nos. 19858 (June 9, 1983), 48 FR 27872 and 20350 (November 4, 1983), 48 FR 51722). For several reasons, the Commission has determined that the proposed rule change should nevertheless be approved. First, the proposal provides only for a limited three month pilot. Second, the pilot will be limited to the most active XMI series; generally those series will be characterized by narrow quotation spreads (*see* Securities Exchange Act Release No. 21197 (August 2, 1984), 49 FR 31792). This means that opportunities for improved executions between the spread will be minimal, and the cost to investors of the lost opportunity from not exposing orders commensurately reduced. Finally, as discussed in the text, the pilot offers both increased efficiencies and the introduction of firm quotes, advantages that serve to offset the potential disadvantage of not exposing orders.

[7] The Commission notes that Amendment No. 1 to the proposed rule change has not previously been published for notice and comment. The Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the initial proposal was published for comment and no adverse comments were received thereon, and the Commission believes it is in the public interest to allow the Amex to commence the AUTOAMOS pilot as soon as practicable.

**[Release No. 34-22604; File No. SR-CBOE-85-45]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Extension of RAES Pilot Program

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on November 4, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the operation of CBOE's retail automatic execution system ("RAES") from November 8, 1985 through April 30, 1986. RAES provides for the automatic execution of public customer market and marketable limit orders of 10 or fewer contracts in a limited number of OEX series. RAES has been operating as a pilot program in OEX since February, 1985.[1] In May, 1985 CBOE filed a proposed rule change to make RAES for OEX a permanent program.[2]

The CBOE's present application for an extension of time has been made in order that the RAES pilot may remain in operation while the Commission considers the CBOE's request to approve RAES for OEX on a permanent basis.[3] The CBOE has represented to the Commission that customer orders routed through RAES have been handled efficiently during the pilot and that there have been "virtually no complaints" regarding RAES or its operation. While the Commission continues to be concerned about the effect of RAES on public customer limit orders on the book,[4] in view of the CBOE's

[1] A complete description of RAES is given in the Commission's initial order approving implementation of the pilot program, and in subsequent amendments made to the original filing. *See* Securities Exchange Act Release Nos. 21695 (January 28, 1985), 50 FR 4823 ("January Order"), and 22015 (May 6, 1985), 50 FR 19832 ("May Order").

[2] *See* Securities Exchange Act Release No. 22274 (July 29, 1985), 50 FR 31264.

[3] The CBOE also has filed a proposed rule change to expand the operation of RAES to certain classes of individual stock options on a six month pilot basis. *See* Securities Exchange Act Release No. 22270 (July 26, 1985), 50 FR 31449 (File No. SR-CBOE-85-16, Amendment No. 2). The Commission is considering this proposal concurrently with the RAES OEX proposal.

[4] Discussions of the Commission's concerns regarding this issue are found in the Commission's January and May Orders, *supra* note 1, and in a previous Commission order extending the pilot through November 8, 1985. *See* Securities Exchange Act Release No. 22387 (September 6, 1985), 50 FR 37753.

representations regarding the operation of RAES to date, the Commission finds that an extension of the pilot program through April 30, 1986, or until such earlier date as the Commission makes a final determination regarding RAES, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, in particular, sections 6(b)(5) and 11A of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission believes it is in the public interest to ensure an uninterrupted continuation of the pilot until such time as a final Commission determination regarding RAES is made. The pilot has operated without technical difficulty since its commencement in February 1985, and the Commission does not believe that extending the pilot for a limited time period will unduly burden market participants.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27375 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-22605; File No. SR-MSRB-85-20]**

## Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to CUSIP Numbers

The Municipal Securities Rulemaking Board on October 8, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The Municipal Securities Rulemaking Board (the "Board") is filing an amendment to rule G-34 on CUSIP numbers, and an interpretation of the application of rule G-12(c) and rule G-12(f) on inter-dealer confirmations to a when-issued transaction that takes place during the time when application for CUSIP numbers for a new issue is pending (hereafter referred to as "the proposed rule change"), as follows:

*Rule G-34. CUSIP Numbers* [1]

(a) New Issue Securities.

(i) Assignment of Numbers.

(A) Except as otherwise provided in this section (a), each municipal securities broker or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purpose of distributing such new issue shall apply in writing to the Board or its designee for assignment of a CUSIP number or numbers to such new issue. The municipal securities broker or municipal securities dealer shall make such application as promptly as possible, but in no event later than [, in the case of competitive sales, the business day following the date of award, or, in the case of negotiated sales, the business day following the date on which the contract to purchase the securities from the issuer is executed.] *: in the case of negotiated sales, a time sufficient to ensure assignment of a CUSIP number or numbers on or prior to the business day on which the contract to purchase the securities from the issuer is executed; or, in the case of competitive sales, the date of award. A municipal securities broker or dealer acting as a financial advisor to an issuer in connection with a competitive sale of an issue shall ensure that application for a CUSIP number or numbers is made in sufficient time to permit assignment of CUSIP numbers prior to the date of award.* The municipal securities broker or municipal securities dealer shall provide to the Board or its designee the following information:

(1)-(8) No change.

(B)-(D) No change.

(ii)-(iii) No change.

(b)-(c) No change.

* * * * *

*Physical Confirmations Not Required if When-Issued Transaction Will Be Submitted to Automated System*

Rule G-12(c) requires that physical confirmations of when-issued transactions be sent out within two business days of trade date. Rule G-12(f) requires trades to be submitted for comparison in an automated comparison system operated by a registered securities clearing agency if certain conditions are met. Rule G-12(a) provides that trades submitted for comparison in the automated system need not be confirmed physically under rule G-12(c).

The Board has received imquiries from dealers concerning the requirements of rules G-12(c) and (f) once the automated comparison system for when-issued trades becomes operational. The issue is whether when-issued trades should be compared using the physical confirmation process set forth in rule G-12(c) if the trades cannot be submitted immediately into the automated comparison systems due to the lack of CUSIP numbers.

The Board notes that a when-issued transaction in a new issue for which no CUSIP number will be assigned is not eligible for automated comparison and must be compared by the use of physical confirmations. The Board is interpreting rule G-12(f) to require that, if a request for a CUSIP number is pending, the trade should be submitted into the automated system on an "as of" basis once the CUSIP number is assigned.

[1] Italics indicate new language; [brackets] indicate deletions.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Rule G–34 on CUSIP Numbers. Rule G–34 requires a municipal securities dealer acting as an underwriter of a new issue of municipal securities to apply to the Board or its designee (currently the CUSIP Service Bureau) for CUSIP numbers for the issue. In the case of competitive issues, the issuer customarily applies for CUSIP number assignment prior to award. In negotiated issues, however, the underwriter is usually responsible for the application.

If application for a CUSIP number is delayed, as is permitted under the current rules, trading on a when-issued basis, particularly in the case of a negotiated issue, can commence before a CUSIP number is assigned. Although this does not present an immediate problem because there is currently no system for automated clearance of when-issued trading, such automated clearance is scheduled to take effect in early 1986. Therefore, unless this provision is adopted, CUSIP numbers may not be available on the day when when-issued trading begins in a new issue, and dealers will be unable to submit such trades into the automated system in a timely manner on the business day following the trade date.

2. Rule G–12(c) and G–12(f) on inter-dealer confirmations of when-issued transactions. Rule G–12(f) requires an inter-dealer transaction to be submitted to the automated system for comparison if both parties to the transaction (or their clearing agents) are participants in a registered securities clearing agency. The objective of the rule is to minimize the use of physical confirmations. Unfortunately, due to delays inherent in the system and current rule G–13, it is possible that a when-issued trade could take place prior to issuance of a CUSIP number, and could result in the issuance of two advisories of uncompared trades by NSCC, duplicative contract sheets, and duplicative delivery tickets.

For this reason, the Board is issuing this interpretation that rule G–12(f) is satisfied by submitting a when-issued transaction in securities for which a CUSIP number is pending to the automated comparison system on an "as of" basis once a CUSIP number is assigned.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules:

> Designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities . . .

The proposed rule change is consistent with the provisions of section 17A of the Act.

The Board believes that the proposed rule change will promote compliance with rule G–12(f) and rule G–15(d), thereby fostering the use of automated clearance facilities and providing greater efficiencies in the comparision of inter-dealer transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change and interpretive statement apply uniformly to all brokers, dealers, or municipal securities dealers that are engaged in municipal securities activities and are generally technical in nature. The Board therefore believes that the proposed rule change would not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.*

The Board has neither asked for nor received any comments concerning the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85–27374 Filed 11–15–85; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–22617; File No. SR–NASD–85–28]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), submitted on September 30, 1985, a proposed rule change purusant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend the NASD's Rules of Fair Practice. Specifically, the proposal clarifies the supervisory and oversight responsibilities of member firms when an associated person of the firm engages in a private securities transaction.[1] The proposed rule also identifies the specific responsibilities of an associated person who engages in such transactions.[2] In addition, the proposal distinguishes between private transactions for which an associated person receives compensation and those transactions handled as an accommodation—or

[1] One category of private securities transactions includes situations where an an associated person is selling securities to public investors on behalf of another party without the participation of the person's employer. A second category includes private transactions in securities owned by the associated person.

[2] The proposed rule entirely replaces the Private Securities Interpretation ("Interpretation") under Ariticle III, section 27 of the Rules of Fair practice. The NASD stated in the proposal that it wanted to replace the Interpretation because it only addressed the responsibility of associated persons to notify member firms and does not specifically address the supervisory and oversight responsibilities of those firms.

under another noncompensatory arrangement. Since the NASD believes that private transactions involving compensation present a greater potential for abuse than noncompensatory transactions, the proposed rule requires member firms to submit transactions involving compensation to a greater degree of scrutiny.

Notice of the proposed rule change together with the terms of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 34-22494, October 2, 1985) and by publication in the **Federal Register** (50 FR 41281, October 9, 1985). No comments were received with respect to the proposed rule change. The Commission has considered the proposed rule change and believes that it is consistent with the requirements of the Act and the rules and regulations applicable to the NASD. The proposal would reduce the likelihood that an associated person would engage in securities transactions for public customers without appropriate supervision by a registered broker-dealer. The Commission believes that the rule would be consistent with the Act's requirement that persons engaging in securities transactions must be associated with a broker-dealer, if they have not themselves registered as broker-dealers.[3] Moreover, the Commission finds that the proposed rule change is consistent with, among other things, section 15A(b)(6) of the Act, which requires, among other things, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission has considered whether the proposal presents an unnecessary burden on competition. Even though firms may prohibit an associated person from participating in certain private securities transactions as a result of the proposal, the Commission believes this concern is outweighed by the benefits to the investing public from careful supervision of private securities transactions by persons associated with member firms.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**John Wheeler,**

*Secretary.*

November 12, 1985.

[FR Doc. 85-27368 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-22607; File No. SR-PCC-85-08]**

## Self-Regulatory Organizations; Proposed Rule Change by Pacific Clearing Corporation Relating to Payments by Non-Members in Connection With Securities Collection Division Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1985, the Pacific Clearing Corporation ("PCC" or "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC is proposing to amend its requirements with respect to the payment by non-members of amounts due to PCC in connection with PCC's Securities Collection Division ("SCD") Service. The text of PCC Rule IX, section 2, as amended, is set forth below. (Italic indicates language to be added; brackets indicate language to be deleted.)

*Rule IX—Securities Collection Division ("SCD") Service*

Sec. 2. Payment due the Clearing House by a member in connection with the SCD Service which is equal to or exceeds $10,000 shall be made by a cashier's or certified check. [All p] *Payment* [s] due the Clearing House by non-members in connection with the SCD Service[, regardless of amount,] *which is equal to or exceeds $1,000* shall be made by a cashier's or certified check.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PCC Rule IX, section 2, currently requires non-members of PCC who use the SCD Service to make payments to PCC in the form of cashier's or certified checks, regardless of the amount owed to PCC. PCC has found that this requirement is unduly burdensome insofar as it applies to non-members which use the SCD Service for transactions involving small dollar amounts. The requirement has occasionally delayed the processing of transactions using the SCD Service.

The proposed rule change would make the cashier's or certified check requirement applicable to payments of $1,000 or more by non-members of PCC arising out of their use of the SCD Service. This will facilitate the use of the SCD Service by organizations which are not PCC members, without subjecting PCC or other users of the SCD Service to undue risk.

The proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination among persons engaged in the clearance and settlement of securities transactions, and thus is consistent with the provisions of section 17A(b)(3)(F) of the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PCC perceives no burden on competition by reason of the proposed rule change.

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[3] *See e.g.*, sections 3(a)(18) and 15 (a)(1), (b)(6), and (7) of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450, Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985

John Wheeler,

*Secretary.*

[FR Doc. 85-27367 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-22609; File No. SR-PCC-85-06]**

## Self-Regulatory Organizations; Proposed Rule Charge by Pacific Clearing Corporation Relating to Proposed Amendment of Rule XXIV Regarding Changes for Services Rendered

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1985, the Pacific Clearing Corporation ("PCC" or "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

PCC is proposing to amend its Rules to clarify its authority to require organizations which use its services and facilities to pay dues and charges attributable to each symbol or account number assigned to them. The text of PCC Rule XXIV, as amended, is set forth below. [Italic indicates language to be added.]

*Rule XXV—Charges for Services Rendered*

Sec. 1. Members, non-clearing members, municipal comparison only members, and such other persons, firms and corporations for whom the Clearing House consents to act pursuant to Rule VIII *or to whom the Clearing House provides the use of its services and facilities or has assigned a symbol or account number,* shall pay such *dues,* fees and charges to the Clearing House as shall be specified by the Clearing House or in the procedures and approved by the Board of Directors on a reasonable and non-discriminatory basis.

Sec. 2. A member may be charged for any unusual expenses caused directly or indirectly by such member, including but without limitation, the cost of producing records pursuant to a court order or other legal process in any litigation or other legal proceeding to which such member is a party or in which such records relating to such member are so required to be produced, whether such production is required at the instance of such member or of any other party other than the Clearing House. For purposes of this section, the term "member" shall be deemed to include non-clearing members, municipal comparison only members and those persons, firms and corporations for whom the Clearing House consents to act pursuant to Rule VIII *or to whom the Clearing House provides the use of its services and facilities or has assigned a symbol or account number.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Satutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PPC Rule XXIV currently requires PPC members, and non-members to whom PCC makes certain of its services available, to pay fees and charges assessed by PCC in accordance with its Rules and procedures. PCC's fee schedule includes monthly dues which are applicable to symbols assigned by PCC with respect to services provided by it. PCC's intention in establishing these charges was to make them applicable to all organizations which use PCC systems for which symbols are required (except other clearing agencies and other self-regulatory organizations).

The purpose of the proposed amendment to PCC Rule XXIV is to clarify PCC's ability to charge dues, fees and other charges to organizations to which PCC makes its services available or has assigned a symbol or account number. The proposed rule change is consistent with Section 17A(b)(3)(D) of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not have an impact on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

**III. Dates of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27363 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-22608; File No. SR-PSDTC-85-08]**

## Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Company Relating to Proposed Amendment of Rule 15 Regarding Charges for Services Rendered

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1985, the Pacific Securities Depository Trust Company ("PSDTC" or "Depository") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

PSDTC is proposing to amend its Rules to clarify its authority to require organizations which use its services and facilities to pay dues and charges attributable to each symbol or account number assigned to them. The text of PSDTC Rule 15, as amended, is set forth below. (Italic indicates language to be added; brackets indicate language to be deleted.)

*Rule 15—Charges for Services Rendered*

*Sec. 1.* Each participant, *and such other persons, firms and corporations to whom the Depository provides the use of its services and facilities or has assigned a symbol or account number,* shall pay such *dues,* fees and charges to the Depository, determined on a reasonable and non-arbitrary basis, as shall be specified in *the Depository's Rules or* the Procedures. Such charges shall be user-oriented and cost-related.

*Sec. 2.* [In addition, a] *A* participant may be charged for any unusual expenses caused directly or indirectly by such participant or incurred at its request, including, but not limited to, the cost of producing records pursuant to a court order or other legal process in any litigation or other legal proceeding to which such participant is a party or becomes a party or in which such records relating to such participant are so required to be produced, whether such production is required at the instance of such participant or of any other party; provided, however, that in the event of any court action in which the Depository is a party with a real interest in the litigation and is not merely a nominal party named for the purpose of obtaining the production of records, this Rule 15 shall not give the Depository the right to charge the participant for the production of any records if the Depository would not have such right apart from this Rule. *For purposes of this section, the term "participant" shall be deemed to include those persons, firms and corporations to whom the Depository provides the use of its services and facilities or has assigned a symbol or account number.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PSDTC Rule 15 currently requires PSDTC participants to pay fees and charges assessed by PSDTC in accordance with its procedures. PSDTC's fee schedule includes monthly dues which are applicable to account numbers assigned by PSDTC with respect to services provided by it. PSDTC's intention in establishing these charges was to make them applicable to all organizations which use PSDTC systems for which account numbers are required (except other clearing agencies and other self-regulatory organizations).

The purpose of the proposed amendment to PSDTC Rule 15 is to clarify PSDTC's ability to charge dues, fees and other charges to organizations to which PSDTC makes its services available or has assigned a symbol or account number. The proposed rule change is consistent with Section 17A(b)(3)(D) of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not have an impact on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 8, 1985.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27366 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

November 8, 1985.

The above named national securities exchanges has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bear Stearns Companies, Inc.
Common Stock, $1.00 Par Value (File No. 8656)
Synder Oil Partners
Units of Limited Partnership Interest, No Par Value (File No. 7-8657)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 29, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 27372 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

November 8, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Super Valu Stores, Inc., Common Stock, $1.00 Par Value (File No. 7-8635)
Union Exploration Partners, Ltd., Limited Partner Units (File No. 7-8636)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 29, 1985 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**John Wheeler,**

*Secretary.*

[FR Doc. 85-27376 Filed 11-15-85; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Order 85-11-29; Dockets 43575, 43211]**

### U.S.-Japan Gateways Case, and U.S.-Japan Route Authority; Order Instituting Proceeding

Issued by the Department of Transportation on the 13th day of November, 1985.

By this order, the Department is instituting the *U.S.-Japan Gateways Case*, Docket 43575, for the purpose of selecting gateways for additional service in the U.S.-Japan market, as well as selecting the carrier or carriers which will serve these routes. The opportunity to award additional authority in the U.S.-Japan market resulted from an interim agreement recently concluded between the two governments, and is reflected in a Memorandum of Understanding (MOU) signed on May 1, 1985. Among other matters, the agreement provides for up to three new combination services, to be selected from one of two route "menus" which are specified in the MOU. Each menu permits the designation of up to two new U.S. gateway cities for service to

and from Tokyo, as well as service between one or two existing gateways and either Tokyo or Nagoya. These routes may be served either by carriers new to the Japan market or by carriers currently serving Japan. Round trip frequencies for the routes are limited by year: 10 per week will be available starting April 1, 1986, increasing to 18 in 1987, 20 in 1988, and finally 21 in 1989. No carrier, however, may operate more than 7 round trip frequencies per week on any single route. The MOU also permits the substitution of a small package carrier for one of the combination services, to begin no sooner than April 1, 1987.

Because of the complex nature of the MOU and the numerous procedural options which it raises for instituting a selection case, the Department, by Order 85-6-74, requested public comments on how such a proceeding should be structured and conducted.[1] Those comments, which were received from numerous carriers and civic parties, have been carefully considered in arriving at our decision on the procedures that will be followed in this case.

## I. Scope of the Proceeding

Based upon the comments and reply comments filed in Docket 43211 as well as the policy considerations discussed below, we have decided to consider, in this proceeding, only two of the three route opportunities afforded by the 1985 MOU. It is our present intention to institute another case in April 1986 in order to select a small package delivery service to operate on the third route.

There are currently eight U.S. gateways to Japan where passenger services are available.[2] This proceeding will establish additional combination service in the market, including a possible increase in the number of U.S. gateways. This additional service will provide substantial benefits to the traveling public in terms of both facilitating access to direct service and providing a wider choice of connecting flights between the United States and Japan. In addition, the availability of these two routes allows all U.S. combination carriers the opportunity to compete in this proceeding for certification in the U.S.-Japan market.

We also find that, because small package service is precluded by the MOU from starting up earlier than April 1, 1987, the deferral of that small package carrier selection will reduce the number of issues that must be considered in the proceeding that we are now instituting. It will also allow us to consider the service proposals offered by small package delivery applicants in light of more current market data.

### *A. Route Selection.*

New services which are designated pursuant to the MOU must be selected from one of two mutually exclusive route "menus." The difference between the two menus is that one would permit additional Honolulu-Tokyo and/or Portland-Tokyo service, while the other would allow additional Los Angeles-Tokyo service. Both menus provide for the selection of up to two new U.S.-Japan services from gateways which are presently unserved on a nonstop basis, as well as allowing service in the Honolulu-Nagoya market.

Several of the commenters recommended that we preselect the menu from which routes are to be chosen, while others suggested that either one or two of the three possible services be limited to new gateway cities. After thoroughly considering the comments which addressed these issues, we have determined that the initial selection of a route menu is best left for the ALJ to decide on the basis of the record compiled in an oral evidentiary hearing. We believe that we can best deal with the selection of gateways after applicants have had the opportunity to submit operating proposals and all parties have been able to scrutinize fully these proposals in the context of a formal hearing.

Some commenters have suggested that this might be accomplished by conducting a preliminary show-cause proceeding, solely for the purpose of determining which menu should be considered. However, this approach would substantially delay a final decision in this case by requiring a separate round of pleadings, and would not produce compensating public benefits. This is especially true since a comprehensive record developed in this oral evidentiary proceeding would allow us the best opportunity to analyze the relative public benefits afforded by each of the competing gateway/carrier proposals.

### *B. Frequency Allocation*

We undertake the allocation of frequencies with extreme reluctance, as we are convinced that the traveling and shipping public would be best served were the marketplace permitted to operate as the sole determinant of the number of flights which each carrier operates. However, as a result of the limitation on weekly round trip frequencies imposed by the MOU, it will be necessary to allocate the ten frequencies available during 1986 should two different carriers be selected in this proceeding to operate on routes derived from that agreement.

Several of the parties that commented on this issue recommended that all applications reflect a common level of weekly frequencies and that all evidentiary exhibits reflect that preestablished standard. This would avoid the problem of deciding to select an applicant at a different frequency level that it had initially proposed. A common frequency level for evidentiary purposes also reduces the need for the decisionmaker to adjust applicants' revenue and expense estimates in order to conform them to the level of service at which they would be selected.

Based upon the comments we have received, it presently appears that the most thorough and effective utilization of these additional route opportunities would be realized by selecting two different carriers and splitting the ten frequencies available in 1986 by awarding five to each carrier. Applicants may, however, offer proposals that contemplate services by a single carrier from two gateways, and/or divide the available frequencies in a different manner.

We tentative believe that five weekly roundtrips would afford a reasonable level of operational flexibility and should be sufficient to allow the selected carriers to begin to develop the traffic generating potential of their services. While a higher level might, in some markets, increase both developmental efforts as well as the degree of potential profitability, the required corresponding reduction in frequencies for the second carrier could seriously inhibit the viability of its operations. Moreover, carriers will not be locked into the initial level, as the MOU permits an increase in weekly frequencies in future years, up to seven per carrier in 1989. We will consider the question of future frequency allocations after we select a small package carrier for the third MOU route.

In order to provide an equitable basis for a comparative analysis, particularly in view of our tentative decision to split the available frequencies in 1986 should two carriers be selected, we will require that all service proposals and supporting evidentiary submissions assume a common frequency level of five round

[1] In view of the fact that the Department has solicited and received both comments and reply comments on the issues that have been considered in instituting this case, we will not entertain petitions for reconsideration of this order.

[2] These are Anchorage, Chicago, Honolulu, Los Angeles, New York, Portland, San Francisco, and Seattle. Nonstop service to Japan is also available from Guam and Saipan.

trips per week. As we have noted, applicants may also provide alternative proposals based on different frequency assumptions; however, they will have the burden of justifying why the public would be best served by a greater or lesser level of service.

*C. Backup Authority*

We have decided that backup authority on routes which have been derived from the recent MOU should not be limited solely to those gateways where primary service has been awarded. The considerations which lead to the selection of both a carrier and gateway are entirely interrelated, and the fact that a gateway might be selected for a primary service with a particular carrier does not mean that a second carrier at the same city would necessarily represent the next best alternative. Therefore, in preparing his recommendations on backup authority, the presiding ALJ should consider all aspects of competing carrier proposals at any of the eligible gateways, as well as any evidence offered by civic party representatives. Based on his evaluation of these factors, as well as other relevant criteria, he should rank the four best gateway/carrier combinations, consistent with the route limitations contained in the MOU. The first two will be selected for primary U.S.-Japan service, while the second pair will receive backup authority.

*II. Procedures*

The *U.S.-Japan Gateways Case*, Docket 43575, which is instituted by this order, will consider the selection of primary and backup combination carriers, as well as the gateways from which they will serve, on two of the three possible route opportunities allowed by the 1985 MOU. Also at issue are the terms, conditions, and limitations which may be attached to any certificates issued in this docket. This proceeding will be set for an oral evidentiary hearing before an Administrative Law Judge.

Whether certificating a carrier for the market is consistent with the public convenience and necessity will not be at issue. We now conclude that there is a need for additional U.S. carrier nonstop service in the U.S.-Japan market and that certification is consistent with the public convenience and necessity. These addtional U.S.-Japan route opportunities represent valuable rights which were obtained through diligent negotiating efforts and in anticipation that they would be used to provide substantial competitive benefits. The public interest clearly calls for utilization of these rights.

In selecting gateways and carriers, we intend to focus on issues of market structure, with the objective of enhancing public benefits and the competitive environment in the overall U.S.-Japan market. This type of structural analysis traditionally has required a multifacted inquiry, and we expect such an inquiry here. Specifically, we expect the parties to develop a record, and the Judge to produce such recommended findings and conclusions as may be material, on the relationship between any espoused result and such elements as intergateway competition, intragateway competition, destination competition, and new entity.[3]

We shall also look at route integration, which refers to a carrier's ability to flow traffic and from points behind the U.S. gateway. This concept has been closely related to questions of market structure (*see Houston-London Case*, Order 85-4-59 at 9). Flow or feed capability can affect the viability of a carrier's primary market services while also affecting the overall number of potential passengers who might benefit from those services. Obviously, in pursuing our objective of enhancing public benefits, these are matters which we need to consider carefully, and which the parties and Judge therefore must explore thoroughly.

We will also consider applicants' fare proposals to the extent that they are consistent with the U.S.-Japan bilateral relationship. While service proposals remain an element of consideration in the selection process, we recognize that frequency levels are severely constrained by the terms of the MOU and, therefore, are not necessarily indicative of an applicant's level of commitment to service in a particular market. Of course, we do not exclude other factors that have been historically used for carrier selection where they are relevant.

It should be noted that, on September 23, 1985, the Department issued a Notice of Proposed Rulemaking dealing, *inter alia*, with the duration of certificate authority on limited-entry international routes.[4] Until a final rule is issued, we will continue to issue authority for limited entry routes in the form of temporary, experimental certificates under section 401(d)(8) of the Act. In keeping with our current practice, we will also continue to make such awards effectice for periods of five years. The ultimate duration of any certificates issued in this docket, however, will be subject to the decision we reach in that rulemaking proceeding.

Finally, it is the Department's objective to reach a decision in this proceeding as promptly as possible. To this end, we have attached as an appendix to this order a proposed evidence request. The Judge, at his discretion, may entertain motions to alter the request, consistent with our goal of reaching a decision without undue delay. In light of the complexity of this case in terms of the numerous issues which must be decided, we are reluctant to impose an inflexible procedural schedule. However, we urge all parties to cooperate with the presiding Administrative Law Judge to ensure that a thorough examination of these issues is conducted in a prompt and efficient manner.

**III. Request for Applications**

Applications for U.S.-Japan authority should be filed with the Department no later than 7 calendar days after service of this order. All applications should conform to the limitations and requirements specified in the MOU. Civic parties should be aware that no city will be considered as a new gateway unless at least one carrier has applied to serve it.

A number of carriers have already filed applications for U.S.-Japan authority in the *Transpacific Low-Fare Route Investigation (Japan Phase)*, Docket 33068. As all these applications have been on file for an extended period, we will require carriers interested in the new Japan authority either to file new applications or to amend their old applications, where necessary, to conform to the requirements of the MOU and move their consolidation into this docket. We have also received several additional applications in the past several months for new Japan authority. Where such applications are consistent with the terms of the MOU, applicants should move their consolidation into this docket. All motions for consolidation should be filed no later than 7 calendar days after the service date of this order.

**IV. Service on the Third MOU Route**

It is our present intention to institute a separate case in April 1986 to select a small package delivery service for certification on the third route derived from the 1985 MOU. We believe that the traveling and shipping public will be

[3] This list is not intended to be exhaustive. It reflects the structural elements described in the Department's September 23, 1985 Notice of Proposed Rulemaking on carrier selection criteria, Docket 43403. The Judge and parties may consider other structural elements if relevant.

[4] Docket 43403, 50 FR 38539 (1985).

best served by the mix of passenger and freight services operating in the U.S.-Japan market as a result of these two proceedings.

Section 102 of the Federal Aviation Act expressly defines as a factor in the public interest the encouragement of the availability of a variety of air services. This objective has often been difficult to achieve, however, because some foreign governments have remained unwilling to permit access to their markets by innovative services, such as small package delivery operations. The option to offer this service between the U.S. and Japan resulted from extensive negotiations, and we believe that we should utilize the limited opportunity afforded by the recent MOU to ensure that a wider choice of aviation services is available to American consumers in this market.

The recent development of the small package delivery service industry within the United States has, in many respects, revolutionized business communications by providing an efficient and reliable means of obtaining overnight delivery of documents and small parcels. As a result, there has been substantial growth in the industry, especially in terms of volume, number of competitors, shippers, and destinations served. The MOU provides for the first time in the U.S.-Japan market, a limited opportunity for the direct participation of a small package carrier. The comments we have received regarding this case demonstrate that there has been an interest in exploiting this opportunity. These considerations, together with the unique character of this service and its potential attractiveness to consumers in this highly commercial market, convince us that the public interest would be best served by allocating one of the three additional MOU routes to a small package service, thereby assuring that all segments of the traveling and shipping public have enhanced opportunities to participate in the U.S.-Japan market.

Accordingly, 1. We institute the *U.S.-Japan Gateways Case*, Docket 43575, which will be set for an oral evidentiary hearing before an Administrative Law Judge of the Department at a time and place to be designated;

2. The proceeding instituted in paragraph 1 shall include consideration of the following issues:

a. Consistent with the terms of the 1985 Memorandum of Understanding between the governments of the United States and Japan, which cities should be selected for new or additional U.S.-Japan service, and which primary and backup carriers should be authorized to engage in foreign air transportation of persons, property, and mail on each route;

b. In what manner should the frequencies allowed under the MOU for the period of April 1, 1986–March 31, 1987 be allocated;

c. What terms, conditions, or limitations, if any, should be placed on any authority awarded in this proceeding;

3. Applications, motions to consolidate, and petitions for leave to intervene shall be filed by November 22, 1985, and answers shall be filed three calendar days thereafter; and

4. We will serve this order upon all certificated air carriers, the Department of State, the Air Freight Forwards Association, the Airport Operators Council International, and all other commenters in Docket 43211.

We shall publish this order in the **Federal Register.**

**Matthew V. Scocozza,**

*Assistant Secretary for Policy and International Affairs.*

## Appendix—U.S.—Japan Gateways Case Evidence Request

### *I. Public Disclosure of Data*

Pursuant to sections 241.19–6 and –7 and 399.100 of the Department's Regulations, it is hereby determined that the Department's ER–586 Service Segment Data and the International O&D Survey Data (Tables 15, 16 and 17) for operations between the United States and Japan, and beyond Japan, for the period January 1, 1980, through final Department decision in this proceeding, are material and relevant to a final determinaton of the issues in this case. Those data are released to the U.S. carriers and U.S. non-airline civic and governmental intervenors participating in this proceeding. Those parties to the proceeding will be free to use these data to the extent they deem necessary.

### *II. Procedures and Ground Rules*

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources (with citations), bases, all assumptions and the methodology so that, without further clarification, any party can derive the necessary results from the basic data. In addition, the parties shall furnish witnesses competent to testify as to the information contained in this exhibits.

### *III. Request for Information and Evidence*

A. Information Responses

1. Public Counsel.[1]

a. ER–586 Service Segment Nonstop and On-Flight O&D Data, by month, calendar year 1984 and for the 12 months ended June 30, 1985, for all routes to and beyond Japan operated by Pan American, United, Northwest and Continental/Air Micronesia.

b. From Table 15 of the Department's O&D Survey, O&D traffic between all U.S. points and Tokyo, Nagoya, and Osaka for calendar years 1980 through 1984, and the 12 months ended June 30, 1985.

c. From Table 16 of the Department's O&D Survey for calendar year 1984 and the 12 months ended June 30, 1985, O&D traffic between all U.S. points and Tokyo, Nagoya and Osaka via the U.S. gateways of New York, Chicago, Seattle/Portland, Los Angeles, San Francisco, Anchorage, Honolulu, and "all others".

d. From Table 16 of the Department's O&D Survey for calendar year 1984 and the 12 months ended June 30, 1985, O&D traffic between all U.S. points and points beyond Japan (Hong Kong, Singapore, Thailand, Taiwan, Korea, Peoples Republic of China, the Philppines, Indonesia, Malaysia, Okinawa, Australia and New Zealand) that used New York, Chicago, Seattle/Portland, Los Angeles, San Francisco, Anchorage, or Honolulu, on the one hand, and Tokyo, Nagoya, or Osaka, on the other hand, as the gateways.

e. Charter data (U.S. and foreign carriers) between all U.S. points and Japan for calendar Years 1982, 1983, 1984 and the latest available for 1985.

2. Incumbent Carriers.[2]

Using the format on page 7 provide the passenger distribution by fare category, and weighted average fare, for the 12 months ended June 30, 1985, between the U.S. gateway(s) and Japan. To the extent possible, show the date(s) of any fare increases during that period.

[1] Public Proceedings Division, Office of Aviation Operations, and Office of Aviation Enforcement and Proceedings, Office of General Counsel. Due to the volume of this material, Public Counsel will not be able to print and distribute copies to the parties. Two copies of these materials will be available for the parties use in Room 4201, 400 7th Street, SW., Washington, DC. Public Counsel will begin preparing these materials immediately and will make them available as soon as possible but in no event later than the date of the prehearing conference.

[2] Any applicant or U.S. carrier intervenor in this proceeding currently providing scheduled nonstop service to Japan from any U.S. gateway.

B. Direct Exhibits[3]

1. *Applicant Carriers.*[4]

The applicant carriers are requested to provide the sources, in exhibit form, for their traffic forecasts. This information should be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates and participation rates and the bases for such rates.

a. The applicant carriers are requested to furnish a breakdown for peak and off-peak season single-plane schedules proposed to be operated in the forecast year, *i.e.*, 12 months ending June 30, 1987. Schedules should contain flight numbers, complete routings from origin to destination (including behind U.S. gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each service class.

b. Based upon the proposed schedules, submit a passenger traffic forecast on an O&D market-by-market basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending June 30, 1987, detailing specifically the sources of all traffic. Include any anticipated changes in the traffic in other markets on the applicant's existing system in which service will be altered as a result of the proposal(s) in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations.

c. Show, with a breakdown for peak and off-peak seasons, by direction and in U.S. dollars, proposed fares in all markets (by fare type and with a description of all fare conditions and restrictions) in which single-plane service is proposed and traffic is forecast.[5] All proposed fares should be those which the carrier would have offered on January 1, 1985, had it been providing service on January 1, 1985.[6] Do not allow for inflation, SFFL fare adjustments or any upward fare flexibility to the forecast year). The applicants should assume that the Department will allow fare increases equal to adjustments in the Pacific SFFL between January 1, 1985, and the date of inauguration of service.[7] Include a percentage distribution of passengers forecast for each fare type proposed for each market (explain the basis for the distribution by fare type). Show the weighted average fare including first class, and, separately, without first class. Separately indicate the dilution from joint fares or other factors not directly related to discount fare offerings. See page 7 for summary format. Explain the basis for any fare stimulation estimate.

d. Indicate the net revenue anticipated from the proposed service for the forecast year. This estimate is to be based on: (1) the traffic forecast in paragraph b, above; and (2) the fares proposed in paragraph c, above. Explain how all dilution factors were arrived at in each revenue estimate.

e. Submit a pro forma profit and loss statement for the forecast year, showing the estimated new impact of the proposal on the applicant. All expense estimates should be based on the CAB Form 41 functional account method. Unit costs, including fuel, should be for the 12 months ended June 30, 1985, and should be the carrier's Pacific Entity unit costs. (*Do not* allow for inflation to the forecast year).[8]

f. Indicate the source of aircraft for the proposed operations. If any applicant does not have on hand the particular aircraft shown in its proposed schedules, indicate delivery date, from whom the aircraft will be purchased or leased, the method of financing the purchase or lease, and submit a copy of any commitment or delivery documents. Submit a pro forma balance sheet reflecting the impact of the aircraft to be acquired to provide the proposed service. Indicate whether the aircraft proposed to be used comply with FAR-36. If not, indicate the applicant's plans for achieving compliance.

g. Estimate the number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed operations and explain the basis of such estimate. Also indicate fuel availability and the method of obtaining the necessary fuel, *e.g.*, contract purchase, etc. Separately indicate the cost per gallon of fuel used in your expense estimate in paragraph e above.

h. Submit a map showing how the applicant's existing route structure would feed into its proposed service.

i. Answer the following interrogatories:[9]

1. Will the carrier(s) selected agree to accept the following condition in its certificate:

"The holder shall file initial tariffs at levels no higher than those stipulated in Exhibit ( ) submitted in Docket 43575, adjusted to reflect in-increases in industry average costs accruing after the date for which the fare proposal in that exhibit was calculated."?

2. Will the carrier(s), if selected as back-up, accept a condition in its certificate which (a) permits it to implement authority within the first year should one of the primary carriers withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

3. Will the carrier(s) selected for primary authority accept a condition in its certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

2. *Civic Parties.*

The civic parties are requested to:

a. Provide any relevant information (including surveys, tourist bureau data, or other data) relating to the size of the markets at issue. List any proposed airport and terminal improvements planned in the next five years.

b. Submit information indicating the character of the traffic to Japan for the most recent period (*i.e.*, vacation, business, etc.).

c. See also § 399.61 of Department's Statements of General Policy (14 CFR 399.61) regarding material to be submitted by civic parties in route cases.

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[3] The base year for traffic forecasting purposes should be the 12 months ended June 30, 1985, and the forecast year should be the 12 months ending June 30, 1987.

[4] Any applicant not previously found fit by the Department to engage in transoceanic scheduled passenger foreign air transportation will be expected to comply with the evidentiary requirements of part 204 of the Department's Regulations (14 CFR Part 204) in addition to the evidentiary requirements set forth in Section III. B. 1.

[5] Describe any new service to be offered or customary service to be withheld with regard to: (a) reservations (local, on-line, and interline), (b) baggage (local, on-line, and interline), and (c) food and beverage.

[6] Separately show the dollar and percent reduction, if any, of all proposed fares, by category and by market, from the fares in effect on January 1, 1985. The January 1 date is the mid-point of the cost year (12 months ended June 30, 1985).

[7] If the Pacific SFFL adjustment factor is negative—*i.e.*, industry average costs go down—the carriers should assume, under the standard initial tariff-filing condition, that they would be required to file their January 1, 1985, fares as their initial tariffs.

[8] To the extent any cost estimates differ from costs shown in the carrier's Form 41 Reports (Pacific Entity) for the 12 months ended June 30, 1985, those differences should be fully explained. If any applicant in this proceeding does not (1) have Form 41 Reports on file with the Department, (2) have the type aircraft proposed to be operated in its current fleet, or (3) report data for a Pacific Entity, all expense estimates and the *bases* for those estimates should be fully explained and justified.

[9] As noted in the instituting order (Order 85-11-29, at 6) any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year.

SAMPLE PRESENTATION, PROPOSED FARES, PASSENGER DISTRIBUTION AND ESTIMATED WEIGHTED AVERAGE FARES

[Response to request III.B.1.c.]

| U.S.-Japan city pairs for which single-plane service is proposed | Proposed fares [1] | | Passenger distribution (percent) [2] | Weighted average [3] | |
|---|---|---|---|---|---|
| | Peak (dollars) | Off-peak (dollars) | | All fares (including first class) (dollars) | Without first class (dollars) |
| Full Fare: | | | | | |
| First class | | | | | |
| Business | | | | | |
| Economy | | | | | |
| Subtotal | | | | | |
| Discount: (Show any individual types, *e.g.*, "Apex" etc.: expected to account for 3% or more of revenue passengers.) | | | | | |
| Apex | | | | | |
| Super Apex | | | | | |
| Excursion | | | | | |
| Standby | | | | | |
| Budget | | | | | |
| Group | | | | | |
| Children | | | | | |
| Other | | | | | |
| Subtotal | | | | | |
| Total before dilution | | | | | |
| Other dilution [4] | | | | | |
| Total after dilution | | | | | |

[1] Based on fares the carrier would have offered in the market(s) on January 1, 1985. All fares should be one-way. Fares not categorized above and used by less than 3 percent of the forecast traffic may be summarized in the "*Other*" category.
[2] Passenger distribution assumes a——percent high and——percent low seasonal traffic pattern.
[3] Weighted average fares should be shown with and without first class.
[4] Dilution attributable to joint fares, etc. which effect the amount of revenue received by the air carrier.

[FR Doc. 85-27445 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-62-M

## Agreements Filed With the Department of Transportation Under Sections 408, 409, 412 and 414 During the Week Ending November 8, 1985

[Answers may be filed within 21 days from the date of filing]

| Date filed | Docket No. | Parties | Subject | Proposed effective date |
|---|---|---|---|---|
| November 11, 1985. | 43553 | Members of International Air Transport Association | Excursion fares within South America | December 1, 1985. |
| Do. | 43554 | Members of International Air Transport Association | Group excursion fares—Brazil, Cuba | Do. |
| Do. | 43555 | Members of International Air Transport Association | Group excursion fares within South America | Do. |
| Do. | 43556 | Members of International Air Transport Association | Intra Pacific specific commodity rates | Do. |
| Do. | 43557 | Members of International Air Transport Association | Specific commodity rates—North Atlantic/South Pacific | Do. |
| November 17, 1985. | 43561 | Members of International Air Transport Association | Specific commodity rates—TC1 | Do. |
| Do. | 43562 | Members of International Air Transport Association | Currency factor adjustment—Italy | Do. |
| Do. | 43563 | Members of International Air Transport Association | Composite conference—Africa currency | Do. |

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 85-27444 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-62-M

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended November 8, 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.

| Date filed | Docket No. | Description |
|---|---|---|
| Nov. 5, 1985 | 43552 | AVAir, Inc., c/o J.E. Murdock III, Boothe, Prichard & Dudley, 2000 Pennsylvania Ave., N.W., Suite 8350, Washington, D.C. 20006.<br>Application of AVAir, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing interstate transportation of persons, property and mail, and that the Department authorize it to use the trade name "American Eagle," or grant such other relief as the Department may deem appropriate.<br>Conforming Applications, Motions to modify Scope and Answers may be filed by December 3, 1985. |
| Nov. 6, 1985 | 43560 | United Air Lines, Inc., P.O. Box 66100, Chicago, Illinois 60666. |

| Date filed | Docket No. | Description |
|---|---|---|
| | | Application of United Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 57 so as to authorize it to perform scheduled foreign air transportation of mail, passengers and property between Chicago, Illinois, in the United States and London, England. |
| | | Conforming Applications, Motions to Modify Scope and Answers may be filed by December 4, 1985. |
| Nov 8, 1985 | 43565 | Le Point Air, S.A.R.L. c/o Pierre F. de Ravel d'Esclapon Donovan Leisure Newton & Irvine, 30 Rockefeller Plaza, New York, New York 10112. |
| | | Application of Le Point Air, S.A.R.L. pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail: Between any point or points in France and New York and/or Newark in the United States, and between New York and/or Newark in the United States and any point or points in France. |
| | | Answers may be filed by December 6, 1985. |
| Nov 8, 1985 | 43567 | Lineas Aereas Nacional—Chile (LAN) and Lineas Aereas Nacional—Chile, Sociedad Anonima, Lan Chile S.A., c/o Benjamin R. Achenbach, Jr., Dunnington, Bartholow & Miller, 1700 K Street, N.W., Suite 1100, Washingtoin, D.C. 20006. |
| | | Joint Application of Lineas Aereas Nacional—Chile (LAN) and Lineas Aereas Nacional—Chile, Sociedad Anonima, Lan Chile S.A. pursuant to Section 402 of the Act and Subpart Q of the Regulations requests: (1) Amendment and (2) approval of the transfer to Lan S.A. of Lan's foreign air carrier permit (issued pursuant to Order 78–5–61). Amendment of the permit is requested in the following respects:<br>Addition of Caracas, Venezuela as an intermediate point.<br>Addition of Madrid, Spain as a point beyond the coterminal points Miami, Florida and New York, New York.<br>Addition of Toronto and/or Montreal, Canada as points beyond the coterminal points, Miami, Florida and New York, New York. |
| | | Answers may be filed by December 6, 1985. |
| Nov. 8, 1985 | 43568 | Grenada Airways Ltd., c/o Richard L. Bernard, Bolko & Morgan, 1000 Ponce De Leon, Coral Gables, Florida 33134. |
| | | Application of Grenada Airways Ltd. pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to conduct scheduled flight services commencing December 15, 1985 between Grenada and New York, and Grenada and Miami to carry passengers, property, and mail. |
| | | Answers may be filed by December 6, 1985. |
| Nov. 8, 1985 | 43570 | MBA Airlines, Inc., c/o Harry A. Bowen, Bowen & Atkin, 2020 K Street, N.W., Suite 350, Washington, D.C. 20006. |
| | | Application of MBA Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations requests permanent authority to engage in scheduled foreign air transportation of property and mail between the terminal points in the United States, New York, New York, Westover, Massachusetts, Dayton, Ohio, Chicago, Illinois, San Francisco and Los Angeles California and:<br>(a) the terminal point Hong Kong via the intermediate points Korea and Taiwan, and<br>(b) between a terminal point or points in the United States and a terminal point in the Republic of Germany via the intermediate points United Kingdom, Republic of Ireland, The Netherlands, Germany, Belgium, France, and Luxembourg. |
| | | Conforming Applications, Motions to Modify Scope and Answers may be filed by December 6, 1985. |

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 85–27443 Filed 11–15–85; 8:45 am]

BILLING CODE 4910–62–M

## Order Adjusting International Cargo Rate Flexibility Level

On January 1, 1985, the Department of Transportation assumed jurisdiction over the regulation of international air cargo rates. The Department seeks to place maximum reliance on the marketplace in regulating such rates. In so doing we have adhered to the Civil Aeronautics Board's policy statement, PS–109, which established geographic zones of cargo pricing flexibility, within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances. This policy was designed to give carriers the greatest flexibility in establishing and adjusting rates to respond to changes in costs and competitive conditions, while assuring that carriers do not abuse their market power.

The Policy Statement established Standard Foreign Rate Levels (SFRL) for each market as the bases for the flexibility zones. The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 85–6–43, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting October 1, 1985, we have projected nonfuel costs based on the year ended June 30, 1985, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 85–11–27 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

| | |
|---|---|
| Atlantic | 1.0195 |
| Western Hemisphere | 1.0492 |
| Pacific | .9418 |

**FOR FURTHER INFORMATION CONTRACT:** Julien Schrenk, (202) 472–5126.

By the Department of Transportation: November 8, 1985.

**Matthew V. Scocozza,**

*Assistance Secretary for Policy and International Affairs.*

[FR Doc. 85–27446 Filed 11–15–85; 8:45 am]

BILLING CODE 4910–62–M

## Reports, Forms, and Recordkeeping Requirements; Submittals to OMB; Sept. 19, 1985–Oct. 28, 1985

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period September 19, 1985–October 28, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler or Annette Wilson, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

**Information Availability and Comments**

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

**Items Submitted for Review by OMB**

The following information collection requests were submitted to OMB from September 19, 1985—October 28, 1985

*DOT No:* 2630
*OMB No:* New
*By:* Maritime Administration
*Title:* Industry Survey for R & D Project—"Waterway Transportation Information Service"
*Form;* None
*Frequency:* One-time
*Respondents:* Waterway Operators
*Need/Use:* To provide industry statistics for a Waterway Transportation Information Service being developed under a research project.

*DOT No:* 2631
*OMB No:* 2105–0009
*By:* Department of Transportation/ Office of the Secretary
*Title:* Advisory Committee Candidate Biographical Information
*Forms:* DOT 1120.1
*Frequency:* Once per respondent
*Respondents:* General public applying for positions on DOT advisory committees
*Need/Use:* It is a means of assuring that the committees are balanced in terms of points of view represented, and where required by statute, that they represent an appropriate segment of industry, labor, State or local government., academia or other interest group.
*Dot No.:* 2632
*OMB No:* 2133–0033
*By:* Maritime Administration
*Title:* Exporter/Importer Data
*Forms:* MA–740
*Frequency:* On occasion
*Respondents:* Exporters/Importers
*Need/Use:* Identify marketing targets and service problems needing correciton to improve U.S.-flag shipping services.

*DOT No:* 2633
*OMB No:* 2137–0014
*By:* Research & Special Programs Administration
*Title:* New Cargo Tank Specifications Requirements
*Forms:* None
*Frequency:* On occasion
*Respondents:* Cargo tank manufacturers
*Need/Use:* Cargo tank markings and certifications are used by manufacturers, purchasers, and the RSPA to verify that tanks have been constructed in accordance with the Department's manufacturing specifications; to show location of various valves, safety relief devices, etc.; to insure operational safety.

*DOT No:* 2634
*OMB No:* 2137–0018
*By:* Research & Special Programs Administration
*Title:* Cargo Tank Retest Requirements
*Forms:* None
*Frequency:* Annually
*Respondents:* Owners of cargo tanks
*Need/Use:* Due to the number of incidents reported in which hazardous materials were released from cargo tanks, RSPA has determined a need to enhance operation, maintenance, repair, and requalification requirements for the DOT specification cargo tanks.
*DOT No:* 2635
*OMB No:* 2133–0036
*By:* Maritime Administration
*Title:* Relative Cost of Shipbuilding in the Various Coastal Districts of the United States
*Forms:* MA–939
*Frequency:* Annually
Respondents: U.S. Shipyards
*Need/Use:* Information needed by MARAD to make studies of and reports of the relative cost of construction or reconditioning of certain ocean vessels for submission of an anual report to Congress.
*DOT No:* 2636
*OMB No:* 2127–0002
*By:* National Highway Traffic Safety Administration
*Title:* Forms Utilized for Assuring Compliance of Imported Motor Vehicles and Motor Vehicle Equipment
*Form(s):* HS–7 and 189
*Frequency:* On occasion
*Respondents:* Individuals, businesses and small businesses
*Need/Use:* These forms are used to implement Title 19, CFR 12.80 "Regulations for Motor Vehicle Importation," which requires an imported vehicle to conform to applicable FMVSS, or to be brought into conformance within 120 days of importation.

*DOT No:* 2637
*OMB No:* 2125–0527
*By:* Federal Highway Administration
*Title:* Public Lands Highways Applications
*Forms:* None
*Frequency:* Annually
*Respondents:* State highway agencies
*Need/Use:* The information is necessary in order to have documentation to support decisions on allocation funds to States for highways through public lands.

*DOT No:* 2638
*OMB No:* 2125–0525
*By:* Federal Highway Administration
*Title:* Develop and Submit Emergency Relief Funding Applications
*Forms:* None
*Frequency:* On occasion
*Respondents:* State highway agencies
*Need/Use:* To allow the Federal Highway Administration to make determinations on funding emergency work to repair highway facilities.

*DOT No:* 2639
*OMB No:* New
*By:* Federal Aviation Administration
*Title:* Inoperable Instrument and Equipment for Multiengine Aircraft—FAR 91.30
*Forms:* None
*Frequency:* On occasion (one time per respondent when applying for authorization)
*Respondents:* Part 91 Operators
*Need/Use:* FAR 91.30 prescribes rules and procedures authorizing owner/ operators of multiengine aircraft to operate with inoperative instruments and equipment. Information in the form of "minimum equipment lists" is collected to allow operations with inoperative instruments and equipment.

*DOT No:* 2640
*OMB No:* 2120–0060
*By:* Federal Aviation Administration
*Title:* General Aviation Activity and Avionics Survey
*Forms:* FAA Form 1800–54
*Frequency:* Annually
*Respondents:* General Aviation Aircraft Owners
*Need/Use:* The survey is to collect information on the use and characteristics of the general aviation aircraft. The data are used by the FAA in supporting safety analysis, assessing the impact of general aviation on National Airspace system and formulating long term programs and policies.

*DOT No:* 2641
*OMB No:* 2137–0557
*By:* Research and Special Program Administration

*Title:* Classification of Smokeless Powder, Not Exceeding 100 Pounds Net as a Flammable Solid
*Forms:* None
*Frequency:* On occasion
*Respondents:* Businesses wishing to have smokeless powder classed as a flammable solid when shipping it.
*Need/Use:* Smokeless powder for small arms, explosives class B, may, by their formulation and packaging, and approval and testing, be reclassified as flammable solids. This allows shippers to save on shipping and storage costs and results in a savings for consumers.

*DOT No:* 2642
*OMB No:* 2137–0553
*By:* Research and Special Programs Administration
*Title:* Combustible Liquid Portable Tanks Approved by USCG
*Form(s):* None
*Frequency:* On occasion
*Respondents:* Shippers using non-DOT specification portable tanks for combustible liquids
*Need/Use:* To insure the safety of vessels, it is necessary that the USCG reviews the plans and specifications of the portable tanks containing combustible liquids so as to ascertain that they are capable of containing the material and able to withstand the rigors of the marine environment.

*DOT No:* 2643
*OMB No:* 2115–0008
*By:* United States Coast Guard
*Title:* Seamans Certificate Application
*Form(s):* CG–719B
*Frequency:* On occasion
*Respondents:* Applicants for U.S. Merchant Mariners documents and documented Merchant Mariners applying for upgrading
*Need/Use:* This information collection is needed/used by the Coast Guard to determine an applicant's suitability for possessing U.S. Merchant Mariners documentation and to establish permanent record of those issued documents.

*DOT No:* 2644
*OMB No:* 2137–0556
*By:* Research and Special Programs Administration
*Title:* Record Retention Requirements for Water Carriers
*Form(s):* None
*Frequency:* On occasion
*Respondents:* Water Carriers
*Need/Use:* The one year retention period for shipping papers, stowage plans, etc., is used to facilitate casualty investigations to determine if it is possible that transportation safety in the shipping by water transportation of hazardous materials can be improved by avoiding similar incidents.

*DOT No:* 2645
*OMB No:* 2137–0555
*By:* Research and Special Programs Administration
*Title:* Refrigeration Stabilization Approval
*Form(s):* None
*Frequency:* On occasion
*Respondents:* Shippers of materials thermally unstable at normal transportation temperatures.
*Need/Use:* The Office of Hazardous Materials Regulation uses this requirement as a method of promoting transportation safety and evaluation of refrigeration as a method of maintaining stability of materials not thermally stable at normal transportation temperatures.

*DOT No:* 2646
*OMB No:* 2137–0559
*By:* Research and Special Programs Administration
*Title:* Rail Carrier and Tank Car Tank Requirements
*Form(s):* None
*Frequency:* Annually
*Respondents:* Rail carriers and owners of tank car tanks
*Need/Use:* The Office of Hazardous Materials Regulation uses these railroad regulations to assure transportation safety of hazardous materials by verifying that rail tank cars are in proper condition to contain the material transported and that rail shipments of other hazardous materials are performed in a safe manner.

*DOT No:* 2647
*OMB No:* 2130–0008
*By:* Federal Railroad Administration
*Title:* Railroad Power Brakes and Drawbars (Air Brake and Test Certification)
*Form(s):* None
*Frequency:* Recordkeeping
*Respondents:* Railroads
*Need/Use:* The information is used by the engineer and road crew to verify that the initial terminal air brake test has been performed in a satisfactory manner.

*Dot No:* 2648
*OMB No:* 2130–0511
*By:* Federal Railroad Administration
*Title:* Designation of Qualifid Persons
*Form(s):* None
*Frequency:* Recordkeeping
*Respondents:* Railroads
*Need/Use:* To prevent the unsafe movement of defective equipment authorized by personnel unqualified to make such determinations, the Federal Railroad Administration requires railroad designation of persons qualified to perform such inspections and authorizations.

*Dot No:* 2649
*OMB No:* 2130–0005
*By:* Federal Railroad Administration
*Title:* Hours of Service Monthly Reports of Excess Service
*Form(s):* FRA F 6180.3
*Frequency:* On occasion
*Respondents:* Railroads
*Need/Use:* The Hours of Service Act, as amended, requires carriers to maintain records of employees' hours of service and to make monthly reports of excess service to the Federal Railroad Administration. The information maintained and reported by the railroads serves as a basis for monitoring compliance.

*Dot No:* 2650
*OMB No:* New
*By:* National Highway Traffic Safety Administration
*Title:* Requirements for Brief Mandatory Note in Owner's Manual Concerning Proper Use of Optional Webbing Tension-Relieving Device
*Form(s):* None
*Frequency:* On occasion
*Respondents:* Motor Vehicle Manufacturers
*Need/Use:* A warning note must appear in the motor vehicle owner's manual to inform users about proper use of optional safety belt webbing tension-relieving device

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

**Jon H. Seymour,**
*Assistant Secretary for Administration.*

[FR Doc. 85–27447 Filed 11–15–85; 8:45 am]
BILLING CODE 4910–62–M

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## Coast Guard

**[CGD 85–082]**

## Houston/Galveston Navigation Safety Advisory Committee; Meeting Cancellation

Referencing the notice in the **Federal Register** of October 10, 1985 (50 FR 41435), the eleventh meeting of the Houston/Galveston Navigation Safety Advisory Committee scheduled for 9:30 a.m. on Thursday, November 21, 1985 at U.S. Coast Guard Base Galveston at the end of Ferry Road on Fort Point, Galveston, Texas is cancelled.

Dated: November 1, 1985.

Clyde T. Lusk, Jr.,

*Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 85-27427 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-074]

## Rules of the Road Advisory Council; Meeting Cancellation

**AGENCY:** Coast Guard, DOT.

**ACTION:** Public notice.

**SUMMARY:** The Rules of the Road Advisory Council meeting that was to be held on Thursday and Friday, November 7 and 8, 1985 at the Lincoln Hotel, 4860 West Kennedy Blvd., at Urban Center, Tampa, Florida has been cancelled.

The Council has not been terminated and will continue to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to any major proposals for changes to the Inland Rules and Collision Regulations. Advance notice of the next Rules of the Road Advisory Council meeting will be published in the Federal Register.

Information concerning the Council's next meeting or Council activities may be obtained from Lieutenant Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR-3), Washington, DC 20593, Telephone (202) 426-1950.

Dated: November 8, 1985.

T.J. Wojnar,

*Rear Admiral, Coast Guard, Chief, Office of Navigation.*

[FR Doc. 85-27425 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 84-060]

## Towing Safety Advisory Committee; Subcommittee Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Licensing of Pilots Subcommittee of the Towing Safety Advisory Committee (TSAC). The subcommittee meeting will be held on December 12, 1985 in Room 1105 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The meeting will begin at 9:00 a.m. The agenda for the meeting will consist of the Notice of Proposed Rulemaking regarding the Licensing of Pilots and the Manning of Vessels—Pilots published in the Federal Register on June 24, 1985 (50 FR 26117).

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain R.F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, D.C. 20593 or by calling (202) 426-1477.

Dated: November 13, 1985.

R.F. Ingraham,

*Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.*

[FR Doc. 85-27428 Filed 11-15-85; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 7]

## Surety Companies Acceptable on Federal Bonds; Termination of Authority; Millers National Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Millers National Insurance Company, of Chicago, Illinois, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 50 FR 27123, July 1, 1985.

With respect to any bonds currently in force with Millers National Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: November 1, 1985.

W.E. Douglas,

*Commissioner, Financial Management Service.*

[FR Doc. 85-27393 Filed 11-15-85; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 50, No. 222
Monday, November 18, 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

**COMMODITY FUTURES TRADING COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 50 FR 45959.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Tuesday, November 19, 1985.

**CHANGES IN THE MEETING:** The following item has been added to the agenda: National Futures Association Proposed Compliance Rule 2-29.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 85-27460 Filed 11-14-85; 10:25 am]
BILLING CODE 6351-01-M

2

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 9:30 a.m., Tuesday, November 19, 1985.

**LOCATION:** Third Floor Hearing Room, 1111 18th Street, NW., Washington, DC

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**

*Management Review: Matrix Management Discussion*

The Commission and staff will discuss issues related to matrix management as a part of the ongoing management review.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800.

Dated: November 13, 1986.
**Sheldon D. Butts,**
*Deputy Secretary.*
[FR Doc. 85-27491 Filed 11-14-85; 12:25 pm]
BILLING CODE 6355-01-M

3

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 9:30 a.m., Wednesday, November 20, 1985.

**LOCATION:** Room 456, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

*Closed to the Public*

1. Compliance Status Report

The staff will brief the Commission on various enforcement matters.

*Open to the Public*

2. All-Terrain Vehicle: Status

The Commission and the staff will discuss the status of the All-Terrain Vehicle project.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301—492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301—492-6800.

Dated: Nov. 13, 1985.
**Sheldon D. Butts,**
*Deputy Secretary.*
[FR Doc. 85-27492 Filed 11-14-85; 12:25 pm]
BILLING CODE 6355-01-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 Tuesday, November 12, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting 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 maters:

Request of Century Bank and Trust Company, Somerville, Massachusetts, for an extension of the grace period within which to conform to interest rate regulations.

Notice of acquisition of control: Name of acquiring party and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii)).

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)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 12, 1985.
Federal Deposit Insurance Corporation.
**Hoyle L. Robinson,**
*Executive Secretary.*
[FR Doc. 85-27479 Filed 11-14-85; 11:26 am]
BILLING CODE 6714-01-M

5

**FEDERAL ENERGY REGULATORY COMMISSION**

Notice (November 13, 1985)

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**TIME AND DATE:** 10:00 a.m., November 20, 1985.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

**Consent Power Agenda, 824th Meeting—November 20, 1985, Regular meeting (10:00 a.m.)**

CAP-1.
Project No. 8707-001, Yakima-Tieton Irrigation District
CAP-2.
Project No. 8383-002, Palisade Irrigation District
CAP-3.
Project No. 3473-004, Jack M. Fuls
CAP-4.
Project No. 5882-004, West Slope Power Company
CAP-5.
Project No. 5248-005, West Slope Power Company
CAP-6.
Project No. 5915-002, White Chuck Water Company
CAP-7.
Project No. 7743-001, Con-Rel Corporation
CAP-8.
Project No. 8875-001, Armstrong-Keta, Inc.
CAP-9.
Project No. 5222-002, Garden Bar Dam and Reservoir Water Power Project
CAP-10.
Project No. 9401-001, the Halecrest Company
Project No. 8595-001, Energy Storage Corporation
Project No. 9105-001, Esperanza Power Limited Partnership
CAP-11.
Project No. 2574-002, Milstar Manufacturing Corporation
CAP-12.
Project No. 6415-003, Slush Cup Company
CAP-13.
Project No. 1962-006, Pacific Gas and Electric Company
Project No. 3223-002, Sacramento Municipal Utility District, Northern California Power Agency, and the cities of Anaheim, Azusa, Banning, Colton and Riverside, California
CAP-14.
Project No. 7282-017, Roaring Creek Ranch
CAP-15.
Project No. 7899-006, Renewable Resources Development
CAP-16.
Project No. 2934-006, New York State Electric & Gas Corporation
CAP-17.
Project Nos. 8950-001 and 002, James W. Caples
CAP-18.
Project No. 5861-003, West Slope Power Company
CAP-19.
Project Nos. 3605-001, 002 and 003, Mohawk Paper Mills, Inc.
CAP-20.
Project No. 3475-003, Town of Clintwood, Virginia
CAP-21.
Project No. 8256-002, Electro Technologies, Ltd.
Project No. 8244-001, Hydropool
CAP-22.
Project No. 2910-001, Town of Jonesboro, Louisiana
CAP-23.
Project Nos. 13-003 and 003, Niagara Mohawk Power Corporation
CAP-24.
Project No. 2503-009, Duke Power Company
CAP-25.
Docket No. QF85-511-000, Veterans Administration Central Office
CAP-26.
Docket No. ER85-644-003, Duke Power Company
CAP-27.
Docket Nos. ER85-595-001, ER85-656-001, ER85-657-001 and ER85-679-001, Vermont Electric Power Company
CAP-28.
Docket No. ER83-138-006 (Phase II), The Cleveland Electric Illuminating Company
CAP-29.
Docket No. ER79-97-003, Alamito Company
CAP-30.
Docket Nos. ER84-572-001 and ER85-806-000, Utah Power & Light Company
CAP-31.
Docket No. ER83-768-000, New England Power Pool
CAP-32.
Docket No. ER85-550-001, Rochester Gas and Electric Company
CAP-33.
Docket No. EL86-4-000, New England Power Company

*Consent Miscellaneous Agenda*

CAM-1.
Docket Nos. RM82-38-000 through 008, fees applicable to electric utilities, cogenerators, and small power producers
CAM-2.
Docket Nos. RM79-63-001 through 005 and RM82-31-001 through 005, fees applicable to natural gas pipelines
CAM-3.
Docket No. SA85-32-001, Inland Ocean, Inc.
CAM-4.
Docket Nos. GP85-41-001 and 002, J.R. Simplot Company and Sacramento Bank for Cooperatives
CAM-5.
Docket Nos. GP-84-56-001 through 004, Northwest Central Pipeline Corporation (formerly Cities Service Gas Company)
CAM-6.
Docket No. GP85-9-002, Texas Gas Transmission Corporation
CAM-7.
Docket No. RM79-76-135 (West Virginia-3), high-cost gas produced from tight formations
CAM-8.
Docket No. RM79-76-244 (West Virginia-2 addition), high-cost gas produced from tight formations
CAM-9.
Docket No. RO85-15-000, Whitaker Oil Company

*Consent Gas Agenda*

CAG-1.
Docket Nos. TA86-1-32-000 and 001 (PGA86-1), Colorado Interstate Gas Company
CAG-2.
Docket Nos. TA86-1-53-000 and 001 (PGA86-1 and IPR86-1), K N Energy, Inc.
CAG-3.
Docket No. RP86-3-000, West Texas Gas, Inc.
CAG-4.
Omitted
CAG-5.
Docket No. RP86-9-000, Southwest Gas Corporation
CAG-6.
Docket No. RP86-10-000, Williston Basin Interstate Pipeline Company
CAG-7.
Docket No. RP86-11-000, K N Energy, Inc.
CAG-8.
Docket Nos. TA86-1-11-000 and 001 (PGA86-1), United Gas Pipe Line Company
CAG-9.
Docket No. RP86-6-000, Mountain Fuel Resources, Inc.
CAG-10.
Docket Nos. ST82-2-003, ST82-409-002, ST83-94-002, ST84-898-001 and ST85-289-001, PGC Pipeline, a division of LPC Energy, Inc.
CAG-11.
Docket Nos. ST85-1661-001, ST85-1684-001, ST84-836-001, ST84-1017-001, ST84-1213-001, ST84-1250-001, ST85-47-001, ST85-49-001, ST85-196-001, ST85-575-001, ST85-663-001, and ST85-715-001, Transcontinental Gas Pipe Line Corporation
CAG-12.
Docket No. RP85-170-002, Texas Eastern Transmission Corporation
CAG-13.
Docket No. RP85-191-001, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-14.
Docket Nos. RP85-11-014 and 015, K N Energy, Inc.
CAG-15.
Docket No. RP85-194-001, Panhandle Eastern Pipe Line Company
CAG-16.
Docket No. RP85-195-001, Southern Natural Gas Company
CAG-17.
Docket No. TA86-1-7-000, Southern Natural Gas Company
CAG-18.
Docket No. TA86-1-33-004, El Paso Natural Gas Company
CAG-19.
Docket No. TA86-1-42-002, Transwestern Pipeline Company
CAG-20.
Docket No. TA82-1-21-018, Columbia Gas Transmission Corporation
CAG-21.
Docket No. TA85-2-21-004, Columbia Gas Transmission Corporation
CAG-22.
Omitted
CAG-23.
Docket No. TA85-3-28-003, Panhandle Eastern Pipe Line Company
CAG-24.
Docket No. RP85-157-000, United Gas Pipe Line Company
CAG-25.
Docket No. RP85-150-001, Natural Gas Pipeline Company
CAG-26.

Omitted
CAG–27.
Docket No. RP83–139–006, El Paso Natural Gas Company
CAG–28.
Docket Nos. RP84–42–002, RP72–133–025, TA80–1–11–003, TA80–2–11–003, TA81–1–11–003, TA81–2–11–006, TA82–1–11–006, TA82–2–11–009, TA83–1–11–005, TA83–2–11–005, TA84–1–11–004, TA84–2–11–004 and TA84–2–11–005 (Phase II), United Gas Pipe Line Company
CAG–29.
Docket No. RP85–161–000, Colorado Interstate Gas Company
CAG–30.
Docket Nos. RP85–151–000 and FA84–23–000, Northern Border Pipeline Company
CAG–31.
Docket Nos. ST80–147–001, ST85–392–000, ST85–450–000 and ST81–307–001, Cabot Pipeline Corporation
CAG–32.
Docket Nos. RI74–188–070 and RI75–21–065, Independent Oil & Gas Association of West Virginia
GAG–33.
Docket Nos. RI74–188–071 and RI75–21–066, Independent Oil & Gas Association of West Virginia
GAG–34.
Docket Nos. CP85–824–001 and 002, Colorado Interstate Gas Company
GAG–35.
Docket Nos. CP83–452–035 through 038, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
GAG–36.
Docket No. CP85–447–001, Colorado Interstate Gas Company
GAG–37.
Docket No. CP85–316–001, Trunkline Gas Company
CAG–38.
Docket No. CI83–269–035, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., West, Inc.
Docket No. RP83–11–044 and RP83–30–042, Transcontinental Gas Pipe Line Corporation
Docket No. CP83–279–034, Producer-suppliers of Transcontinental Gas Pipe Line Corporation
Docket No. CP83–340–033, Producer-suppliers of Transco Gas Supply Company
Docket No. CP83–428–042, Producer-suppliers of Transco supply Company and Transcontinental Gas Pipe Line Corporation
Docket No. CP83–452–023, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
Docket No. CP83–502–027, Tennessee Gas Pipe Line Company, a division of Tenneco Inc.
Docket No. CP83–333–034, Panmark Gas Company
Docket No. CP83–342–003, Trunkline Gas Company
Docket No. CP83–343–004, Panhandle Eastern Pipe Line Company
Docket No. CP83–354–002, Trunkline Gas Company and Panmark Gas Company
Docket No. CP83–355–003, Panhandle Eastern Pipe Line Corporation and Panmark Gas Company
Docket No. CP84–244–013, Texas Eastern Transmissioin Corporation and Producer-Suppliers of Texas Eastern Transmission Corporation
Docket No. CI84–332–019, Cities Service Oil and Gas Corporation, Cities Offshore Production Company and Oxy Petroleum, Inc.
Docket No. CI84–374–017, TXP Operating Company
Docket No. CI84–465–020, Amoco Production Company
Docket No. CP84–539–016, El Paso Natural Gas Company
CAG–39.
Docket No. CP85–561–000, Panhandle Eastern Pipe Line Company
CAG–40.
Docket No. CP85–735–000, Carnegie Natural Gas Company
CAG–41.
Omitted
CAG–42.
Docket No. CP85–537–000, Columbia Gulf Transmission Company
CAG–43.
Docket No. CP85–194–000, Stingray Pipeline Company
CAG–44.
Docket No. CP85–441–000 and 001, Transwestern Pipeline Company
CAG–45.
Docket No. CP85–681–000, Northern Natural Gas Company, division of Internorth, Inc.
CAG–46.
Docket Nos. ST84–1014–001 and CP85–780–000, Mississippi River Transmission Corporation

**I. Licensed Project Matters**

P–1.
Project No. 4334–006, Long Lake Energy Corporation
P–2.
Project Nos. 7804–002 and 7805–002, Gerald and Glenda OHS

**II. Electric Rate Matters**

ER–1.
Docket No. EL85–18–000, city of Tacoma, Washington v. the Washington Water Power Company, the Montana Power Company, Portland General Electric Company, Pacific Power and Light Company and Puget Sound Power and Light Company

*Miscellaneous Agenda*

M–1.
Reserved
M–2.
Reserved
M–3
Docket No. RM83–8–000, ratemaking treatment of investment tax credits for natural gas pipeline companies
M–4
Docket No. RM83–13–000, revisions to FPC Form No. 8, "Underground Gas Storage Report," and FERC Form No. 16, "Report of Gas Supply and Requirements"
M–5
Docket No. CP83–34–000, Westar Transmission Company
M–6
Docket No. GP80–43–005, (Phase I), Northern Natural Gas Company

**I. Pipeline Rate Matters**

RP–1.
Docket No. RP86–13–000, Natural Gas Pipeline Company of America
RP–2.
Docket No. RP86–15–000, Columbia Gas Transmission Corporation
Docket No. RP86–14–000, Columbia Gas Transmission Corporation
RP–3.
Docket Nos. RP84–15–005 and RP84–7–003, MIGC, Inc.
Docket Nos. TA83–2–47–002, TA84–1–47–002 and TA84–2–47–002, Colorado Interstate Gas Company
RP–4.
Docket No. ST82–319–006, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST82–361–008, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
RP–5.
Docket No. RP82–71–000, 016, TA83–1–59–000, TA84–1–59–000 and TA85–1–59–000, Northern Natural Gas Company, division of Internorth Inc.

**II. Producer Matters**

CI–1.
Docket Nos. G–4579–033 and CI85–222–001, Cities Service Oil and Gas Corporation
CI–2.
Docket Nos. CI84–10–000, Felmont Oil Corporation and Essex Offshore, Inc.
CI–3.
Docket No. CI85–270–000, Panhandle Eastern Pipe Line Company v. TXO Production Corporation, Essex Exploration, Inc. and Graham Exploration, Ltd.

**III. Pipeline Certificate Matters**

CP–1.
Docket No. CP84–386–000, ANR Pipeline Company

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 85–27461 Filed 11–14–85; 10:25 am]
BILLING CODE 6717–01M

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6

**FEDERAL HOME LOAN BANK BOARD**

**TIME AND DATE:** Monday, November 25, 9:00–5:00 p.m.; Tuesday, November 26, 9:00–12 Noon.

**PLACE:** Hotel Inter–Continental San Diego, California.

**STATUS:** Federal Savings and Loan Advisory Council Meeting.

**CONTACT PERSON FOR MORE INFORMATION:** John M. Buckley, Jr. (202/377–6577) or Debra J. Ahearn (202/377–6924).

**MATTERS TO BE CONSIDERED:**

Committee reports regarding the following:

1. Recapitalization of the FSLIC and Variable Rate Deposit Insurance Premiums
2. Thrift Capital and the FSLIC Fund

**Jeff Sconyers,**

*Secretary.*

No. 30, November 14, 1985.

[FR Doc. 85-27451 Filed 11-14-85; 9:36 am]

BILLING CODE 6720-01-M

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**7**

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

November 13, 1985.

**TIME AND DATE:** 2:00 p.m., Wednesday, November 13, 1985.

**PLACE:** 1730 K Street NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** In addition to the previously announced items, the Commission considered and acted upon the following:

3. The NACCO Mining Company, Docket No. LAKE 85-87-R.

4. Westmoreland Coal Company, Docket Nos. WEVA 82-152-R, WEVA 82-269. (Consideration of a Petition for Discretionary Review).

It was determined by a unanimous vote of Commissioners that these items be added to the agenda and no earlier announcement of the items was possible.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629.

**Jean Ellen,**

*Agenda Clerk.*

[FR Doc. 85-27537 Filed 11-14-85; 3:51 pm]

BILLING CODE 6735-01-M

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**8**

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**

(Northwest Power Planning Council)

**STATUS:** Open.

**TIME AND DATE:** November 20-21, 1985, 9:00 a.m.

**PLACE:** Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

**MATTERS TO BE CONSIDERED:**

1. *Council Deliberation on Model Conservation Standards Amendments.* The Council may take final action on the model conservation standards amendments at its November 20-21 meeting.

2. *Council Deliberation on Draft Power Plan.* The Council expects to address the following issues:

a. *Cost-Effective Limit.*
b. *Non-Firm Strategies.*
c. *Resource Portfolio Uncertainty.*
d. *Conservation Availability.*
e. *Generating Resources Assumptions.*
f. *Any issues not resolved from November 13-14 meeting.*

3. *Council Business.*

- Fish and Wildlife Program Amendment Schedule.
- Administrative Matters.

4. *Public Comment* on any other issue. The record on the MCS closed on October 23, 1985, and the record on the draft plan closed October 25, 1985; therefore, no public comment can be taken on this subject at this meeting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ruth Curtis (Power Plan issues only) or Ms. Bess Atkins (all other issues) at (503) 222-5161.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 85-27514 Filed 11-14-85; 1:27 pm]

BILLING CODE 0000-00-M

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**9**

**POSTAL RATE COMMISSION**

**TIME AND DATE:** Periodic meetings between November 18 thru 22, 1985.

**PLACE:** 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Discussion of issues and recommended decisions regarding Tri-Parish—Docket No. C85-2.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 85-27462 Filed 11-14-85; 10:25 am]

BILLING CODE 7715-01-M

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**10**

**POSTAL RATE COMMISSION**

**TIME AND DATE:** 2:00 p.m., November 19, 1985.

**PLACE:** 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** United Parcel Service's Motion for costing proceeding.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

[FR Doc. 85-27463 Filed 11-4-85; 10:25 a.m.]

BILLING CODE 7715-01-M

federal register

Monday
November 18, 1985

Part II

# Department of Health and Human Services

Public Health Service

Announcement of Opportunities for Research on Adolescent Family Life; Investigator-Initiated Research Grants and New Investigator Research Awards; Notice

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

## Announcement of Opportunities for Research on Adolescent Family Life; Investigator-Initiated Research Grants and New Investigator Research Awards

**AGENCY:** Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is a standing announcement of opportunities for research on adolescent family life made available through the Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, DHHS. Proposals for investigation-initiated research grants and New Investigator Research Awards may be submitted to the Division of Research Grants, National Institutes of Health, for peer review. Application receipt dates are February 1, June 1, and October 1. Research is invited in six topical areas: (1) Influences on adolescent premarital sexual behavior; (2) consequences of adolescent premarital sexual behavior; (3) consequences of adolescent premarital pregnancy; (4) the adoption option for the unmarried adolescent mother; (5) parenting by the unmarried adolescent mother and (6) adolescent pregnancy services.

### I. Background

The Adolescent Family Life (AFL) Program was enacted in 1981 to develop and evaluate model demonstration projects to postpone adolescent sexual activity; develop and evaluate model demonstration care projects that provide comprehensive health and social services for pregnant or parenting teens; present adoption as a viable option to parenthood for young, unmarried mothers; and conduct research on related topics. The AFL research component has both basic and applied thrusts in order to provide knowledge needed to support the range of AFL program goals.

This research program is described in the Catalog of Federal Domestic Assistance No. 13.111, Adolescent Family Life Research Grants. Awards are made under the authority of Title XX of the Public Health Service Act and administered under PHS grant policies and Federal Regulations, most specifically at 42 CFR Part 52 and 45 CFR Part 74. This program is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review, unless the proposed research would establish a demonstration project for purposes of collecting data.

### II. Research Goals and Scope

The following research problem areas have been identified as those most needing attention from the viewpoint of the AFL Program:

*A. Influences on Adolescent Premarital Sexual Behavior:* Demographic, economic, social, psychological, and physical characteristics that are related to adolescent premarital sexual activity; the influence of family, peers, the media, and other factors on the initiation of adolescent premarital sexual activity; the adolescent's decision-making process about premarital sexual activity as this is influenced by developmental stage, societal attitudes, ethical values, family/peer relationships, and other factors that enter into the decision-making process. Different patterns of influence for adolescent males and females.

*B. Consequences of Adolescent Premarital Sexual Behavior:* The effects of adolescent premarital sexual behavior on adolescent males and females, particularly with regard to their development (psychological, social, educational, moral, etc.) and physical health; how these consequences differ for major subgroups of the population or other groupings.

*C. Consequences of Adolescent Premarital Pregnancy:* Social, psychological, physiological and other consequences of an adolescent premarital pregnancy and the social mechanisms that operate to ameliorate the negative consequences of such a pregnancy; impact on family of origin/extended family of an adolescent premarital pregnancy, family response to various stages of the pregnancy, and how these vary by major population subgroups or other groupings.

*D. The Adoption Option for the Unmarried Adolescent Mother:* Social, psychological, legal and service dimensions of the pregnant adolescent's adoption decision-making process. Role of the counseling process, social attitudes toward single parenthood, family involvement, the putative father, and the pregnant teen's own characteristics and expectations in the adoption decision-making process.

The effect (social, economic, or psychological) of the adoption decision on the adolescent mother, the child and/or the adoption family. Short and long-term adjustments and use of post-adoption services by an adolescent mother who places a child for adoption.

The differences among and usage of various adoption and care arrangements (formal adoption, informal adoption, temporary foster care, closed adoption and open adoption arrangements) and the differential outcomes for the adolescent mother, the child and/or the adoption family.

*E. Parenting by the Unmarried Adolescent Mother:* Factors influencing parenting behavior of the unmarried adolescent mother and consequences of different kinds of parenting behavior for her and her offspring; role of unmarried adolescent mother's family of origin/extended family in adolescent parenting experience, how this differs by major population subgroups or other groupings, and the effect of such differences on the unmarried mother and her offspring; role of the father of the child of the unmarried adolescent mother in the parenting process and the impact of how his role is played on the mother and her child.

*F. Adolescent Pregnancy Services:* The scope and impact of public and private sector services and policies directed toward adolescent pregnancy prevention, care, and parenting.

Evaluations of discrete strategies or interventions designed to eliminate adolescent premarital sexual relations and to assist families in effectively communicating their values about sexual matters to their children.

Evaluations of discrete strategies or interventions that might enhance service delivery of care services (e.g., health care, educational and vocational services, family planning services) to pregnant and parenting adolescents and their families.

Applications should include a well-organized statement of the problem to be addressed, the research design, the conceptual framework within which the design has been developed, the methodology to be employed, the evidence upon which the analysis will rely, and the manner in which the evidence will be analyzed.

### III. Mechanisms of Support

The support mechanisms for this program will be the individual research project grant award and the New Investigator Research Award (NIRA). Direct costs should not exceed $100,000 for each year of the project in the former case and $37,500 in the latter case. Awards can be made for a maximum of three years in both cases, although the Office of Adolescent Pregnancy Programs (OAPP) is particularly interested in shorter-term projects as well as those making use of already existing data. Yearly continuation of a

multi-year award is contingent on grantee performance and availability of funds. Competition is open to any corporation, public or private institution or agency, including corporations operated for profit.

In order to make data available to others, copies of data sets and accompanying documentation produced with funds granted through this announcement will be deposited with a public use data archive or with OAPP. The cost of making such data available should be budgeted in the proposal.

This announcement is a standing announcement of opportunities for research on Adolescent Family Life and will prevail until superseded by a subsequent annoucement. Funding decisions can be expected within eight months of an application receipt date. Approximately one million dollars is available annually from OAPP for new awards in the AFL research area, contingent upon the receipt of appropriated funds for this purpose.

### IV. Review Procedures and Criteria

Applications in response to this solicitation will be reviewed on a nationwide basis and in competition with other submitted applications by committees convened by the Division of Research Grants/NIH, in accord with the usual NIH peer review procedures. Peer review criteria include:

A. Scientific merit and significance of the project;

B. Competency of proposed staff in relation to the type of research involved;

C. Feasibility of the project;

D. Reasonableness of proposed budget period in relation to the proposed research;

E. Amount of grant funds necessary for completion, and adequacy of applicant's resources available for project;

F. Adequacy of methodology proposed to carry out research;

G. Adequacy of the proposed means for protecting against adverse effects upon humans, animals, or the environment, where an application involves activities which could have such effects.

Applications recommended for approval will be selected for funding by the Deputy Assistant Secretary for Population Affairs, Office of Population Affairs, on the basis of priority score, AFL program relevance, and availability of funds.

### V. Method of Applying

Applications should be prepared on PHS form 398, which is available in the business or grants and contracts office at most academic and research institutions or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building, Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: 301–496–7441.

Completed applications should be submitted to: Division of Research Grants, National Institutes of Health, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Type across the mailing envelope and item two on the application face page: "Research on Adolescent Family Life." In addition, "New Investigator Research Award" should be added for proposals falling in this specialized category. Organizations which contemplate submitting a NIRA application should request the pamphlet, "New Investigator Research Awards," from DRG/NIH before developing the application and follow the guidelines contained therein.

Application receipt dates are February 1, June 1, and October 1.

### VI. Identification of Contact Points

Staff at the OAPP will assist to the extent possible in matters of scope, relevance, or other questions about review, administration, and funding of applications received in response to this announcement. Investigators are encouraged to contact the following individual: Eugenia Eckard, Office Population Affairs, OASH, DHHS, Hubert H. Humphrey Building, Room 731E, 200 Independence Avenue SW., Washington, D.C. 20201, Telephone: 202–245–1181.

Dated: November 12, 1985.

**Jo Ann Gasper,**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 85–27343 Filed 11–15–85; 8:45 am]

BILLING CODE 4160–17–M

federal register

Monday
November 18, 1985

Part III

# Department of Health and Human Services

Public Health Service

Announcement of Opportunities for Research in Family Planning Service Delivery Improvement; Investigator-Initiated Research Grants and New Investigator Research Awards; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Opportunities for Research in Family Planning Service Delivery Improvement; Investigator-Initiated Research Grants and New Investigator Research Awards

**AGENCY:** Office of Family Planning, Office of Population Affairs, PHS, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is a standing announcement of opportunities for research in family planning service delivery improvement being made available through the Office of Family Planning, Office of Population Affairs, PHS, DHHS. Proposals for investigator-initiated research grants and New Investigator Research Awards may be submitted to the Division of Research Grants, National Institutes of Health, for peer review. Application receipt dates are February 1, June 1, and October 1. Research is invited in 10 topical areas: 1) Family planning client behavior; 2) adolescent family planning clients; 3) male family planning clients; 4) targeting of family planning services; 5) clinic personnel behavior; 6) organization and management of family planning services; 7) role of private physician; 8) natural family planning; 9) infertility services and 10) counseling services.

#### I. Background

The Office of Family Planning (OFP) which administers Title X of the Public Health Service Act, the major source of Federal funding for voluntary family planning services in this country, has an applied research program oriented toward the provision of knowledge that will enable the Title X program to improve its delivery of family planning services to low-income women and other clients in need of such services but otherwise unable to afford them. The knowledge sought is that needed by family planning service providers, particularly those at the clinic level, to better understand the service delivery processes with which they are involved and ways to influence these processes in the desired direction. Investigations of a number of topics can help build the needed knowledge.

This research program is described in the Catalog of Federal Domestic Assistance No. 13.974, Family Planning—Services Delivery Improvement Research Grants (SDI). Awards are made under the authority of Section 1004(a) of Title X of the Public Health Service Act (42 U.S.C. 300a–2(a)) and administered under PHS grant policies and Federal Regulations, most specifically at 42 CFR Part 52 and 45 CFR Part 74. This program is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review, unless the proposed research would establish a demonstration project for purposes of collection data.

#### II. Research Goals and Scope

The following research problem areas have been identified as those most needing attention from the viewpoint of family planning services delivery improvement:

*A. Family Planning Client Behavior:* Factors influencing who comes to family planning clinics, when they come, their expectations, their satisfaction, effectiveness of their contraceptive behavior, and their pattern of clinic attendance and contraceptive use.

*B. Adolescent Family Planning Clients:* Analyses of ways to better serve adolescents who are obtaining Title X services.

*C. Male Family Planning Clients:* Identification of barriers to and strategies for bringing about effective involvement of males in family planning services; analyses of developmental processes that operate against responsible male sexual and family planning behavior.

*D. Targeting of Family Planning Services:* Effectiveness of different kinds of strategies for targeting family planning services to low-income and other special needs clients (e.g., cultural or ethnic minorities, populations in rural or other distinctive geographical settings, unemployed, physically handicapped, mentally ill, or retarded); effectiveness of special approaches to delivery of family planning services for these subgroups.

*E. Clinic Personnel Behavior:* Factors influencing the manner in which different types of family planning personnel perform their roles; consequences of such differences for effectiveness of clients' family planning behavior; successfulness of training or other strategies in enhancing personnel role performance; factors in recruiting and retaining competent family planning personnel; impact of clinic personnel characteristics on clinic quality of care and efficiency.

*F. Organization and Management of Family Planning Services:* Effects of managerial and organizational factors at the clinic and other levels (e.g., funding arrangements, organization type, staffing patterns, facility/location characteristics) on efficiency and effectiveness of family planning service provision. Analyses of how costs can be contained or reduced while maintaining quality of family planning services provided; evaluations of how integration of family planning services with other services affects the character of family planning service provision.

*G. Role of Private Physician:* Factors influencing role of private physician in providing family planning services to low-income women and adolescents.

*H. Natural Family Planning:* Factors affecting choice of Natural Family Planning (NFP) as a method of fertility regulation in family planning clinics and other settings; determinants of NFP use-effectiveness; conditions under which NFP is an effective component of infertility services; studies of how to improve provision of NFP in family planning clinic settings.

*I. Infertility Services:* Factors influencing the need for and provision of infertility services among low-income women; conditions for successful treatment of low-income women's various infertility problems; studies of how to improve provision of infertility services in Title X programs.

*J. Counseling Services:* Evaluations of the role and effectiveness of various kinds of contraceptive education counseling approaches in different kinds of family planning clinic settings; studies of ways to include/improve counseling of pregnant adolescents concerning the adoption option in family planning clinic settings.

Applications should include a well-organized statement of the problem to be addressed, the research design, the conceptual framework within which the design has been developed, the methodology to be employed, the evidence upon which the analysis will rely, and the manner in which the evidence will be analyzed. The question of how findings from the proposed study will have general applicability to concerns of family planning services programs in this country should be addressed.

#### III. Mechanisms of Support

The support mechanisms for this program will be the individual research project grant award and the New Investigator Research Award (NIRA). Direct costs should not exceed $100,000 for each year of the project in the former case and $37,500 in the latter case. Awards can be made for a maximum of three years in both cases, although OFP is particularly interested in shorter-term projects as well as those making use of already existing data. Yearly continuation of multi-year awards is contingent on grantee performance and availability of funds. Competition is

open to any public or private non-profit institution or agency.

In order to make data available to others, copies of data sets and accompanying documentation produced with funds granted through this announcement will be deposited with a public use data archive or with OFP. The cost of making such data available should be budgeted in the proposal.

This announcement is a standing announcement of opportunities for research in family planning service delivery improvement and will prevail until superseded by a subsequent announcement. Funding decisions can be expected within eight months of an application receipt date. Approximately one million dollars is available annually from OFP for new awards in the family planning service delivery improvement research area, contingent upon the receipt of appropriated funds for this purpose.

### IV. Review Procedures and Criteria

Applications in response to this solicitation will be reviewed on a nationwide basis and in competition with other submitted applications, by committees convened by the Division of Research Grants (DRG)/NIH in accord with the usual NIH peer review procedures. Peer review criteria include:

A. Secientific merit and significance of the project;

B. Competency of proposed staff in relation to the type of research involved;

C. Feasibility of the prbject;

D. Reasonableness of proposed budget period in relation to the proposed research;

E. Amount of grant funds necessary for completion, and adequacy of applicant's resources available for project;

F. Adequacy of methodology proposed to carry out research;

G. Adequacy of the proposed means for protecting against adverse effects upon humans, animals, or the environment, where an application involves activites which could have such effects.

Applications recommended for approval will be selected for funding by the Deputy Assistant Secretary for Population Affairs, Office of Population Affairs, on the basis of priority score, OFP program relevance, and availability of funds.

### V. Method of Applying

Applications should be prepared on PHS form 398, which is available in the business or grants and contracts office at most academic and research institutions or from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building, Room 449, 5333 Westbard Avenue, Bethesda, Maryland 20892, Telephone: (301) 496–7441.

Completed applications should be submitted to: Division of Research Grants, National Institutes of Health, Westwood Building, Room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.

Type across the mailing envelope and item two on the application face page: "Research in Family Planning Service Delivery Improvement." In addition, "New Investigator Research Award" should be added for proposals falling in this specialized category. Organizations which contemplate submitting a NIRA application should request the pamphlet, "New Investigator Research Awards, "from DRG/NIH before developing the application and follow the guidelines contained therein.

Application receipt dates are February 1, June 1, and October 1.

### VI. Identification of Contact Points

Staff at OFP will assist to the extent possible in matters of scope, relevance, or other questions about review, administration, and funding of applications received in response to this announcement. Investigators are encouraged to contact the following individual for further information: Patricia Thompson, Ph.D., Office of Family Planning, Office of Population Affairs, Hubert H. Humphrey Building, Room 731E 200 Independence Avenue S.W., Washington, D.C. 20201, Telephone (202) 245–1181.

Dated: November 12, 1985.

**Jo Ann Gasper,**

*Deputy Assistant Secretary for Population Affairs.*

[FR Doc. 85–27360 Filed 11–15–85; 8:45 am]

BILLING CODE 4160–17–M

federal register

Monday
November 18, 1985

Part IV

# Department of the Interior

## Minerals Management Service

**Outer Continental Shelf; Eastern Gulf of Mexico; Oil and Gas Lease Sale 94; Notice**

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Eastern Gulf of Mexico
Oil and Gas Lease Sale 94

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 3301 North Causeway Boulevard, Metairie, Louisiana 70002. Bids may be submitted in person or by mail to the above address during normal business hours (8:00 a.m. to 4:00 p.m., c.s.t.) and must be received by the Bid Submission Deadline at 10:00 a.m., c.s.t., December 17, 1985. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t) unless otherwise stated. Bids will not be accepted on the day of Bid Opening, December 18, 1985. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10:00 a.m., December 17, 1985. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., December 18, 1985. Bid Opening Time will be 9:00 a.m., December 18, 1985, at the New Orleans Convention Center, Ballroom, in New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 50 FR 40618 on October 4, 1985.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 94, (map number, map name, and block number), not to be opened until 9:00 a.m., c.s.t., December 18, 1985," must be submitted for each block bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 94, NH 16-8, Destin Dome, Block 701, not to be opened until 9:00 a.m., c.s.t., December 18, 1985." A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block will be considered.



All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $150 or more per acre or fraction thereof. All leases resulting from this sale will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases awarded will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be utilized for this sale apply to blocks as shown on map 2 (see paragraph 12). The following bidding systems will be used.

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.





9. Acceptance, Rejection, or Return of Bids. The United States re-
serves the right to reject any and all bids.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $150 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer (EFT) utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS. Bidders are referred to 30 CFR 218.155.



11. Official Protraction Diagrams. Blocks offered for lease may be located on the following Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14(a)). These diagrams sell for $2.00 each:

| Outer Continental Shelf Official Protraction Diagrams: | | (Latest Approval or Revision Date) |
|---|---|---|
| NH 16-5 | Pensacola | (June 2, 1983) |
| NH 16-8 | Destin Dome | (December 2, 1976) |
| NH 16-9 | Apalachicola | (June 2, 1983) |
| NH 16-11 | De Soto Canyon | (December 2, 1976) |
| NH 16-12 | Florida Middle Ground | (December 2, 1976) |
| NH 17-7 | Gainesville | (June 2, 1983) |
| NH 17-10 | Tarpon Springs | (June 2, 1983) |
| NG 16-2 | Lloyd Ridge | (November 10, 1983) |
| NG 16-3 | The Elbow | (December 2, 1976) |
| NG 16-6 | Vernon Basin | (November 10, 1983) |
| NG 16-9 | Howell Hook | (April 18, 1979) |
| NG 17-1 | St. Petersburg | (June 2, 1983) |
| NG 17-4 | Charlotte Harbor | (June 2, 1983) |
| NG 17-7 | Pulley Ridge | (October 24, 1978) |

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Official Protraction Diagrams. Some of these blocks, however, are bisected by administrative lines such as the Federal/State jurisdictional line, or the section 8(g) line, or a combination of such lines. In these cases, the following supplemental document to this Notice of Sale is available from the Gulf of Mexico Regional Office (see paragraph 14 (a)).

(1) Eastern Gulf of Mexico Lease Sale 94, Final - Split Blocks and 8(g) Boundary Blocks

(b) References to maps 1 and 2 in this Notice refer to the following maps which are also available on request from the Gulf of Mexico Regional Office.

Map 1 entitled "Eastern Gulf of Mexico Lease Sale 94, Final, Stipulations and Warning Areas."

Map 2 entitled "Eastern Gulf of Mexico Lease Sale 94, Final, Lease Terms and Bidding Systems."

(c) The areas offered for leasing include all those blocks shown on the Official Protraction Diagrams listed in paragraph 11 except for those blocks in areas marked "Deferred from Bidding" on the above maps, blocks which are in water depths greater than 2,400 meters (as shown on the above maps), and blocks described as follows:

(1)

EASTERN GULF OF MEXICO LEASED LANDS

Descriptions of Blocks Listed Represent All Federal Acreage Leased Unless Otherwise Noted

| Pensacola | Destin Dome (continued) | De Soto Canyon (continued) | Charlotte Harbor (continued) | Pulley Ridge (continued) |
|---|---|---|---|---|
| 881 | 328 | 424 | 709 | 671 |
| 948 | 329 | 427 | 710 | 672 |
| 949 | 375 | 466 | 711 | 673 |
| 952 | 376 | 467 | 712 | 674 |
| 969 | 377 | 468 | 753 | 675 |
| 970 | 378 | 469 | 754 | 687 |
| 996 | 419 | 472 | 755 | 688 |
| | 421 | 476 | 756 | 694 |
| Destin Dome | 422 | 511 | 796 | 695 |
| | 458 | 512 | 797 | 714 |
| 1 | 460 | 513 | 798 | 715 |
| 2 | 502 | 516 | 840 | 716 |
| 3 | 511 | 517 | 841 | 717 |
| 4 | 555 | 520 | 842 | 718 |
| 37 | 556 | 521 | 843 | 719 |
| 38 | 617 | 555 | 886 | 738 |
| 45 | 661 | 556 | 887 | 739 |
| 46 | 731 | 557 | 931 | 757 |
| 55 | 775 | 600 | 932 | 758 |
| 56 | 776 | 656 | 975 | 760 |
| 57 | | 657 | | 761 |
| 81 | Apalachicola | 700 | Howell Hook | 799 |
| 82 | | | | 800 |
| 99 | 959 | Florida Middle | 528 | 830 |
| 100 | 960 | Ground | 573 | 831 |
| 114 | 1002 | | 574 | 846 |
| 115 | 1003 | 35 | | 847 |
| 116 | 1004 | | Pulley Ridge | 874 |
| 158 | | Charlotte Harbor | | 875 |
| 159 | Gainesville | | 589 | 890 |
| 160 | | 577 | 590 | 891 |
| 161 | 706 | 578 | 598 | 930 |
| 166 | 707 | 579 | 599 | 931 |
| 167 | 750 | 580 | 600 | 963 |
| 203 | | 581 | 629 | 964 |
| 204 | De Soto Canyon | 621 | 630 | 974 |
| 205 | | 622 | 631 | 975 |
| 235 | 337 | 623 | 632 | 994 |
| 236 | 378 | 665 | 633 | 995 |
| 240 | 379 | 666 | 642 | 999 |
| 280 | 422 | 667 | 643 | 1000 |
| 284 | 423 | 668 | 644 | 1001 |
| 285 | | | | 1007 |
| | | | | 1008 |



(2) Although currently unleased and shown on Official Protraction Diagram NH 16-8, Destin Dome, no bids will be accepted on the following blocks:

Blocks 133 through 148
Blocks 177 through 192
Blocks 221 through 234
Blocks 265 through 279
Blocks 309 through 324
Blocks 353 through 368
Blocks 397 through 412
Blocks 441 through 456
Blocks 485 through 500
Blocks 529 through 544
Blocks 573 through 586
Blocks 618 through 632
Blocks 662 through 676
Blocks 705 through 720
Blocks 749 through 764
Blocks 793 through 808

(3) Although currently unleased and shown on Official Protraction Diagram NH 16-5, Pensacola, no bids will be accepted on the following blocks:

Blocks 963, 1007, and 1008

(4) Although currently unleased and shown on Official Protraction Diagram NH 16-9, Apalachicola, no bids will be accepted on the following blocks:

Blocks 1 through 4
Blocks 45 through 49
Blocks 89 through 94
Blocks 133 through 138
Blocks 177 through 182
Blocks 222 through 227
Blocks 266 through 271
Blocks 311 through 316
Blocks 355 through 360
Blocks 399 through 405
Blocks 444 through 454
Blocks 488 through 500
Blocks 503 through 504
Blocks 533 through 548
Blocks 578 through 592
Blocks 623 through 636
Blocks 669 through 680
Blocks 713 through 724
Blocks 757 through 768
Blocks 801 through 812
Blocks 848 through 856
Blocks 894 through 900



(5) Although currently unleased and shown on Official Protraction Diagram NH 17-7, Gainesville, no bids will be

(5) Although currently unleased and shown on Official Protraction Diagram NH 17-7, Gainesville, no bids will be accepted on the following blocks:

Blocks 574 through 577
Blocks 619 through 621
Blocks 663 through 665
Blocks 708 through 709
Blocks 752 through 753
Block 797



13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on map 2 and will be issued on Form MMS-2005 (August 1982). Copies of the lease form are available from the Gulf of Mexico Regional Office.

(b) The applicability of Stipulations Nos. 1 through 7 that will be included in leases resulting from this sale is as shown on map 1 and supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site building, structure, or object. (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Live Bottom Areas.

(This stipulation will apply only to leases on blocks in water depths of 200 meters or less. For activities conducted under Plans of Exploration, the provisions of this stipulation shall apply only in water depths of 100 meters or less. For activities conducted under Development and Production Plans, the provisions of this stipulation shall apply in water depths of 200 meters or less.)

Prior to any drilling activity or the construction or placement of any structure for exploration or development on this lease including, but not limited to, well drilling and pipeline and platform placement, the lessee will submit to the Regional Director (RD) a bathymetry map prepared utilizing remote sensing and/or other survey techniques. This map will include interpretations for the presence of live bottom areas within a minimum of 1,820 meters radius of a proposed exploration or production activity site.

For the purpose of this stipulation, "live bottom areas" are defined as seagrass communities; or those areas which contain biological assemblages consisting of such sessile invertebrates as sea fans, sea whips, hydroids, anemones, ascidians, sponges, bryozoans, or corals living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; or areas whose lithotope favors the accumulation of turtles, fishes, and other fauna.

The lessee will also submit to the RD photodocumentation of the sea bottom within 1,820 meters of the proposed exploration drilling sites or proposed platform locations.

If it is determined that the live bottom areas might be adversely impacted by the proposed activity, then the RD will require the lessee to undertake any measure deemed economically, environmentally, and technically feasible to protect live bottom areas. These measures may include, but are not limited to, the following:

(a) the relocation of operations to avoid live bottom areas;

(b) the shunting of all drilling fluids and cuttings in such a manner as to avoid live bottom areas;

(c) the transportation of drilling fluids and cuttings to approved disposal sites; and

(d) the monitoring of live bottom areas to assess the adequacy of any mitigation measures taken and the impact of lessee initiated activities.



Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within warning areas and Eglin Water Test Areas as shown on map 1 described in paragraph 12).

(a) Hold Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, his agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, his agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the military installations referenced below, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors, or subcontractors, emanating from individual designated Department of Defense (DOD) warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with DOD flight, testing, or operational activities, conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electro-



magnetic communication during any period of time between a lessee, his agents, employees, invitees, independent contractors

magnetic communication during any period of time between a lessee, his agents, employees, invitees, independent contractors, or subcontractors, and onshore facilities.

(c) Operational Controls

The lessee, when operating or causing to be operated on his behalf boat or aircraft traffic in the individual designated warning area, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, on utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters
Eastern Planning Area

| Warning Areas | Command Headquarters | Remarks |
|---|---|---|
| W-151 | Commander<br>Armament Division<br>Eglin AFB, Florida | Overall<br>Operational<br>Control |
| W-151 | Commander<br>Naval Coastal System Center<br>Code 30<br>Panama City, Florida | Periodic<br>Testing<br>Stand<br>Down |
| W-155 | Naval Air Training Command<br>Training Wing Six<br>Naval Air Station<br>Pensacola, Florida | Overall<br>Operational<br>Control |
| W-168 | Commander<br>Armament Division<br>Eglin AFB, Florida | Overall<br>Operational<br>Control |
| W-174 | Naval Air Training Command<br>Naval Air Station<br>Key West, Florida | Overall<br>Operational<br>Control |
| W-470 | Commander<br>Armament Division<br>Eglin AFB, Florida | Overall<br>Operational<br>Control |
| Eglin Water Test Areas 1, 2, 3, 4, and 5 | Commander<br>Armament Division<br>Eglin AFB, Florida | Overall<br>Operational<br>Control |



(d) Evacuation

(The following clause will apply to Warning Areas W-151, W-168, W-470, and the Eglin Water Test Areas 1, 2, 3, 4, and 5. It will not apply to blocks within W-155 and W-174.)

When the activities of the Armament Development and Test Center at Eglin Air Force Base, Florida, may endanger personnel or property, the lessee agrees, upon receipt of a directive from the Regional Director (RD), to evacuate all personnel from all structures on the lease and to shut-in and secure all wells and other equipment, including pipelines on the lease, within 48 hours or within such other period of time as may be specified by the directive. Such directive shall not require evacuation of personnel and shutting-in and securing of equipment for a period of time greater than 72 hours; however, such a period of time may be extended by a susequent directive from the RD. Equipment and structures may remain in place on the lease during such time as the directive remains in effect.

Stipulation No. 4--Transportation.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) Pipelines will be required: (1) if pipeline rights-of-way can be determined and obtained; (2) if laying of such pipelines is technologically feasible and environmentally preferable; and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental cost of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendations of the Regional Technical Working Group for assessment and management of transportation of offshore oil and gas with the participation of Federal, State, and local governments and industry. All pipelines, including both flow lines and gathering lines for oil and gas, shall be designed and constructed to provide for adequate protection from water currents, storm scouring, and other hazards as determined on a case-by-case basis.

(b) Following the development of sufficient pipeline capacity, no crude oil will be transported by surface vessels from offshore production sites except in the case of emergency. Determination as to emergency conditions and appropriate responses to these conditions will be made by the Regional Director.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met, and surface transportation must be employed, all vessels used for carrying hydrocarbons from the leased area will conform with all standards established for such vessels pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.).

Stipulation No 5--Restriction on Exploration Activities.

(This stipulation will be included in leases on blocks shown on map 1 within W-151, W-168, W-470, and Eglin Water Test Areas 1, 2, 3, and 4.)

The placement, location, and planned periods of operation of surface structures on this lease during the exploration stage are subject to approval by the Regional Director (RD) after the review of an operator's Plan of Exploration (POE). Prior to approval of the POE, the RD shall consult with the Commander, Armament Division, Eglin Air Force Base, Florida, and the Commanding Officer, Naval Coastal Systems Center, Panama City, Florida, in order to determine the POE's compatibility with scheduled military operations. The POE will serve as the instrument for promoting a predictable and orderly distribution of surface structures, determining the location and density of such structures, and maximizing exploration while minimizing conflicts with Department of Defense activities. A POE will be disapproved in accordance with 30 CFR 250.34-1(e)(2)(iii) if it is determined that the proposed operations will result in interference with scheduled military missions in such a manner as to possibly jeopardize the national defense or to pose unacceptable risks to life and property. Moreover, if there is a serious threat of harm or damage to life or property, or if it is in the interest of national security or defense, approved operations may be suspended in accordance with 30 CFR 250.12(a)(1)(ii) and (iii). The term of the lease will be extended to cover the period of such suspension or prohibition. It is recognized that the issuance of a lease conveys the right to the lessee as provided in section 8(b)(4) of the OCS Lands Act to engage in exploration, development, and production activities conditioned upon other statutory and regulatory requirements.

Stipulation No. 6--Eight-Year Lease Term.

(This stipulation will be included in leases on blocks in the 400-meter to 900-meter depth range as shown on map 2.)

The lessee must commence the drilling of an exploratory well within 5 years of the date the lease becomes effective if there has been no suspension of operations (SOO). (In the event of a SOO, the 5-year period will be extended accordingly.) The exploratory well shall meet the depth and other criteria established in an approved exploration plan.

Stipulation No. 7--Exploration in Warning Area W-174.

(This stipulation will be included in leases on the following blocks within Warning Area W-174: NG 17-7, Pulley Ridge, 552-567, 596-597, 601-611, 640-641, 645-655, 684-686, 689-693, 696-699, 728-737, 740-743, 772-787, 816-829, 860-873, 904-919, 948-962, 992-993, 996-998, and 1002-1006.)

During the months of November through March, location of exploratory drilling structures (rigs and platforms) will be limited, as necessary, to provide for maneuvering by naval ships conducting training in the area. This will take the form of a prohibition on exploratory drilling within 10 nautical miles of another exploratory structure. This procedure is necessary to provide for placement of structures whereby exploration can be safely accomplished without



interruption to or interference with the national defense mission or unacceptable risks to life and property. If it is in the interest of national security or defense, operations may be suspended in accordance with 30 CFR 250.12(a)(1)(iii) with notification to the lessee by the Regional Director.

14. Information to Lessees.

(a) Information on Supplemental Documents. There is available from the Gulf of Mexico Regional Office a set of drawings depicting the State-Federal Boundary, including the acreage on the Federal side of the line. For copies of this and other documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit at the address stated in paragraph 2, either in writing or by telephone at (504) 838-0519 or 838-0527. For additional information, contact the Regional Supervisor for Leasing and Environment at the same address or by telephone at (504) 838-0755 or 838-0756.

(b) Information on Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.). Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the OCS seabed in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Information on a Memorandum of Understanding with the Department of Transportation on Pipelines. Bidders are advised that the Departments of the Interior (DOI) and Transportation entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult with both Departments for regulations applicable to offshore pipelines.

(d) Information on Unitization. Bidders are advised that, in accordance with section 16 of each lease issued, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate or a net profit share payment.

(e) Information on 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3) the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(f) Information on Affirmative Action. Revision of Department of Labor regulations on Affirmative Action requirements for Government contractors (including lessees) have been deferred pending review of those regulations (see Federal Register of August 25, 1981, at FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting



from this sale, section 18 [illegible]

from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations requirements will be deemed to be part of the existing Affirmative Action forms.

(g) Information on Ordnance Disposal Areas. The Air Force has released an indeterminable amount of unexploded ordnance throughout Warning Areas 151, 168, and 470, and Eglin Water Test Areas 1 through 5. The exact location of this unexploded ordnance is unknown, and lessees are advised that all lease blocks in this sale should be considered potentially hazardous to drilling and platform and pipeline placement.

(h) Information on Navy Operations. These blocks will be affected by the following clause: NH 16-5, Pensacola, 728, 772-778, 816-825, 860-872, 904-917, 950-951, 953-962, 992-995, and 997-1006; NH 16-9, Apalachicola, 221, 265, 309-310, 353-354, 357-398, 441-443, 485-487, and 529-532; and NH 16-8, Destin Dome, 24-36, 68-80, 112-113, 117-126, 157, 162-165, 168-170, 201-202, 206-214, 246-258, 290-302, 335-346, 380-390, 425-434, 470-478, 514-522, and 561-566.

The Navy advises that its Naval Coastal Systems Center (NCSC) conducts testing between April and October with peak operating months during the summer. During this period, oil companies may be requested to stand down from activity for 5- to 10-day periods (to a maximum of 15 days) as determined by the NCSC testing schedule.

(i) Information on Protection of the West Indian Manatee. Bidders are advised that the West Indian manatee is a marine mammal which is officially listed as an endangered species by the DOI. It is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407), and various other State and Federal laws and regulations. On October 22, 1979, (44 FR 60963), the DOI promulgated regulations (50 CFR 17.100-17.108) providing a means for establishing manatee protection areas. Also, there is the Florida Manatee Sanctuary Act of 1978 declaring the entire State of Florida as "refuge and sanctuary for the manatee." A Cooperative Agreement between the DOI and Florida on endangered species became effective on June 23, 1976.

(j) Information on Shallow Hazards. Federal regulation (30 CFR 250.34) requires a lessee to conduct shallow hazards and other geological and geophysical surveys that are necessary for the evaluation of activities to be carried out under a proposed exploration or development/production plan or activities being carried out under an approved plan.



Data collection by the lessee on a lease and, when necessary, off a lease will be analyzed and submitted by the lessee and then reviewed and, when necessary, reanalyzed by the RD to ensure that drilling, development, and production activities can be conducted in an acceptable manner with minimum risk or damage to human, marine, and coastal environments. Based on the review and analysis of the data received and other available data and information, the RD either approves or requires modification to an exploration or development/production plan or application for permit to drill or recommends that the Director, MMS, temporarily prohibit or suspend the conduct of exploration or development/production activities according to provisions of the OCS Lands Act, as amended, and appropriate regulations. Existing regulations authorize the RD to take whatever steps are necessary to assure safe operations offshore, whether shallow hazards are delineated before or after the lease sale.

(k) Information on Stipulation No. 6. Any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, if, within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploratory plan criteria, or if there is not a suspension of operations in effect. For further information, see the Federal Register Notice (50 FR 13289) published April 3, 1985, subject: Notification of OCS Programwide Policy of Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases. See also the Federal Register Notice (50 FR 24546) published June 11, 1985, subject: Proposed Rule on Primary Lease Terms for Leases in Water Depths of 400 to 900 Meters.

(l) Information on Restriction of Exploration Activities. Bidders are advised that there will be restrictions on exploratory activities within areas identified as Eglin Water Test Areas (EWTA) 1, 2, 3, and 4 and Warning Areas W-151, W-168, and W-470 as shown on map 1. Stipulation No. 5 addresses these restrictions. Exploration activities will be confined to 30- by 30-mile drilling windows. The windows will shift from location to location as exploration progresses. Bidders should be aware that, because of the window concept, exploration on some leases may be delayed as operations proposed in drilling windows established for Sale 79 will have some priority over activities proposed in windows which would accommodate Sale 94 activities. Operations on Sale 94 leases issued on blocks within the six already established windows will be permitted as those windows open. Plans of Exploration (POE's) are presently approved in window A, the two northern rows of blocks in window B, and the extreme eastern part of window F, as shown on map 2.

(m) Information on Joint Navy/Air Force Project in W-174. Bidders should be aware that a joint Navy and Air Force instrumented range is being installed in Warning Area W-174. This installation is expected to include an array of 13 transmitting towers ranging in height from 60 to 700 feet above the water surface. The array of towers will extend from the vicinity of

Key West, Florida, north toward the northern part of W-174. Each tower requires a clear line of sight with adjacent towers. Freedom from electromagnetic interference is also required on this line of sight. The specific locations of these structures will be available by July 1986.

(n) Information on Oil Spill Modeling. Bidders are advised that the State of Florida may request site-specific oil spill trajectory modeling as part of the coastal zone consistency concurrence process.

(o) Information on Biological and Oceanographic Study South of 26° N. Latitude. Bidders are advised that no Applications for Permit to Drill will be approved for POE's submitted on leases south of 26° N. latitude prior to completion of a biological and oceanographic resources study underway in the area. The study is expected to be completed in April 1986. If this requirement results in delay in approval of APD's the lease may be suspended in accordance with 30 CFR 250.12(a)(1)(iv) with notification to the lessee by the RD.

(p) Information on Public Release of Geological and Geophysical Data. Bidders are advised that the Department is examining the question of whether the times established for public release of geological and geophysical data under 30 CFR Parts 250 and 251 should be extended to longer periods when moratoria or other conditions delay leasing. The question will be dealt with under separate rulemaking procedures.

(q) Information on Deferral of Payment of Balance of Bonus. Bidders on blocks subject to Stipulation No. 5 should carefully review paragraph 16 of this Notice.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

16. Military Activities. The Air Force (USAF) has three major air bases in Florida that use most of the Eastern Gulf of Mexico (EGOM) for research, development, testing, and evaluation of advanced tactical air-to-air and air-to-surface weapons systems. These air bases are Eglin Air Force Base, Tyndall Air Force Base, and MacDill Air Force Base. The only USAF test location large enough to meet the requirements of these bases is the EGOM. The types of missions conducted by the USAF involve flying from extremely high altitudes to very low altitudes at very high speeds. Safe and effective testing of most of these systems can be performed only over large expanses of water, subject to surveillance and monitoring control by strategically located land/water/airborne tracking facilities.



The intrinsic danger to the oil industry offshore is the occurrence of falling debris as drone planes are shot down or exploded, dropping of ordnance, low-flying planes, and offshore-to-onshore and vice versa testing of weapons and tactical testing missions. Threats to life and property could exist to crews and structures without proper control of OCS structures and operations in the area.

Therefore, a stipulation (Stipulation No. 5) which would restrict the timing and location of exploration activities will be included in any leases shown on Map 1 within Military Warning Areas W-151, W-168, W-470, and Eglin Water Test Areas (EWTA) 1, 2, 3, and 4. There is concern over the military restrictions imposed on leases in the EGOM, particularly with regard to the delays involved in operating on leases outside of areas made available for drilling following Lease Sale 79 (January 5, 1984), the last sale in the EGOM. As a consequence of this concern, a bid for any block shown on Map 1 within Military Warning Areas W-151, W-168, W-470, and EWTA 1, 2, 3, and 4 will be subject to different procedures from those otherwise identified in this Notice. After the MMS completes its bid adequacy review, it will notify bidders of the results of this review. If a bid is determined to be inadequate, it will be rejected, and the bidder's deposit will be returned with interest, as prescribed in 30 CFR 218.155. If a bid is determined to be adequate, the bidder will be so notified, and will be required to furnish a corporate surety bond in a sum equal to the balance of the cash bonus bid, as directed by authorized officer. However, this notification and requirement will not constitute acceptance of the bid. Upon filing the surety bond as directed, the bidder is liable for payment of the four-fifths bonus unless the bid is subsequently rejected. No bid will be accepted until the United States determines that it is in its best interest to do so. The removal of the restriction on the initiation of exploration activities on a block or area will be deemed to be a situation when it is in the best interests of the United States to accept a bid for a lease on that particular block. At such time, the authorized officer will promptly accept the high bid submitted on a block and require the bidder to execute the lease, pay the remaining four-fifths bonus and the first year's rental by EFT, and file a bond as prescribed in 30 CFR 256.47(f). Failure to timely pay the remaining four-fifths bonus will be deemed to render the bidder in default of the bid payment, enabling the United States to obtain payment of the outstanding bonus from the bidder's surety. The four-fifths bonus and the first year's rental must be paid by EFT using the procedure described in paragraph 10 of this Notice. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the notice of bid acceptance. The term "business day" is defined as a day on which the Gulf of Mexico Regional Office is open for business.

At such time as the United States may determine that it would not be in its best interests to accept a bid, the MMS shall reject such bid for a lease within the above-referenced Military Warning Areas and Eglin Water Test Areas, and refund the bid deposit with interest, in accordance with 30 CFR 218.155. In any event, if the authorized officer does not accept the bid within 5 years after the date of the lease sale, the MMS shall reject such bid and return the bid deposit to the bidder with actual interest earned.



Authority for the procedures in this

Authority for the procedures in this paragraph is in 30 CFR- 218.155, 256.46(b), 256.47(e)(2), 256.58(g)(2), and 256.59.

Director, Minerals Management Service
WM. D. Bettenberg

Approved:

Secretary of the Interior
Donald Paul Hodel

NOV 13 1985

Date

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[FR Doc. 85-27429 Filed 11-15-85; 8:45 am]

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**S. 1570 / Pub. L. 99–150**

Fair Labor Standards Amendments of 1985. (Nov. 13, 1985; 99 Stat. 787; 5 pages) Price: $1.00

**H.R. 2942 / Pub. L. 99–151**

Legislative Branch Appropriations Act, 1986. (Nov. 13, 1985; 99 Stat. 792; 18 pages) Price: $1.00

**S.J. Res. 47 / Pub. L. 99–152**

Designating the week beginning November 10, 1985, as "National Women Veterans Recognition Week". (Nov. 13, 1985; 99 Stat. 819; 2 pages) Price: $1.00

**S.J. Res. 51 / Pub. L. 99–153**

To designate the week beginning November 24, 1985, as "National Adoption Week". (Nov. 14, 1985; 99 Stat. 812; 1 page) Price: $1.00

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| Title | Price | Revision Date |
|---|---|---|
| **16 Parts:** | | |
| 0-149 | 9.00 | Jan. 1, 1985 |
| 150-999 | 10.00 | Jan. 1, 1985 |
| 1000-End | 13.00 | Jan. 1, 1985 |
| **17 Parts:** | | |
| 1-239 | 20.00 | Apr. 1, 1985 |
| 240-End | 14.00 | Apr. 1, 1985 |
| **18 Parts:** | | |
| 1-149 | 12.00 | Apr. 1, 1985 |
| 150-399 | 19.00 | Apr. 1, 1985 |
| 400-End | 7.00 | Apr. 1, 1985 |
| **19** | 21.00 | Apr. 1, 1985 |
| **20 Parts:** | | |
| 1-399 | 8.00 | Apr. 1, 1985 |
| 400-499 | 16.00 | Apr. 1, 1985 |
| 500-End | 18.00 | Apr. 1, 1985 |
| **21 Parts:** | | |
| 1-99 | 9.00 | Apr. 1, 1985 |
| 100-169 | 11.00 | Apr. 1, 1985 |
| 170-199 | 13.00 | Apr. 1, 1985 |
| 200-299 | 4.25 | Apr. 1, 1985 |
| 300-499 | 20.00 | Apr. 1, 1985 |
| 500-599 | 16.00 | Apr. 1, 1985 |
| 600-799 | 6.50 | Apr. 1, 1985 |
| 800-1299 | 10.00 | Apr. 1, 1985 |
| 1300-End | 5.50 | Apr. 1, 1985 |
| **22** | 21.00 | Apr. 1, 1985 |
| **23** | 14.00 | Apr. 1, 1985 |
| **24 Parts:** | | |
| 0-199 | 11.00 | Apr. 1, 1985 |
| 200-499 | 19.00 | Apr. 1, 1985 |
| 500-699 | 6.50 | Apr. 1, 1985 |
| 700-1699 | 13.00 | Apr. 1, 1985 |
| 1700-End | 9.00 | Apr. 1, 1985 |
| **25** | 18.00 | Apr. 1, 1985 |
| **26 Parts:** | | |
| §§ 1.0-1.169 | 21.00 | Apr. 1, 1985 |
| §§ 1.170-1.300 | 12.00 | Apr. 1, 1985 |
| §§ 1.301-1.400 | 7.50 | Apr. 1, 1985 |
| §§ 1.401-1.500 | 15.00 | Apr. 1, 1985 |
| §§ 1.501-1.640 | 12.00 | [2] Apr. 1, 1984 |
| §§ 1.641-1.850 | 11.00 | Apr. 1, 1985 |
| §§ 1.851-1.1200 | 22.00 | Apr. 1, 1985 |
| §§ 1.1201-End | 22.00 | Apr. 1, 1985 |
| 2-29 | 15.00 | Apr. 1, 1985 |
| 30-39 | 9.50 | Apr. 1, 1985 |
| 40-299 | 18.00 | Apr. 1, 1985 |
| 300-499 | 11.00 | Apr. 1, 1985 |
| 500-599 | 8.00 | [1] Apr. 1, 1980 |
| 600-End | 4.75 | Apr. 1, 1985 |
| **27 Parts:** | | |
| 1-199 | 18.00 | Apr. 1, 1985 |
| 200-End | 13.00 | Apr. 1, 1985 |
| **28** | 16.00 | July 1, 1985 |
| **29 Parts:** | | |
| 0-99 | 11.00 | July 1, 1985 |
| 100-499 | 5.00 | July 1, 1985 |
| 500-899 | 19.00 | July 1, 1985 |
| 900-1899 | 7.00 | July 1, 1985 |
| 1900-1910 | 21.00 | July 1, 1985 |
| 1911-1919 | 5.50 | [3] July 1, 1984 |
| 1920-End | 20.00 | July 1, 1985 |
| **30 Parts:** | | |
| 0-199 | 16.00 | July 1, 1985 |
| 200-699 | 6.00 | July 1, 1985 |
| 700-End | 13.00 | July 1, 1985 |
| **31 Parts:** | | |
| 0-199 | 8.50 | July 1, 1985 |
| 200-End | 11.00 | July 1, 1985 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1–39, Vol. I | 15.00 | [4] July 1, 1984 |
| 1–39, Vol. II | 19.00 | [4] July 1, 1984 |
| 1–39, Vol. III | 18.00 | [4] July 1, 1984 |
| 1–189 | 13.00 | July 1, 1985 |
| 190–399 | 16.00 | July 1, 1985 |
| 400–629 | 15.00 | July 1, 1985 |
| 630–699 | 12.00 | [3] July 1, 1984 |
| 700–799 | 15.00 | July 1, 1985 |
| 800–999 | 7.50 | July 1, 1985 |
| 1000–End | 5.50 | July 1, 1985 |
| **33 Parts:** | | |
| 1–199 | 20.00 | July 1, 1985 |
| 200–End | 14.00 | July 1, 1985 |
| **34 Parts:** | | |
| 1–299 | 15.00 | July 1, 1985 |
| 300–399 | 8.50 | July 1, 1985 |
| 400–End | 18.00 | July 1, 1985 |
| **35** | 7.00 | July 1, 1985 |
| **36 Parts:** | | |
| 1–199 | 9.00 | July 1, 1985 |
| 200–End | 14.00 | July 1, 1985 |
| **37** | 9.00 | July 1, 1985 |
| **38 Parts:** | | |
| 0–17 | 16.00 | July 1, 1985 |
| 18–End | 11.00 | July 1, 1985 |
| **39** | 9.50 | July 1, 1985 |
| **40 Parts:** | | |
| 1–51 | 16.00 | July 1, 1985 |
| 52 | 21.00 | July 1, 1985 |
| *53–80 | 23.00 | July 1, 1985 |
| 81–99 | 18.00 | July 1, 1985 |
| 100–149 | 18.00 | July 1, 1985 |
| 150–189 | 13.00 | July 1, 1985 |
| 190–399 | 19.00 | July 1, 1985 |
| 400–424 | 14.00 | July 1, 1985 |
| 425–699 | 13.00 | July 1, 1985 |
| 700–End | 8.00 | July 1, 1985 |
| **41 Chapters:** | | |
| 1, 1–1 to 1–10 | 13.00 | [5] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | 13.00 | [5] July 1, 1984 |
| 3–6 | 14.00 | [5] July 1, 1984 |
| 7 | 6.00 | [5] July 1, 1984 |
| 8 | 4.50 | [5] July 1, 1984 |
| 9 | 13.00 | [5] July 1, 1984 |
| 10–17 | 9.50 | [5] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | 13.00 | [5] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | 13.00 | [5] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | 13.00 | [5] July 1, 1984 |
| 19–100 | 13.00 | [5] July 1, 1984 |
| 1–100 | 7.50 | July 1, 1985 |
| 101 | 19.00 | July 1, 1985 |
| 102–200 | 8.50 | July 1, 1985 |
| 201–End | 5.50 | July 1, 1985 |
| **42 Parts:** | | |
| 1–60 | 12.00 | Oct. 1, 1984 |
| *61–399 | 7.00 | Oct. 1, 1985 |
| 400–End | 18.00 | Oct. 1, 1984 |
| **43 Parts:** | | |
| 1–999 | 9.50 | Oct. 1, 1984 |
| 1000–3999 | 14.00 | Oct. 1, 1984 |
| 4000–End | 8.00 | Oct. 1, 1984 |
| **44** | 13.00 | Oct. 1, 1984 |
| **45 Parts:** | | |
| 1–199 | 9.50 | Oct. 1, 1984 |
| 200–499 | 6.50 | Oct. 1, 1984 |
| 500–1199 | 13.00 | Oct. 1, 1984 |
| 1200–End | 9.50 | Oct. 1, 1984 |
| **46 Parts:** | | |
| 1–40 | 9.50 | Oct. 1, 1984 |
| 41–69 | 9.50 | Oct. 1, 1984 |
| 70–89 | 6.00 | Oct. 1, 1984 |
| 90–139 | 9.00 | Oct. 1, 1984 |
| 140–155 | 9.50 | Oct. 1, 1984 |
| 156–165 | 10.00 | Oct. 1, 1984 |
| 166–199 | 9.00 | Oct. 1, 1984 |
| 200–499 | 13.00 | Oct. 1, 1984 |
| 500–End | 7.50 | Dec. 31, 1984 |
| **47 Parts:** | | |
| 0–19 | 13.00 | Oct. 1, 1984 |
| 20–69 | 14.00 | Oct. 1, 1984 |
| 70–79 | 13.00 | Oct. 1, 1984 |
| 80–End | 14.00 | Oct. 1, 1984 |
| **48 Chapters:** | | |
| 1 (Parts 1–51) | 13.00 | Oct. 1, 1984 |
| 1 (Parts 52–99) | 13.00 | Oct. 1, 1984 |
| 2 | 13.00 | Oct. 1, 1984 |
| 3–6 | 12.00 | Oct. 1, 1984 |
| 7–14 | 14.00 | Oct. 1, 1984 |
| 15–End | 12.00 | Oct. 1, 1984 |
| **49 Parts:** | | |
| 1–99 | 7.50 | Oct. 1, 1984 |
| 100–177 | 14.00 | Nov. 1, 1984 |
| 178–199 | 13.00 | Nov. 1, 1984 |
| 200–399 | 13.00 | Oct. 1, 1984 |
| 400–999 | 13.00 | Oct. 1, 1984 |
| 1000–1199 | 13.00 | Oct. 1, 1984 |
| 1200–1299 | 13.00 | Oct. 1, 1984 |
| 1300–End | 3.75 | Oct. 1, 1984 |
| **50 Parts:** | | |
| 1–199 | 9.50 | Oct. 1, 1984 |
| 200–End | 14.00 | Oct. 1, 1984 |
| CFR Index and Findings Aids | 18.00 | Jan. 1, 1985 |
| Complete 1985 CFR set | 550.00 | 1985 |
| Microfiche CFR Edition: | | |
| Complete set (one-time mailing) | 155.00 | 1983 |
| Complete set (one-time mailing) | 125.00 | 1984 |
| Subscription (mailed as issued) | 185.00 | 1985 |
| Individual copies | 3.75 | 1985 |

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.