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Federal Register

Wednesday
December 18, 1985

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

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Cosmetics
Food and Drug Administration

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Freedom of Information
Environmental Protection Agency

Handicapped
Farm Credit Administration

Public Assistance Programs
Social Security Administration

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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There are no restrictions on the republication of material appearing in the **Federal Register**.

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.

Surface Mining
Surface Mining Reclamation and Enforcement Office

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.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5421 of December 15, 1985

Seventy-fifth Anniversary of the Boy Scouts of America, 1985

By the President of the United States of America

A Proclamation

The Boy Scouts of America, our Nation's largest organization for young people, has served our youth since 1910. Thanks to dedicated adult volunteers, more than 70 million young people have learned Scouting's lessons of patriotism, courage, and self-reliance over the past 75 years, and millions more have benefited from the service, inspiration, and leadership of the Boy Scouts.

Former Scouts have gone on to become leaders in all fields, including business, education, and government. The values they learned through Scouting have given them the confidence to make ethical choices and to realize their full potential as active and responsible citizens.

America's young people have always been treasured as our most precious resource. Since Scouting has had a strong positive influence on young people, it has played a vital role in shaping America's future. The Boy Scouts have clearly shown that it is possible to innovate while remaining faithful to their original principles. I am confident that they will continue to play an important role in American society for many years to come, molding our youth with programs that build confidence and competence, and instilling in them principles that can guide them through their lives.

The Congress of the United States, by House Joint Resolution 159, has designated the year 1985 as the "75th Anniversary of the Boy Scouts of America" and has authorized and requested the President to issue a proclamation to commemorate this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year 1985 as the Seventy-fifth Anniversary of the Boy Scouts of America.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-30079
Filed 12-16-85; 4:27 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 1985

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307 and 381

[Docket No. 85-028]

Overtime and Holiday Inspection Service

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends provisions in the Federal meat and poultry products inspection regulations listing holidays for Federal empolyees to reflect that the birthday of Martin Luther King, Jr., will become an official Federal holiday beginning in January 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6735.

SUPPLEMENTARY INFORMATION: Pub. L. 98-144 (5 U.S.C. 6103) which became effective November 2, 1983, requires that the meat and poultry products inspection regulations be amended to show that the birthday of Martin Luther King, Jr., is an offical Federal holiday. The provisions in § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) and in § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) listing holidays for Federal employees are hereby amended to reflect this change.

These amendments are made as a result of a legislative act made by Congress and to become effective on the first January 1 occurring after the 2-year period following the date of the enactment of such action. That law requires a change in agency practice as set forth in its regulations. This change does not require notice and comment under the Administrative Procedure Act (5 U.S.C. 553).

Accordingly, the Federal meat and poultry products inspection regulations are amended by revising the first sentence of paragraph (b), section 307.5 and the first sentence of paragraph (b) of § 381.38 to insert immediately below the item relating to New Year's Day as follows:

"Birthday of Martin Luther King, Jr., the third Monday in January."

Done at Washington, DC on: December 11, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

List of Subjects in 9 CFR Parts 307 and 381

Meat inspection, Government employees.

PARTS 307 AND 381—[AMENDED]

Part 307 of the Federal meat inspection regulations (9 CFR 307) and Part 381 of the Federal poultry products inspection regulations (9 CFR 381) are amended as follows:

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.5(a), 2.92.

§ 307.5 [Amended]

2. Section 307.5(b) is amended by inserting "Birthday of Martin Luther King, Jr., the third Monday in January;" after "New Year's Day, January 1;".

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

§ 381.38 [Amended]

4. Section 381.38(b) is amended by inserting "Birthday of Martin Luther King, Jr., the third Monday in January;" after "New Year's Day, January 1;".

[FR Doc. 85-29711 Filed 12-17-85; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-32]

Alteration of Santa Ynez, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the existing transition area at Santa Ynez, California. The extension of the 700 foot transition area is required to contain the Standard Instrument Approach Procedures (SIAP) established for Santa Ynez Airport, Santa Ynez, California. This action is necessary to provide sufficient controlled airspace to contain Instrument Flight Rules (IFR) operations at Santa Ynez Airport.

EFFECTIVE DATE: 0901 G.M.T., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1655.

SUPPLEMENTARY INFORMATION:

History

On September 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to ensure that aircraft conducting Instrument Flight Rules (IFR) operations at Santa Ynez Airport are contained within controlled airspace (50 FR 37542).

Interested parties were invited to participate in this relemaking 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 § 71.181 of the

Federal Aviation Regulations will expand the 700 foot transition area to contain the Standard Instrument Approach Procedures at Santa Ynez Airport, Santa Ynez, California.

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 currrent. 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, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR 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:

Santa Ynez, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at a point lat. 34°33'33" N., long. 120°00'10" W.; to lat. 34°29'00" N., long. 120°06'00" W.; to lat. 34°29'00" N., long. 120°12'20" W.; to lat. 34°37'10" N., long. 120°22'30" W.; to lat. 34°45'40" N., long. 120°18'40" W.; to lat. 34°40'30"N., long. 120°02'00" W.; thence within a 5-mile radius circle of Santa Ynez Airport (lat. 34°36'25" N., long. 120°04'30" W.); to the point of beginning.

Issued in Los Angeles, California, on December 3, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85–29848 Filed 12–17–85; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1510

Banning of Hazardous Articles and Establishment of Safety Requirements; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in the final rule on the requirements for rattles that was published on May 23, 1978 (43 FR 22002, 22006).

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: In FR Doc. 78–14166, appearing on page 22006, in the **Federal Register** of Tuesday, May 23, 1978, correct the first line of the authority citation to read:

"**Authority:** Secs. 2 (f)(1)(D), (q)(1)(A), (s)."

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29845 Filed 12–17–85; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1700

Packaging Act of 1970 Regulations; Final Exemption of Oral Contraceptives From Child-Resistant Packaging Requirements; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final exemption; correction.

SUMMARY: This document corrects an error contained in the final exemption of oral contraceptives from child-resistant packaging requirements that was published on November 7, 1984 (49 FR 44455, 44457).

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–29223, appearing on page 44457, in the **Federal Register** of Wednesday, November 7, 1984, correct § 1700.14(a)(10)(iv), line 3, 1st word to read "mnemonic". It now reads "memonic".

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29846 Filed 12–17–85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility; Amount of Benefits; Payment of Benefits, Overpayments, and Underpayments, Reports Required; Income; Resources; and State Supplementation Provisions, Agreements; Payments

Correction

In FR Doc. 85–27698 beginning on page 48563 in the issue of Tuesday, November 26, 1985, make the following corrections:

1. On page 48565, third column, second complete paragraph, third line, "effect" should read "affect".

2. On page 48566, first column, first paragraph, twelfth line, "exclusion" should read "exclusions"; in the the twenty-third line, "some" should read "one"; and in the seventh line from the bottom, "from" should appear between "source" and "being".

3. On page 48567, first column, second line from the bottom, "inocme" should read "income"; and in the third column, second complete paragraph, third line, "issued" should read "issue".

4. On page 48571, first column, § 416.414(b)(3)(ii), last line, "(b)(3), (i)" should read "(b)(3)(i)".

5. On the same page, second column, Example 1, third line, "Mr. X's" should read "Mrs. X's".

6. On page 48578, second column, paragraph designated as (7), twenty-first line, "(b)(4)" should read "(f)(4)".

BILLING CODE 1505-01-M

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Public Emergency Shelters for the Homeless

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These rules provide that an aged, blind, or disabled person who is a resident of a public emergency shelter for the homeless throughout a month may be eligible for Supplemental Security Income (SSI) benefits for up to 3 months in any 12-month period. This is an exception to the general limitation on SSI eligibility for individuals who are residents of a public institution throughout a month. The rules reflect section 1611(e)(1)(D) of the Social Security Act, which was added by section 403 of Pub. L. 98–21 (the Social Security Amendments of 1983).

DATE: These rules are effective December 18, 1985; however, the statutory provision which they reflect has been in effect since May 1983.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7337.

SUPPLEMENTARY INFORMATION: Section 1611(e)(1)(A) of the Social Security Act (the Act) provides that, with certain limited exceptions, no person may be eligible for benefits for months throughout which he or she is an inmate (i.e., resident) of a public institution. Sections 1611(e)(1) (B) and (C), which were in effect prior to enactment of Pub. L. 98–21 and are already reflected in regulations, provide exceptions for residents of certain medical institutions which receive payments for the cost of an individual's care from Medicaid and for residents of publicly operated community residences having 16 or fewer residents. Section 1611(e)(1)(D), which was added by Pub. L. 98–21, provides the additional exception that aged, blind, or disabled individuals who are residents of a public emergency shelter for the homeless throughout a month may be eligible for SSI benefits for up to 3 months in any 12-month period. This statutory provision was effective for months beginning with May 1983.

Prior to enactment of Pub. L. 98–21, residents of public emergency shelters for the homeless throughout a month were ineligible for SSI benefits, while similar residents of private emergency shelters could be eligible for SSI benefits. This additional exception provides for more uniform treatment of homeless individuals residing in public and private emergency shelters.

Regulatory Provisions

Exception for Residents of Public Emergency Shelters for the Homeless

We revised the rules in § 416.211 (You are a resident of a public institution) to reflect the additional exception to the rule that a person is not eligible for SSI benefits for any months throughout which he or she is a resident of a public institution. This exception provides that an individual who is a resident of a public emergency shelter for the homeless can be eligible for SSI benefits for any full calendar month throughout which he or she is a resident of such shelter for up to 3 months in any 12 month period.

Suspension of Benefits

We revised § 416.1325 (Suspension due to status as an inmate of an institution) to show that we will not suspend an individual's benefits for up to 3 full calendar months throughout which he or she is a resident of a public emergency shelter for the homeless in any 12-month period. We also revised § 416.1325 to provide for suspension of benefits beginning with the month after the individual has received benefits for the maximum 3 full calendar months in a 12-month period, if such individual is not otherwise eligible for benefits.

"Public Emergency Shelter for the Homeless"

Section 1611(e)(1)(D) of the Act requires the Secretary of Health and Human Services to define by regulation the term "public emergency shelter for the homeless". In developing a definition for "public emergency shelter for the homeless" we were guided by legislative history and the definitions of "institution" and "public institution", both of which were already included in § 416.201. Thus, a public emergency shelter for the homeless must make available some treatment and services in addition to food and shelter. Also, it must be used by the Federal government, a State, or a political subdivision of the State primarily to make available on a temporary basis a place to sleep, food, and some services or treatment to homeless individuals. By "emergency shelter" we mean a shelter for individuals whose homelessness poses a threat to their lives or health. A "homeless individual" is one who is not in the custody of any public institution and has no currently usable place to live. An individual who is in custody is not homeless because the governmental unit that has custody of the individual has the obligation to provide shelter for the person. An individual who for whatever reason no longer has access to his or her dwelling place is homeless. Likewise, an individual who has available shelter but the use of which presents a probability of bodily harm, is considered homeless for purposes of this provision. A medical care facility (as defined in § 416.201) or a holding facility, halfway house, foster care facility, detoxification center, or the like, that retains custody of the individual is not a public emergency shelter for the homeless because individuals under the care and control of the State (or political subdivision) in such facilities meet the definition of custody and are not homeless. Therefore, these facilities do not serve a population that would qualify them as emergency shelters for the homeless. We discuss these definitions in § 416.201 (General definitions and terms used in Subpart B).

"Any 12-month Period"

We also revised § 416.201 to define the term "any 12-month period" as the current full calendar month throughout which an individual is residing in a public emergency shelter for the homeless and the immediately preceding 11 consecutive full calendar months. The use of any standard base such as a calendar year or a fiscal year could result in an individual being paid benefits for as many as 6 consecutive months throughout which he or she resided in a public emergency shelter for the homeless.

Using a calendar base, for example, if an eligible individual entered a public emergency shelter on the last day of September, the first full calendar month throughout which the individual was a resident of the shelter would be October. If the individual remained in the shelter until April of the following year, he or she could receive a benefit under this provision for October, November, and December (3 months of the first 12-month period) and a benefit for January, February, and March (3 months of the second 12-month period). Such a result seems contrary to section 1611(e)(1)(D) of the Act, which clearly provides that a resident of such a shelter not be paid benefits for more than 3 months in *any* 12-month period. Under the definition we have adopted, that same individual would receive benefits under this provision for October, November, and December, but would receive none for January, February or March of the following year. In determining the eligibility of the individual in this example for October, we would use the 12 months from that October through the previous November inclusive. In determining eligibility for November, we would use the 12 months from that November through the previous December inclusive and for December, we would use the 12 months from December through the previous January inclusive.

Similarly, the use of a 12-month period beginning with the first month of an individual's eligibility under this provision (with the next 12-month period beginning on the anniversary of that month) could result in an individual being paid benefits for as many as 6 consecutive months throughout which he or she resided in a public emergency shelter for the homeless.

Comments Received Following Publication of the Notice of Proposed Rulemaking

These regulations were published as proposed rules on April 18, 1984 (49 FR 15225). Interested parties were given 60 days to submit comments. We received comments from 10 sources—7 State agencies, 2 advocacy groups, and an associated charities organization. Six of the writers wrote to support the proposed rules. Another writer, although supporting the proposed rules, recommended several specific changes. Two writers were concerned that the definition of public emergency shelter for the homeless that we proposed may be restrictive to the point of disqualifying most, if not all, public shelters from consideration under these rules. Another writer requested that we clarify the relationship between the public shelter exception and the community residence exception. We have addressed these comments, as well as others that were received, below.

Comment: Two writers feel that the regulations do not address the question of eligibility for SSI benefits of persons who reside in public institutions for part of a month and a public emergency shelter for the homeless for the remainder of that month. Both writers suggested that language be added to the regulations to clarify the benefit eligibility of such persons.

Response: A person residing in a public institution (e.g., a mental hospital) is generally not eligible to receive SSI benefits for any month throughout which he or she resides in that institution (section 1611(e)(1)(A) of the Social Security Act). The law provides three exceptions (section 1611(e)(1) (B), (C), and (D)) to that restriction. One of those exceptions, the public emergency shelter for the homeless exception (section 1611(e)(1)(D)), is the subject of this publication. Section 1611(e)(1)(B), which provides that a resident of an institution which receives payments for the cost of his or her care from Medicaid may be eligible for a reduced benefit, is another exception. The remaining exception under which a resident of a public institution may receive an SSI benefit is provided by section 1611(e)(1)(C). This section permits payment of SSI benefits to residents of publicly operated community residences which serve no more than 16 residents.

A resident of an institution not excepted by section 1611(e)(1) (B) or (C) who leaves that institution and enters a public emergency shelter for the homeless that same month would, if otherwise eligible, be entitled to an SSI benefit upon entering the shelter. However, the amount of the benefit for that first month of residency in the shelter would be a prorated amount calculated from the date of the person's application for benefits or the date of eligibility, whichever is later. Proration of benefits in the initial month of eligibility is required by section 1611(c)(2) of the Social Security Act as amended by section 181 of Pub. L. 97–248. Proposed regulations implementing section 181 were published in the **Federal Register** on September 5, 1985 (50 FR 36108).

A person who leaves an institution where Medicaid is paying for a part of his or her care (and who is, therefore, receiving a reduced benefit) who enters a shelter that same month would, if otherwise eligible, be entitled to the benefit amount he or she would have received for that month had he or she not been institutionalized, less the amount of the reduced benefit already received for that month.

The benefit payments received by a resident of a publicly operated community residence which serves no more than 16 residents would be unaffected by the resident's move to a public emergency shelter for the homeless, if the person is otherwise eligible. By otherwise eligible, we mean that the person has not resided in a public emergency shelter for the homeless for 3 months within the last 12 months for which he or she received SSI benefits, and he or she meets the income and resource limitations of the law.

We have not adopted the writers' suggestions that additional language be added to the regulations to describe such situations. We believe the present pertinent regulation sections permit us to fairly process any situations likely to arise. Section 416.211 explains what we mean by "throughout a month" and discusses that exceptions to the limitation on benefits for resident of public institutions.

Comment: Two commenters are concerned that the definition of public emergency shelter for the homeless may be restrictive to the point of disqualifying most, if not all, public shelters from coverage under these regulations. They point out that most shelters are only able to provide a place to sleep and that very few are able to provide food or other services or treatment. One of the writers feels that public emergency shelters should, by definition, only be required to provide a place to sleep and, while other services may voluntarily be included, they should not be required by regulation.

Response: Facilities that do not provide some treatment or services in addition to food and shelter are not "institutions" for SSI purposes, and individuals residing in such facilities are not subject to any limitation on their SSI benefits on the basis of their residency. Only residents of public institutions, as defined in § 416.201, are ineligible for SSI benefits for months throughout which they reside in such institutions. Since the subject regulations provide an exception to the general limitation on SSI eligibility for persons in public institutions, we paralleled the definition of public emergency shelter for the homeless as closely as possible to the definition of public institution. We believe to do otherwise would be contrary to the purpose of section 1611(e)(1)(D).

Comment: One writer suggested that these regulations should clarify the relationship between the publicly operated community residence exception and the public emergency shelter for the homeless exception. Both are exceptions to the general rule that persons living in public institutions cannot be eligible for SSI benefits. The writer pointed out that some public institutions might qualify both as public operated community residences and as public emergency shelters for the homeless. A resident of a publicly operated community residence which serves no more than 16 residents may be eligible for SSI benefits throughout his or her residency regardless of how long he or she resides there, whereas a resident of a public emergency shelter for the homeless may receive SSI benefits in any 12-month period for no more than 3 months throughout which he or she resides in a shelter. The writer feels the regulations should clarify the benefit status of a resident of an institution that appears to qualify as both a publicly operated community residence and as a public emergency shelter for the homeless.

Response: We have not adopted the writer's suggestion. The public emergency shelter for the homeless exception and the publicly operated community residence exception (see § 416.211(c)) are two different and separate exceptions to the general limitation on benefits for residents of

public institutions. A public emergency shelter for the homeless is a temporary arrangement whereby homeless individuals are provided with shelter, food, and some treatment or services. It is not intended to become a permanent home. A publicly operated community residence is a public institution which provides a more permanent living arrangement, generally offers more community based services than a public emergency shelter for the homeless and may serve no more than 16 individuals at a time for its residents to be SSI eligible (see § 416.211(c)). If an applicant for or a recipient of SSI benefits is in a public facility, we first check to see whether it is, by definition, an institution. If it is, we then check to determine if any of the exceptions apply. Where an institution might technically qualify both as a publicly operated community residence and as a public emergency shelter for the homeless, we would in that instance support a finding most favorable to its residents.

Comment: A writer suggested that the regulations be clarified to show that the 3 months for which a resident of a public emergency shelter for the homeless may be eligible for SSI benefits does not include months in which he or she resided in a shelter but did not receive benefits. Although an individual could be ineligible for SSI benefits for a variety of reasons, the most likely occurrence is where the individual does not file for SSI benefits until sometime after he or she has taken up residency in a shelter.

Response: We agree with the writer's concern and have added language to § 416.211(d) to show that the 3 months of eligibility does not include months during which an individual resided in a public shelter, but for which he or she did not receive SSI benefits.

Additional Changes

We clarified what we mean by a public emergency shelter for the homeless by modifying the definition (in § 416.201) to more clearly show the population that this type of institution normally serves and by describing those types of facilities that are not considered to be public emergency shelters for the homeless. We have also (in § 416.201) described what we mean by the terms "emergency shelter" and "homeless individual".

We have corrected the parenthetical reference added May 9, 1984 (49 FR 19639), under "Resident of a public institution" in § 416.201, that referred to paragraphs (b) and (c) of § 416.211 as describing exceptions to the status of resident of a public institution. They do not describe exceptions to the status of "resident". Rather, they describe exceptions to the general limitation on SSI eligibility for individuals who are residents of a public institution throughout a month. In addition, we have added a reference to the new paragraph (d) of section 416.211. This new paragraph describes the exception for residents of public emergency shelters for the homeless.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and we have determined that they do not create costs of $100 million or more yearly, or otherwise meet the threshold of the Executive Order. For this reason, the Secretary has determined that the regulations are not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities since they primarily affect only homeless aged, blind, or disabled individuals receiving, or applying for, SSI benefits. States which will be affected are those which supplement the Federal SSI benefit and those States where Medicaid eligibility is tied to SSI eligibility. However, a regulatory flexibility analysis as required under Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

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

List of Subjects in 20 CFR Part 416

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

Dated: August 30, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 10, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

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

1. The authority citation for Subpart B of Part 416 revised amended to read as follows:

Authority: Secs. 1102, 1110, 1602, 1611, 1614, 1616, 1618, 1619, 1631, and 1634 of the Social Security Act as amemded, secs. 211 and 212 of Pub. L. 93-66, 49 Stat. 647, 94 Stat. 474, 86 Stat. 1465, and 1474, 90 Stat. 2901, 94 Stat. 445, 86 Stat. 1478, and 87 Stat. 154 through 156 (42 U.S.C. 1302, 1310, 1381a, 1382, 1382c, 1382e, 1382g, 1382h, 1383, 1383c, and 1396); sec. 403 of Pub. L. 98-21, 97 Stat. 140.

2. Section 416.201 is amended by adding in alphabetical order four new definitions and by revising the language in, and adding an exception to, the parenthical reference under "Resident of a public institution" as follows:

§ 416.201 General definitions and terms used in the subpart.

"Any 12-month period" means any period of 12 full calendar months ending with any full calendar month throughout which (as defined in § 416.211) an individual is residing in a public emergency shelter for the homeless (as defined in this section) and including the immediately preceding 11 consecutive full calendar months.

"Emergency shelter" means a shelter for individuals whose homelessness poses a threat to their lives or health.

"Homeless individual" is one who is not in the custody of any public institution and has no currently usable place to live. By "custody" we mean the care and control of an individual in a mandatory residency where the individual's freedom to come and go as he or she chooses is restricted. An individual in a public institution awaiting discharge and placement in the community is in the custody of that institution until discharged and is not homeless for purposes of this provision.

"Public emergency shelter for the homeless" means a public institution or that part of a public institution used as an emergency shelter by the Federal government, a State, or a political subdivision of a State, primarily for making available on a temporary basis a place to sleep, food, and some services or treatment to homeless individuals. A medical facility (as defined in § 416.201) or any holding facility, detoxification center, foster care facility, or the like that has custody of the individual is not a public emergency shelter for the homeless. Similarly, transitional living arrangements such as a halfway house that are part of an insitution's plan to facilitate the individual's adjustment to community living are not public emergency shelters for the homeless.

"Resident of a public institution" * * * (See § 416.211 (b), (c), and (d) of

this subpart for exceptions to the general limitation on the eligibility for Supplemental Security Income benefits of individuals who are residents of a public institution.)

3. Section 416.211 is amended by adding a new paragraph (d) to read as follows:

§ 416.211 You are a resident of a public institution.

* * * * *

(d) *Exception for residents of public emergency shelters for the homeless.* For months after April 1983, if you are a resident of a public emergency shelter for the homeless (defined in § 416.201) you may be eligible for SSI benefits for any 3 months throughout which you reside in the shelter in any 12-month period (defined in § 416.201). The 3 months do not need to be consecutive and we will not count as part of the 3 months any prior months in which you lived in the shelter but did not receive SSI benefits.

Example: You were receiving SSI benefits when you lost your home and you entered a public emergency shelter for the homeless on June 10, 1985. You remained a resident of the shelter until October 10, 1985. Since you were not in the shelter throughout the month of June, you will be eligible to receive your benefit for June without having this month count towards the 3 month period. The last full month throughout which you resided in the shelter was September. Therefore, if you meet all eligibility requirements, you will also be paid benefits for July, August, and September (3 months during the 12-month period September 1985 back through October 1984). In determining your eligibility for July, we used the 12 months from July 1985 through the previous August 1984 inclusive. In determining your eligibility for August, we used the 12 months from August 1985 through the previous September 1984 inclusive and for September, we used the 12 months from September 1985 through the previous October 1984 inclusive. If your are otherwise eligible, you will receive your SSI benefit for October, when you left the shelter, since you were not a resident of the shelter throughout that month.

4. The authority citation for Subpart M of Part 416 is revised to read as follows:

Authority: Secs. 228, 1102, 1611 through 1615, and 1631 of the Social Security Act, as amended, 80 Stat. 647, 49 Stat. 647, as amended, 86 Stat. 1465 through 1477 (42 U.S.C. 428, 1302, 1381 through 1382d, 1383), sec. 502(a) of Pub. L. 94–241, 90 Stat. 628 and sec. 403 of Pub. L. 98–21, 97 Stat. 140.

5. Section 416.1325 is amended by designating the existing text as paragraph (a) and revising it (the example remains unchanged) and adding paragraph (b) to read as follows:

§ 416.1325 Suspension due to status as a resident of an institution.

(a) *General.* Except as provided in § 416.211 (b), (c), and (d), an individual is ineligible for benefits for the first full calendar month in which he or she is a resident of a public institution (as defined in § 416.201) throughout the calendar month, and his or her payments are suspended effective with such first full month. Such ineligibility continues for each full calendar month such individual is so institutionalized.

Example: * * *

(b) *Residents of public emergency shelters for the homeless.* A resident of a public emergency shelter for the homeless (see § 416.201) may be eligible for benefits for any 3 months throughout which he or she is a resident of the shelter in any 12-month period (see § 416.201). The 3 months do not have to be consecutive and we will not count any prior months you lived in the shelter and did not receive Supplemental Security Income benefits. An individual is ineligible and his or her payments will be suspended effective with the fourth full calendar month in which the individual resides in a shelter in any 12-month period. Such ineligibility continues for each full calendar month thereafter within the 12-month period that the individual remains a resident of the shelter.

[FR Doc. 85–29926 Filed 12–16–85; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

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 J & R Specialty Supply Co. The NADA provides for the use of a 48-gram-per-pound pyrantel tartrate premix in making a 9.6-gram-per-pound pyrantel tartrate intermediate premix used to make complete swine feeds.

EFFECTIVE DATE: December 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: J & R Specialty Supply Co., 10 Second Ave. SW., P.O. Box 506, Waseca, MN 56093, is the sponsor of NADA 138–609 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making a 9.6-gram-per-pound pyrantel tartrate intermediate premix. The intermediate premix is used 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)(26) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(26) To 049768: 9.6 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Dated: December 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-29885 Filed 12-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Approval of Amendments to the Utah Permanent Program 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 approving amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On February 6, 1984, Utah submitted proposed program amendments for OSM's approval pertaining to water quality and effluent limitations, inspections, notices of violations and suspension or revocation of permits. On August 29, 1984, the Director, OSM, approved the amendments, with the exception of those provisions concerning suspension or renovation of permits (49 FR 34210-34212). On September 25, 1984, the State submitted revised regulations and position papers from the Utah Assistant Attorney General to address OSM concerns regarding the State programs provisions for the suspension or revocation of permits.

On July 31, 1985 (50 FR 30958) OSM reopened the comment period on the materials submitted by the State on September 25, 1984. The Director has determined that the regulatory provisions for the suspension and revocation of permits submitted by the State on February 6, 1984, with the regulatory revisions and clarifications submitted September 25, 1984, satisfy the criteria for approval of state program amendment set forth at 30 CFR 732.17. Therefore, the Director is approving the amendments.

This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: (202) 343-5361.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of surface coal mining operations in the State (46 FR 5899-1915).

Information pertinent to the general background, revisions modifications, and amendments to the proposed 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 Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899-5915).

On February 6, 1984, the Utah Division of Oil, Gas and Mining (DOCGM) submitted proposed program amendments for OSM's approval pertaining to water quality standards and effluent limitations, and inspection and enforcement requirements.

On April 30, 1984, OSM announced receipt of these amendments and scheduled a public hearing and comment period on the proposed modifications (49 FR 18315). The public comment period closed May 30, 1984.

On June 29, 1984, OSM advised Utah by letter that the proposed provisions satisfied the criteria for approval of State program amendments set forth under 30 CFR 732.15 and 732.17 with the exception of the proposed revisions contained in section UMC/SMC 843.13. This section pertains to the suspension or revocation of permits [See Utah Administrative Record No. 335].

OSM informed the State that it was prepared to delay its final rulemaking on the amendments for one month to allow the State an opportunity to submit draft proposed rule changes or other evidence that the State amendments were consistent with the Federal standards.

Utah did not submit to OSM any additional materials to address the deficiencies identified by OSM in the State's proposed amendments during the one month period granted for this purpose. Therefore, OSM proceeded with the publication of a final rule to announce the Director's decision on the amendments as submitted to OSM on February 6, 1984. The Director's decision was to approve the amendments, with the exception of those provisions pertaining to the suspension or revocation of permits [August 29, 1984, 49 FR 34210-34212].

Subsequently, in a letter to OSM dated September 25, 1984, the State responded to the concerns raised by OSM regarding the provisions submitted February 6, 1984, concerning suspension or revocation of permits. To address OSM's concerns the State submitted revised regulations and position papers from the Assistant Attorney General for Utah concerning the provisions for suspension or revocation of permits.

On July 31, 1985, OSM reopened the public comment period on the amendments submitted February 6, 1984, as revised and clarified by the State on September 25, 1984 (50 FR 30958). The material considered pertained only to the revisions made by Utah to its regulations at UMC/SMC 843.13.

Director's Decision

After thoroughly reviewing the amendments to UMC/SMC 843.13 submitted to OSM by the State on February 6, 1984, together with the regulatory revisions submitted on September 25, 1984, and the Attorney General's position papers submitted on that date, the Director, OSM, has determined that the State's program incorporates sanctions no less stringent than those set forth in section 521 of SMCRA and 30 CFR Part 843 and contains the same or similar requirements relating thereto.

The initial concerns which OSM raised regarding the amendments to UMC/SMC 843.13 submitted by the State on February 6, 1984, were eliminated with the State's submission of further additional regulatory revisions on September 25, 1984, and with respect to one issue, by the submission of a position paper from the State attorney general. A discussion of each of the issues raised by OSM in its June 29, 1984 letter to the State and the disposition of each issue is provided below.

UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1)

In its letter to the State dated June 29, 1984, OSM indicated that the State regulations at UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1) appeared to provide for both the Director, DOGM, and the Board of Oil, Gas and Mining to make a determination that a pattern of violations exists. OSM advised the State that such a two-tier system would be inconsistent with the Federal regulations at 30 CFR 843.13(a) (1) and (3).

In its letter to OSM dated September 25, 1984, Utah states that both the Director and the Board have responsibilities for specific portions of the procedures for determining that a pattern of violations exists and that those responsibilities do not overlap. The State indicates that the memorandum from the Assistant Attorney General to the Director of DOGM dated September 20, 1984, provides clarification with respect to the distinct roles of the Board and the Director. The September 20, 1984 memorandum indicates that the Director makes the initial finding that a pattern of violations exists and that each violation is the result of a willful or unwarranted failure to comply, while the Board hears the matter following the Director's initial finding. Therefore, the two bodies are making different determinations in that the Board hears the matter *after* the Director makes the initial finding that a related series of violations exists and that each is the result of a willful or unwarranted failure to comply. In light of the explanatory material provided by the Assistant Attorney General OSM has determined that State regulations UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1) are consistent with the Federal requirements.

UMC/SMC 843.13 (b) and (c)

A second issue raised in OSM's letter of June 29, 1984, pertained to the requirement under Utah's regulations that an appeal hearing be conducted by the Board or an administrative hearing officer with the Board making a final decision on the case. OSM was concerned that the Board would be making both the initial determination on a pattern of violations and the decision on any appeal of that determination. As indicated above, the memorandum from the Assistant Attorney General to the Director of DOGM dated September 20, 1985, clarifies that the Board only hears a case following the Director's initial finding. In light of the material provided by the State, OSM finds the State provisions consistent with the Federal requirements.

UMC/SMC 843.13(b)

As originally submitted to OSM Utah's proposed rules provided that a hearing on an appeal may be conducted at the Board's option before an administrative hearing officer who may be legally trained. OSM advised Utah that to incorporate procedural requirements which are the same as or similar to those set forth in the Federal regulations, Utah's rules should specify that administrative hearing officers should have the minimum qualifications for hearing officers established under Utah law. Utah's amendment of this provision of September 25, 1984, provides that the minimum requirements for a hearing examiner will be those established under Utah law. This amendment of the provision adequately addresses OSM's initial concern.

UMC/SMC 843.13 (a)(2), (a)(3) and (a)(4)

As initally submitted proposed rules UMC/SMC 843.13 (a)(2), (a)(3) and (a)(4) provided that the determination that a pattern of violations exists shall be based upon the permittee's performance as observed during a given number of inspections of the permit area within a calendar year.

The Federal rules at 30 CFR 843.13 provide that the determination shall be based upon a review of a permittee's performance as observed during a given number of inspections during any 12-month period.

OSM advised Utah that to incorporate sanctions no less stringent than those established in the Federal rules and procedural requirements which are the same as or similar to the Federal requirements, Utah's program must provide that a determination be based on the results of a given number of inspections conducted during a 12-month period rather than during a calendar year. As amended on September 25, 1984, the State's provisions are consistent with the Federal requirements as they provide that a pattern of violations determination be based on the State's findings during a 12-month period rather than a calendar year.

UMC/SMC 843.13(a)(4)

Utah's rules specify that in determining whether or not a pattern exists, the Director shall consider only violations cited as a result of State inspections carried our during enforcement of a State program or a Federal lands program or during the interim program and before the State program was approved pursuant to section 502 or 504 of the Act.

In its June 29, 1984 letter to the State OSM indicated that to incorporate sanctions no less stringent than those set forth in Section 521(a)(4) of the Act and 30 CFR 843.13 and the same or similar procedural requirements relating thereto, Utah's program must stipulate that all violations of the State program requirements cited during any inspection be considered by the person or body making the determination that a pattern of violations does or does not exist.

In its letter to OMS dated September 25, 1984, Utah points out that the State has no control over Federal inspections and, indicates that a due process argument could be made against incorporating Federally written violations into a State pattern of violations charge. After considering the point raised by Utah, OSM has determined that the State should not be required to consider Federally written violations in making a pattern of violations determination.

UMC/SMC 843.13(d)

As initially submitted Section UMC/SMC 843.13(d) of Utah's proposed regulations provided that the Director "may" review the permittee's history of violations to determine whether a pattern of violations exists when the permittee fails to abate a violation contained in a notice of violation or cessation order.

30 CFR 843.13(d) does not allow the Director any discretion with respect to the review of a permittee's history of violations when a permittee fails to abate a violation contained in a notice or order within the abatement period set. The Federal provision stipulates that the Director "shall" conduct such a review.

OSM advised Utah that to incorporate procedural requirements which are the same as or similar to the Federal requirements, Utah's rules must make the review requirement mandatory rather than discretionary.

As amended on September 25, 1984, the State's provision is consistent with the Federal rule.

OSM finds that the regulatory revisions and the position papers provided by the State on September 25, 1984, address all the concerns which were initially raised by OSM regarding the amendments to UMC/SMC 843.13. Therefore, the Director is approving the amendments submitted on February 6, 1984, as revised and clarified on September 25, 1984, as State program amendments.

Additional Determinations

1. Compliance With the National Environmental Policy Act

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

2. Compliance With the Regulatory Flexibility Act

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small

entities within the meaning of the Regulatory Flexibility Act (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. Compliance With Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

4. 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 944

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

Accordingly, 30 CFR Part 944 is amended as set forth herein.

Dated: December 12, 1985.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining.

PART 944—UTAH

Part 944 of Title 30 is amended as follows:

1. The authority citation for Part 944 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. Section 944.15 is amended by adding a new paragraph (g) to read as follows:

§ 944.15 Approval of amendments to State regulatory program

* * * * *

(g) The amendments to UMC/SMC 843.13 submitted to OSM by Utah on February 6, 1984, as revised and clarified by the State in its submittal to OSM dated September 25, 1984 are approved effective December 18, 1985.

[FR Doc. 85–29949 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–8–FRL–2937–6]

Approval and Promulgation of State Implementation Plans; Revision to Colorado Regulation for Existing Alfalfa Dehydration Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves revisions to the Colorado Regulations 1 and 5 for existing alfalfa dehydration plants. This regulation extends a limited exemption from the general particulate and opacity regulation found in Regulation No. 1 and subjects existing alfalfa dehydration plants to a less stringent particulate limit as found in Regulation 5.

DATES: This action will be effective on February 18, 1986, unless notice is received by January 17, 1986, that someone wishes to submit adverse or critical comments. Such notice may be submitted to Robert DeSpain at the EPA Regional office address listed below.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

FOR FURTHER INFORMATION CONTACT: Steve Frey, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202, (303) 293–1769, FTS–564–1768.

SUPPLEMENTARY INFORMATION: This revision to Colorado Regulations 1 and 5 was approved by the Colorado Air Quality Control Commission on January 17, 1985 and was submitted by the Governor as a State Implementation Plan (SIP) revision on April 9, 1985. This action extends a provision that had expired on January 1, 1985. The provision, which pertains solely to existing alfalfa dehydration plants, previously was incorporated in the Colorado SIP, but had expired at the end of 1984.

This action extends the less stringent regulation for existing alfalfa plants until January 1, 1987. There are only two sources eligible for this standard in Colorado and both are located in areas either attaining or unclassifiable for total suspended particulates. The action should have no impact on the total suspended particulate attainment status for the two areas since it merely extends the effective date of an earlier regulation.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 18, 1986.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 9, 1985

Lee Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(32) as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(32) Revisions to Air Pollution Control Commission Regulation No. 1, section II. A. 6 and III. C. 2 (a) and (b) and Regulation No. 5 Emission Control Regulation for Existing Alfalfa Dehydration plants, submitted by the Governor on April 9, 1985.

(i) Incorporation by Reference.

(A) Revisions to Air Pollution Control Commission Regulation No. 1, "Emission Control Regulation for Particulates, Smokes, and Sulfur Oxides for the State of Colorado," sections II. A. 6 and III. C. 2 (a) and (b), effective March 2, 1985.

(B) Revisions to Air Pollution Control Commission Regulation No. 5, "Emission Control Regulation for Existing Alfalfa Dehydration Plants", effective March 2, 1985.

[FR Doc. 85–29559 Filed 12–17–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Grazing Administration; Effects of Court Order Enjoining Certain Regulations in 43 CFR Group 4100

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Effect of Court Memorandum and Order Enjoining Certain Regulations in 43 CFR Group 4100.

SUMMARY: The United States District Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc., et al.* v. *Hodel, et al.*, enjoined the Secretary of the Interior from implementing certain sections of the grazing regulations in 43 CFR Group 4100 that were published as a final rulemaking in the **Federal Register** of February 21, 1984 (49 FR 6451), with an effective date of March 22, 1984. Notice is hereby given that the Bureau of Land Management will comply with the memorandum and order of the Court. Specifically, the provisions enjoined by the memorandum and order of the Court will not be implemented and that those regulatory provisions are being amended as set out below.

EFFECTIVE DATE: December 20, 1985.

ADDRESS: Any inquiries or suggestions should be addressed to: Director (220), Bureau of Land Management, Room 5626, Main Interior Bldg., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653–9193.

SUPPLEMENTARY INFORMATION: On August 30, 1985, the United States District Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc. et al.* v. *Hodel, et al.*, No. CIV. S–84–616 RAR (1985), enjoined the Bureau of Land Management from implementing the following provisions which were either included in the final rulemaking published in the **Federal Register** on February 21, 1984 (49 FR 6451), with an effective date of March 22, 1984, or were repealed by that rulemaking. The sections covered by the Court order are as follows:

1. Cooperative Management Agreement Program—§§ 4120.1 and 4170.1–4 (49 FR 6451, Feb. 21, 1984);

2. Dilution of Allotment Management Plans—§ 4120.2 (49 FR 6451, Feb. 21, 1984) and the deletion of § 4120.2–3(a) (as it appears in the Code of Federal Regulations revised as of Oct. 1, 1983);

3. Supplemental Feeding Amendments—section 4140.1(a)(3) (49 FR 6451, Feb. 21, 1984) and the deletion of § 4140.1(a)(3) (as it appears in the Code of Federal Regulations revised as of Oct. 1, 1983);

4. Land Use Planning Amendment—section 4130.6–3 (49 FR 6451, Feb. 21, 1984) and the deletion of §§ 4120.2–1(c) and 4130.2(d)(3) as they appear in the Code of Federal Regulations revised as of Oct. 1, 1983; and

5. Operator Penalty Amendments—the deletion of §§ 4140.1(b) (7) and (8) (as they appear in the Code of Federal Regulations revised as of Oct. 1, 1983).

Dated: December 12, 1985.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–29953 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No. 83–1096; FCC 85–602]

Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: Rules are adopted that refine cellular pre-screening procedures and further streamline and clarify the overall cellular application process. The Commission, in so doing, considered petitions for reconsideration filed against the Memorandum Opinion and Order on Reconsideration of the Cellular Lottery Decision and additional proposals for modifying cellular processing procedures. The rules reduce burdens for applicants and expedite the administrative processes related to the licensing of Cellular Service.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia McClain-Hill, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Mobile radio service, Cellular radio.

Memorandum Opinion and Order on Further Reconsideration

In the Matter of Amendment of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings; CC Docket No. 83–1096, FCC 85–602.

Adopted November 14, 1985.
Released December 3, 1985.
By the Commission.

1. On March 14, 1985, we adopted a *Memorandum Opinion and Order on Reconsideration* in this proceeding affirming our decision to adopt a system of lotteries for selecting cellular licensees from among mutually exclusive applicants in markets other than the 30 largest.[1] In that order, we generally affirmed the basic regulatory structure and application process for the implementation of cellular lotteries established in the *Cellular Lottery Decision.*[2] In addition, in response to the petitions and our experience with implementing the lottery application and selection process, we eliminated cumulative lottery chances for nonwireline applicants entering into partial settlements in markets beyond the top 120; revised the 1% ownership rule for the beyond-120 markets; clarified certain issues regarding basic qualifying standards and established guidelines for the form, organization and content of future applications. We also interpreted § 22.917 of the rules to require each applicant to obtain a firm lending commitment guaranteeing availability of the financing necessary to construct and operate for one year the

[1] Cellular Lottery Reconsideration Order (Reconsideration Order), FCC 85–117, released May 3, 1985.

[2] Cellular Lottery Decision, 98 FCC 175 (1984).

system at issue.[3] We also announced that all future cellular applications should be filed in a "letter perfect" condition and that failure to conform to this standard would result in the application not being accepted for filing, and we reiterated our commitment to a careful prescreening process.

2. Pending before us are three petitions for reconsideration.[4] Responsive pleadings have been filed.[5] Two of the petitioners seek modification of the "stringent" demonstration of financial ability established in the *Reconsideration Order*. The third petition seeks clarification of the provisions regarding cumulative lottery chances for wireline carriers. Finally, rule changes regarding the format of microfiche application copies, incorporation of common engineering, and frequency coordination are proposed.

3. Also pending before the Commission is a proposal filed by NewVector Communication, Inc. (NewVector) regarding expediting the cellular licensing process. By Public Notice, CL-342, released August 8, 1985, we invited comments on the NewVector pleading.[6] We incorporate the NewVector proposal and responsive pleadings by reference and will act here to revise our cellular pre-screening procedures in general accord with the suggestions made there. Similarly, we will modify the financial demonstration requirement of § 22.917 to require only tentative selectees, surviving applicants in full market settlements and unopposed applicants to obtain firm financing commitments; we will no longer require financial exhibits in the application. Finally, we will modify our frequency coordination requirements as discussed herein.

Discussion

A. Pre-Screening

4. In its proposal, NewVector states that the careful, in-depth pre-screening of cellular applications we have undertaken for markets 91–120 is not required by law and has disserved the public interest. NewVector proposes that the Commission exercise its discretion under section 309(i) of the Communications Act to relax it current pre-screening procedures in favor of a minimal review to determine if all requested information has been priovided.[7] Following this determination, a lottery would be held in accordance with the procedures set forth in § 1.822 of the rules. The tentative selectee's application would then be subject to a thorough and in-depth review to ensure that it has strictly complied with the Commission's rules and if so, subject to petitions to deny. The Commission would then make a finding as to whether or not the application should be granted. If on the other hand, the tentative selectee does not survive, based on staff review or the petition to deny process, successive runners-up would immediately be subjected to the same process until a qualified applicant is found.

5. NewVector's pre-screening proposals are supported in whole or in part by nearly all of the commenters.[8] In contrast, the Cellular Telecommunications Division of Telocator Network of America (Telocator) opposes them. Telocator argues that NewVector has failed to show that the proposed pre-screening, however minimal, would be less time-consuming than the current pre-lottery processing procedures. Second, it maintains that the post-lottery review process that would result from a minimal pre-screening standard could significantly delay the award of construction permits, because of the need to resolve petitions to deny against applications that would otherwise not have been in the lottery at all. Finally, it asserts that the vastly disproportionate number of non-wireline, as opposed to wireline applicants, in conjunction with an increased tendency towards post-lottery litigation under the NewVector proposal, will serve to create substasntial "headstart" problems. Contel Cellular, Inc. (Contel) also opposes NewVector arguing that a relaxation of the current acceptability standards could generate a "gold rush" atmosphere and encourage the very type of applicant that the Commission has tried to discourage.

6. In its comments, the Cellular Telecommunications Industry Association (CTIA) suggests an alternative means of revising current processing procedures. CTIA proposes that the Commission minimize its pre-screening process by requiring that a one-page qualifications summary accompany each application and that each applicant certify that its application meets the statutory qualification requirements set forth in Form 401 and associated exhibits, thereby obviating the need for additional pre-screening.[9]

7. Our efforts to discourage the filing of frivolous applications by speculators having no real interest in constructing or operating a cellular system through rigorous pre-screening procedures have consumed a considerable amount of time and administrative resources, resulting in a delay of more than one year in issuing public notices accepting applications for filing in markets 91 to 120.[10] Consequently, we have reviewed with great interest the pleadings on this issue. While the pre-screening procedures used in markets 91–120 were helpful in ensuring that only qualified applicants become licensees, we are sensitive to the delay inherent in this process and its effect on the expeditious availability of nationwide cellular

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[3] Specifically, we stated that for markets beyond the top 120, we would require applicants who intend to finance their systems through debt placement to submit a firm lending commitment from a recognized bank or other financial institution for the financing required. Such commitment must guarantee availability of the amount of financing necessary to construct and operate for one year the system at issue, and set forth the terms of the loan commitment, including any action required of the applicant to continue the commitment in force. Applicants relying on internal funding must comply with § 22.917(c) to demonstrate their financial ability. Finally, an applicant obtaining funding from other than a recognized lending institution or internal sources, must submit proof that the financing entity has such funds available and uncommitted to other cellular applicants, or, in the alternative, has obtained a bond to guarantee performance of its obligation.

[4] Petitions for Reconsideration and/or Clarification were filed by Cellular Technology, Inc., Cell Pro, and Centel Corporation.

[5] Responsive pleadings were filed by Cell Pro, National Telephone Company, Inc., and Richard L. Vega and Associates, Inc.

[6] The Commission stated that the NewVector proposal would be treated as a counter-proposal to the Request of Metro Mobile CTS, Inc., filed July 8, 1985, regarding expedited acceptance and processing of applications for non-MSA/non-NECMA areas. However, we will deal with the NewVector proposal, to the extent it relates to pre-screening procedures, in the context of the petitions for reconsideration of the cellular lottery procedures in this docket.

[7] The public notice that an application is minimally "acceptable" for inclusion in the lottery would be carefully qualified so as to inform applicants that strict scrutiny to ensure full compliance with the Commission's application requirements will follow in the event the application is selected.

[8] The commenters supporting NewVector are listed in Appendix A. In addition, Western Union Personal Communications, Inc. has proposed similar cellular application processing changes as well as more expeditious acceptance of applications for the remaining markets. See letter from Richard E. Horner, President and Chief Executive Officer of Western Union Personal Communications, Inc. to Jack Richards of Commissioner Dawson's Office. (A copy of Western Untion's proposal has been placed in this docket).

[9] CTIA's proposal is supported by Contel Cellular, Inc., Southwestern Bell Mobile Systems, Inc., BellSouth Mobility, Inc. and United Telespectrum Inc. Contel's support for the CTIA proposal is based on its view that an applicant would be certifying its compliance with the "letter perfect" standard.

[10] Applications in these markets were filed by July 16, 1984, and the first applications were accepted for filing August 12, 1985. *See* Report No. CL-343 released August 12, 1985 (applications accepted for Fort Wayne, Indiana).

service.[11] In other words, the benefits of the pre-screening process used for markets 91–120 are outweighed by the inherently time-consuming nature of the process and resultant delay in the licensing of competing cellular systems.[12] In authorizing the Commission to utilize lottery procedures, Congress accorded the Commission broad discretion to establish standards by which applications are preliminarily reviewed for inclusion in the lottery.[13] Accordingly, as urged by the commenters, we have decided to modify our pre-screening policies. In order to expedite the processing of applications, each applicant in markets beyond the top 120 will be required to certify under penalties of law,[14] that its application is complete and contains all of the information required by Form 401 and our cellular application rules.[15] Requiring each applicant to certify that its application meets with all applicable Commission rules is a proper means of addressing the Congressional objective of ensuring that only those applications that are deemed acceptable for filing by the Commission be included in the lottery. An applicant signing such a statement falsely will be subject to disqualification and may be prosecuted under 18 U.S.C. 1621 (2). It is our judgement that proceeding in this manner serves the overall legislative intent of making an important new technology available to the public in an expeditious manner. An application containing this certification will be accepted for filing without further review and included in the lottery.[16] The public notice accepting applications for filing will be carefully qualified to inform applicants that strict scrutiny to ensure full compliance with the Commission's application requirements will follow in the event the application is selected in the lottery. In other words, the tentative selectee's application will be carefully reviewed to ensure its compliance with the cellular application standards and will be dismissed for failure to do so.[17] If, on the other hand, the application is found acceptable, petitions to deny may be filed and our existing post-lottery procedures followed.

8. This modified policy will serve the public interest by considerably expediting preliminary staff review of cellular applications and facilitate the rapid implementation of service to the public—our primary reason for the introduction of lotteries in the first place. Moreover, it will not increase the likelihood of an unqualified applicant obtaining a cellular license but will instead allow the Commission to shift its resources to a thorough and in-depth examination of the tentative selectee as opposed to each applicant in the lottery. Although there is merit to Telocator's observation that the experience of having gone through the "hard look" procedures in the fourth round should make future rounds proceed more smoothly and expeditiously, it does not follow that this experience factor will result in a time savings equal to that anticipated by a more cursory review of the applications, particularly in light of the geometric increase in the number of applications in each round thus far. Moreover, there is no objective evidence to support its contention that a significantly greater number of unqualified applicants will be allowed to participate in lotteries or that a relaxation of the prescreening process will result in increased post-lottery litigation.[18] Finally, the procedure we are adopting is likely to reduce, rather than increase, the likelihood of a substantial wireline headstart; by minimizing the time needed to choose a selectee from among non-wireline applicants, we will likely be able to authorize both carriers for a market in a narrow time span.

B. Financial Qualifications

9. Cell-Pro, a cellular application preparation consultant, states that it has no objection to strict scrutiny of financial qualifications under existing case law[19] but that our requirement of a firm commitment would impose "unreasonably large and totally unnecessary costs on applicants with no countervailing public benefit." It says that banks typically charge fees for such letters, ranging from one-half to two percent of the amount of the commitment and often annually. Cell Pro estimates that commitment fees for a conservative estimate of the number of applications in the next round of 30 markets could total at least $50 million—likely more than the total cost of construction and first year operation for the entire round of thirty markets.[20] It states that this would be totally out of proportion to the administrative objectives we enumerated in adopting this policy and would constitute a wasteful diversion of resources to financial institutions that could be more productively utilized in constructing and operating cellular systems. Moreover, Cell-Pro argues that the financing requirement cannot withstand cost-benefit analysis because cellular systems have proved to be self-financing

[11] We have consistently held that there is a pressing need for cellular service throughout the nation. *See, e.g.*, Cellular Communications Systems 86 FCC 2d 469, 489 (1981).

[12] Since the relatively few wireline carriers in each market are likely to settle, this pre-screening delay impacts most significantly on the non-wireline carriers and may unnecessarily exacerbate the wireline headstart.

[13] Conference Report on Communications Amendments Act of 1982, Conference Report No. 97–765, 97th Cong., 2d Sess. 39 (1982). (Authorizing Commission to establish threshold standards for acceptance for filing.)

[14] See 18 U.S.C. 1621(2).

[15] See § 22.913(b)(3). The certification does not come with the requirements of the Paperwork Reduction Act. See 44 U.S.C. 3501, *et seq.*; 5 CFR 1320.7(k)(1).

[16] The signed certification must appear on the first page of each application. In addition, each applicant must submit an original application and duplicate, the cover of which must include the applicant's name, market name and market number for which it is applying and frequency block designation. Two microfiche copies of the application, in jackets, must also be presented at the time of filing. Failure to comply with the foregoing will result in the application being returned as unacceptable for filing.

[17] Under § 22.916(b), amendments to initial cellular applications may not be filed until a tentative selectee has been placed on public notice, and then only by the tentative selectee. Prior to placement on public notice (and thus prior to the filing of amendments) the tentative selectee's application will undergo the careful review described above. Thus, the selectee will *not* have an opportunity to file curative amendments prior to the extensive staff screening. Only after passing that screening will amendments be permitted under § 22.916(b).

[18] We do not believe that the reduction in the amount of staff time it would take to preliminarily review each application would be offset by increases in the number of applications filed by unqualified applicants. It is true that adoption of lottery selection procedures resulted in a vast increase in the number of applications filed. This occurred, however, because the expense that applicants could expect to incur in preparing and prosecuting applications under the lottery regime was much less than that entailed in participating in a comparative hearing. In addition, new entrants perceive themselves as having an equal chance of prevailing in a lottery as experienced communications companies, thus providing them with a greater incentive to file. In contrast, relaxation of pre-screening procedures is unlikely to spur the filing of additional applications because the change will not reduce the expense of preparing and prosecuting an application or increase the likelihood of being awarded a license. Applicants will continue to face the same rigorous scrutiny of their proposals and their qualifications, albeit at a later stage of application processing. Merely surviving pre-screening procedures will gain an applicant nothing if, when its application is selected by lottery, it is found insufficient and dismissed.

[19] See, *e.g.*, Ultravision Broadcasting Company, Inc. 1 FCC 2d 544 (1965).

[20] Assuming a typical cost of construction and first year operation of between $2 million and $4 million in future markets, the typical commitment fee would range between $10,000 and $40,000 per application. Even taking the lower figure and assuming at least 5,000 applications for the next round of markets (markets 121–150), Cell-Pro argues that the commitment fees would total at least $50 million for the first year alone.

in the "real world marketplace" [21] and that the Commission's objective of assuring that lottery entrants are *bona fide* applicants able to construct and operate a high quality, competitive cellular system should be addressed directly through character, candor and trafficking standards. Cellular Technology, Inc. (Cell-Tech) makes similar criticism of the financing requirements and states further that application mass marketers are arranging firm financing letters for their clients and thus the requirement will have no appreciable impact on deterring or significantly reducing the massive numbers of speculative "lottery ticket" applications being prepared for future markets. Richard L. Vega comments that the Commission should not create unrealistic barriers to entry simply to attempt to reduce the number of cellular applications or to excuse its insufficient processing resources.

10. Given these criticisms, the petitioners propose a number of alternative mechanisms to achieve the goals set forth in the *Reconsideration Order*. Cell-Tech would require all applicants to file affidavits establishing their direct and substantial participation in formulating the design of the proposed system, arranging financing, and developing service proposals. Cell-Pro suggests strict scrutiny of financial showings under existing precedent [22] including rejecting letters from entities with insufficient lending resources, letters which merely evidence a lender's willingness to consider making the loan and those which fail to demonstrate that the applicant has obtained reasonable assurance of receiving the required funding. Vega suggests that each applicant be required to demonstrate a liquid net worth of at least $500,000 in order for its application to be accepted for filing. Finally, National Telephone Company, Inc. proposes requiring each applicant to procure a personal bond to guarantee its ability to obtain financing.

11. Throughout this proceeding, we have carefully considered the need for various additional requirements to deter frivolous applications. [23] In the *Reconsideration Order*, we found a stricter interpretation of § 22.917 warranted because, under a lottery selection regime, the low cost and relative simplicity of the application process encourages many purely speculative "lottery ticket" applications by thinly or non-capitalized entities having little interest in providing cellular service but seeking to profit from obtaining the license. [24] We concluded that these types of applications disserve the public interest and that a stricter financial demonstration requirement was needed to deter them and assure that lottery entrants are *bona fide* applicants. However, as the petitioners here point out, the costs associated with the new financial demonstration are high and will divert substantial capital from constructive system development and operations. Moreover, it has proved to be both difficult and time consuming to properly review each and every applicant's financial exhibits for compliance with our rules. This has been a major source of the delay in prescreening applications and a barrier to the expeditious conduct of lotteries.

12. In addition, as Cell-Pro suggests, cellular systems in the top-90 markets have proved to be attractive to sources of capital investment and there is no evidence here that this will not continue to be the case. The rule may prevent legitimate, sincere applicants from applying for markets otherwise attractive on a marketing, business-potential basis because of the excessive cost of the commitment. Our concern is heightened, moreover, by the possibility that the strengthened financial requirement we articulated in the *Reconsideration Order* may not be effective in limiting abusive or insincere applications, particularly if application mass marketers are successful in arranging firm commitments for their customers. [25] In other words, we have serious doubts as to whether the benefits of applying this requirement to each applicant is justified in light of the costs involved.

13. Accordingly, on reconsideration, we have decided to amend § 22.917 to eliminate the requirement that cellular *applicants* demonstrate their financial qualifications to be licensees. We will no longer require a cellular applicant to include an exhibit in its application demonstrating its financial ability under the firm commitment or any other standard. We will however, require a firm financial commitment be obtained by every tentative lottery selectee, sole applicant in a market, or surviving entity in a full market settlement, within 30 days of the Public Notice which announces such status and invites Petitions to Deny under § 1.822(1) of the rules. [26] Applicants not satisfying this requirement will be disqualified immediately. Thus, applicants would be well advised to make arrangements for the production of the financing and appropriate documentation well in advance of the lottery. We conclude that the public interest would be better served by focusing our efforts on assuring that the applicant that is actually going to construct and operate the system, the cellular permittee, is financially qualified rather than by attempting to ascertain the financial qualifications of thousands of applicants who will merely lose in the lottery and never become permittees.

14. Given this analysis, we will not adopt any of the alternative financial showings suggested by the petitioners. Cell-Tech's "personal involvement" requirement, while meritorious in principle, would invite factual disputes and would be difficult to verify and administer and unlikely to contribute much to achieving our objectives. [27] Cell-Pro's suggestion of "strict scrutiny" of financial showings under existing case precedent is not materially different than the policy we have been following in the past, particularly for markets 91–120 and, given our experience is not likely to reduce the number of abusive applications or ensure that applicants are financially qualified. Vega's suggestion would bar many perfectly capable and deserving applicants while NTCI's suggestion of each applicant obtaining a personal bond to guarantee ability to obtain financing would accomplish at best the same result as we propose here at a higher cost to each applicant. Thus, we conclude that the time has come to focus our resources on assuring that the ultimate permittee can obtain firm financing and move rapidly to construct and operate its system by focusing primarily on that entity rather

[21] Cell-Pro further argues that the financing requirement violates the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.* In light of our action here, it is unnecessary to reach this argument.

[22] See Advanced Mobile Phone Service, Inc., 91 FCC 2d 512, 516–17 (1982), applying a "reasonable assurance" test to an applicant's demonstration of financial qualifications under Section 22.917.

[23] Cellular Lottery Decision, at paras. 63–71; Cellular Lottery Reconsideration Order, at paras. 23–28.

[24] Thus, we found that "reasonable assurance" of financing, while adequate under comparative procedures, was ineffective in deterring such applicants. Reconsideration Order, at para. 28.

[25] Since we have not accepted any applications for markets beyond the top-120 we do not know whether financial demonstrations arranged in this way would meet the firm commitment standard. Some mass marketers of cellular applications advertise that they can arrange a "firm commitment" for any applicant.

[26] We are amending § 1.822 of the rules to increase the time for filing Petitions to Deny to 45 days to allow review of the financial commitment.

[27] Cell-Pro's Comments on Petition for Partial Reconsideration of Cellular Technology, Inc., at pps. 2–4.

than on thousands of applicants in a lottery selection context.[28]

C. Miscellaneous

15. Centel Corporation (Centel) seeks clarification of § 22.33(b) of the rules relating to cumulative chances for partial cellular settlements. Centel states that the rule as originally promulgated in the *Cellular Lottery Decision* authorized cumulative chances for applicants entering into pre-filing settlements so long as each party files an individually acceptable application and subsequently enters into the actual joint enterprise. Centel believes that the amendment of § 22.33(b) adopted in the *Reconsideration Order* to limit cumulative chances to wireline carriers in markets beyond the top-120 has rendered the rule ambiguous and susceptible of being interpreted as meaning that wireline applicants can retain their cumulative lottery chances only if they enter into a settlement agreement after they file their applications. Accordingly, it seeks clarification that the rule has not been changed.

16. We see no need for revision of the rule. In the *Reconsideration Order*, we retained the provision of cumulative chances for wireline carriers entering into partial settlements exactly as provided in the *Cellular Lottery Decision*. There we stated that nothing would prevent an applicant from entering into a pre-filing settlement agreement contemplating a joint venture after the filing date in order to obtain a cumulative chance provided that each party to the settlement files an individually acceptable *bona fide* application capable of being independently prosecuted.[29] This policy and the rule implementing it are unchanged for wireline applicants in markets beyond the top-120.

17. Cell Pro also petitions that we modify our requirement regarding microfiche copies of initial cellular applications to allow the filing of the two required microfiche copies one week after the original and paper copy applications are required to be filed.[30] It states that applicants often make "last minute" revisions to their applications which might not be reflected on the microfiche copies due to the time required for processing. We will not grant this request. The handling and "logging in" of thousands of cellular applications is difficult and burdensome enough without repeating the process one week after the filing period for a group of markets has closed just to accept copies of the same applications. Moreover, under lottery selection, applications have been reduced to a relatively simple, predictable format and no comparative advantage can be achieved by "last minute" system modifications. We will give ample notice of the filing periods for future rounds to enable applicants to prepare their applications with all due deliberation. If one week is the expected time lag in obtaining microfiche copies, applicants would be well advised to complete their applications several weeks prior to the close of the filing window. We expect applicants to anticipate the filing deadlines and ensure that their applications and all copies are complete and correct in accordance with our standards.

18. We also deny Cell Pro's suggestion that applicants be allowed to incorporate by reference generic engineering and market demand materials submitted by the applicant's consulting firm on behalf of all of its clients. We have already taken other steps to substantially reduce space requirements,[31] and we believe that the staff can process applications more expeditiously when each application is complete in itself and ready for review.[32]

19. However, we will modify our frequency coordination requirements specifying that applicants design their systems to avoid harmful intersystem interference to and with authorized systems or single applicant markets within 75 miles.[33] Given the dynamic state of cellular system development, the large number of applicants and the fact that our station files may not be updated frequently enough, we will eliminate this requirement at the application stage only. Of course, all permittees and licensees remain required to engage in formal frequency coordination and to cooperate fully in resolving frequency conflicts as set forth in the rule.

20. Finally, on our motion, we will reverse our decision in the *Reconsideration Order* requiring an applicant to specifically demonstrate that its proposed CGSA includes at least 75 percent of either the land area or population of the MSA or NECMA it is applying for. An applicant need only provide the maps required by §§ 22.913(a)(2) of the rules indicating its compliance with this 75 percent CGSA coverage of MSA requirement and state in its application that the requirement has been met—no independent demonstration need be filed. Consequently, we will amend § 22.903(a) to eliminate the requirement that an applicant *demonstrate* that the combined 39 dBu contours of all base stations will cover at least 75 percent of the total CGSA. The coverage requirement remains in effect; however, the applicant need only state its compliance and prepare its maps accordingly.[34]

D. Filing Periods for Markets Beyond the Top-120.

21. In light of the actions we are taking today, we are now prepared to accept applications for markets beyond the top-120.[35] As we anticipate processing applications more quickly and holding lotteries on an expeditious basis, we establish the following acceptance schedule.

Markets	Dates
121–135	Feb. 3–7, 1986.
136–150	Feb. 24–28, 1986.
151–165	March 17–21, 1986.
166–180	April 7–11, 1986.
181–240	April 28–May 2, 1986.
241–305	May 19–23, 1986.

No application may be filed after 5:30 p.m. EST.[36] These filing periods provide more than 60 days notice to prospective applicants and will allow sufficient preparation time for complete compliance with our cellular application rules and procedures. We will discuss

[28] In a companion *Notice of Proposed Rulemaking*, we propose to reduce the construction period for cellular systems to one year. This will further assure that cellular permittees must move rapidly to construct and operate their initial systems and that those who fail to do so will lose their authorizations.

[29] Cellular Lottery Decision at para. 48 and n. 73.

[30] Cell Pro also asks that we adopt the industry standard microfiche format instead of that specified in the *Reconsideration Order*. This was our intention and by Erratum released June 24, 1985, we corrected the specifications and § 22.913(c) of the rules. The rule allows the use of a 4 x 6 positive or negative copy microform, 24x reduction, readably labeled at the top and enclosed in a paper jacket. A microfilm jacket format (16mm microfilm in a 4 x 6 jacket) may also be used.

[31] Reconsideration Order, at paras. 48–50.

[32] See Cellular Cleanup Order, FCC 84–416, CC Docket No. 79–318, released October 19, 1984, at paras. 6–7.

[33] Section 22.902(d) of the rules.

[34] We conclude that formal notice and comment procedures are not required. See n. 37, *infra*.

[35] On September 12, 1985, Telephone and Data Systems, Inc. (TDS) filed a petition for rulemaking proposing the redefinition of cellular application markets beginning with MSA No. 210, to consolidate them with non-MSA/non-NECMA areas and to adjust the acceptance of applications accordingly. Our action here is without prejudice to the TDS petition which we will address in the near future.

[36] We are amending our rules to require that all initial applications for the provision of cellular service be filed at the FCC facility in Gettysburg, PA. The doors to this facility will be closed at 5:30 p.m., and no applicant will be admitted.

applications for non-MSA/non-NEOMA areas in a subsequent order.

Ordering Clauses

22. Accordingly, It Is Ordered, That the Petitions for Reconsideration filed in this proceeding are Granted to the extent set forth herein, and are otherwise Denied.

23. It is Further Ordered, That the proposal of NewVector Communications, Inc. is Granted to the extent set forth herein.

24. It is Further Ordered, That Part 22 of the Rules are Amended as specified in Appendix B. These amendments and other policies adopted in this order will become effective January 17, 1986.[37]

Federal Communications Commission.

William J. Tricarico

Secretary.

Appendix A

Comments Supporting NewVector's Pre-Screening Proposal

Colorado Cellular, Inc.
Intercall Systems, Inc.
Midwest Cellular Telephone, Inc.
Kenebec Cellular Telecommunications Company
Blackhawk Metro Cellular Company
Lake Area Cellular Company
Bernard Independent Cellular Telephone Company
East Texas Independent Cellular Telephone Company
Pembroke Cellular Company
Mississippi Valley Cellular Telephone Company, Inc.
Mid-Iowa Cellular Company
Androscoggin Cellular Telecommunications Company
Excell
Coastal Cellular Systems, Inc.
Clinton Cellular Company
Norway Cellular Communications Company
Concord Telephone Company of Concord, North Carolina
Fairmount Telephone Company, Inc.
Hughes Telephone Company
Interstate Telephone Company
Mid-South Telephone Company
Mouthie Independent Telephone Company
Plant Telephone & Power Company
Statesboro Telephone Company
Waitsfield-Fayston Telephone Company
Rural Telephone Company
Home Telephone Co. of Nebraska
Blue Grass Cellular Communications
Northwestern Indiana Telephone Company, Inc.
The Orwell Telephone Company
North-West Telephone Company
United States Telephone Association
PacTel Mobile Access

[37] The amendments of our rules adopted herein are interpretative and procedural in nature and, moreover, will operate to reduce existing burdens on prospective cellular applicants. Thus, further notice and comment rulemaking procedures are not required. See 5 U.S.C. 553(b).

Appendix B

47 CFR Parts 1 and 22 are revised as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart E—Complaints, Applications, Tariffs and Reports Involving Common Carriers

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.742 [Amended]

2. Section 1.742 is amended by adding the words, "Except as specified in Section 22.6 of this chapter," at the beginning of the existing text.

3. Section 1.823(b)(2) is amended by revising the existing text to read as follows:

§ 1.823 Random selection procedures for the Public Land Mobile and Domestic Public Cellular Radio Telecommunications Services.

* * * * *

(b) Petitions to Deny. * * *

(2) Cellular Radio Telecommunications Service. In the Cellular Service, Petitions to Deny may be filed only against the tentative selectee within 45 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 30 days of the due date for Petitions to Deny. No additional pleadings will be accepted. If the tentative selected is disqualified, or its application designated for hearing, the Commission will allow Petitions to Deny against the next-ranked tentative selectee.

PART 22—PUBLIC MOBILE SERVICE

Subpart B—Applications and Licenses

4. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553).

5. Section 22.6(b) is amended by revising the existing text and redesignating it as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(b)(1) Except as specified in paragraph (b)(2) of this section, applications for radio stations authorizations shall be submitted for filing to: Federal Communications Commission, Washington, D.C. 20554.

(2) Applications for an initial cellular radio communications system authorization in markets beyond the top-120 shall be filed at the Commission's office in Gettysburg, Pennsylvania 17325. The initial processing of such cellular applications to determine their acceptability for filing will be conducted at the Gettysburg office.

* * * * *

§ 22.6 [Amended]

6. Section 22.6(b) is amended by adding the phrase "(See § 22.913 for specific filing requirements for applications for an initial cellular radio communications system authorization)" after the existing text.

§ 22.902 [Amended]

7. Section 22.902 is amended by removing paragraph (d)(2); removing the word "applicants" in the first sentence of paragraph (d)(3) and redesignating paragraph (d)(3) as (d)(2); and redesignating subparagraph (d)(4) as (d)(3).

§ 22.903 [Amended]

8. Section 22.903(a) is amended by removing the last sentence and substituting the following: "An applicant must state that the combined 39 dbu contours of all base stations will cover at least 75% of the total CGSA."

9. Section 22.913 is amended by revising paragraph (b)(2), redesignating paragraph (b)(4) and (b)(5), revising and redesignating paragraph (b)(3) as (b)(4) and by adding a new paragraph (b)(3) to read as follows:

§ 22.913 Content and Form of Applications.

(b) Form of Applications. Applications for construction permits for initial cellular systems in markets beyond the top 120 shall be filed as set forth below:

* * * * *

(2) The applicant's name and the market, market number and frequency block applied for must appear on the cover of the application. In lieu of the name of the market, applications for non-MSA/non-NECMA areas shall include a list of all major cities within the proposed CGSA.

(3) The initial item inside the application cover shall be a certification that all information required by Form 401 and the Commission's cellular application rules has been included in the application. The certification shall be signed by the person signing the Form 401. The following form shall be used.

Certification

[Name of Applicant]

Application for an initial cellular authorization for [insert market]

[Name of applicant or authorized representative] hereby certifies, under penalties of perjury, that this application for an initial cellular authorization for [insert market] is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules. [Applicant or authorized representative] acknowledges that if, upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

[Signature and Title] _____

Verification

I declare, under penalties of perjury, that I am the authorized representative of [name of applicant] in the above-entitled matter; that I have read the foregoing certification; and that the matter and things therein stated are true and correct. Executed on [date].

[Signature]

(4) The initial Form 401 shall immediately follow the certification required by paragraph (3) above, followed by a table of contents. The exhibits specified in § 22.13(a)(1) and (2), and § 22.913(a) (1), (2), (8) and (10), shall immediately follow the initial Form 401 and table of contents, with the remaining exhibits required by § 22.13, § 22.913(a), and the remaining cell sites after that. All exhibits shall be tabbed in accordance with the table of contents.

* * * * *

10. Section 22.917 is revised as follows:

§ 22.917 Demonstration of Financial Qualifications.

(a) *Top-120 Markets.* (1) Applications for new stations or modified facilities shall demonstrate the applicant's financial ability to meet the realistic and prudent:

(i) Estimated costs of proposed construction and other initial expenses; and

(ii) Estimated operating expenses for a period of one year, depending upon the nature of service proposed and the degree of business uncertainty or risk.

(2) Resources used to demonstrate an applicant's financial ability under paragraph (a)(1) of this section cannot include funds committed to another project, or committed in another cellular application.

(3) Except as provided in paragraph (c) of this section, each application shall demonstrate an applicant's financial ability as set forth in paragraph (a)(1) of this section by submitting the following financial information, the information required by paragraph (a)(3)(iii) of this section, and whatever other information or details the Commission may require:

(i) A balance sheet current within ninety (90) days of the date of the application and copies of any financial commitments (for example, loan agreements and service contracts) in support of the proposed facilities; and

(ii) Whenever the submissions of paragraph (a)(3)(i) of this section do not satisfy the standard established in paragraph (a)(1) of this section, the applicant shall submit such additional information (e.g., a current income statement, and, for the period of proposed construction plus an initial year of operation, a statement of projected revenues and expenses, a statement of projected sources and application of funds, etc.) as is necessary to demonstrate financial ability.

(iii) The following additional information shall be submitted on any form of intended credit arrangement or equity placement:

(A) The details of any loan or other form of credit arrangement intended to be utilized to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), letters of commitment, terms of the transaction, and a statement that paragraph (d) of this section is complied with; and

(B) The details of any sale or placement of any equity or other form of ownership interest.

(b) *Markets Beyond the Top-120.*—(1) *New Facilities.* The tentative selectee chosen in a random selection process conducted pursuant to §§ 1.822 and 22.33(a) of these rules, the surviving applicant in a full-market settlement of all mutually exclusive cellular applications for a market, and any unopposed applicant for an initial cellular authorization shall, within 30 days of the Public Notice announcing such status, obtain a firm financial commitment for the financing necessary to construct and operate for one year its proposed cellular system and shall amend its application to so demonstrate. The amendment shall also include the realistic and prudent estimated costs of proposed construction and other initial expenses; estimated operating expenses for a period of one year; and a balance sheet current within 30 days of the date of the filing of the amendment.

(i) The firm financial commitment required above shall be from a recognized bank or other financial institution and shall evidence the lender's determination that it has assessed the creditworthiness of the loan applicant and that it is committed to providing the necessary financing, including any actions required of the applicant to continue the commitment in force. Applicants obtaining financing from other than a recognized lending institution must submit proof that the financing entity has such funds available and uncommitted to another cellular application.

(ii) An applicant relying on internal financing must submit the information required by § 22.917(a)(3), in conformance with generally accepted accounting principles, to demonstrate its financial ability.

(2) Modified Facilities. Applications for modified facilities in markets beyond the top-120 shall demonstrate the applicant's financial ability in accordance with the requirements of paragraph (a), above.

(c) Each application for an assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

(d) *Notice Upon Default.* In addition to the disclosures required by paragraph (c) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

[FR Doc. 85-29419 Filed 12-17-85; 8:45 am]

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47 CFR Part 73

[MM Docket No. 85-39; RM-3683; Docket No. 18651; FCC 85-586]

Amendment of the Rules Regarding AM Station Assignment Standards and Relationship Between the AM FM Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By *Report and Order* in MM Docket No. 85-39, the Commission has amended § 73.37(e) of its rules by deleting the non-technical requirements for the acceptance of applications for new AM radio broadcast stations and major changes to them. Conditions since these requirements were adopted have

changed dramatically. These changes have removed the justification for continuing to apply these rules especially since doing so comes at the expense of precluding new AM services in places where there is demand and support for them. Removing these requirements will enhance the opportunities for the provision of competitive AM services.

EFFECTIVE DATE: January 21, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, Washington, DC 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

AM broadcast stations, Applications for broadcast facilities; showing required.

Report and Order (Proceeding Terminated)

In the matter of deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's Rules, MM Docket No. 85-39, Rm-3683; Amendment of Part 73 of the Commission's Rules, Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services, Docket No. 18651.

Adopted: October 31, 1985.

Released: December 12, 1985.

By the Commission:

Introduction

1. We here consider our proposal in the *Notice of Proposed Rule Making* in this proceeding (50 FR 8169, published February 28, 1985), to delete the non-technical AM application acceptance criteria set forth in § 73.37(e) of the FCC Rules.[1]

2. Under these non-technical criteria, applications for new AM stations or major changes in existing AM stations are not acceptable for filing unless:

—at least 25% of the area or population to be served has neither AM nor FM primary service; or

—the principal community to be served has fewer than two authorized local services and no FM channel is available for use there; or

—at least 20% of the area or population of the principal community receives fewer than two aural services, and no FM channel is available.

In addition, special provision was made for the acceptance of minority or noncommercial applications on the 25 U.S. I-A Clear Channels even if these applications do not meet the above requirements.

3. In issuing the *Notice*, the Commission noted that the basic policies regarding AM allocations had not been reviewed for almost 20 years. While it may well have been appropriate during early stages of AM development to employ such acceptance criteria, we noted that their continuing need is far from clear, especially in view of the substantial changes which have taken place in the intervening period. With this in mind the Commission decided on a full review of the AM application policies set forth in § 73.37(e).

4. Most responses to the *Notice* opposed retention of existing requirements because they have limited opportunities to provide improved service, especially with respect to daytime stations seeking to obtain nighttime operation. On the other hand, minority and noncommercial radio parties sought retention of these requirements, including their special advantage with respect to the use of the 25 U.S. Class I-A channels. Based on the record in this proceeding and our extensive experience in managing the aural broadcast spectrum, we believe that retention of the requirements of § 73.37(e) is no longer warranted.

Background

5. AM radio was the first broadcast medium and, over the years, AM applications have been subject to varying acceptance criteria. Initially, AM applications were accepted on a "demand" basis, leaving an applicant free to choose its own frequency, power, mode of operation, as well as the proposed community of license. By the early 1960's, the Commission had become concerned that this approach, which encouraged a continuing flow of applications seeking to provide service to the most populous areas of the country, could foreclose remaining opportunities to provide service to unserved and underserved areas.

6. In July 1968, the Commission instituted a "freeze" on the acceptance of AM applications to allow it to consider changes in AM allocation policies. This led to a *Notice of Proposed Rule Making* (34 FR 14384, September 13, 1969) in which the Commission proposed accepting applications for new AM service (other than Class IV) only if each application proposed a first aural service to 25 percent of the applicant's proposed coverage area or population. As adopted, the rule also allowed the filing of an application for a community if it lacked an available FM channel and at least 20 percent of the community did not receive two daytime city-grade services. *Report and Order*, 39 FCC 2d 645 (1973).

7. However, these rule changes proved overly restrictive. Few applicants were interested in establishing a station in those limited areas where they could file, and no opportunity was provided for them to file in those areas in which they wished to bring service. Accordingly, the Commission conducted another proceeding and decided upon a partial relaxation of the previous standards to allow, *inter alia*, expansion of daytime-only stations to provide first aural nighttime radio service in their communities. *Report and Order*, 54 FCC 2d 1 (1975). The rules were further relaxed in 1980 when the Commission, in deciding to permit additional nighttime operations on the 25 Class I-A Clear Channel stations, amended § 73.37(e) of the Rules to allow the acceptance of applications filed by minorities and noncommercial broadcasters. *Report and Order*, 78 FCC 2d 1345 (1978), recon. denied 83 FCC 2d 216 (1980). Even though the rules have been amended on several occasions throughout the years to broaden the class of permissible applications, they remain essentially the same today as has our basic approach to AM allocations.

Discussion

8. As explained below, we believe that our AM allocation policies have been very much responsible for the mature AM radio service that we now have in this country, and § 73.37's non-technical acceptance criteria appear to have been instrumental in furthering our objective of increasing AM service to unserved and underserved areas. However, we have concluded that continuance of these particular criteria would no longer serve the public interest. Similarly, we have concluded that the special provisions relating to the acceptance of applications filed by minorities and public broadcasters for stations on the 25 Class I-A clear channels should no longer be retained. We shall first address the rule's present utility in bringing new AM service to unserved and underserved areas. We shall then turn our attention to the question of the exclusive preferences given minorities and noncommercial public broadcasters with respect to the use of the 25 U.S. Class I-A channels.

9. At the time of the rules' adoption, a substantial percentage of the populace was without any primary aural service. Over half the land area of the United States with an aggregate population of

[1] Section 73.37 also contains technical acceptance criteria designed to avoid interference. These provisions are not at issue in this proceeding.

25 million or more lacked any primary aural nighttime service. Although FM service had come into existence, most FM stations were in areas already well served by AM and few people then owned FM receivers.[2] Accordingly, our primary objective in fashioning these criteria was to stimulate the growth of AM stations to areas lacking any primary service.

10. Since then, the situation has dramatically changed. By 1980, the population lacking primary aural service at night in the 48 coterminous states has been reduced to under four million persons living in widely scattered areas in the West and in smaller, thinly populated portions of the East. Although precise figures are not available, it is clear that AM operations authorized since then have reduced these figures even further.[3]

11. Moreover, vast changes in the FM broadcasting service, particularly in recent years, appear to have diminished the necessity of restricting remaining opportunities for new AM station growth exclusively to the areas embraced by our non-technical acceptance criteria. In spite of its slow beginnings in the 1950s and 1960s, FM has become the dominant aural medium today, and there continues to be a strong demand for FM channels in virtually all parts of the country, rural as well as urban.[4] In addition, the significant actions we have taken in Dockets 80–90 and 84–231 to increase the supply of FM channels throughout the country has expanded possibilities for new and increased radio voices in the marketplace including in underserved areas.

12. Because the availability of FM stations to provide service to new areas appears to be considerably more elastic than that on the AM side, FM appears to be in a far better position than AM to respond to the need for new service in the remaining unserved areas. In addition, FM has the technological advantage over AM of not generating nighttime skywave propagations, which is responsible for greater limitations on nighttime operation of AM broadcasting. The absence of this limitation in FM and the near universal availability of FM receivers in homes and cars have already been instrumental factors that have paved the way in bringing FM service to many areas lacking AM service and, in our estimation, augurs still further for the availability of FM service in many new communities and areas.

13. Given all these circumstances and especially the fact that the demand for FM service is currently much stronger than for AM, we cannot envision any continued strong demand for AM service in the remaining areas now subject to the acceptance criteria. At this juncture, virtually all of the unserved or underserved areas that remain lack a population center capable of supporting a high power AM station which in turn is capable of reaching the area needing service. Moreover, even though we have made provision for additional AM stations with powers up to 50 kW, we have found that this opportunity has been little utilized as a vehicle to provide service in remaining areas, nor has it proved to be a realistic means of providing service to a significant number of persons, particularly at night.

14. Accordingly, we have come to the conclusion that retention of the non-technical acceptance criteria for the very few remaining areas that, in theory, might be desirable locations for new AM services but, in economic reality, could not support such services would serve no positive public interest purpose. Although universal service is a laudatory goal, it is clear to us that future growth in AM is unlikely to bring service to unserved areas even if the current requirements are maintained. From an economic standpoint, it simply is not possible to guarantee one local service to every community regardless of size.[5] In areas where there is both demand and ability to support a broadcast operation, AM service, for the most part, has already been proposed. And, in those areas where future service expansion is possible, the likelihood of its being provided by FM, rather than by AM, is strong. Given these circumstances and the fact that the rule's purposes have largely been achieved, there appears to be very little wisdom in our rigid adherence to the non-technical criteria of § 73.37(e) if they merely serve in theory to preserve AM "opportunities" in the remaining underserved and unserved areas.

15. Aside from the minimal public benefits to be gained from their retention, we find that continuance of these restrictions would have undesirable negative effects. While it is apparent that the remaining benefits that can be reaped under the rule are likely to be negligible, retention of the rule may have the practical effect of eliminating opportunities for new, additional AM radio voices elsewhere. The exclusion of otherwise acceptable applications occasioned by the non-technical criteria thus may unjustly deny to the public new prospects for additional diversity outside those limited areas expressly carved out under the rule.

16. The rule is also designed to foster a first and second local transmisison service as well. However, it should be clear that two local services will not always be sufficient to respond to the needs of a community. Yet, the practical effect of the current provisions is to exclude otherwise acceptable proposals that do not offer a first or second local service. Because they limit entry of new radio forces into the marketplace, they necessarily limit prospects for increased program competition and program diversity. At this relatively mature stage of AM's development, we think it is more sensible to rely on actual demand as a basis for permitting AM operation, rather than to maintain the current criteria.

17. Moreover, we believe that the approach we are adopting today comports more fully with section 307(b) of the Act. Although that section calls for a "fair, efficient and equitable" distribution of radio facilities, it indicates quite clearly that the "equitable distribution" mentioned is to be considered "insofar as there is demand for the same." Accordingly, we believe that the purposes of section 307(b) are far better served by allowing the filing of applications for which there

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[2] According to a *Pulse* audience measurement study published in the February 23, 1970, issue of *Broadcasting*, FM penetration in Abilene, Texas, was only 25.8% and in Winston-Salem, North Carolina, was only 33.7%. Even Pittsburgh, Pennsylvania, only reached the 56.2% level. While penetration in some areas was higher, for the most part these were areas that had abundant AM service. In terms of overall market share, FM was only about 20%, a figure which had grown to 40% by 1976. Again using Pittsburgh, the FM market share in 1970 was 14.7%, climbing to no higher than 33.6% even as late as 1976. In sharp contrast, the Spring, 1985 RADAR survey by Statistical Research, Inc. estimates that FM's share of all radio listening, nationwide (7 days, 24 hours, all persons age 12+) is 70.6%.

[3] AM service continues to grow, but this growth is attributable in major part to the more extensive use of the 25 U.S. 1–A Clear Channels made possible by the Commission's Clear Channel decision, *Report and Order*, 78 FCC 2d 1345 (1980), *recons. denied in pertinent part, Memorandum Opinion and Order*, 83 FCC 2d 216 (1980), *aff'd sub nom. Loyola University v. FCC*, 670 F. 2d 1222 (D.C. Cir. 1982).

[4] The significant progress FM broadcasting has made throughout the years and the dominance it has achieved are principal factors which obviously point to no further need for these restrictions from the standpoint of our having to encourage commercial FM development, one of the early objectives underlying the criteria.

[5] *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in Docket No 19161 Anamosa, Iowa *et al.* 46 FCC 2d 520 at 525 (1974).

is demand rather than letting them "lie fallow." [6]

18. There are other considerations which lead us to this conclusion. For many daytime-only stations, the only way to obtain nighttime operation is by proposing a change in station location to a community meeting the § 73.37(e) standard, *viz.*, a suburban community. In some of these instances, no attempt is made to determine whether there is a greater need for the station in the suburban location to which it was being moved. In this respect, these non-technical criteria serve only as superficial barriers since some daytime operators having the necessary resources and wherewithal are capable of clearing the administrative hurdles created by the rule. However, other daytime-only stations are not able to take advantage of the provisions of the rules at all and to them it operates as an absolute barrier by foreclosing to them any opportunities for expanding to nighttime operations.

19. The effects of these barriers run counter to the Commission's efforts to alleviate the difficulties daytime-only AM stations face because of their hours of operation. Even with the actions we have taken thus far, daytime-only stations will operate under a disability, unable to compete effectively and to offer the benefits that unlimited operations would bring to their audience. Removal of these barriers creates the possibility of new opportunities for a number of these stations to obtain nighttime operations without having to propose a change in station location solely to clear administrative hurdles.[7]

20. We also wish to emphasize that the burdens that would be removed by elimination of the threshold showing requirements of § 73.37(e)(1) and (2)(i)–(ii) would equally be lifted from the shoulders of minority applicants as well. This would mean, for example, that a minority applicant for a new station on a channel, other than a domestic clear channel, will no longer have to make the threshold showing of service to unserved or underserved areas in order to have its application accepted for filing. Deletion of these provisions would therefore have a positive effect on increasing opportunities for minority ownership of AM stations because it would open the door wider to the possibility of a larger number of new AM stations for which authorization could be sought.

21. Having concluded that the benefits underlying the rule of extending new AM service to unserved and underserved areas are so small as to be outweighed by the detriments imposed, we now turn to the final issue for our consideration—whether to maintain the special provisions applicable to minorities and noncommercial broadcast entities in the use of the 25 U.S. Class I.–A Clear Channels (Section 73.37(e)(2) (iv) and (v). The National Black Media Coalition (NBMC) and the National Association of Black Owned Broadcasters (NABOB) are opposed to the elimination of these special provisions relating to minorities. They urge retention of these provisions as a means for increasing the number of minority-owned stations. They rely on reports that the number of minority-owned broadcast stations in 1984 was reportedly 188 or 1.8% of all broadcasting stations, and that this figure was even below the 1980 figure of 196 minority-owned stations representing 1.9% of the total. They also point out that, until recently, only 13 authorizations have been issued to minority applicants in reliance on the minority-ownership exception in § 73.37(e)(2)(iv). NABOB asserts that the temporary imposition of a "freeze" on the use of these Clear Channels and the time required for judicial review of the rules themselves have inhibited filings and thus form a basis for an additional period during which the rule should continue in effect. For these reasons, we are asked to leave in place all of the non-technical acceptance criteria of § 73.37(e).

22. Under the current criteria, applicants other than minorities and non-commercial entities have never been foreclosed from applying for operation on the 25 U.S. Class I–A Clear Channels, although, unlike minorities and non-commercial entities, they were permitted to apply only for stations serving unserved and underserved areas. However, if we eliminate the non-technical acceptance criteria for unserved and underserved areas, and still maintain the minority and noncommercial broadcast criteria, no one except minorities and non-commercial broadcasters could apply for operation on these channels. In light of this outcome, we can understand why NABOB seeks preservation of the non-technical acceptance criteria and, apparently, not merely the minority provisions: minorities and non-commercial entities would have the exclusive right to apply for all of the remaining opportunities for use of the 25 Class I–A Clear Channels. Such a result clearly was never contemplated by our rules [8] and, having already determined that the non-technical acceptance criteria for underserved areas should be eliminated, we decline to adopt that result here. Accordingly, we conclude that the special provisions for minorities and non-commercial station should also be deleted.

23. Moreover, even if we were disposed to retain the special provisions of § 73.37(e)(2)(iv), we are extremely skeptical whether the few remaining opportunities that exist would justify their retention. The Commission has already received over three hundred applications for unlimited-time Class II stations on the Class I–A channels in question and, therefore, it is extremely unlikely that many more requests for authorizations beyond those already requested could be entertained whether filed by minorities or others. This, together with the fact that approximately 115 stations have already been authorized by the Commission to operate on these channels, indicates that, due to increased spectrum crowding, it simply would not be possible to accommodate many more authorizations in this area.[9] Because there are so few remaining possibilities for unlimited-time stations on these clear channels and because only in unusual circumstances would additional growth in this area be possible, perpetuation of the special provisions of § 73.37(e)(2)(iv) cannot be viewed as a realistic means of appreciably increasing the number of minority owned stations or as a justifiable means for further enlarging the number of minority-owned stations.[10]

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[6] The policy judgment that new AM stations should be allowed wherever there is sufficient demand to support them assumes, of course, that, absent the nontechnical criteria, new AM stations can be proposed for areas already well served without violating our interference rules. In *Report and Order, MM Docket No. 84–281*, 50 FR 24515 (June 11, 1985), *appeal pending sub nom. National Black Media Coalition* v. *FCC*, Case No. 85–4121 (2d Cir.), we found that this possibility did not exist on the foreign clear channels, where for the most part new full-time stations could only be proposed in unserved and underserved areas. Proposals for new stations in areas already adequately served would generally run afoul of our interference rules.

[7] Some licensees may still wish to change their community of license. No alteration in the policies in regard to these applications is intended, including proposals for change of community of license made possible by our revision of § 73.37(e).

[8] *Clear Channel Broadcasting Report and Order, supra.*

[9] The "freeze" mentioned by NABOB may have discouraged the filing of some applications by minorities for use of these Clear Channels, but the fact that the Commission received over three hundred applications suggests that the impact of the freeze was minimal. In any event, no Commission rule or policy prevented the filing of applications either before or after the freeze.

[10] Our reasoning that "so few remaining" opportunities exist to justify our retention of the special acceptance provision for minorities and noncommercial broadcasters was also a consideration at the heart of our decision not to apply for the first tie these special acceptance provisions in the foreign clear channel proceeding. *See* n. 7 *supra*. Although our action in that proceeding created some opportunity for new full-time stations on the 14 foreign clear channels, it created few, if any, opportunities for full-time stations *outside of* unserved or underserved areas.

24. For similar reasons, we have also concluded that the special provision of § 73.37(e)(2)(v) relating to the use of these Clear Channels by noncommercial broadcasters should be deleted. Although Congress has stated that "it is in the public interest to encourage the growth and development of public radio," 47 U.S.C. 396(A)(1), that declaration does not require adoption of, or adherence to, any allocations policy which limits all remaining AM opportunities exclusively to noncommercial broadcasters. We believe that the aims of the statute can be better met through other regulatory mechanisms that do not have the drastic effect of foreclosing remaining AM opportunities to others. Moreover, as indicated above, even with the deletion of the non-technical acceptance criteria, noncommercial broadcasters would continue to have the opportunity to apply for use of these Clear Channels to the extent any opportunities exist. In addition, elimination of the non-technical acceptance criteria would afford noncommercial broadcasters the opportunity to seek authorizations for new AM service on other frequencies in those areas previously forbidden to them and others under the rule.

25. Our decision to delete the exclusively elements contained in § 73.37(e)(2)(iv) & (v) does not curtail in any manner the filing opportunties created under the rule for minorities and noncommercial broadcasters.[11] It merely removes the existing shield which, in some circumstances, protected these groups from the filing of competing applications by others. But even without this shield, minority groups would still continue to enjoy in any ensuing comparative license proceeding the benefits of a preference or enhancement factor to the extent that there existed integration of minority ownership into the overall management of the station. *See Waters Broadcasting Corp.*, 91 FCC 2d 1260 (1982), *aff'd sub. non. West Michigan Broadcasting Co.* v. *FCC*, 735 F.2d 601 (1984), *cert. denied*, 105 S.Ct. 1392 (1985).

26. We believe that a sounder approach to promoting minority ownership is to develop regulatory tools which facilitate new opportunities for minorities, but which do not have the exclusive effect of denying opportunities to all others completely, which retention of the special minority provision of § 73.37(e)(2)(iv) would have. For example, we have attempted to alleviate the underrepresentation of minority ownership that exists through such regulatory mechanisms as the distress sale policy, issuance of tax certificates and effectuation of the newly-exacted lottery statue by Congress. *See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Minority Ownership of Broadcast Facilities*, 69 FCC 2d 1591 (1978); *Random Selection Lotteries, Second Report and Order*, 93 FCC 2d 952 (1983), *appeal pending sub nom. National Latino Media Coalition* v. *FCC*, No. 83–1785 (D.C. Cir. July 20, 1983). Very recently, we instituted a *Notice of Inquiry* seeking comment on the possibility of extending the existing distress sale policy to permit distress sales of broadcast properties subsequent to the beginning of a revocation or renewal hearing, provided the transaction is entered into prior to the filing of proposed Finding of Fact and Conclusions of Law with the Administrative Law Judge. *Notice of Inquiry in the Matter of Distress Sale Policy for Broadcast Licensees (MM Docket No. 85–299)*, FCC 85–543 (adopted October 8, 1985). In our estimation, all these measures serve to promote minority ownership of broadcast stations for the purpose of fostering program diversity.

27. *Other Matters.* Several Parties in their comments asked that we amend other sections of the rules. The Association of Federal Communications Consulting Engineers and du Treil-Rackley, Consulting Engineers, ask that we modify § 73.37(b)(1), relating to prohibited overlap of adjacent channel signals. WEW, Inc. requests that we amend sections 24 (i) and (j), relating to requirements affecting Class II–A stations and the minimum signal to be provided over principal cities. These matters are all outside the scope of the present proceeding, which is limited to the proposal set out in the *Notice of Proposed Rule Making*, to eliminate the non-technical AM acceptance criteria in § 73.37(e).

28. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Final Analysis

I. Reason for Action

The amendment is designed to relieve restrictions on the filing of AM applications.

II. Objective

By relaxing current restrictions on the filing of AM applications, service can be increased and opportunities for competition enhanced.

III. Legal Basis

Section 303 and 307(b) of the Communications Act of 1934, as amended, empower the Commission to foster more efficient use of radio spectrum in the public interest.

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

The National Black Media Coalition took issue with the observation in the Regulatory Flexibility Initial Analysis that the only group of small entities affected is the group of potential applicants who will be able to file for new or improved facilities. NBMC asserted tht minority applicants also would be affected because they no longer would receive special treatment on the U.S. Class I–A Clear Channels. However, as discussed above, the rule is unlikely to offer significant future benefits to such applicants. In addition, their opportunity to file otherwise acceptable applications has not been diminished. Accordingly, we adhere to the view set out in the Initial Analysis that only potential applicants for new and improved AM facilities will be significantly affected by the present Rule change. They will be favorably affected.

V. Federal Rules Which Overlap, Duplicate, or Conflict With Stated Objectives

None.

VI. Any Significant Alternative Minimizing Impact on any Entities Consistent With Stated Objectives

Although NBMC, differed with the Commission's initial anlysis that no adverse impact on small entities is expected, it offered no alternative consistent with the stated objectives.

29. Accordingly, pursuant to authority found in sections 303 and 307(b) of the Communications Act of 1934, as amended, it is ordered, That, effective January 21, 1986, § 73.37 of the Commission's Rules is amended as set forth in appendix 1.

30. It is further ordered, That this proceeding is terminated.

31. For further information please

[11] See para. 20, *supra*.

contact Louis C. Stephens of the Commission's Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

1. the authority citation for 47 CFR Part 73 continues to read as follows:

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

2. 47 CFR 73.37 is amended by revising paragraph (e) to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraph (a), and, as appropriate, paragraphs (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1) of this chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to any authorized station, as determined pursuant to § 73.182(o) of this chapter.

* * * * *

3. 47 CFR 73.37 is amended by removing Notes 5, 6, 7 and 10 and by renumbering existing Notes 8 and 9 as Notes 5 and 6, respectively.

Appendix 2

Parties Who Commented on the Record of MM Docket No. 85-39

Association of Federal Communications Consulting Engineers (AFCCE)
Corporation for Public Broadcasting (CPB)
Du Treil-Rackly, Consulting Engineers
First Broadcasting of Nevada, Inc., and Dave Mack Broadcasting (joint filing)
Robert A. Jones Consulting Engineers
National Black Media Coalition (NBMC)
National Association of Black Owned Broadcasters, Inc. (NABOB)
National Association of Broadcasters (NAB)
National Radio Broadcasters Association (NRBA)
National Public Radio (NPR)
Radio WEW, Inc. (WEW)

[FR Doc. 85-29894 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575-5075]

Atlantic Surf Clam and Ocean Quahog Fisheries; Technical Correction

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

ACTION: Notice of ocean quahog fishery time adjustment.

SUMMARY: NOAA issues this notice lifting the effort restrictions on the ocean quahog fishery. This action is necessary because catch rates in the ocean quahog fishery have slowed, eliminating the need for effort restrictions. The intended effect of the adjustment of fishing time in the ocean quahog fishery is to allow the quota to be harvested.

EFFECTIVE DATE: 0001 hours, Eastern Standard Time, December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Plan Coordinator, 617-281-3600, extension 272.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(c) a provision to revise allowable fishing time in the ocean quahog fishery when 50 percent of the quota is caught and the Regional Director determines that the quota will be exceeded for the applicable time period.

Allowable fishing time in the ocean quahog fishery was reduced from seven days per week to five days per week on November 1, 1985 (50 FR 46072), consistent with § 652.22(c) of the regulations. This action was taken to prevent the ocean quahog quota from being exceeded and to avoid a prolonged closure of the fishery. Ocean quahog catch rates have since slowed sufficiently to assure that the quota of 4.9 million bushels will not be exceeded this fishing year, thus the Regional Director has determined that the effort restrictions are no longer necessary for the remainder of 1985.

The 1986 fishing year for ocean quahogs will begin December 29, 1985, with the allowable fishing time of seven days per week, 24 hours per day.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 13, 1985.

Carmen J. Blondin,

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

In addition to the above, a technical correction is made as follows:

§ 652.22 [Amended]

(a) In § 652.22(c)(2), the reference to "§ 652.21(c)" is changed to "§ 652.21(d)".

[FR Doc. 85-29923 Filed 12-13-85; 2:20 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab off Alaska

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

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Central District, Kamishak Bay District, and Barren Islands District of Registration Area H must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in these districts. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Standard Time (AST), December 19, 1985. Public comments on this notice of closure are invited until December 31, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone (FCZ) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason

adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area H (Cook Inlet area) in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached.

The Tanner crab season in Cook Inlet opened on November 1, 1985 (50 FR 47549 November 19, 1985). The overall optimum yield (OY) for Registration Area H is 1.5 to 3 million pounds. Approximately 24 vessels caught an estimated 1.1 million pounds of crab from the Central, Kamishak Bay, and Barren Islands Districts through December 5. The catch of legal crabs declined from approximately 38 crabs per pot to 12 crabs per pot in these districts. This unanticipated rapid decline in catch, and the catch of a substantial number of sublegal and female Tanner crabs (10 to 200 per pot) necessitates the closure of this fishery to protect the Tanner crab stocks.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. Actual conditions of Tanner crab stocks in the Central, Kamishak Bay, and Barren Islands District of Cook Inlet are substantially different from conditions anticipated at the beginning of the fishing year; and

2. These differences reasonably support the need to protect those Tanner crab stocks by closing the Central, Kamishak Bay, and Barren Islands Districts of Cook Inlet as defined in § 671.26(E)(1) (i), (iii), (iv), from noon, AST, December 19, 1985, until noon, Alaska Daylight Time, May 31, 1986, at which time the closure of these districts prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Central, Kamishak Bay, and Barren Islands Districts will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671, and complies with Executive Order 12291.

List of Subjects in CFR 50 Part 671

Fisheries, Reporting and recordkeeping requirements.

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

Dated: December 13, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-29874 Filed 12-16-85; 10:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 243
Wednesday, December 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.

FEDERAL ELECTION COMMISSION

11 CFR Ch. I

[Notice 1985-14]

Rulemaking Petition; Use of Funds To Influence Federal Elections

AGENCY: Federal Election Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Election Commission requests comments on several factual and legal issues raised by the use of funds to influence federal elections that are not being considered as subject to the Federal Election Campaign Act of 1971, as amended (the "Act" of "FECA"), 2 U.S.C. 431 *et seq.* and the Commission's regulations on the asserted ground that they are actually contributed or expended only for the purpose of influencing state elections. These issues have been discussed extensively in the press in terms of the use of "soft money" in elections and the adequacy of the Commission's regulations to provide disclosure of all funds used to influence federal elections. In light of the attention focused on this area, the Commission is issuing this notice and scheduling public hearings to examine the possible use of unreported funds to influence federal elections. Further details on the specific questions on which comment is sought is provided in the supplementary information that follows.

DATE: Comment must be received on or before January 17, 1986. The Commission will hold a hearing on January 29–30, 1986. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, DC 20463, (202) 523–4143 or toll-free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is aware of the concerns that have been raised by members of the public regarding the increased use of undisclosed funds for activities that may affect federal elections. Often these funds consist of donations from sources that would be prohibited from making contributions or expenditures for federal elections, such as corporations, labor organizations, and persons who have reached their contribution limits under federal law. As a result, it has been asserted that the Commission's regulations are insufficient to provide adequate disclosure of all funds used for activities related to federal elections or to prevent evasion of the Act's prohibitions and limitations.

In view of the growing perception that funds not reported to the Commission may be used to influence federal elections, the Commission is publishing this notice as part of its examination of the questions that have arisen in this area. The Commission's inquiry focuses on two interrelated areas. First, the Commission seeks factual information on the practices involving undisclosed funds that are spent in a manner that affects federal elections. Although the use of undisclosed funds or "soft money" to affect federal elections has been the subject of wide discussion in the press, there appears to be no general agreement as to what constitutes "soft money" or to what extent certain activities involving unreported funds impact on federal elections. For example, some commentors have focused the discussion on nonreporting accounts maintained by political party committees for use in state and local elections. Other groups have defined "soft money", based on the type or source of the funds without regard to the particular activity for which they are used, to include corporate and union treasury funds and funds from individuals who have contributed the maximum amount under federal law.

In addition, the Commission requests comment on the appropriate courses of action to address the problems in this area. The Commission is considering whether a revision of its regulations is necessary in view of charges that have been made that they are inadequate. Several legal issues need to be examined before the Commission can determine whether rulemaking is appropriate. For example, the extent to which the Commission's current regulations are mandated by FECA or are an exercise of the Commission's discretion warrants exploration. Furthermore, the question arises whether the Commission should seek statutory reform to the extent that changes in the current regulatory scheme require revisions of the Act to address issues raised by the use of undisclosed funds.

A. Use of Undisclosed Funds to Influence Federal Elections

The Commission has considered matters involving the use of undisclosed funds to influence federal elections in different contexts involving various activities. These issues have been raised for Commission consideration in advisory opinions ("AOs") and compliance matters. Questions regarding the use of "soft money" to influence federal elections were presented to the Commission in a petition for rulemaking filed by Common Cause on November 6, 1984.[1] In addition, members of Congress have questioned the Commission concerning undisclosed funds that may be used to affect federal elections. Finally, during the last election cycle, the media focused a significant amount of attention on whether the public interest in disclosure and limitation of such funds is being served.

Most of the questions concerning the use of undisclosed funds to influence federal elections have related to the activities of political party committees. There have been numerous stories in the media regarding the large amount of money raised by the major political parties ostensibly for use in state and local elections. While political party committees have been the primary focus, the "soft money" discussion has

[1] The Commission issued a Notice of Availability to seek public comment on the Common Cause petition. 50 FR 477 (Jan. 4, 1985). Five written comments were received in response to the notice, including a supplemental statement by Common Cause. If the Commission decides to undertake a rulemaking to address the issues raised by the use of unreported funds to influence federal elections, it could decide to include the issues raised by the Common Cause petition within the scope of that rulemaking. The Common Cause petition and the comments on it are available for copying and inspection in the Commission's Public Records Office.

extended to activities by other committees, organizations, and individuals as well. For example, concerns have been raised that treasury funds have been expended by corporations and labor organizations in a manner that impacts on federal elections. Questions have similarly arisen regarding other political committees and individuals, such as nonconnected committees with nonfederal accounts and individuals conducting activities in the delegate selection process or in the "testing the waters" period prior to becoming a candidate. To assist the Commission in assessing the scope of activities involved in this area, comment is requested on the extent to which undisclosed funds are used by political committees, organizations, and individuals in a manner that influences federal elections. Comments are also sought on whether revision of various provisions of the Commission's regulations is necessary to address the issues that have arisen in this area. The questions raised for public comment are discussed in greater detail in the information that follows.

1. Political Party Committees

Several activities undertaken by political party committees have raised allegations that undisclosed funds are being used to influence federal elections. One area in which such issues have arisen payments for certain activities conducted by State and local party committees pursuant to provisions enacted in the 1979 FECA amendments. These provisions were intended to increase the role of State and local party committees in the electoral process by exempting certain payments from the definitions of "contribution" and "expenditure". Under the Act, payments by State and local party committees to prepare and distribute slate cards, sample ballots or other printed lists naming three or more candidates for any public office are exempted from the definitions of "contribution" and "expenditure". 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv). *See also* 11 CFR 100.7(b)(9) and 100.8(b)(10). Another set of exemptions permits State and local party committees to purchase campaign materials (such as buttons, bumper stickers, and yard signs) to be distributed through volunteer activities on behalf of the party's nominees in a general election. 2 U.S.C. 431(8)(B)(x) and 431(9)(B)(viii). *See also* 11 CFR 100.7(b)(15) and 100.8(b)(16). The third exempted area involves payments by State and local party committees for voter registration and get-out-the-vote activities on behalf of the party's nominees for President and Vice President. 2 U.S.C. 431(8)(B)(xii) and 431(9)(B)(ix). *See also* 11 CFR 100.7(b)(17) and 100.8(b)(18).

Local party committees undertaking only exempt activities are not required to register and report until payments for these activities exceed $5,000. 2 U.S.C. 431(4)(C). Committees may sponsor an activity that falls within these exemptions on behalf of both federal and nonfederal candidates. Under the Commission's regulations, only the portion of the payments attributable to federal candidates must be paid from funds permissible under the Act. *See* 11 CFR 100.7(b)(9), (b)(15)(ii), and (b)(17)(ii); 11 CFR 100.8(b)(10), (b)(16)(ii) and (b)(18)(ii). Similarly, party committees may allocate expenses for get-out-the-vote and voter registration drives conducted jointly in connection with federal and State or local elections. *See* Advisory Opinions ("AOs") 1978–10, 1978–28, and 1978–50. *See also* 11 CFR 106.1(e).

These statutory exemptions should not be used as a shield to spend nonfederal funds for the benefit of federal candidates, particularly through the use of allocation methods which permit a committee to expend funds raised for use in nonfederal elections and thereby free federal funds for contributions and expenditures. Such allocation arguably affords a benefit to the committees, avoiding their spending permissible contributions they have received for operational expenses. Thus, Common Cause and others have claimed that allowing allocation of expenses for exempt activities provides a loophole permitting funds that are not reported to the Commission, often not permissible under the Act, to be used in a manner that affects federal elections. *See also* dissents to AOs 1978–10, 1978–46, 1981–3 and 1982–5.

Concerns have also arisen regarding the use of funds in nonfederal accounts maintained by political party committees. Many persons have alleged that funds ostensibly raised for use in nonfederal elections, that are not reported to the Commission, have in fact been used to influence federal elections. Neither the statute nor current Commission regulations require committees to report the receipt and disbursement of funds in their nonfederal accounts. *See* 11 CFR 102.5(a). Contentions have thus been made that the lack of disclosure of these funds deprives the Commission and the public of accurate information on financing used to influence federal elections, thereby defeating a major purpose underlying the reporting provisions of the Act. It has also been alleged that the Commission's ability to effectively monitor campaign financing for federal elections is impaired if these funds are not subject to reporting requirements. In addition, concerns have been raised because there is no centralized disclosure of funds raised for use in nonfederal elections even though such funds may be subject to disclosure under various state laws.

Another area in which these issues regarding undisclosed funds have arisen concerns the use of nonfederal funds by party committees to conduct activities that have as their purposes promoting the party as a whole. The Commission has noted that political party committees perform numerous functions, termed "party building", that do not relate directly to any particular federal candidate or election. *See, e.g.*, AOs 1975–21, 1975–28, 1975–87, and 1978–50. Members of the public have alleged, however, that nonfederal funds purportedly raised for party building activities are in reality being used to fund activities designed to influence federal elections.

The Common Cause petition and the complainant in Matter Under Review ("MUR") 1766 (1984) questioned the transfer of funds in nonfederal accounts maintained by national level party committees (such as the party's national committee and House and Senate campaign committees) to State and local party committees for party building activities. These matters also raised issues concerning the methods used for allocating expenses between their federal and nonfederal accounts. In MUR 1766, for example, the complainant alleged both that undisclosed funds transferred by the national committees of the Republican and Democratic parties to State and local committees in the State of Washington for party building activities were in reality used to influence a federal election held in the state and that there was not a proper allocation of funds between federal and nonfederal elections. The complainant requested that the Commission issue guidelines on how to allocate party building expenses, as well as additional reporting requirements, to facilitate monitoring these funds and ensure that prohibited funds raised for use in nonfederal elections are not in fact used to influence federal elections. The Commission determined, however, that the respondents had submitted documentation sufficient to indicate that no improper funds were used to influence federal elections.

Quesions pertaining to party building activities have also been presented to

the Commission in advisory opinion requests submitted in 1984 and 1985. *See* AORs 1984–15 and 1985–14. Each of these requests concerned political advertising by a major political party. In responding to the requests, the Commission considered the timing and the content of the advertisements involved to determine whether disbursements for them should be characterized as contributions to a federal candidate, coordinated expenditures under 2 U.S.C. 441a(d), or expenditures for general party building activities. In AO 1984–15, the Commission concluded that neither the contribution limitations nor the section 441a(d) expenditure limitations would apply to disbursements for political advertisements, broadcast in the period after the national nominating convention and before the general election, that referred to opposing party candidates generally without identifying any specific candidate or office. The purpose of such advertisements was found by the Commission to be to promote one party over another and to encourage voters to support one political party generally. As such, the Commission determined that disbursements for the advertisements were not required to be reported as contributions to any specific candidates or as section 441a(d) expenditures, but were only reportable as operating expenditures that are generally related to federal elections. In contrast, the Commission also concluded in AO 1984–15 that the limitations on contributions or section 441a(d) expenditures would apply where the advertisement both (1) depicted a clearly indentified presidential candidate and (2) contained an electioneering message. *Accord* AO 1985–14.

These advisory opinion requests thus raise the issue of whether the Commission's regulations governing party building activities should be expanded to deal more explicitly with such activities. Currently, 11 CFR 110.8(e) addresses certain circumstances under which a party committee may reimburse expenses incurred by a presidential candidate who engages in party building activities without the payment being considered a contribution to the candidate or having an unreimbursed expense count against the expenditure limits for presidential candidates receiving public financing. However, the Commission's regulations might provide more adequate guidance if they set forth general rules governing party building activities.

Clearly increasingly complex questions concerning political party activities are being presented for Commission consideration in the context of advisory opinions and compliance matters. These questions concern a variety of activities including those undertaken pursuant to special statutory exemptions, others ostensibly conducted in nonfederal elections and still others that are alleged to be generic party building. The Commission must examine how the issues raised by these activities impact on the various provisions of its regulations.

2. Separate Segregated Funds

While the most prominent issues concerning the use of unreported funds to influence federal elections have involved political party committees, the questions concerning the use of unreported funds to affect federal elections have also extended to permissible payments by corporations and labor organizations prohibited by the Act from making contributions and expenditures in connection with federal elections from their treasury funds. *See* 2 U.S.C. 441b. Pursuant to 2 U.S.C. 441b(b)(2)(C), these organizations may establish political committees (separate segregated funds) that may undertake activities designed to influence federal elections. Contributions to separate segregated funds must be solicited only from a prescribed class of persons. *See* 2 U.S.C. 441b(b)(4)(A). Sponsoring corporations and labor organizations are allowed to pay all costs associated with establishing, administering, and soliciting contributions to these committees. *See* 11 CFR 114.5. These expenses may include payments for salaries, rent, charges for equipment, and postage and printing charges for committee solicitations. The Act does not require the committees or their sponsors to report funds spent by a sponsoring organization for administrative or solicitation costs incurred by its separate segregated fund.

Concerns have been articulated with regard to the payment of administrative expenses since such payments afford a great benefit to the separate segregated funds. Many have alleged that such payments provide these committees with an unfair advantage because committees without corporate or union sponsors are not permitted to use funds from prohibited sources to pay all of their operational expenses. The Commission has considered legislative recommendations concerning the issues raised by the use of undisclosed funds by corporations and labor organizations to pay the administrative expenses of their separate segregated funds. *See* Agenda Documents #84–40D (March 1, 1984) and #83–46 (March 24, 1983). Congress has also heard testimony from organizations who view this permission as according preferential treatment to political committees established by organizations subject to the prohibitions of section 441b. *Federal Election Campaign Act Amendments, 1979: Hearing Before the Senate Committee on Rules and Administration*, 96th Cong., 1st Sess. 37–38 and 48–52 (1979) *reprinted in Legislative History of Federal Election Campaign Act Amendments of 1979*, 43–44 and 54–57 (1983).

Questions have also arisen regarding payments by corporations and labor organizations using treasury funds to finance communications to their respective solicitable classes. These communications may be made on any subject and may include nonpartisan voter registration and get-out-the-vote drives aimed at these groups. 2 U.S.C. 441b(b)(2)(A) and 441b(b)(2)(B). The statute requires corporations and labor organizations to report payments for communications to their solicitable classes expressly advocating the election or defeat of a clearly identified candidate only if they exceed $2,000 per election. 2 U.S.C. 431(9)(B)(iii). The Commission recently expanded the extent to which treasury funds may be used when it revised its regulations governing the permissible activities that corporations and labor organizations may undertake without violating the Act or incurring reporting obligations. *See* 11 CFR 114.3 and 114.4.

Clearly, payments by corporations and labor organizations from treasury funds for the administration of their separate segregated funds and partisan communications to their solicitable classes have an impact on federal elections. Comment is sought on whether such payments are being made in the manner intended by the Act. The Commission's examination of this area extends to its regulations governing the aforementioned payments made by corporations and labor organizations and the effect that any action to ensure that such payments are made consistent with statutory requirements would have on these rules.

3. Other Political Committees and Individuals

Similar issues involving the use of undisclosed funds in ways that affect federal elections have arisen regarding a broad range of activities conducted by other political committees and individuals. For example, concerns have been raised with regard to nonconnected committees that maintain separate federal and nonfederal

accounts. Like political party committees, these committees are not required to report funds in their nonfederal accounts to the Commission and may allocate administrative expenses between them. The nonfederal accounts established by nonconnected committees may also contain funds from sources prohibited under FECA from making contributions or expenditures in federal elections if permitted by state law.

Issues have also arisen regarding activities conducted pursuant to the Commission's regulations, such as those governing individuals seeking to become delegates to national nominating conventions. Under the Commission's present regulations, individual delegates are not required to report funds received or expended for the purpose of furthering their selection. However, individual delegates are not permitted to use prohibited funds for their activities. 11 CFR 110.14(f). Contributions to delegates are not subject to the Act's contribution limits, but do count against an individual's $25,000 annual contribution limit under 2 U.S.C. 441a(a)(3). 11 CFR 110.5(d) and 110.14(c). Individuals may make disbursements for activities in the course of running for selection as a delegate that benefit the presidential candidate they support. Subject to certain conditions, these disbursements are neither considered contributions to the candidate nor chargeable to the expenditure limitation of a presidential candidate receiving public financing. 11 CFR 110.14(d)(2). The Commission is in the process of reviewing its regulations governing the delegate selection process in light of issues that arose during the 1984 election cycle.

Similarly, the use of undisclosed funds may also affect the Commission's regulations concerning "testing the waters" activities. Commission regulations provide that funds received and expended by an individual in deciding whether to campaign for federal office, so-called "testing the waters" activities, need not be reported unless the person later becomes a candidate. 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. The Commission recently revised these rules to forbid the use of prohibited funds and funds in excess of the contribution limitations for "testing the waters" activities. *See* 50 FR 25698 (June 21, 1985).

The Commission will need to consider whether the questions that have been raised by the use of undisclosed funds would impact on other provisons of its regulations. The results of the Commission's inquiry into this area should highlight those activities conducted by political committees and individuals where potential problems exist and possible solutions to these problems. This examination will facilitate the Commission's determination of what, if any, revisions of its rules is necessary to address the use of undisclosed funds to influence federal elections.

4. Questions Raised for Comment

To assist the Commission in assessing the need for a rulemaking regarding the use of undisclosed funds to influence federal elections, comment is sought in the following areas. First, in view of the many activities that raise similar issues, the Commission seeks comments on the scope of the problems raised by the use of undisclosed funds to influence federal elections. The Commission would like information, for example, on the extent to which undisclosed funds are being spent in a manner that impacts on federal elections and, if so, how this is done. Comment is also requested on the extent to which entities that are prohibited from making contributions for federal elections, such as corporations, labor organizations, and those who have reached their contribution limits, dontate funds that may ultimately be used to influence federal elections and whether this increases the potential for evasion of the contribution limitations and prohibitions of the Act.

A related topic on which public comment is sought concerns the committees or other entities that should be affected by a rulemaking concerning the use of undisclosed funds to influence federal elections. Common Cause has proposed regulations, for instance, that would have a significant effect on the activities of candidate committees and party committees operating on the national level and would subject State and local party committees, as well as other political committees with nonfederal affiliates, to increase reporting obligations. *See* Common Cause comment (Feb. 4, 1985). Yet, it is apparent that an even wider range of committees and organizations could be affected by a proposed rulemaking in this area. Concerns similar to those raised with respect to party committees have also arisen regarding activities conducted by separate segregated funds, nonconnected committees and individuals. The Commission requests comments on whether, if undertaken, the rulemaking should address practices of these entities or, alternatively, whether they should be distinguished from party committees and candidate committees that conduct activities on the national level.

With regard to the activities of political parties, the Commission requests comments on which activities, if any, conducted by their committees should be reviewed as related to federal elections. Additionally, comment is sought on what activities conducted by party committees, particularly national party committees, should be viewed as sufficiently unrelated to specific federal elections to be considered general party building.

B. Should the Commission Initiate a Rulemaking?

The second area on which the Commission seeks comments concerns the appropriate courses of action to be taken to address the issues raised by the use of "soft money". The use of undisclosed funds to influence federal elections in many instances has been alleged to result from the Commissions' interpretation of the statute as reflected in its regulations. In view of the issues that have been raised regarding the Commission's regulations, the question arises of whether the Commission should initiate a rulemaking to address some or all of these issues.

Other options are available to the Commission should it decide to resolve the questions that have arisen in this area. Upon reviewing the statute and regulations, the Commission could determine that statutory revisions are necessary to remedy certain problems raised by the use of undisclosed funds to influence federal elections. The Commission could decide in that case to make legislative recommendations advocating statutory reforms. Another course the Commission could take would be to resolve these issues as they are presented in the context of particular enforcement matters. Indeed, there are those who argue that the enforcement process is the only proper method because the alleged practices constitute violations of the Act. Which, if any, of these courses of action the Commission decides to take will depend upon the results of a thorough examination of the allegations that undisclosed funds, particularly those in nonfederal accounts maintained by political committees, are being used to influence federal elections.

1. Current Regulations

The major issues that have been raised about the Commission's regulations have concerned those that permit organizations that qualify as political committees under the Act to maintain separate accounts for their activities in connection with federal and nonfederal elections and to allocate

expenses for these activities. Section 102.5(a) of the Commission's regulations provides an organization that qualifies as a political committee under the Act with the option of having separate accounts for its activities in connection with federal and state and local elections. 11 CFR 102.5(a). While the Act requires political committees to report all receipts and disbursements, 2 U.S.C. 434(b)2) and 434(b)(4), the Commission's regulations do not subject an organization with separate federal and nonfederal accunts, as a whole, to reporting requirements. Rather, under § 102.5(a), only its federal account is considered a political committee subject to the reporting requirements of the Act. Although state laws may require reporting of nonfederal activity to a state office, a committee's nonfederal activity is not reported to the Commission nor is its nonfederal account subject to the Act's contribution limitations and prohibitions. The lack of centralized disclosure of funds in a nonfederal account has thus been said to result from the Commission's not requiring a committee with separate accounts to report receipts and disbursements for its nonfederal account.

Moreover, the Commission's regulations allowing committees to allocate their expenses between their federal and nonfederal activities have also raised questions concerning the use of unreported funds. Section 106.1(e), for example, provides political committees with the option of allocating administrative expenses between their federal and nonfederal accounts "on a reasonable basis in proportion to the amount of funds spent on federal and nonfederal elections or on some other reasonable basis." Commission regulations also permit party committees conducting exempt activities to allocate the costs between the federal and nonfederal candidates involved, requiring only the portion of the costs attributable to Federal candidates to be paid with funds subject to the limitations and prohibitions of the Act. *See* 11 CFR 100.7 (b)(15)(ii), (b)(16), and (b)(17)(ii); 11 CFR 100.8 (b)(16)(ii), (b)(17) and (b)(18)(ii). In addition, party committees have been allowed to allocate their expenses for get-out-the-vote and voter registration drives conducted in connection with federal and State and local elections as general administrative expenses. *See* AOs 1978–10, 1978–28 and 1978–50. The potential for political committees to evade the contribution limitations and prohibitions and subsidize their political activities in federal elections with prohibited funds has been alleged to stem from the Commission's permitting allocation of expenses for federal and nonfederal activities.

Problems have also arisen regarding the application of these regulations, particularly those governing allocation. It has been contended that committees are using methods to allocate their expenses between federal and nonfederal accounts which neither accurately reflect the effect that a particular activity has on federal elections nor indicate what is spent for nonfederal elections. *See, e.g.*, MUR 1766. Thus, questions have been raised regarding whether the current regulations provide sufficient guidance to insure uniformity as to how expenses should be allocated. Concerns have also been expressed that the present regulations do not permit effective monitoring of allocation methods since committees are not required to disclose the amount of nonfederal activity or the allocation method used. Indeed, the current regulations do not reflect all of the methods the Commission has approved for allocating expenses between federal and nonfederal accounts. In several advisory opinions, the Commission has permitted committees to use various allocation methods, determining that these methods allocated the expenses on a reasonable basis. *See, e.g.*, AOs 1978–28, 1978–50, 1978–102 and 1982–5. *See also* Re: AOR 1976–72. The Commision has also required generally that federal offices be given proportionately more weight in allocating expenses incurred for activities involving federal and nonfederal candidates. AO 1976–72. None of these opinions are reflected in the Commission's regulations.

In prescribing rules to cover committees that conduct activities with respect to both federal and nonfederal elections, the Commission sought to fill a void resulting from the lack of a statutory provision governing the various election activities of these committees. The Commission's regulations attempt to provide a method for separating permissible and impermissible federal contributions and to allow a political committee active in federal and nonfederal elections to limit the extent to which its nonfederal funds would be subject to the requirements of the Act. In this respect, the regulations relieve the reporting obligations of these committees. When these regulations were initially promulgated, they were intended to apply to an area of activity thought to have little, if any, relevance to federal elections. Now there appears to be a significant rise in the amount of money raised for use in nonfederal elections, particularly by national level committees and organizations. Thus, there has been an increase in the potential for these funds to be used in ways that influence federal elections.

2. Issues Raised by Potential Rulemaking

Because of the incresed potential for the use of undisclosed funds that may include prohibited contributions to influence federal elections, it may be necessary for the Commission to take action to address this area. Rulemaking may be the most appropriate vehicle should the Commission determine to address in a prospective fashion the questions raised by the use of unreported funds to influence federal elections. The Commission's regulations could be amended in this regard along the lines proposed by Common Cause to require reporting of funds in nonfederal accounts and the amount of expenditures allocated to nonfederal elections. Other provisions of the regulations could also be revised to change the rules governing allocation of expenses and party building activities.

Several issues would arise should the Commission decide to initiate a rulemaking. First, the extent to which the Commission should revise its regulations may depend upon the impact that a particular activity has on federal elections. The Commission has the authority to establish the reporting requirements, within the framework of the Act, of organizations that qualify as political committees. The current regulations are based upon this authority. However, there are those who have asserted that the Commission does not have jurisdiction over nonfederal accounts maintained by political committees because these funds have an insufficient link to federal elections. Similarly, some contend that activities such as party building do not have a direct influence on federal elections. The results of this inquiry must be examined to determine the extent to which a regulatory revision concerning undisclosed funds used to influence federal elections is within the extensive rulemaking authority accorded to the Commission by the statute.

Alternatively, or with respect to certain activities, the Commission could determine that its regulations are mandated by the statute and that a legislative measure is necessary to resolve the issues raised by the use of undisclosed funds to affect federal elections. If such a determination were made, the Commission would then have to decide whether to make legislative

recommendations to Congress seeking statutory revisions to address the use of undisclosed funds to influence federal elections.

Another issue that would be examined in deciding whether to initiate a rulemaking concerns the extent to which the Act preempts state law regarding funds ostensibly raised for use in nonfederal elections. The Act and Commission regulations specify that the Act supersedes and preempts state law in certain instances when an election activity is governed by both FECA and state law. 2 U.S.C. 453; 11 CFR 108.7 (a) and (b). The provisions of the Act and regulations governing the registration and reporting obligations of political committees supporting federal candidates have been found to preempt state law. *See, e.g.*, AO 1978–80. As a result of its inquiry into the use of undisclosed funds to affect federal elections, the Commission could decide that certain activities not currently covered under the regulations fall within the scope of its jurisdiction over political committees and prescribe rules to govern these activities. The Commission would have to consider the extent to which relevant state law would be preempted by a rulemaking of this nature.

3. Questions Raised for Comment

Comment is sought on whether a rulemaking would be consistent with the Commission's authority under the Act. The Commission requests comments on whether there is sufficient impact on federal elections for it to regulate funds not currently subject to reporting requirements that may be used with respect to federal elections. Furthermore, the Commission seeks comments on the extent to which a rulemaking would raise issues involving possible preemption of state law. Comments are also requested on whether legislation is necessary to resolve any of the issues that have arisen concerning activities involving the use of undisclosed funds to influence federal elections and, if so, whether the Commission should seek statutory reform to address these issues.

Finally, the Commission also seeks comments on the areas in which its regulations could be revised should it decide to initiate a rulemaking to address the issues raised by the use of undisclosed funds to influence federal elections. A number of suggestions have been made regarding possible revisions to the Commission's regulations. For instance, in its supplemental statement of February 4, 1985, Common Cause proposed specific amendments to the Commission's regulations to establish reporting requirements for nonfederal accounts maintained by national level political party committees and specific rules for allocation of expenses between federal and nonfederal accounts. There are several other options available to the Commission if it decides to revise its regulations regarding the use of undisclosed funds to influence federal elections. Suggestions of other possible regulatory revisions that could be made to address the use of undisclosed funds to influence federal elections are welcomed.

Dated: December 12, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85–29809 Filed 12–17–85; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to the programs or activities conducted by the Farm Credit Administration.

DATES: To be assured of consideration, comments must be in writing and must be received on or before February 17, 1986. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to Donald E. Wilkinson, Governor, Farm Credit Adminstration, 1501 Farm Credit Drive, McLean, Virginia 22101–5090. Comments received will be available for public inspection in the Office of the Director, Congressional and Public Affairs Division, 8:00 a.m. to 4:30 p.m. Copies of this notice will be available on tape or reader services will be provided for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Adminstration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to program or activities of the Farm Credit Administration (FCA). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benfits or be subjected to discrimination under any program or activity receiving Federal financial assistance or *under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal finanicial assistanace. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978); *id.* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127); therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis:

Section 606.601 Purpose.

Section 606.601 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by executive agencies or the United States Postal Service.

Section 606.602 Application.

The proposed regulation applies to all programs or activities conducted by the agency. Generally, the "programs and activities" of the FCA are the regulation, supervision, and examination of Farm Credit System institutions, and as such do not involve the direct provision of benefits and services to, or participation by, members of the public. Members of the public can avail themselves of the following "programs and activities" which constitute the "programs and activities" of the FCA for purposes of this regulation:

(a) Attending open meetings of the Federal Farm Credit Board.

(b) Making inquiries or filing complaints.

(c) Using the FCA library in McLean, Virginia.

(d) Seeking employment with the FCA.

(e) Attending any meeting, conference, seminar, or other program open to the public.

This regulation does not apply to the institutions that are supervised, regulated, or examined by the FCA.

Section 606.603 Definitions.

"Agency." For purposes of this regulation "agency" means the Farm Credit Administration.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and benefit from the agency's activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 606.660(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 606.670(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 606.649, 606.650, and 606.670(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies to all programs or activities conducted by the agency.

Section 606.610 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within 1 year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 606.611 Notice.

Section 606.611 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 606.630 General prohibitions against discrimination.

Section 606.630 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 606.630 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining section of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 606.630. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its activities simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the program or activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a presentation if the facilities in which the presentation is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a

handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 606.650–651) and communications (§ 606.660) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and conduct its activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when they are necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services may be provided only when necessary to ensure that acces to that activity by handicapped persons is as effective as the access provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped person access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 606.630(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 606.640 Employment.

Section 606.640 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of courage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both sections 504 and 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt v. United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employemnt in federally conducted programs or activities. In addition to this section, § 606.670(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employemnt is assigned to the EEOC by Executive Order 12067 (43 FR 2897, 3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes Governmentwide standards on nondiscrimination in employment on the basis of handicap.

Section 606.649 Program Accessibility: Discrimination prohibited.

Section 606.649 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.650 and 606.651.

Section 606.650 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 606.650 requires that the agency's program of activities, when viewed in their entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 606.650(a)(1)). However, § 606.650, unlike 28 CFR 41.56–.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 606.650).

Paragraph (a)(2) generally codified recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activities or in undue financial and administrative burders. A similar limitation is provided in § 606.660(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail

such extensive costs and administrative burdens, that the refusal to undertake the accommodations is not discriminatory. The failure such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 606.650(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and opration of the conducted program or activity should be considered. The burden of proving that compliance with § 606.650(a) would fundamentally alter the financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who belives that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.670.

Paragraph (b) suggests some methods by which program accessibility may be achieved including redesign of equipment, reassignment of services to accessible buildings, and provisions of aides. In choosing among methods, the agency shall give priority consideration to those that will provide services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when these is no other feasible way to make the agency's program accessible.

Paragraphs (c) and (d) establish time periods for complying with the accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than 3 years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within 6 months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days.

Section 606.651 Accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 606.651 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing building leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 606.650.

Section 606.660 Communications.

Section 606.660 requries the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 606.660(a)(1) to afford a handicapped person an equal opportunity to participate in and enjoy the benefits of the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 606.660). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 606.660(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra*, preamble § 606.650). Unless not required by § 606.660(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 606.660 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 606.660 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.670.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated in complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired person is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need

not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 606.660 (a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to handicapped persons. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 606.670 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 606.670(d)). It it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 606.670(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 504 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appear (§ 606.670(g)). One appeal within the agency shall be provided (§ 606.670(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 606.670(i)).

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 12 CFR Part 606

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended by adding Part 606 as follows:

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

Sec.

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606.671–606.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 606.601 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.602 Applicantion.

This part applies to all programs or activities conducted by the agency. Generally, the "programs and activities" of the Farm Credit Administration are regulation, supervision, and examination of Farm Credit System institutions, and, as such, do not involve the direct provision of benefits and services to, or participation by, members of the public. Members of the public can avail themselves of the following "programs and activities" which constitute the "programs and activities" of the FCA purposes of this regulation:

(a) Attending open meetings of the Federal Farm Credit Board.

(b) Making inquiries or filing complaints.

(c) Using the FCA library in McLean, Virginia.

(d) Seeking employment with FCA.

(e) Attending any meeting, conference, seminar, or other program open to public.

This regulation does not apply to the institutions that are supervised, regulated, or examined by the FCA.

§ 606.603 Definitions.

For purposes of this part, the term—

(a) "Agency" means the Farm Credit Administration.

(b) "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities, conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(d) "Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(e) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(f) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or conditions, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) "Qualified handicapped person" means a qualified handicapped person who meets the essential eligibility requirements for participation in the program or activity by the agency.

(h) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disability Amendment of 1978 (Pub. L. 95-602, 92 Stat. 2955).

§§ 606.604-606.609 [Reserved]

§ 606.610 Self-evaluation.

(a) The agency shall, within 1 year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least 3 years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of interested persons consulted;

(2) A description of areas examined and problems identified; and

(3) A description of any modifications made.

§ 606.611 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulations.

§§ 606.612-606.629 [Reserved]

§ 606.630 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the activity, aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not effective in affording equal opportunity to obtain the same result, or to gain the same benefit, as that provided to others; or

(iv) Provide different or separate aid, benefit, or service to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons or otherwise subject them to discrimination; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall conduct its activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 606.631-606.639 [Reserved]

§ 606.640 Employment.

No qualified handicapped person shall, on the basis of handicapped, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section

501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment by the agency.

§§ 606.641–606.648 [Reserved]

§ 606.649 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 606.650 and 606.651, no qualified handicapped persons shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 606.650 Program accessibility: Existing facilities.

(a) General. The activities of the agency shall be conducted in a manner that, when viewed in their entirety, provides ready accessibility to and usability by handicapped persons. This paragraph does not—

(i) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration of the activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that provide the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve accessibility, the agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specif the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 606.651 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectual Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.652–606.659 [Reserved]

§ 606.660 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with personnel of other Federal entities and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in and enjoy the benefits of an agency program or activity.

(i) In determining what type of auxiliary aid is necessry, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with persons by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accesible services, activities, and facilities.

(c) The agency shall provide sinage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel beleive that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after

considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration of such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons are able to receive the benefits and services of the program or activity.

§§ 606.661–606.669 [Reserved]

§ 606.670 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Deputy Governor, Office of Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violtion found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by this paragraph. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Deputy Governor, Office of Administration, or his/her designee.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the persmission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 606.671–606.999 [Reserved]

Donald E. Wilkinson,

Governor.

[FR Doc. 85–29965 Filed 12–17–85; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–27]

Proposed Transition Area Revocation, Gwinner, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for Gwinner, North Dakota and to return the associated 700-foot area to a non-controlled status.

DATE: Comments must be received on or before January 20, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The Gwinner, North Dakota 1200-foot and 700-foot transition areas were established in anticipation that an instrument approach procedure would be developed for Gwinner Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach procedure from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700-foot area is neither necessary or warranted.

However, the controlling facility for the area has identified a requirement to retain the 1200-foot designated airspace for the area. Currently, the Gwinner area is excluded from the Britton, South Dakota 1200-foot transition area. A change to the Britton transition area to eliminate the Gwinner exclusion would provide the required 1200-foot floor of controlled airspace in the area after revocation of the Gwinner transition area is published.

The modification of the Britton, South Dakota Transition area to eliminate the Gwinner exclusion is the subject of Docket No. 85–AGL–28. That docket along with this Gwinner docket would be processed and charted simultaneously so as to maintain continuity in the 1200-foot controlled airspace.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considerd before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the designated transition area for Gwinner, ND.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[Amended]

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449, January 12, 1983]; 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending 71.181 as follows:

Gwinner, ND

Revoked

Issued in Des Plaines, Illinois, on December 4, 1985.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 29849 Filed 12–17–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

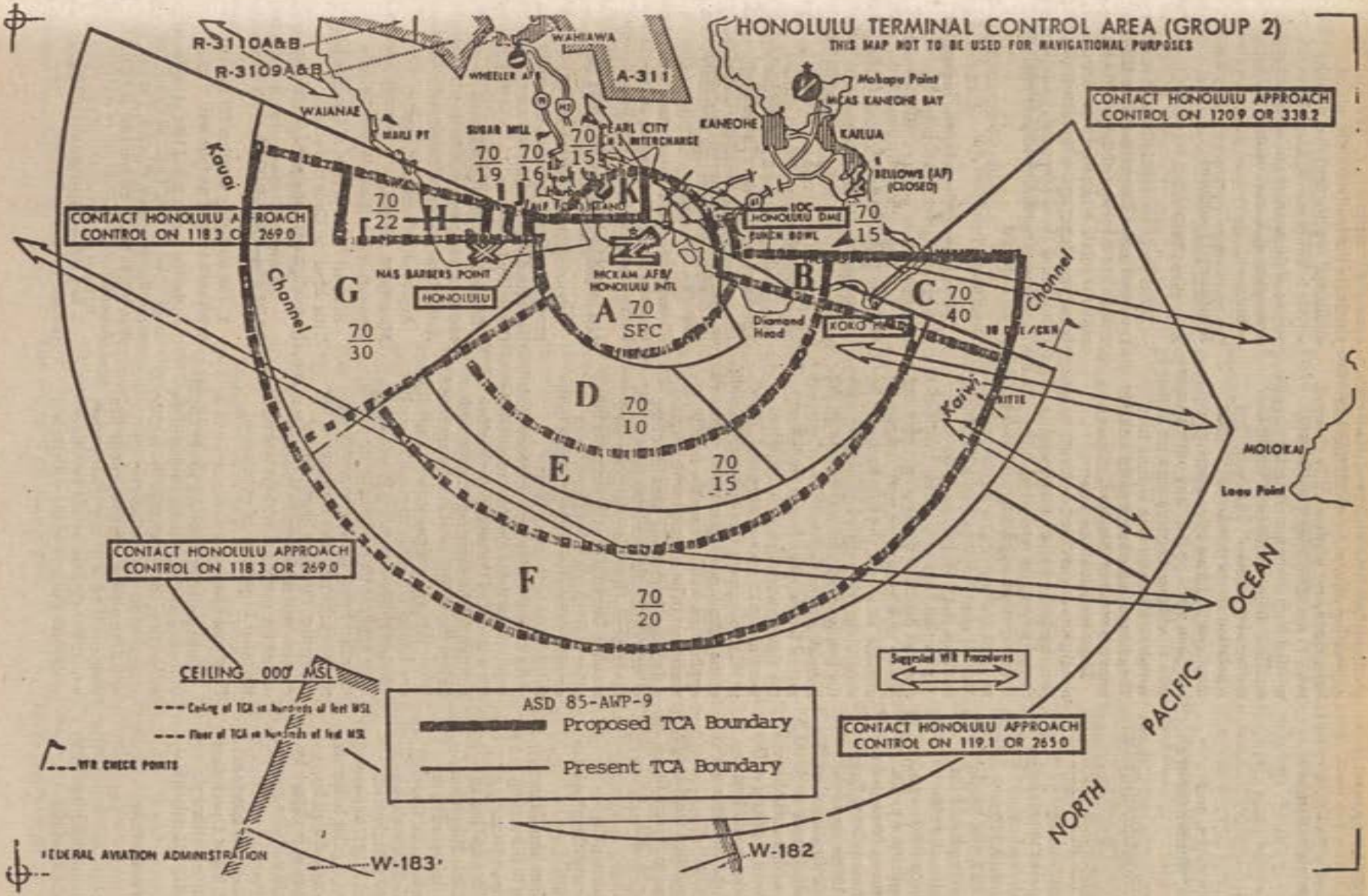
[Airspace Docket No. 85–AWP–9]

Proposed Alteration to the Honolulu, HI, Terminal Control Area

Correction

In FR Doc. 85–29038 beginning on page 50174 in the issue of Monday, December 9, 1985, the following chart was inadvertently omitted from the end of the document.

BILLING CODE 1501–01–M



BILLING CODE 1505-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Withdrawal of an Application

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations on withdrawal of applications. As a result of the recodification of 20 CFR 404, Subpart G in 1979, one of the prerequisites for withdrawal of an application after a determination has been made was inadvertently changed. Prior to the recodification, consent was needed from beneficiaries already entitled if their "entitlement would be rendered erroneous." The recodification altered the regulation to state that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it."

This proposed regulation would alter the current regulation to restore the intended meaning to 20 CFR 404.640(b)(2).

DATE: Your comments will be considered if we receive them no later than February 18, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–7459.

SUPPLEMENTARY INFORMATION:

Background

As a result of the recodification of 20 CFR 404, Subpart G, one of the prerequisities for withdrawal of an application after a determination has been made was inadvertently changed. Prior to recodification, consent was needed from other beneficiaries already entitle if their "entitlement would be rendered erroneous". The recodified regulation states that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it." The change in the scope of the consent required was not intended.

There are situations where simultaneously entitled children, (entitled on more than one Social Security earnings record) wish to withdraw their application on the record with the higher primary insurance amount after a determination has been made on it. By withdrawing their application, they may become entitled to a higher benefit amount on the earnings record with a lower primary insurance amount. However, the entitlement of the simultaneously entitled children causes the family maximum, applying to all the individuals entitled on the first earnings record to be higher than it would be if the simultaneously entitled children were not entitled on that record. Thus, in these circumstances, the withdrawal of the simultaneously entitled children's application would cause the family maximum to be reduced which results in a decrease in monthly benefits of the other individuals receiving benefits on that record. However, the decreased monthly benefits are the amounts the other individuals would have been entitled to receive without regard to the entitlement of these children.

As a result of the present recodified regulations, these children must obtain the consent of the other individuals entitled on the same earnings record before the withdrawal can be approved. Often these situations involve more than one household, and the simultaneously entitled children desiring to withdraw their application are not able to obtain the other beneficiaries' consents. By restoring the previous language of the regulation, the other beneficiaries' consent will no longer be required unless the proposed withdrawal nullifies the other beneficiaries' entitlement.

Proposed Change

We propose to amend § 404.640(b)(2) to restore the intended meaning of the subsection; that is, change the section to state that an application may be withdrawn after a determination has been made on it if "any other person whose entitlement would be rendered erroneous became of the withdrawal consents in writing to it." We wish to eliminate the inadvertently added additional requirement that persons whose benefits are decreased, but whose entitlement is not rendered erroneous, also must consent to withdrawal.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation because there should be no significant cost in implementing or maintaining these proposed regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting/recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

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

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance)

List of Subjects in 20 CFR PART 404

Administrative practice and procedure, Death Benefits, Disability Benefits, Old-Age, Survivors, and Disability Insurance.

Dated: September 17, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 25, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart G continues to read as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat., 647; Sec. 5, Reorganization Plan No., 1 of 1953, 67 Stat. 631; 42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix.

2. In § 404.640 paragraph (b)(2) is revised to read as follows:

§ 404.640 Withdrawal of an application.

* * * * *

(b) * * *

(2) Any other person whose entitlement would be rendered erroneous because of the withdrawal consents in writing to it. Written consent for the person may be given by someone who could sign an application for him or her under § 404.612; and

* * * * *

[FR Doc. 85-29847 Filed 12-17-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Argiculture; Adverse Effect Wage Rate for Montana

Correction

In FR Doc. 85-29279 beginning on page 50311 in the issue of Tuesday, December 10, 1985, make the following corrections:

1. On page 50311, in the third column, in the **FOR FURTHER INFORMATION CONTACT,** in the first line, "Burening" should read "Bruening".

2. Also on page 50311, in the third column, in the eighth line from the bottom, "IND" should read "INS".

3. On page 50312, in the second column, in the first complete paragraph, in the first line, "set slow" should read "set to slow".

4. Also on page 50312, in the second column, in the second complete paragraph, in the last line, "and" should read "an".

BILLING CODE 1505-01-M

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Charges for Meals

Correction

In FR Doc. 85-29280 beginning on page 50313 in the issue of Tuesday, December 10, 1985, make the following correction: On page 50314, in the third column, in paragraph 1., in the Authority, in the last line, "(h)(2)(i)" should read "(h)(3)(i)".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

[Docket No. 85N-0536]

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to ban the use of methylene chloride as an ingredient of cosmetic products. The agency is proposing this action because recent scientific studies have revealed that inhalation of methylene chlolride causes cancer in laboratory animals. These studies have shown that the continued use of methylene chloride in cosmetic products may pose a significant risk to the public health, especially to specific segments of the population that are continually exposed to cosmetics containing methylene chloride. FDA is not proposing to lower the maximum permitted residue level of methylene chloride in decaffeinated coffee because that level is considered to be safe.

DATES: Comments by February 18, 1986. The agency proposes that any final rule based on this proposal become effective 60 days after its date of publication for products initially introduced and initially delivered for introduction into interstate commerce.

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

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0160.

SUPPLEMENTARY INFORMATION:

I. Introduction

Methylene chloride (CAS Reg. No. 75-09-2, dichloromethane) is a colorless, volatile liquid that is used in a variety of consumer and industrial products as a solvent and flame suppressant. The cosmetic use of methylene chloride is primarily in hair sprays. In these products, it is used as a solvent and flame suppressant, and because of its volatility, it serves to cause quick drying and setting of the applied resin.

Methylene chloride is also used in foods as an extraction solvent in the processing of coffee beans, spices, and hops. When used to decaffeinate coffee, methylene chloride is a food additive within the meaning of section 201(s) of the Federal Food, and Drug, and Cosmetic Act (the act) [21 U.S.C. 321(s)].

II. Carcinogenicity of Methylene Chloride

Several recent chronic studies of methylene chloride have raised questions about the safety of this chemical. The National Toxicology Program (NTP) sponsored inhalation studies in rats and mice; the National Coffee Association (NCA) sponsored drinking water studies in rats and mice; and the Dow Chemical Co. performed three inhalation studies, two in rats and one in hamsters. In addition to these seven studies, NTP sponsored gavage studies in rats and mice. These gavage studies may have no value for carcinogenicity assessment because of serious problems with the manner in which the studies were conducted. NTP did not draw any conclusions from the gavage studies, and, therefore, FDA is not employing them in this proposal.

In one NTP-sponsored 2-year inhalation study, test groups of B6C3F1 mice were exposed to air containing 0 ppm, 2,000 ppm, and 4,000 ppm of methylene chloride for 6 hours per day, 5 days per week (Ref. 1). Increases in the incidence of mice with benign and malignant neoplasms derived from hepatocytes (liver cells), as well as benign and malignant neoplasms of the lung, were observed in the treatment groups of both sexes. The increases in these neoplasms were distinctly dose related. The agency concludes that methylene chloride is carcinogenic to the liver and lung of male and female mice. This study also demonstrates that methylene chloride induces cancer at a site (the liver) remote from the tissues directly exposed by the inhalation treatment (Ref. 2).

In the other NTP-sponsored 2-year inhalation study, test groups of Fischer 344 rats were exposed to air containing 0 ppm, 1,000 ppm, 2,000 ppm, and 4,000 ppm of methylene chloride for 6 hours per day, 5 days a week (Ref. 1). In the female rat groups, the incidence of animals with benign fibroadenomas of the mammary glands was increased by treatment and provided some evidence of a dose-response effect. The agency considers these results to be suggestive of a tumorigenic effect of methylene chloride on the mammary glands of female rats (Ref. 2).

The NTP studies were reviewed and validated by NTP's Board of Scientific Counselors, which concluded that methylene chloride is a carcinogen in mice, but that the evidence is equivocal in rats (Ref. 3).

Dow performed a pair of 2-year inhalation studies in Sprague-Dawley rats: a high-dose study and a low-dose study in which groups of animals were exposed to vaporized methylene chloride at 0 ppm, 500 ppm, 1,500 ppm, and 3,500 ppm; and 0 ppm, 50 ppm, 200 ppm, and 500 ppm, respectively, for 6 hours per day, 5 days per week (Refs. 4 and 5). Compound-related neoplastic effects were not observed in the low-dose study. In the high-dose inhalation study, an increase in the incidence of male rats with sarcomas in the region of the salivary gland was reported at the 1,500 ppm and 3,500 ppm exposure levels. The study investigators believed that this effect was associated with a viral infection of the salivary gland. However, similar tumorigenic effects from viral infections of the salivary gland were not observed among the female or male animals in the other test groups in this study.

Moreover, two unusual sarcomas of the salivary gland/integument were observed in treatment groups in the NTP-sponsored inhalation study on Fischer 344 rats. FDA and NTP pathologists found these two sarcomas to be very similar to those observed in the Dow high-dose study. The agency believes that these observations provide suggestive evidence that methylene chloride induces sarcomas of the salivary gland/integument in rats upon inhalation (Ref. 2).

Dow also performed a 2-year inhalation bioassay in Syrian Golden hamsters in which test groups were exposed to vaporized methylene chloride at 0 ppm, 500 ppm, 1,500 ppm, and 3,500 ppm for 6 hours per day, 5 days per week (Ref. 4). There were no treatment-related toxic effects observed in this study.

NCA sponsored 2-year multidose drinking water studies in Fischer 344 rats and B6C3F1 mice. In the rat study, the concentration of methylene chloride in the drinking water provided intakes for test groups ranging from 5 milligrams per kilogram of body weight per day (mg/kg/day) to 250 mg/kg/day (Ref. 6). In the mouse study, the methylene chloride intakes for the test groups ranged from 60 mg/kg/day to 250 mg/kg/day (Ref. 7). In these drinking water studies, there were no significant increases in the incidences of rats or mice with neoplasms at any site examined. However, higher treatment levels could have enhanced the sensitivity of this study. Because the treatment levels were relatively low, the animals that received methylene chloride via drinking water may not have received as much as those receiving methylene chloride by inhalation (Ref. 2).

Two epidemiology studies have been conducted on workers exposed to methylene chloride in manufacturing plants (Refs. 8 and 9). Neither study reported an increase in cancer attributable to methylene chloride. Design limitations such as small numbers of workers and insufficient duration of exposure make it impossible for FDA to draw any definitive conclusions from these studies about the potential for methylene chloride to cause cancer in humans.

A variety of genotoxicity studies have been performed on methylene chloride. Methylene chloride gave positive results for mutagenicity in bacteria (*Salmonella typhimurium* strains TA-98, TA-100, and TA-1535) (Refs. 10 through 17) and in yeast (*Saccharomyces cerevisiae*) (Ref. 18) without metabolic activation.

A more complete assessment of the specific types of tumors found in testing of methylene chloride and of the significance of these findings is presented in the report of the Cancer Assessment Committee of FDA's Center for Food Safety and Applied Nutrition (Ref. 2).

Based on these adverse findings, the agency concludes that methylene chloride is an animal carcinogen by inhalation and may be carcinogenic to humans. It has been the agency's policy that substances that cause cancer in laboratory animals should be considered potential human carcinogens unless there is clear epidemiological evidence to the contrary or unless there is other evidence that the effects observed in animals are not relevant to humans. In the case of methylene chloride, FDA has found that although the epidemiological studies that have been conducted have not reported any increase in cancer attributable to methylene chloride, these results must be considered inconclusive due to design limitations such as small numbers of workers and insufficient duration of exposure. The Environmental Protection Agency reached a similar conclusion about these studies in its **Federal Register** notice of October 17, 1985 (50 FR 42037). In addition, the agency is unaware of any basis on which to find that the animal studies discussed above are not relevant to humans. Although there is some evidence indicating that at high doses the metabolic pathways of methylene chloride may become saturated, FDA agrees with EPA that currently available data are insufficient to assess the effect of saturation on the carcinogenic potential of methylene chloride (50 FR 42038–42039). FDA will evaluate any additional data from ongoing studies on this point when they become available.

III. Risk Estimate—Cosmetic Uses

The agency has examined the potential level of exposure from the use of methylene chloride as an ingredient of aerosol cosmetic products and has made preliminary estimates of the carcinogenic risks to users of these products.

In calculating the risk from exposure to methylene chloride, the agency considered two population groups. One group, hair care specialists, represents the group with the highest exposure level expected from aerosol hair sprays. The other group is the segment of the population that routinely uses aerosol hair sprays as part of their grooming practices.

The exposure estimates used in the agency's risk assessment are based on data obtained from studies published in 1976 that measures methylene chloride concentration in the breathing zone after use (Refs. 19 and 20). The agency needed to make various assumptions in order to calculate exposure levels for consumers. For example, FDA's exposure estimates assumes that a consumer will use the hair spray once a day, that the spray period is 5 seconds, that the consumer will remain in the spraying zone for 5 to 10 minutes, and that the average concentrations of methylene chloride in the breathing zone is 50 ppm. The agency believes that these assumptions reasonably reflect the actual consumer use conditions and are not drawn to represent worst-case conditions (Ref. 21).

To make comparisons between mice exposed to 2,000 ppm methylene chloride by inhalation in the NTP study and potential human exposure at different exposure levels and for different time intervals, the agency has chosen to use a time-weighted average. The time-weighted average air concentration represents the concentration of methylene chloride to which individuals are exposed on a continuous daily basis, calculated by averaging over time the intermittent air concentrations for fractions of the day or fractions of the week. Use of this averaging concept permits a direct comparison between average human exposure and test animal exposure.

Accordingly, a consumer exposed to 50 ppm methlyene chloride in air for 5

minutes per day, 7 days a week, would have a time-weighted average exposure of 0.174 ppm

$$\left(50\ \text{ppm} \times \frac{5\ \text{min}}{60\ \text{min}} \times \frac{1\ \text{hr}}{24\ \text{hr}} \times \frac{7\ \text{days}}{7\ \text{days}} = 0.174\ \text{ppm}\right),$$

and a mouse exposed to 2,000 ppm for 6 hours per day, 5 days a week, would have a time-weighted average exposure of 357 ppm

$$\left(2{,}000\ \text{ppm} \times \frac{6\ \text{hr}}{24\ \text{hr}} \times \frac{5\ \text{days}}{7\ \text{days}} = 357\ \text{ppm}\right).$$

time-weighted average human exposure to methlyene chloride from consumer use of hair spray is thus 0.174 ppm of air inhaled. Assuming that all of the inhaled methylene chloride is absorbed from the lungs into the blood stream, the time-weighted average human exposure is 0.15 milligrams per kilogram of body weight per day.

FDA's time-weighted exposure estimates for hair care specialists are about one order of magnitude higher (1.74 ppm or 1.5 milligrams per kilogram of body weight per day).

Extrapolating, using a linear model, from the incidence of benign and malignant neoplasms in female mice exposed to 2,000 ppm (357 ppm time-weighted exposure) in the NTP study to average human exposure from use of aerosol cosmetics containing methylene chloride, the upper bound estimated lifetime cancer risk for consumers is in the range of 1×10^{-3} (1 in 1,000) to 1×10^{-4} (1 in 10,000), depending on whether the animal-to-human dose comparison is based on the concentration in air or on milligrams per kilogram of body weight per day. For hair care specialist, the upper bound of lifetime risk is in the range of 1×10^{-2} (1 in 100) to 1×10^{-3} (1 in 1,000). These risks are relatively high primarily because the anticipated exposures from aerosol uses are high. Methylene chloride is not a particularly potent carcinogen. Additional discussion of how FDA has calculated the potency of methylene chloride is provided in the discussion of its use in decaffeinated coffee.

The agency assumed a linear dose-response model from zero dose to the experimental level of 2,000 ppm. Extrapolation models incorporating low dose linearity have been recommended by the Office of Science and Technology Policy when uncertainty exists regarding the mechanism of carcinogenicity, as is the case with methlyene chloride (50 FR 10371–10442; March 14, 1985).

Full details of the specific assumptions and methods used to project these upper bound risk assessments are described in Ref. 21.

IV. Risk Estimate—Food Additive Use for Decaffeination

Methylene chloride has been listed in FDA's food and color additive regulations for more than 20 years. It is currently listed in the following regulations: § 73.1 *Diluents in color additive mixtures for food use exempt from certification* (21 CFR 73.1), § 172.560 *Modified hop extract* (21 CFR 172.560), § 173.255 *Methylene chloride* (21 CFR 173.255), § 175.105 *Adhesives* (21 CFR 175.105), and § 177.1580 *Polycarbonate resins* (21 CFR 177.1580).

The agency has sufficient information to determine that the existing methylene chloride residue level for decaffeinated coffee is safe. Because the U.S. population consumes a large volume of decaffeinated coffee, the majority of which is manufactured using methylene chloride in the extraction procedure, it is important to make an assessment of safety. FDA is deferring consideration of the other uses of methylene chloride in food (as well as its presence as an impurity in food additives) because the agency is not aware of any information indicating that the other uses of methylene chloride present a public health hazard.

Methylene chloride is regulated as a food additive in § 173.255. Paragraph (c) of that section authorizes the use of this additive to extract caffeine from green coffee beans and limits residual methylene chloride to a level not to exceed 10 parts per million (ppm) in decaffeinated roasted coffee and in decaffeinated soluble coffee extract (instant coffee).

FDA issued § 173.255(c) in the **Federal Register** of August 31, 1967 (32 FR 12605), in response to a food additive petition (FAP 7A2061). The petitioner submitted data showing that use of both decaffeinated roasted coffee and decaffeinated instant coffee containing 10 ppm methylene chloride would result in approximately 0.1 ppm methylene chloride in a 5 ounce (148 gram) cup of coffee. The petitioner also showed that the average level of methylene chloride in dried decaffeinated instant coffee was approximately 2 ppm, based on an analysis of 33 batches.

As discussed in section II above, methylene chloride has been shown to be carcinogenic to both sexes of B6C3F1 mice upon inhalation. The NTP inhalation mouse bioassay demonstrates that methylene chloride can induce cancer at sites remote from the site of administration. The evidence is also suggestive that methylene chloride may induce tumors in two strains of rats upon inhalation. Based on this evidence, the agency concludes that methylene chloride is an animal carcinogen, and that the NTP inhalation study provides a suitable basis for evaluating the safety of its food additive uses because methylene chloride displayed the greatest potency in this study.

General Foods Corp., the manufacturer that produces the largest amount of decaffeinated coffee, has surveyed its decaffeinated coffee products from 10 nationwide grocery locations (Ref. 22). For 69 samples of decaffeinated roasted and ground coffee products that it has analyzed since 1982, General Foods found methylene chloride levels of 0.01 ppm or less in 82.6 percent of the samples, 0.05 ppm or less in 91.3 percent of the samples, and 0.10 ppm or less in 100 percent of the samples. For 54 samples of decaffeinated instant coffee products that it has analyzed over the same period, General Foods found methylene chloride levels of 0.01 ppm or less in 96.3 percent of the samples, 0.05 ppm or less in 98.2 percent of the samples, and 0.10 ppm or less in 100 percent of the samples.

The agency is aware of four other manufacturers of decaffeinated coffee (Ref. 23). Although FDA does not know whether any methylene chloride residues in the products of these manufacturers are as low as those in the products of General Foods, the agency is aware that these products comply with the current regulation.

Quantitative risk assessment of methylene chloride consists of two parts: (1) Assessment of probable exposure to methylene chloride from its use to decaffeinate coffee under a specific residue limitation, and (2) extrapolation of the risk from methylene chloride observed in the NTP bioassay to the conditions of probable exposure to humans.

1. *Exposure to methylene chloride.* The exposure to methylene chloride from its use in decaffeinating coffee is a product of three factors: (a) The methylene chloride concentration in

coffee products, (b) the amount of coffee product used to make the coffee beverage, and (c) the amount of beverage consumed.

(a) *Methylene chloride concentration in coffee products.* FDA decided to assess the risk from the existing limitation on the concentration of methylene chloride of 10 ppm. The agency recognizes that the average level of methylene chloride likely to be present in decaffeinated coffee would be much lower than that limitation. The available data, however, did not allow the agency to estimate what the average residue level would be under the 10 ppm limitation. Therefore, in conducting the risk assessment, FDA assumed that all products would contain methylene chloride at a concentration equal to the limitation of 10 ppm.

(b) *Amount of coffee product used to make the coffee beverage.* The General Foods' submission of August 7, 1985, reported that 1 pound of roasted and ground coffee makes 70 to 90 cups of coffee (each cup containing 5 fluid ounces or 148 grams) based on current brewing practices (Ref. 22). Therefore, approximately 5.7 grams of roasted and ground product is used for each cup. General Foods also reported that instant coffee drinkers use about 2.2 grams soluble solids per cup. The agency used these numbers as elements of its exposure estimate (Ref. 23).

In estimating methylene chloride exposure, the agency also assumed that all of the methylene chloride in the roasted and ground product is extracted during brewing and becomes a part of the coffee beverage. Although this assumption may result in an overestimate of exposure, the agency does not now have sufficient reliable data to refine this estimate (Ref. 24).

(c) *Beverage consumption.* The agency considered three surveys in estimating decaffeinated coffee beverage consumption. Based on 1977–1978 surveys, the Market Research Corp. of America (MRCA) estimated a 90th percentile consumption of decaffeinated coffee (among persons who consumed decaffeinated coffee) of 389 grams per day for roasted and ground coffee and 435 grams per day for instant coffee. MRCA estimated average consumption for decaffeinated coffee drinkers of 136 grams per day for roasted and ground coffee and 192 grams per day for instant coffee. MRCA's survey involved a 14-day menu census of 10,819 individuals in the 2 years and older age group. The values for decaffeinated coffee are based on 458 "eaters" of brewed decaffeinated coffee and 1,362 "eaters" of instant decaffeinated coffee (Ref. 25).

The International Coffee Organizataion (ICO) performs a survey each winter. Its winter 1985 coffee drinking survey indicates that 17.3 percent of the U.S. population was drinking decaffeinated coffee at the time of the survey. Decaffeinated coffee drinkers consume the beverage at a rate of 2.42 cups per day (358 grams per day). The ICO data are bsed on wintertime telephone inverviews of 7,500 individuals who were questioned about their coffee consumption on the previous day (Ref. 26).

In 1977–1978, the U.S. Department of Agriculture (USDA) also performed a food consumption survey. This survey included 37,874 individuals of whom 7.3 percent consumed decaffeinated coffee at least once in 3 days. For those individuals consuming decaffeinated coffee at least once in 3 days, USDA computed average consumption and 90th percentile consumption of 347 grams per day and 720 grams per day, respectively (Ref. 27).

Based on these surveys, the agency believes that the estimated consumption of 740 grams per day (five cups) is adequate to represent consumers of large amounts of decaffeinated coffee for a time span of several years (Ref. 28). It is unlikely, however, that individuals will average this consumption rate over a lifetime because decaffeinated coffee drinking varies from essentially no consumption by children to the highest consumption among the oldest age group. In the ICO survey, for example, the percentages of the individuals who drank decaffeinated coffee were 1.7 percent for the 10 to 19 year old age group, 7.3 percent for the 20 to 29 year old age group, 21.0 percent for the 30 to 59 year old age group, and age group, 21.0 percent for the 30 to 59 year old age group, and 33.8 percent for the 60 year old and older age group (Ref. 26). Because of this variation in consumption across age groups, the agency believes that individuals are unlikely to average more than 370 grams per day consumption of decaffeinated coffee over their lifetime (which is equivalent to one-half a lifetime at 740 grams per day) (Ref. 28). The agency used this 370 gram consumption level in computing its exposure estimate.

Dietary exposure can be calculated by multiplying together the three factors (10 ppm methylene chloride in the product, 5.7 grams roasted and ground or 2.2 grams instant product per 148 gram cup, and 370 grams per person per day consumption). By this approach the agency estimated that the lifetime-averaged exposure to methylene chloride under a 10 ppm regulatory limitation would not be likely to exceed 140 micrograms per day for consumers of brewed (roasted and ground) decaffeinated coffee and 55 micrograms per day for consumers of instant decaffeinated coffee (Ref. 28).

2. *Risk extrapolation.* The second part of the evaluation of risk presented by the dietary exposure to methylene chloride is an extrapolation from the actual compound-related incidence of animals with tumors (risk) found in animal bioassays under conditions of exaggerated exposure to the conditions of probable exposure for humans. Among the available studies, the agency considers the NTP inhalation study in mice and the NCA drinking water study in mice to be suitable studies for risk assessment. The NTP study is used because methylene chloride displayed the greatest potency in it.

The agency recognizes, however, that there are problems with using an inhalation study for assessing the risk from ingestion of methylene chloride. The problems stem from a lack of knowledge about the differences in the pharmacokinetics of the absorptioh, distribution, metabolism, and excretion of methylene chloride (and the ultimate carcinogenic entity, which also is not known) when it is inhaled as opposed to when it is ingested.

The NCA drinking water study in mice provides a way of confirming that using the inhalation study for upper bound risk estimation is not likely to underestimate any potential risk. Although the NCA study, which was performed in the same strain of mice as the NTP study, negative, it is useful for determining a maximum possible potency for methylene chloride by ingestion.

In the NTP inhalation study in mice, methylene chloride induced liver cell neoplasms and lung neoplasms. The agency used the female mice data for risk assessment because the female mice give a somewhat stronger response than the male mice. To estimate the risk, the agency considered the lung and liver neoplasia to be independent and added them together. The agency then computed the carcinogenic potency based on the incidence of animals with tumors at the low dose (2,000 ppm).

The computed carcinogenic potency is the risk (the probability that an animal will develop a tumor) divided by the dose that produced that risk. An inhalation exposure of 2,000 ppm for mice is equivalent to an exposure of 2,250 mg/kg/day if it is assumed that all the inhaled methylene chloride vapor is absorbed systemically. Thus, for methylene chloride, the calculated

carcinogenic potency is $4.x10^{-4}$ per kilogram of body weight per day (Refes. 21 and 28).

The NCA drinking water study in mice did not demonstrate any distinct neoplastic effects to liver or lung. However, the dosage levels were considerably lower than those in the inhalation study. Making the assumption that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency estimated from the inhalation study and provides more confidence that the inhalation study is not likely to underestimate the potency of methylene chloride by ingestion (Ref. 28).

The agency therefore finds that the available bioassays are consistent with a methylene chloride carcinogenic potency of no greater than $4.4X10^{-4}$ per milligram per kilogram of body weight per day when ingested. For a 60 kilogram human, this corresponds to a potency of $7.3X10^{-6}$ per milligram per day.

The potency for methylene chloride derived by the Environmental Protection Agency (EPA) is about 26 times higher than FDA's value. Most of the difference (a factor of 13) between the two estimates is attributable to the fact that EPA uses body surface area for interspecies comparison of exposure, whereas FDA uses body weight for such comparison. An additional factor of two is attributable to a combination of other small differences in risk assessment procedures employed by the two agencies.

FDA has traditionally used body weight scaling to compare doses among laboratory test species and for estimating comparable levels of exposure in humans. Under contract with FDA, the Life Sciences Research Office of the Federation of American Societies for Experimental Biology in initiating a study to examine the biological basis extrapolating doese among laboratory test species and humans (50 FR 45669; November 1, 1985). In the meantime, FDA will continue to use body weight scaling for interspecies comparison of doses.

In FDA's view, the overall risk assessment procedures used by both FDA and EPA are conservative. Neither FDA's nor EPA's procedures are likely to underestimate the actual risk from very low doses. In fact, both are likely to exaggerate the risk because the overall procedures of both agencies are designed to estimate an upper bound risk consistent with the data.

FDA has estimated the upper bound risk from exposure to methylene chloride from consumption of decaffeinated coffee produced in compliance with the 10 ppm limitation. Using $7.3X10^{-6}$ per milligram per day as the potency for methylene chloride when ingested at very low levels and the estimated lifetime-averaged methylene chloride exposure of 140 micrograms per day for consumers of large amounts of decaffeinated brewed coffee and 55 micrograms per day for consumers of large amounts of decaffeinated instant coffee, the agency estimates upper bound of lifetime risks to be $1X10^{-6}$ (i.e., 1 in million) and $4X10^{-7}$ (i.e., 1 in 2.5 million), respectively (Ref. 28).

It should be emphasized that the actual levels of residual methylene chloride in the decaffeinated coffee produced by the major manufacturer are much less than 10 ppm and, therefore, pose an even smaller risk. Most decaffeinated coffee contains mehtylene chloride residue of less than 0.1 ppm. The risks posed by this level of residue are two orders of magnitude lower than the already small risk posed by the 10 ppm level, i.e., $1X^{-8}$ (1 in 100 million) and $4X^{-9}$ (1 in 250 million), respectively.

V. Determination That Existing Limit for Decaffeination is Consistent with Safe Use of Methylene chloride

Because decaffeinated coffee that meets a 10 ppm regulatory limitation presents such extremely low levels of risk, FDA is not proposing to amend § 173.255(c).

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, FDA cannot approve a food additive for a particular use unless the data presented to FDA establish that the food additive is safe for that use. The concept of safety embodied in this requirement was explained in the House Report on the Food Additives Amendment of 1958:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

H. Rept. 2284, 85th Cong., 2d Sess. 1, 4–5 (1958).

This determination of safety has been incorporated into FDA's food additive regulations in 21 CFR 170.3(i).

The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act) provides further:

> That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *.

Because methylene chloride has been shown at a statistically significant level to be a carcinogen by inhalation in the NTP mouse bioassay, if the Delaney anticancer clause (21 U.S.C. 348(c)(3)(A)) is to be interpreted as applying even it a *de minimis* risk is involved, FDA could not find that use of methylene chloride for decaffeinating coffee is safe. Yet, if the associated risk is essentially negligible, there is no gain to the public, and the statutory purpose is not implemented, if the words of the statute are interpreted not to leave the agency any discretion to apply it reasonably. The calculated risk for this use of methylene chloride is extremely low. The risk (no greater than 1 in 1 million and probably closer to 1 in 100 million) is so low as to be essentially nonexistent. Given such a low level of risk, FDA has concluded that there would be no safety gain to the public if it interpreted the Delaney Clause to require a ban on this use of methylene chloride. Therefore, FDA, exercising its inherent authority under the *de minimis* doctrine, concludes that the Delaney Clause does not require a ban in this situation. Because there are no other known safety problems with this use of methylene chloride, FDA finds that the use of methylene chloride to decaffeinate coffee is safe.

A. The de Minimis Doctrine

The *de minimis* doctrine holds that the law does not concern itself with trifling matters, and that courts consequently should be reluctant to apply the literal terms of a statute to mandate pointless results. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979). In *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968), the United States Court of Appeals for the District of Columbia Circuit stated that this doctrine was properly applied to the administration by the government of its regulatory programs. Thus, an administrative agancy has the inherent power under most statutory schemes to overlook circumstances that are contrary to the literal terms of a statute when those

circumstances can fairly be considered *de minimis*. As the court in *Alabama Power Co.* v. *Costle, supra,* explained:

> Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.

636 F.2d at 360–361. *Accord, Environmental Defense Fund, Inc.* v. *Environmental Protection Agency,* 636 F.2d 1267, 1284 n. 46 (D.C. Cir. 1980).

B. The de Minimis Doctrine and the Federal Food, Drug, and Cosmetic Act

Section 201(s) of the act states that a "food additive" is "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food * * *." Yet, in *Monsanto* v. *Kennedy,* 613 F.2d 947 (D.C. Cir. 1979), the court held that not all chemicals that become components of food need be considered food additives. The court stated that FDA has the authority to ignore a chemical that migrates from plastic packaging material into beverages if the amount of the chemical that migrates is *de minimis*.

The *Monsanto* decision is important to the agency's present action even though that case involved the definition of "food additive" and not the application of the Delaney Clause, and even though the carcinogenicity of the chemical at issue in that case, acrylonitrile monomer, had not been established at the time of the decision. The court held that the *de minimis* concept is appropriately used to allow marketing of a product that would otherwise be banned by a Delaney Clause. In that case, the agency had interpreted the statute as defining a carcinogenic substance that migrated into food in low amounts as technically a "food additive" whose approval is banned by the food additive provision's Delaney Clause, see 21 U.S.C. 321(s), 331(a), 342(a)(2)(C), 348 (a) and (c)(3)(A). Although the reviewing court accepted that interpretation, it nevertheless held that the "de minimis" concept, applied to the threshold "food additive" definition, could be utilized to allow such a substance into the market when it presents no real public health risk, see 613 F.2d at 955–956. Thus, the court's decision in *Monsanto* has the practical effect of shielding substances that present effectively no carcinogenic risk from the Delaney Clause. Although the court did not explicitly interpret the Delaney Clause as inapplicable to such substances, the court presumably knew that if a carcinogenic chemical was disregarded as *de minimis* in relation to the food additive definition, the chemical would not be subject to the Delaney Clause, which applies only when that definition is met. Necessarily, therefore, the court regarded this consequence as legally warranted.[1]

Moreover, in *Scott* v. *FDA,* 728 F.2d 322, 325 (6th Cir. 1984), the Sixth Circuit upheld the so-called constituents policy, whereby FDA may approve known carcinogens present in color additives as intermediaries or impurities present at levels too low to cause a response using conventional tests. Noting that FDA had determined the public health risk presented by D and C Green 5 was negligible, the Court reasoned:

> . . . We find this determination by the *Monsanto* court persuasive and relevant to the particular facts of the instant case. We agree with the FDA's conclusion that since it 'has discretion to find that low level migration into food of substances in indirect additives is so insignificant as to present no public health or safety concern . . . . it can make a similar finding regarding a carcinogenic constituent or impurity that is present in a color additive' 47 *FR* 24280 (1982).

C. Application of the de Minimis Doctrine

Two conditions must apply to justify an agency's exercise of its authority to interpret a legal requirement as not requiring action in *de minimis* situations. First, it must be consistent with the legislative design for the agency to find that a situation is trivial and, therefore, one that need not be regulated. *Alabama Power Co.* v. *Costle, supra,* 636 F.2d at 630. Second, it must be clear that the situation is in fact trivial, and that no real benefit will flow from regulating the particular situation. *Environmental Defense Fund* v. *Environmental Protection Agency,* 636 F.2d 1267, 1283–1284 (D.C. Cir. 1980). Both conditions apply here.

1. The establishment of a *de minimis* exception to the Delaney Clause is consistent with the legislative design.

In *Alabama Power Co.* v. *Costle, supra,* the court stated that the implication of *de minimis* authority is consistent with most statutes. The court stated that unless Congress has been extraordinarily rigid, there is likely a basis for an implication of such authority. *Id.* at 360–361. That Congress was not so rigid as to preclude the implication of *de minimis* authority under the Delaney Clause is evidenced both by the stated congressional intent in enacting the Clause and by the stated purpose of this provision.

Although the Delaney Clause in section 409(c)(3)(A) of the act was passed as part of the Food Additives Amendment of 1958, the clearest statement of the congressional intent for that provision is in the legislative history of the Color Additive Amendments of 1960. The Color Additive Amendments contain a provision that is very similar to section 409(c)(3)(A) of the act. See section 706(b)(5)(B) of the act (21 U.S.C. 376(b)(5)(B)).

The Senate considered that the calculation of risk would permit interpretation of the Delaney Clause to allow approval of color additives producing a negligible risk. This is clear from a colloquy on the Senate floor initiated by Senator Jacob Javits in debate on his motion to reconsider the vote to approve the Color Additive Amendments. Senator Javits, focusing on the Delaney Clause, made the record clear in discussion with Republican leader Senator Dirksen and committee chairman Senator Hill that the Senate had agreed to pass the Color Additive Amendments with the Delaney Clause based upon its understanding that the authority conferred by that clause "should be used and applied within the 'rule of reason.' " 106 Congressional Record 15381 (July 1, 1960).[2] Both Senator Dirksen and Senator Hill agreed that the "rule of reason" was to be applied in interpreting the Delaney Clause. *Id.* On that basis, Senator Javits did not pursue his motion to reconsider.

The term "rule of reason" was taken from a report to the President from the President's Science Advisory Committee and from the Departments of Agriculture and of Health, Education, and Welfare (the predecessor to the Department of Health and Human Services) that analyzed the effect of the Delaney Clause that is applicable to food additives. That report defines the "rule of reason" as meaning that: "Every

[1] FDA has not always been clear about its position on the *Monsanto* decision. For example, in questioning by Senator Orrin G. Hatch that took place in 1983 during hearings on food safety by the Senate Committee on Labor and Human Resources, then-Commissioner Arthur Hull Hayes, Jr. expressed some uncertainty about whether the *Monsanto* decision should be interpreted beyond its specific factual context (S. Hearing 98–309, 98th Cong., 1st Sess. 248 (1983)). FDA has concluded that the *Monsanto* decision is correctly interpreted as extending to the Delaney Clause.

[2] Senator Javits, now retired, recently reviewed this discussion. On July 10, 1985, he sent Margaret Heckler, Secretary of the Department of Health and Human Services, a letter stating that his views had not changed since 1960. He stated that it was his continuing understanding that the rule of reason "would dictate that where the danger to the public is negligible in using products with such color additives, then use should not be prohibited." A copy of Senator Javits' letter to Secretary Heckler is included in the record of this rulemaking.

statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature." 106 Congressional Record 15380. The report stated its conclusion that "an area of administrative discretion based on the rule of reason is unavoidable if the clause is to be workable." 106 Congressional Record 15381.

This report on implementation of the food additive provision, relied upon by the Senators as illustrating their understanding of the types of circumstances in which the "rule of reason" would appropriately be applied, in fact accurately predicted the advent of the science of risk assessment, the science that the agency is now applying in making its determination about the use of methylene chloride in decaffeinating coffee. The report stated that: "From the experience obtained in animal experiments and study of humans who have been exposed to carcinogens in the course of their work the panel believes that the probability of cancer induction from a particular carcinogen in minute doses may be eventually assessed by weighing scientific evidence as it becomes available." 106 Congressional Record 15380–15381.

Thus, the Senate agreed to adopt the color additive Delaney Clause only with the understanding that the clause would, like the food additive Delaney Clause, be administered with a "rule of reason," premised on the expectation that scientists would be able to determine the "probability of cancer induction." Thus, far from having been "extraordinarily rigid," Congress clearly contemplated that those administering the Delaney Clause would have discretion to implement that provision in a reasonable way.

The purpose of the Delaney Clause in section 409 of the act is, after all, to protect the public from the possibility of increasing cancer risks through the use of food additives. It does not advance this purpose to prohibit uses that present a risk that is, for all practical purposes, zero. Congress recognized this fact in warning FDA not to "go overboard" in applying the Delaney Clause. 106 Congressional Record 15381. Thus, it is not inconsistent with the Delaney Clause to permit some uses of a carcinogenic food additive when those uses are shown to present a potential carcinogenic risk that is so trivial, based on conservative statistical analyses, as to be the functional equivalent of no risk at all.

2. FDA finds that the risk from the use of methylene chloride in decaffeinating coffee (no greater than 1 in 1 million) is so small as to be effectively no risk. The agency makes this finding for the following reasons:

a. This computed level of risk is an upper bound level. It is not an actuarial risk. An actuarial risk is the risk determined by the actual incidence of an event. In contrast, the computed risk is a projection based on certain assumptions that enable the agency to estimate a risk that is too small to actually be measured. The agency uses conservative assumptions to ensure that the computation does not understate the risk. Among the assumptions that the agency relied upon in this computation are that:

(i) FDA assumes that methylene chloride is as effective in inducing cancer on a proportional basis at extremely low doses as it is at the exaggerated doses used in the animal studies.

(ii) FDA assumes that methylene chloride is present in all decaffeinated coffee at the highest level permitted by the regulation.

(iii) FDA assumes that lifetime-average consumption for the high consumer is used, rather than the average consumer.

Based on its computations, the agency is confident that the risk from the use of methylene chloride to decaffeinate coffee will not exceed 1 in 1 million and is likely to be somewhere between that level and zero. FDA emphasizes that the 1 in 1 million level of risk does not mean that 1 in every 1 million people will contract cancer as a result. Rather, in all likelihood, no one will contract cancer as a result of this exposure. The 1 in 1 million level represents a 1 in 1 million increase in risk over the normal risk of cancer in a lifetime—not annual—risk.

Because of the conservative assumptions in the foregoing risk assessement computation, it is probable that the incidence of tumors that would result the use of methylene chloride is likely to be even lower. In fact, the level of risk from most decaffeinated coffee is an incidence of less than one tumor after a lifetime of consumption in the entire population of coffee drinkers. As previously noted, it is likely that in fact there will be no increase incidence.

b. FDA has previously considered the risk level of 1 in 1 million in serveral contexts. In the ongoing rulemaking proceeding to establish procedures and standards for applying the so-called DES-proviso to the Delaney Clause for carcinogenic drug and food additive residues in edible animal tissues (21 U.S.C. 360b(d)(1)(H)), FDA has proposed than an assay method sufficient to detect a residue posing a calculated upper bound risk of 1 in 1 million be required posing a calculated upper bound risk of 1 in 1 million be required becasue "a risk level of 1 in 1 million over a lifetime imposes no additional risk of cancer to the public" (44 FR 17070, 17093; March 20, 1979). The agency noted that by using that level of risk, "as far as can be determined, in all probability no one will contract cancer" (50 FR 45530, 45541; October 31, 1985).

In several proceedings involving the agency's policy for carcinogenic impurities in food and color additives, FDA has used the risk of 1 in 1 million as a standard for determining whether the calculated upper bound risk of cancer posed by an impurity is low enough to be considered "safe" within the meaning of the general safety clause. See, e.g., the administrative record compiled in the rulemaking on D&C Green No. 6, 47 FR 14138; April 2, 1985.

FDA believes that these uses of the 1 in 1 million risk level are indistinguishable from the use 1 in 1 million as a *de minimis* level of risk with respect to the Delaney Clause. A finding that a substance with a 1 in 1 million risk is "safe," or that it "imposes no additional risk of cancer to the public," is the same as a finding that the risk is of no public health consequence or that it is insignificant. It is in just those circrumstances, where there is no meaningful increase in public health protection from applying the strict terms of a legal standard, that the courts have found the *de minimis* doctrine to be applicable. For example, the court in *Monsanto* equated "*de minimis*" with a finding that migration of an indirect food additive is "insignificant" (613 F.2d at 947) in a context where the court clearly recognized that the real question was the toxicity of a particular level of migration.

For these reasons, FDA concludes that a risk level on the order of 1 in 1 million for cancer constitutes a *de minimis* level of risk, and that its use of that level of risk in other regulatory contexts is consistent with that conclusion, although the agency until now has not had occasion to consider what levels of risk might be considered *de minimis* under the Delaney Clause with respect to be considered *de minimis* under the Delaney Clause with respect to a food or color additive.

Based on the foregoing, FDA concludes that the risk of cancer from the use of methylene chloride to decaffeinate coffee is so low as to be effectively no risk, and that there would be no benefit to the public from prohibiting its use in this case. Further, consistent with section 409 of the act, FDA concludes, for the same reasons

and because there are no other safety problems with this use of methylene chloride, that methylene chloride is safe for use to decaffeinate coffee. Therefore, FDA will permit the continued use of methylene chloride to decaffeinate coffee so long as the residue levels are kept within the limits established in § 173.25.

VI. Regulatory Action

Under section 601(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 361(a)), a cosmetic is deemed to be adulterated "[i]f it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or, under such conditions of use as use are customary or usual * * *." FDA believes that the evidence discussed above establishes that methylene chloride is a poisonous or deleterious substance, and that its use in cosmetic products may render those products injurious to users. Therefore, FDA has tentatively concluded that cosmetics that contain methylene chloride are adulterated under section 601(a) of the act, and the agency is consequently proposing to prohibit the use of methylene chloride in all cosmetic products.

FDA has been informed by several cosmetic manufacturers that they have either ceased using methylene chloride in their hair spray products or are in the process or will soon be in the process to so reformulate. The agency acknowledges these substantial voluntary efforts and the availability of safe substitutes. Consequently, given the severity of the public health risk presented, a regulation is necessary to ensure that all hair spray manufacturers cease using methylene chloride and that no new hair spray manufacturers being using it.

FDA, however, is not taking any action with regard to the use of methylene chloride is decaffeinated coffee.

VII. Economic Impact

FDA, in accordance with the Reguatory Flexibilitiy Act, has considered the effect that this proposed rule would have on small entities including small businesses. The agency has determined that the economic impact arising from this proposed rule will result from one-time reformulation and relabeling costs for those cosmetic products currently containing methylene chloride. Information available to the agency has indicated that the only products potentially affected by this proposal are aerosol hair spray products, and that the use of methylene chloride in these products has declined sharply in recent years. The agency estimates the aggregate costs of this proposed rule to be approximately $1 million. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibiltiy Act, that no significant ecomonic impact on a substantial number of small entities will derive from this action.

Further, in accordance with Executive Order 12291, FDA has analyzed the economic effects of this proposal and has determined that it is not major rule as defined by that Order. A copy of the threshold assessment is on file the Dockets Management Branch.

VII. Environmental Impact

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 findings, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985).

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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2. Cancer Assessment Committee, Memorandum of Conferences, "Methylene Chloride," January 20, 1983, August 8, 1984, and June 13, 1985.

3. Summary Minutes for Peer Review of Draft Technical Reports of Long-Term Toxicological Studies by the Technical Review Subcommittee of the Board of Scientific Counselors and Panel of Experts, March 29, 1985.

4. Burek, J.E., et al., "Methylene Chloride: A Two-Year Inhalation Toxicity and Oncogenicity Study in Rats and Hamsters," Toxicological Research Laboratories, Dow Chemical U.S.A., December 31, 1980.

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14. Brusick, D.J., "Mutagenicity Evaluation of Methylene Chloride—Final Report," Litton Bionetics, Kensington, MD, July 30, 1976.

15. Green, T., "The Metabolic Activation of Dichloromethane and Chlorofluoromethane in a Bacterial Mutation Assay Using *S. typhimurium*," *Mutation Research*, 118:277-288, 1963.

16. Simmon, V.F., et al., "Mutagenic Activity of Chemicals Identified in Drinking Water," *in* "Progress in Genetic Toxicology," Scott, I.D., et al., editors, Elsevier, Amsterdam, pp. 249-258, 1977.

17. Nestmann, E.R., et al., "Mutagenicity of Paint Removers Containing Dichloromethane," *Cancer Letters*, 11:295-302, 1981.

18. Callen, D.F., et al., "Cytochrome P-450 Medicated Genetic Activity and Cytotoxicity of Seven Halogenated Aliphatic Hydrocarbons in *Saccharomyces cerevisioe*," *Mutation Research*, 77:55-63, 1980.

19. Sayad, R.S., et al., "Methylene Chloride in Hair Sprays," *Soap/Cosmetic/Chemical Specialties*, March 1976.

20. Skory, L.K., T. Anthony, and M.P. Stevenson, "Carboxyhemoglobin Studies Show Methylene Chloride Safe in Aerosol Use," *Aerosol Age*, 20(5), May 1975.

21. Quantitative Risk Assessment Committee, Memorandum, "Preliminary Assessment of Upper-Bound Cancer Risk from Exposure to Methylene Chloride Used in Cosmetic Aerosol Sprays," April 23, 1985.

22. Letter dated August 7, 1985, J. Kirschman, General Foods Corp., to R. Scheuplein, FDA, with attachment.
23. Memorandum dated November 12, 1985, G. Cramer, Food Additive Chemistry Evaluation Branch, FDA.
24. Memorandum dated November 14, 1985, G. Cramer, Food Additive Chemistry Evaluation Branch, FDA.
25. Letter dated November 18, 1985, I. Abrams, MRCA Information Service, to A. Beloian, FDA.
26. International Coffee Organization, "United States of America Coffee Drinking Study, Winter 1985," London, England.
27. Pao, E., et al., "Foods Commonly Eaten by Individuals: Amounts Per Day and Per Eating Occasion," U.S. Department of Agriculture, Home Economics Research Report No. 44, pp. 24–25, 1982.
28. Quantitative Risk Assessment Committee, Memorandum, "Upper Bound Estimate of Cancer Risk from Methylene Chloride (MC) in MC-based Decaffeinated Coffee Products," November 15, 1985.

X. Comments

Interested persons may, on or before February 18, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 700

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 700 be amended as follows:

PART 700—GENERAL

1. The authority citation for 21 CFR Part 700 is revised to read as follows:

Authority: Secs. 601, 602, 701(a), 704, 52 Stat. 1054 as amended, 1055, 67 Stat. 477 as amended (21 U.S.C. 361, 362, 371(a), 374); 21 CFR 5.10 and 5.11.

2. By adding new § 700.19, to read as follows:

§ 700.19 Use of methylene chloride as an ingredient of cosmetic products.

(a) Methylene chloride has been used as an ingredient of aerosol cosmetic products, principally hair sprays, at concentrations generally ranging from 10 to 25 percent. In a 2-year animal inhalation study sponsored by the National Toxicology Program, methylene chloride produced a significant increase in benign and malignant tumors of the lung and liver of male and female mice. Based on these findings and on estimates of human exposure from the customary use of hair sprays, the Food and Drug Administration concludes that the use of methylene chloride in cosmetic products poses a significant cancer risk to consumers, and that the use of this ingredient in cosmetic products may render these products injurious to health.

(b) Any cosmetic product that contains methylene chloride as an ingredient is deemed adulterated and is subject to regulatory action under sections 301 and 601(a) of the Federal Food, Drug, and Cosmetic Act.

Dated: December 12, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85–29851 Filed 12–17–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control Custody, Care, Treatment, and Instruction of Inmates; Chemical Abuse Programs, Admission and Orientation, Classification and Program Review, and Inmate Recreation Programs

Correction

In FR Doc. 85–27920 beginning on page 48338, in the issue of Friday, November 22, 1985, on page 48341, third column, the fifth line of § 544.34(d)(5) is corrected by changing "90" to read "30".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Probable Hydrologic Consequences and Cumulative Hydrologic Impact of Mining

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

ACTION: Availability of draft guidance documents.

SUMMARY: Section 507(b)(11) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that a permit application for a surface coal mining operation contain a determination of the probable hydrologic consequences (PHC) of the operations. The regulatory authority, pursuant to the requirements of sections 507(b)(11) and 510(b)(3) of SMCRA, must conduct a cumulative hydrologic impact assessment (CHIA) of all anticipated mining in the area, and make a finding that the proposed coal mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area prior to issuing a permit.

The Office of Surface Mining (OSM) has developed draft guidelines that provide and understanding of the statutory and regulatory requirements relative to PHC and CHIA and that suggest procedures which may be utilized by permit applicants and State regulatory authorities in the preparation of PHCs and CHIAs, respectively. In order to make the guidelines more useful to surface coal mine permit applicants and regulatory authorities, OSM is soliciting specific suggestions and comments particularly with respect to the sources of hydrologic and geologic information and the applicability and adequacy of coverage of relevant concerns.

DATE: Written comments must be received before 5:00 p.m. eastern standard time on April 17, 1986.

ADDRESS: Administrative Record, Office of Surface Mining, Room 5315L 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Allen Perry, Division of Reclamation Technology, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202/343–1514.

Dated: December 10, 1985.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 85–29924 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-2940-1]

Gasoline Volatility and Hydrocarbon Emissions From Motor Vehicles; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; hearing.

SUMMARY: On November 21, 1985 (50 FR 48100), EPA published notice of availability of a regulatory strategies document on gasoline volatility and hydrocarbon emissions from motor vehicles. This notice also established a time and place for a public hearing on this issue. EPA has found it necessary to change the date and location of the hearing as indicated below.

DATES: A public hearing on the issues brought forth in this study will be held on February 4, 1986, convening at 9:00 a.m. The hearing will continue through February 5, 1986 if additional time is needed. Written comments on the study must be received on or before March 5, 1986.

ADDRESS: The public hearing will be held at the Campus Inn, 615 East Huron Street, Ann Arbor, Michigan 48104.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Office of Mobile Sources, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7647.

Dated: December 6, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-29787 Filed 12-17-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-379; RM-5091]

FM Broadcast Station in Franklin, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Franklin Broadcasting Corporation, proposes the allotment of Channel 269A to Franklin, Virginia, as the community's first FM service.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 13, 1986.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, 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.

Notice of Proposed Rulemaking

In the Matter of Amendment fo § 73.202(b), Table of Allotments, FM Broadcast Stations (Franklin, Virginia) MM Docket No. 85-379, RM-5091.

Adopted: November 25, 1985.

Released: December 12, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Franklin Broadcasting Corporation ("petitioner"), licensee of Station WYSR(AM), Franklin, Virginia, seeking the allotment of Channel 269A to Franklin, Virginia, as that community's first commercial FM service. Petitioner has expressed an intention to apply for the channel if allotted.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) west of the community. This restriction is necessary to avoid short spacing to Station WWDE-FM, Channel 267, Hampton, Virginia.[1]

3. In view of the fact that Franklin, Virginia could receive its first commercial FM service, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community.

City	Channel No.	
	Present	Proposed
Franklin, VA		269A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006 (Counsel to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes and *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a

[1] This proposal is also conditioned on the grant of a license for Station WHZZ, New Bern, North Carolina, to become a Class C1 station, for which a permit has already been issued.

proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Pubic Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requsted for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29916 Filed 12-17-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-380; RM-4963; RM-5052; RM-5084; RM-5092]

FM Broadcast Station in Elizabeth, Roswell, Acworth, and Cartersville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channnel 298A to either Elizabeth, Roswell, Acworth, or Cartersville, Georgia, as a first FM service at any of the communities, in response to petitions filed by Elizabeth Community Broadcasters, William E. Mallon, C. Phillip Robuck and by Julia N. Frew, respectively.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tryee, 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:

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.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations Elizabeth, Roswell, Acworth, and Cartersville, Georgia, MM Docket No. 85-380, RM-4963, RM-5052, RM-5084, RM-5092.

Adopted: November 26, 1985.
Released: December 12, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers four separate petitions for rule making for Channel 298A. The first was filed by Elizabeth Community Broadcasters, requesting the allotment of Channel 298A to Elizabeth, Georgia; the second by William E. Mallon, requesting Channel 298A at Roswell, Georgia; the third by C. Phillip Robuck for Channel 298A at Acworth, Georgia; and the fourth was submitted by Julia N. Frew, requesting that Channel 298A be allotted to Elizabeth, Georgia.[1] The petitions are considered to be mutually exclusive since the communities are less than the required 105 kilometers (65 miles) apart. Each petitioner stated its (his) intention to apply for Channel 298A at the community requested.

2. Elizabeth (population 1,700),[2] Roswell (population 23,337),[3] Acworth (population 3,648), and Cartersville (population 9,504), are all without local FM broadcast service. Cartersville is served by two AM stations; one fulltime and one daytime-only. Channel 298A can be allotted to any of the communities in compliance with the minimum distance separation requirements of § 73.207 of the Rules. In order to avoid a short spacing to Channel 297 at Columbus, Georgia, a site restriction of 10.3 kilometers (6.4 miles) northeast of Elizabeth and 4.6 kilometers (2.8 miles) north of Acworth must be imposed.

3. Since there are no other channels available for allotment to any of the communities, we shall provide each proponent an opportunity to demonstrate in comments to this proceeding, why its community should receive the allotment. In this regard, parties should be guided by the criteria adopted by the Commission to evaluate conflicting proposals in *Revision of FM assignment Policies and Procedures* (BC Docket 80-130), 90 F.C.C. 2d 88 (1982).

PART 73—[AMENDED]

4. In view of the foregoing, the Commission seeks comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, as it pertains to the following communities.

City	Channel No.	
	Present	Proposed
Elizabeth, GA		298A
or		
Roswell, GA		298A
or		

[1] Channel 288A presently allotted to Cartersville is being used at Canton, Georgia. Petitioner requested the Commission to modify the Table of Allotments to reflect the actual use of Channel 288A at Canton. However, that request will be considered in a separate proceeding which proposes to substitute Channel 289C2 for Channel 288A at Canton.

[2] Elizabeth, Georgia, is not shown in the 1980 U.S Census Report. Petitioner shows Elizabeth as a township which has chosen independent status from nearby Marietta, Georgia, identifiable on various county, state and Rand McNally maps.

[3] Population figures are taken from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Acworth, GA		298A
or		
Cartersville, GA		298A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Nancy L. Wolf, Dow, Lohnes and Albertson, 1255 Twenty-third Street NW., Washington, DC 20037 (Counsel for Elizabeth Community Broadcasters)

Eric S. Kravetz, Ward and Mendelsohn, 1100 17th Street NW., Suite 900, Washington, DC 20036 (Counsel for C. Phillip Robuck)

James E. Price, Sterling Communications, Inc., Uptain Building, Suite 418, Chattanooga, Tennessee 37411 (Consultant to William E. Mallon)

Julia N. Frew, Route 6, N. Tennessee Road, Cartersville, Georgia 30120.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29896 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-377; RM-5017]

FM Broadcast Station in Kapaa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 278 to Kapaa, Hawaii, as its first FM service, in response to a petition filed by Native Hawaiian Broadcasting Company.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, 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:

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.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Kapaa, Hawaii) MM Docket No. 85-377; RM-5017.

Notice of Proposed Rule Making

Adopted: November 25, 1985.
Released: December 12, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Native Hawaiian Broadcasting Company, which seeks the allotment of Channel 278 to Kapaa, Hawaii, as its first FM channel. Petitioner stated its intent to apply for the channel.

PART 73—[AMENDED]

2. Channel 278 can be alloted to Kapaa in compliance with the minimum distance separation requirements. In view of the fact that the proposed allotment could provide a first FM service to Kapaa, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Kapaa, HI		278

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner(s), or their counsel or consultant, as follows: Alan G. Moskowitz, Shrinsky, Weitzman and Eisen, 1120 Connecticut Avenue NW., Washington, DC 20036 (counsel for petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-29914 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-378; RM-4978]

FM Broadcast Station in Sturgeon Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Davison Communications Corporation, proposes the substitution of Channel 259C2 for Channel 261A at Sturgeon Bay, Wisconsin, and modification of the license of Station WSBW(FM), Sturgeon Bay, Wisconsin, to specify operation on Channel 259C2, as that community's second wide coverage area FM service.

DATES: Comments must be filed on or before February 3, 1986, and reply comments or or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation of Part 73 continues to read:

Authority: Secs. 4 and 303, 84 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.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Sturgeon Bay, Wisconsin) MM Docket No. 85-378, RM-4978.

Notice of Proposed Rule making

Adopted: November 25, 1985. Released: December 12, 1985.

By the Chief, Policy and Rules Divisions.

1. A petition for rule making was filed by Davison Communications Corporation, licensee of Station WSBW(FM), Channel 261A, Sturgeon, Wisconsin, ("petitioner"), seeking the substitution of class C2 Channel 259 for Channel 261A and modification of its license to specify operation on the new channel.

2. Petitioner submitted information in support of the proposal and states the upgrade of its facilities would provide a benefit both to Sturgeon Bay and to the entire Door County Peninsula.

3. We believe the petitioner's proposal warrants consideration. The substitution can be made in compliance with the Commission's minimum distance separation requirements. Since Sturgeon Bay is located within 320 kilometers (200 miles) of the U.S.-Canadian border, the proposal requires concurrence by the Canadian government.

4. In accordance with our established policy, we shall propose to modify the license of Station WSBW to specify operation on Channel 259C2. However, if another party should indicate an interest in the Class C2 allotment, the modification may not be implemented unless an additional equivalent channel is allotted.[1] See, *Modification of FM and TV Station Licenses*, MM Docket No. 83-1148, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

5. Accordingly in order to provide Sturgeon Bay with its second wide converage FM station, the Commission proposes to amend the FM Table of Allotments, (§ 73.202(b) of the Rules, with regard to the community listed below, as follows:)

City	Channel No.	
	Present	Proposed
Sturgeon Bay, WI	230, 249A, and 261A	230, 249A, and 259C2

6. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel with be allotted.

7. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James M. Weitzman, Allan G. Moskowitz, Shrinsky, Weitzman & Eisen, P.C., 1120 Connecticut Avenue NW., Suite 270, Washington, DC 20036.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

[1] Interested parties should consider the pendency of the *Notice of Proposed Rule Making* in MM Docket No. 85-313, 50 FR 45439 (published October 31, 1985), which proposes to permit FM stations to upgrade on adjacent channels in this type of proceeding without demonstrating the availability of an additional equivalent class of channel.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29915 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 462]

Rail Carriers; Exemption of Demurrage From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is seeking public comment on whether to consider a partial or complete exemption of demurrage charges from regulation. We have recently eliminated antitrust immunity with respect to demurrage charges because in a competitive environment, such charges will more accurately track car supply condition, car demand conditions, and the specific priorities and needs of individual carriers and shippers. Eliminating antitrust immunity effectively promotes the general goals of the rail transportation policy, and the equipment allocation goals of 49 U.S.C. 10750. However, demurrage charges will, without further action, remain subject to Commission regulation. We are requesting comments on whether elimination of antitrust immunity is of itself sufficient to achieve the section 10750 goals of whether additional action should be taken at this time under the exemption provisions of 49 U.S.C. 10505 to reduce or eliminate the regulation of demurrage.

Specifically, we request the parties to comment on the practical effects of the following approaches: (i) no further action at this time; (ii) exemption of demurrage charges from the tariff filing provisions of the Act, while retaining jurisdiction over discrimination, reasonable practice complaints, equipment allocation and equipment shortage; (iii) some other form of partial deregulation; and (iv) exemption of demurrage charges from all applicable statutory provisions. Following consideration of the comments, the Commission will determine whether a further proceeding is warranted.

DATES: Comments are due January 17, 1986.

ADDRESS: An original and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428.

The effect of this proceeding on matters related to energy, environment, and small business entities also should be addressed in the comments.

Authority: 49 U.S.C. 10321, 10324(a), 10505, 10701, 10741, 10750, 10761, 10762, 11121, 11122, 11123, and 5 U.S.C. 553.

Decided: November 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-29892 Filed 12-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Florida Grasshopper Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Florida grasshopper sparrow *(Ammodramus savannarum floridanus),* a bird endemic to the prairie region of south-central Florida, is proposed for listing as an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. In the early 1900's the populations of this bird were reportedly large and widespread in Florida. However, surveys conducted between 1980 and 1984 would indicate a population of about 250 adult birds. The principal reason for the decline of the grasshopper sparrow, and the greatest threat to its continued survival, is habitat loss or degradation resulting from conversion of native vegetation to improved pasture. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for the Florida grasshopper sparrow. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 18, 1986. Public hearing requests must be received by February 3, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The following information is abstracted primarily from a report by Delany and Cox (1985) prepared for the U.S. Fish and Wildlife Service.

The grasshopper sparrow *(Ammodramus savannarum)* occurs throughout most of temperate North America. The Florida subspecies *(A. s. flordianus)* is geographically isolated from its nearest conspecific, the eastern race *(A. s. pratensis)*, by at least 500 km, and is limited in distribution to the prairie region of south-central Florida.

The Florida subspecies was discovered in 1901 by E.A. Mearns at a location "on the Kissimmee Prairie, 7 miles east of Alligator Bluff, Osceola County, Florida" (Mearns, 1902). Howell (1932) set the northern limit of distribution as 12.9 km southwest of Kenansville (Osceola County), where 10 specimens were collected from a small colony in 1929. He also documented a 1927 report of "numerous" Florida grasshopper sparrows at a location 24 km northwest of Basinger (Okeechobee County); referred to two nests found south of Lake Hicpochee (Hendry County); and stated that Nicholson saw a "number" of birds southeast of Immokalee (Hendry County), where they appeared to be breeding. In 1932, an unspecified number of birds were found south of Fort Drum (Okeechobee County).

More recent records (cited by Delany and Cox, 1985) include one male heard singing 14 km north of Okeechobee (1962), and two birds located 1.6 km south of Brighton in Glades County (1963). In 1968, one specimen was collected in a typical habitat near the Everglades National Park (Dade County); one singing male was reported "west of Lake Okeechobee" in 1971. Finally, in 1973 and again in 1974, several birds were located southwest of Kenansville. Unfortunately, the lack of early distributional information precludes a precise delineation of the historical range of the subspecies.

Florida grasshopper sparrows are small, short-tailed birds, about 13 cm long. Dorsally they are much darker than the eastern race of the species *(A. s. pratensis)*, being mostly black and gray, lightly streaked with brown on the nape and upper back. Ventrally, adults are whitish and unstreaked, with some buff on the throat and breast. The breast is streaked in the juvenile plumage. The stripe over the eye is ochraceous, and the bend of the wing is yellow; the feet are flesh colored. There are no obvious sexual differences in the plumages. The Florida grasshopper sparrow is a well-marked subspecies that has been universally accepted as valid since it was described by Mearns in 1902. This subspecies is non-migratory, while the other two subspecies found east of the Rocky Mountains winter across the southern U.S. from Texas to South Carolina.

The Florida grasshopper sparrow inhabits the stunted growth of saw palmetto, dwarf oaks 30-70 centimeters high, bluestems, and wiregrass, seemingly preferring this habitat to the grassy areas usually occupied by other subspecies of grasshopper sparrows (Howell, 1932). According to Nicholson (1936) the Florida grasshopper sparrow uses the open spaces where saw palmetto are small (25 to 40 centimeters high) and grass is sparse. A low, but sparse growth of saw palmetto, woody shrubs, and bluestems and wiregrass, rather than sod forming grasses, is apparently needed for nesting. Dense vegetation and accumulated litter probably preclude effective foraging by the sparrow.

Delany and Cox (1985) found that, in general, grasshopper sparrows occurred on treeless, relatively poorly drained sites that have been burned frequently. Common shrubs in Florida grasshopper sparrow habitat include pawpaw (*Asimina* spp.), dwarf oak (*Quercus minima*), gopher apple (*Licania michauxii*), and St. John's Wort (*Hypericum fasciculatum*). The grass and herbaceous ground layer usually is rich in species, being dominated by pineland threeawn (*Aristida stricta*), bluestems (*Andropogon* spp.) and flat-topped goldenrod (*Euthamia minor*). In wetter areas of lower elevation, the herbaceous layer includes beak rushes (*Rhynchospora* spp.), pipewort (*Eriocaulon* spp.), and yellow-eyed grass (*Xyris* spp.). Cattle grazing, at a rate of one per 8 hectares, occurs on all sites occupied by sparrows, and does not appear to be detrimental to the species.

In the early 1900's, the populations of Florida grasshopper sparrows were reportedly large and widespread (Howell, 1932). Surveys by Delany and Cox, however, conducted between 1980 and 1984, located only 182 sparrows occurring at nine sites. These sites were in southern Osceola County, southern Polk County, northern Highlands County, western Okeechobee County, and western Glades County. Of the 182 sparrows located, 119 were males. Male sparrows are far more conspicuous than females. If each of the males was mated to a single female, a minimum population estimate for the subspecies would be less than 250 adults. In addition, Delany and Cox found sparrows at only two of the eight sites from which they have been known historically. These facts imply both a reduction in abundance and occupied range for the subspecies. Alteration and loss of habitat due to conversion of native grasslands to improved pastures have been, and continue to be, the greatest threats to the survival of the Florida grasshopper sparrow.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida grasshopper sparrow (*Ammodramus savannarum floridanus*) are as follows (abstracted from Delany and Cox, 1985):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The principal threat to the Florida grasshopper sparrow is habitat loss or degradation resulting from conversion of native grasslands to improved pastures. The subspecies apparently can tolerate some alteration in vegetation composition and structure, as evidenced by its occurrence in some improved pastures (Stevenson *in* Kale, 1978). Sparrows have been found in improved pastures where some native vegetation exists. It appears, however, that the species cannot adapt to conditions that result from intensive pasture management which removes all shrubs and saw palmetto. Grasshopper sparrows have been found only in areas that have at least some saw palmetto, shrubs, bluestems and/or wiregrass. Nest sites are located on the ground beneath bushes or tall clumps of grass, features that do not exist in most improved pastures.

Delany and Cox (1985) believe that 6 of the 8 historically known populations of the Florida grasshopper sparrow may have been extirpated as a result of range management. They located 7 new localities for the subspecies, plus two of the historically known sites. Areas now occupied by grasshopper sparrows are managed for cattle by periodic burning during the winter (November-January) at 2- to 3-year intervals. For the most part this does not appear to have adversely affected the grasshopper sparrow populations because prescribed burning improves the habitat for this subspecies by maintaining the prairie grassland community at an early successional stage. There is a possibility that changes in intensity of management could render these sites unsuitable for grasshopper sparrows. More intensive management (removing saw palmetto and planting grass) would eliminate nesting sites. Less intensive management, which would exclude burning or mechancial clearing, would allow vegetation to reach a successional stage which would be unusable by the birds. Much of the land within the range of the Florida grasshopper sparrow is contained in a few large, private ranches; most of the landowners are not aware of the sparrow's existence or needs. Present land use trends indicate a continued loss of habitat for the subspecies due to increased pasture conversion and changes in intensity of management of already converted pastureland.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that any of these factors have had a significant impact on the Florida grasshopper sparrow in the past. However, there is a potential for adverse impact if isolated pairs are collected, or scientific collection is conducted at locations were numbers are small.

C. *Disease or predation.* Hogs, snakes, and skunks are known to destroy nests and prey upon Florida grasshopper sparrows (Nicholson *in* Smith, 1968). However, these natual losses do not appear to be causing any of the reductions in range and numbers that have been observed.

D. *The inadequacy of existing regulatory mechanisms.* The Florida grasshopper sparrow occurs on private land, on State Wildlife Mangement Areas (WMA) (Three Lakes WMA in Osceola County, and Fisheating Creek WMA in Glades County), and on land managed and administered by the Federal Government (U.S. Air Force's Avon Park Bombing Range); the Air Force leases pastures on the Bombing Range for cattle grazing. There are no regulatory mechanisms to assure protection of prairie grassland habitat in private ownership; however, the needs of the grasshopper sparrow are considered when habitat decisions are made on the Bombing Range.

The species is listed as endangered by the State of Florida (Chapter 39–27, Florida Administrative Code), but this legislation does not provide habitat protection. Habitat protection is also not affored under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

E. *Other natural or man-made factors affecting its continued existence.* It is not known if grasshopper sparrows live directly within the target areas of the Air Force's Avon Park Bombing Range; if so, the birds would be adversely affected by bombing activities. Exploding ordnance might also cause fires that could spread to other areas and result in damage to nearby resident sparrows. However, this is unlikely as the Air Force has an aggressive fire control program. Because the bombing range cannot be entered, the Service cannot evaluate how many, if any, sparrows are present within the drop zone.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Florida grasshopper sparrow as endangered. The total population of this subspecies may be less than 250 adults at 9 scattered sites in the prairie region of south-central Florida. All available evidence indicates that the bird has declined greatly in range and in numbers. This has been due to habitat loss or degradation resulting from pasture conversion and changes in intensity of management of converted pasture. Present land use trends indicate a continued loss of acceptable habitat for the species. Given these factors, the Florida grasshopper sparrow appears to be in danger of extinction throughout all or a significant portion of its range and therefore is being proposed as an endangered species. Critical habitat is not being proposed for the Florida grasshopper sparrow for reasons discussed below in the "Critical Habitat" section.

Critical Habitat

In order for the Florida grasshopper sparrow to survive, it is necessary to maintain a habitat that has a low (30–70 cm), but sparse growth of palmettos and woody shrubs. Prescribing burning or mechanical clearing is necessary to maintain this sort of suitable habitat. Delany and Cox (1985) presented the following information to illustrate how grasshopper sparrow populations fluctuate depending upon the condition of the habitat. They report that in 1981–82, only 4 adult grasshopper sparrows were found at the Three Lakes Wildlife Management Area in Osceola County. Many of the pastures at Three Lakes were burned in the winter of 1983–84, and 37 adult grasshopper sparrows were found there in 1984.

At a pasture site in Okeechobee County, no sparrows were found in 1982, but 32 were found in 1984. This particular pasture is burned every three years and was last burned in the winter of 1982–83. In the summer of 1982, when no sparrows were present, it has been two and a half years since the pasture last last burned. In another pasture, only one grasshopper sparrow was found in 1982, but 8 were found in 1984. This pasture is burned every 2 or 3 years, and was last burned in the winter of 1982–83. In contrast, pastures in the Avon Park Bombing Range contained 8 grasshopper sparrows in 1982, but only one could be found in 1984. Some of the pasture in this area had not been burned in the intervening years, and the vegetation was generally very dense, with little bare ground. From the above, it seems evident that periodic buring (and/or mechancial clearing) of vegetative cover greatly improves the quality of pastures for grasshopper sparrows, and that the birds move from area to area as habitiat improves or deteriorates.

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida grasshopper sparrow for the following two reasons.

First, as discussed above, the Florida grasshopper sparrow is a species which moves around frequently in order to take advantage of the changing mosaic of available habitat. The habitat needs of the species are specific, and its presence in any one area over a long term cannot be predicted or assured. As one area becomes too thickly overgrown to support populations, the birds move to a more sparsely vegetated area that has been recently burned or mechancially cleared. Thus, the sparrows are not stable residents of any specific area for long periods of time.

Second, most of the habitat occupied by the Florida grasshopper sparrow is

on privately owned land and would not be affected by a determination of critical habitat. There would be no benefit to the species from determining any of this privately owned land as critical habitat. The only Federal agency that might be involved is the U.S. Air Force's Avon Park Bombing Range. The Air Force is already fully aware of this situation.

Therefore, a determination of critical habitat would provide no benefits to the species which would not already be available through the listing itself without critical habitat. For the above reasons, the Service determines that a proposal of critical habitat for the grasshopper sparrow is not prudent at the present time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only Federal agency that might be affected by the Florida grasshopper sparrow proposal and listing is the U.S. Air Force (Avon Park Bombing Range). Grasshopper sparrows that are resident in target areas of the Bombing Range will be directly affected by exploding ordnance. Fires from exploding ordnance also could spread to nearby areas inhabited by nesting grasshopper sparrows and may temporary damage the sparrow populations. During the period of the present proposal, the Air Force is required to confer with the Service on any action at its Avon Park Bombing Range which is likely to jeopardize the continued existence of this species. If the Florida grasshopper sparrow is listed as endangered, the Air Force will then be required to consult with the Service and to insure that actions it authorizes, funds, or carries out are not likely to jeopardize the continued existence of the species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce the Florida grasshopper sparrow. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation of survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concering any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Florida grasshopper sparrow;

(2) the location of any additional populations of the Florida grasshopper sparrow and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this subspecies; and

(4) current or planned activities, in the subject areas and their possible impacts on the Florida grasshopper sparrow.

Final promulgation of the regulation on the Florida grasshopper sparrow will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

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Nicholson, W.H. 1936. Notes on the habits of the Florida grasshopper sparrow. Auk. 53:318–319.

Smith, R.L. 1968. Grasshopper Sparrow. Pp. 725–745 *in* O.L. Austin, Jr., ed. Life Histories of North American Cardinals, Grosbeaks, Buntings, Towhees, Finches, Sparrows, and Allies. U.S. Nat. Mus., Bull 237, Part 2.

Author

The primary author of this proposed rule is John L. Paradiso, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2508 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
*	*	*	*	*	*	*	*
Sparrow, Florida grasshopper	*Ammodramus savannarum floridanus*	U.S.A. (FL)	Entire	E		NA	NA
*	*	*	*	*	*	*	*

Dated: December 4, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–29964 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 243
Wednesday, December 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

Soil Conservation Service

Environmental Statements; Caddo Creek Watershed, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Enironmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conversation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Caddo Creek Watershed, Hunt and Collin Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main Street, Temple, Texas 76501-7682, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assesment are on file and may be reviewed by contacting Billy C. Griffin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 10, 1985.

Gene C. Vittetoe,

State Conservation Engineer.

[FR Doc. 85-29862 Filed 12-17-85; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statements; Crow Creek Watershed, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service; U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Crow Creek Watershed, St. Francis County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 2405 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378-5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection which provides accelerated technical and financial assistance for installing land treatment measures to control erosion. Land treatment measures include the no-tillage method of crop production, terraces with underground outlets, diversions, waterways, land smoothing, and contour farming.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack C. Davis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 9, 1985.

Jack C. Davis,

State Conservationist.

[FR Doc. 85-29865 Filed 12-17-85; 8:45 am]

BILLING CODE 3410-16-M

Environmental Impact; Fulton County Landfill Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fulton County Landfill RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal

Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environmental. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of 12.5 acres of a severely eroding closed landfill. Planned works of improvement include the installation of a diversion and grade stabilization structure and the shaping, grading, and seeding of the 12.5 acres.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29903 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Gallia County Fairgrounds Flood Prevention RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guideline (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gallia County Fairgrounds RC&D Measure, Gallia County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for flood prevention on the Gallia County Fairgrounds property to eliminate damage to the property and facilities and increase the use of the fairgrounds. Planned works of improvement include the removal of three downstream culverts and the removal of 1400 feet of downstream woody vegetation that is restricting flow.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29904 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Kiser Lake Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guideline (40 CFR Part 1500); and the Soil Conservation Service Guidelined (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kiser Lake RC&D Measure, Champaign County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along a channel leading into Kiser Lake. Planned works of improvement include the installation of glaciated boulders in the bottom and sides of the channel, a grouted rock chute, and 1.2 acres of critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29905 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Prairie Creek Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Convervation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Prairie Creek RC&D Measure, Henry County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along 6800 feet of eroding and slipping streambanks that are causing severe erosion and sedimentation problems. Planned works of improvement include the installation of rock rip-rap at selected locations and the selected shaping and seeding of the streambanks.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29906 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Rocky Fork Lake Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rocky Fork Lake RC&D Measure, Highland County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along 5000 feet of eroding shoreline on Rocky Fork Lake. Planned works of improvement include the installation of 5000 feet of rock rip-rap and critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29907 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Ziegler Group Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ziegler Group RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of a 100-acre eroding cropland watershed that is causing a county road to be flooded and damaged by sediment. Planned works of improvement include the installation of water and sediment control basins, a change to less intensive crop rotation, and the use of conservation tillage.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill

single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

[FR Doc. 85-29908 Filed 12-17-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on January 10, 1986, at the U.S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to plan a public forum on hate group violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7171. (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least fives (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29927 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on January 14, 1986, at the Federal Building, 444 S.E. Quincy, Room 201, Topeka, Kansas. The purpose of the meeting is to discuss the status of civil rights issues in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29928 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Subcommittee on Education to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on January 6, 1986, at the Anne Arundel County Board of Education, 2644 Riva Road, Conference Room, Annapolis, Maryland. The purpose of the meeting is for the Subcommittee on Education to continue planning a community forum on equity issues in special education.

Persons desiring additional information, or planning a presentation to the Subcommittee, should contact Committee Chairperson, Loretta Johnson or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202)254-6717, (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29929 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 2:00 p.m., on February 14, 1986, at the Northern Hotel, 1st & Broadway, Billings, Montana. The purpose of the meeting is to review a briefing memorandum on the Harlem School District and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty L. Babcock or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29930 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on January 9, 1986, at the Holiday Inn, Blush Hill Road, Waterbury, Vermont. The purpose of the meeting is to discuss data-gathering and other aspects of the Committee study of civil rights laws and enforcement in Vermont.

Persons desiring additional information, or planning a presentation to the Committee, should contact

Committee Chairperson, Kenneth Holland or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671. (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29931 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

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

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Interviewer Record/Follow-up Record/Monthly Noncertainty Letters
Form Number: Agency-B-645, B-646, B-647; OMB—0607-0067
Type of request: Revision of a currently approved collection
Burden: 29,580 respondents; 4,006 reporting hours
Needs and uses: This survey collects data from nonemployers and newly opened retail and service businesses, whose employee identification numbers have not yet been subjected to the list sample.
Affected Public: Businesses or other for-profit institutions and small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: December 11, 1985.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 85-29963 Filed 12-17-85; 8:45 am]

BILLING CODE 3510-07-M

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

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 National Content Test—Content Reinterview
Form number: Agency—DE-11, DE-12; OMB-NA
Type of request: New Collection
Burden: 8,000 respondents; 1,500 reporting hours
Needs and uses: This survey will be used to assure the accuracy and consistency of reported information collected in the National Content Test.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1984 Panel Wave 9
Form number: Agency—SIPP-4900, SIPP-4903, SIPP-4905; OMB-0607-0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: The results of this survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.
Affected public: Individuals or households
Frequency: One time only
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1985 Panel Wave 5
Form number: Agency—SIPP-5500, SIPP-5505(L), SIPP-4903/5503; OMB-0607-0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: The results of this survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: December 12, 1985.

Edward Michals,

Department Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 85-29889 Filed 12-17-85 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Semiconductor Dependency; Change in Meeting Place and Invitation to Provide Information and Views

Summary

The notice for the Defense Science Board Task Force on Semiconductor Dependency meeting on 9 January 1986 in the Pentagon as published in the **Federal Register** (Vol. 50, No. 231, Monday, December 2, 1985, FR Doc. 85-28600) has been changed to 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202. In all other respect the previous notice remains unchanged.

In accordance with the guidance provided by the Terms of Reference enumerated below, the Defense Science Board Task Force on Semiconductor Dependency will address the impact of possible dependancy of the U.S. Military on foreign sources for semiconductor devices.

Individuals or organizations desiring to provide information and views to the Task Force on the subject should send not only written information but also

justification as to why the information would be in the best interest of the Task Force pursuits explained below. The material should be sent to Col. Donald W. Derrah, USA, Defense Science Board, OUSDRE, Room 3D1020, The Pentagon, Washington, D.C. 20301–3140.

Terms of Reference

You are requested to organize a Defense Science Board Task Force to address the impact of possible dependency of the U.S. military on foreign sources for semiconductor devices.

To an increasing extent, semiconductor devices are being employed in U.S. military systems of virtually all types. Applications include missiles, aircraft, spacecraft, command and control systems, fire control, etc. In the past the U.S. has possessed a burgeoning domestic semiconductor industry to serve as a source of these critical components for military systems. Recent events in the semiconductor industry, however, caused in part by increasing foreign competition, appear to threaten the long-term viability of major segments of the U.S. industrial base in this area. Whether the domestic semiconductor industry can (and should) continue to be the principal supplier of such electronics to the Department of Defense and to its systems contractors is a matter of some importance as well as uncertainty.

Accordingly, the Defense Science Board Task Force on Semiconductors is requested to conduct an assessment addressing, but not limited to, the following questions:

1. To what degree is U.S. military capability dependent upon the use of semiconductor devices insofar as systems in production or previously deployed are concerned?

2. To what extent are domestic sources currently available to supply the semiconductor devices incorporated in operational and production military systems?

3. What is the projected trend for the availability in peacetime, mobilization, and wartime of a domesitc supply of semiconductor devices for military applications?

4. Is it essential that domestic fabrication sources be available for semiconductor devices to be used in U.S. military systems? Must these sources be in operation during peacetime? Is stockpiling a practicable alternative?

5. What is the projected trend for the U.S. semiconductor industry with respect to its ability to stay at the leading edge of the semiconductor device state of the art? What requirements are imposed by the demand to advance or stay abreast of the state of the art in semiconductor devices?

6. What, if any, specific actions should be undertaken to assure an adequate supply of such devices and semiconductor technology for use in defense systems?

Although the semiconductor memory market is a principle area of intended focus, the study should include whatever breadth within the semiconductor field that is deemed appropriate by the Task Force itself.

Administrative Approach

The Semiconductor Dependency Task Force is sponsored by Deputy Under Secretary of Defense for Research and Engineering (Research and Advanced Technology). Mr. Norman R. Augustine, Defense Science Board Member, has agreed to Chair the Task Force. The Executive Secretary will be Mr. Egbert D. Maynard and the DSB staff representative will be Colonel Donald W. Derrah, USA. It is requested that the study be initiated at the earliest possible time. In order to assure that input is received from organizations intimately involved in the day-to-day semiconductor production field, it is requested that an industrial consultation group be established to augment the Task Force itself. It is considered that the subject matter of this study does not involve "particular matters" within the meaning of Section 208 of Title 18, U.S. Code.

Linda M Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 13, 1985.

[FR Doc. 29962 Filed 12–17–85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on January 6 and 7, 1986, at 735 Jackson Place, NW., Washington, DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1), (c)(4), and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

AGENDA: The Commission will meet in task force, planning, and executive sessions to continue its consideration of defense management policy and procedures and its preparation of a report to the President on acquisition and procurement issues.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1201 Pennsylvania Avenue, NW., Suite 700A Washington, DC 20004. Telephone (202) 638–0799 or (202) 395–3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 13, 1985.

[FR Doc. 85–29961 Filed 12–17–85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposal To Allocate Excess Capacity in Abiquiu Reservoir, NM; Conservation Storage and Allied Purposes

AGENCY: US Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. *Study Objectives and Alternatives.* The Albuquerque District is reactivating an earlier study of potential allocation of excess capacity in the existing Abiquiu Reservoir, with the objective of evaluating additional conservation storage of both imported and native waters. This action was requested by members of the Rio Grande Compact Commission, the City of Albuquerque, and the County of Los Alamos, and was largely prompted by the regional need for additional long-term storage of San Juan—Chama Diversion Project allocations which are surplus to immediate needs. An additional factor is the need to provide a flood control buffer in Elephant Butte Reservoir to protect the city of Truth or Consequences by storing additional water in Abiquiu Reservoir. The reactivated study will, therefore, consider allocation of the project's excess capacity for conservation storage for water supply and allied purposes. Study objectives that will be considered in addition to water supply include the preservation, conservation, and

enhancement of biological, cultural, recreational, social, and aesthetic values; flood control; and hydropower. Additional objectives may be added as the study progresses.

Storage alternatives in Abiquiu Reservoir at this time include conservation storage to the reservoir's maximum capacity, partial storage, and the no-action alternative. Additional alternatives may be developed during the course of the study. The formulation and evaluation of alternatives comprise feasibility level studies and will culminate in a recommendation that best accommodates the needs and desires of the public.

2. *Public Involvement and Interagency Coordination.* Coordination will be maintained with both public and private concerns having jurisdiction or an interest in land and water resources in the Rio Chama and Rio Grande Valleys. Formal public involvement will include public meetings and public and agency coordination. All interested parties will be notified of the time, date, and location of meetings and invited to submit comments on the DEIS when it is circulated for review.

The planning effort will be coordinated with the United States Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act and the Endangered Species Act and the National Park Service pursuant to the requirements of the Wild and Scenic Rivers Act. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer will continue pursuant to the National Historic Preservation Act and the Preservation of Historic and Archeological Data. Also, special land and water classifications and uses will be coordinated with responsible state and federal agencies.

3. *Significant Issues to be Analyzed.* Significant issues to be addressed and analyzed in the DEIS include the effect of additional water storage on regional water needs and economic development, flood protection, biological resources, recreational facilities and uses, special land and water classifications, cultural resources, social and economic welfare, land use, and aesthetic values. Also, if necessary, the development of mitigative measures will be discussed.

4. *Public Review.* The presently estimated date that the DEIS will be circulated for public review is December 1986.

5. *Further Information.* Questions regarding the study and the DEIS may be directed to: Mr. Mark Sifuentes, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103. Phone: Comm (505) 766-3577, FTS 474-3577.

Dated: December 10, 1985.

Edward D. Postell,

Major, CE, Deputy District Engineer.

[FR Doc. 85-29886 Filed 12-17-85; 8:45 am]

BILLING CODE 3710-KK-M

DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program; Withdrawal of Application Notice

AGENCY: Department of Education.

ACTION: Withdrawal of Application Notice.

On December 3, 1985, at 50 FR 49595, an application notice was published establishing the closing date for the transmittal of applications for noncompeting continuation projects for fiscal year 1986 under the Magnet Schools Assistance Program. That notice is withdrawn.

On November 22, 1985, the President signed the National Science, Engineering and Mathematics Authorization Act of 1986, Pub. L. 99-159, which includes four amendments to the Magnet Schools Assistance Act (Act). In particular, the prohibition in the Act on secular humanism instruction has been deleted and the provision of the Act describing the authorized uses of funds has been significantly changed. Because these amendments apply to the fiscal year 1986 continuation awards which will be made under this program, an application notice announcing the new closing date for these continuation projects will be published early in 1986 with a Notice of Proposed Rulemaking amending those sections of the magnet schools regulations which are affected by the new legislation.

FOR FURTHER INFORMATION CONTACT: For further information contact M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB-6), Mail Stop 6264, 400 Maryland Avenue, S.W. Washington, D.C. 20202. Telephone: (202) 472-7960. (20 U.S.C. 4051-4062)

Dated: December 13, 1985.

(Catalog of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program)

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-29919 Filed 12-17-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 27-28, 1986. Business Meeting 9:00 a.m. to 4:30 p.m. The business meeting will be held at: The U.S. Department of Education, Federal Office Building Number (6), Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245-2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under Section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order

II. Roll Call.

III. Approval of Minutes from Previous Meeting.

IV. Introduction of Visitors.

V. Presentation of Information by Director of OBEMLA or Designee.

VI. Presentation of Information by General Public or Organizations (Limited to 5 minutes).

VII. Committee Assignments.

VIII. Old Business.

IX. New Business.

X. Presentations of Information by Members of the General Public on Items for Possible Future Action by the Council.

XI. Meetings of Council Committees.

XII. Council Reconvenes.

XIII. Adjournment.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: December 12, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-29890 Filed 12-17-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 10–11, 1986. Business Meeting 9:00 a.m. to 4:30 p.m. The business meeting will be held at: The U.S. Department of Education, Federal Office Building Number (6), Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under Section 752(a) of the Bilingual Education Act (20 U.S.C. 3282). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order.
II. Roll Call.
III. Approval of Minutes from Previous Meeting.
IV. Introduction of Visitors.
V. Presentation of Information by Director of OBEMLA or Designee.
VI. Presentation of Information by General Public or Organizations (Limited 5 minutes).
VII. Committee Assignments.
VIII. Old Business.
IX. New Business.
X. Presentations of Information by Members of the General Public on Items for Possible Future Action by the Council.
XI. Meetings of Council Committees.
XII. Council Reconvenes.
XIII. Adjournment.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: December 12, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85-29891 Filed 12-17-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Variable Industrial Power Rate, Public Hearings, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. *BPA File No.:* VI–86. BPA requests that all comments and documents which become part of the Official Record compiled in the process of developing a variable rate based on the market price of aluminum for BPA's direct-service aluminum industrial customers contain the file number designation VI–86.

SUMMARY: In the Pacific Northwest, BPA serves 15 direct-service industrial customers (DSI) that produce various chemicals, metals, pulp and paper, and aluminum. The aluminum companies account for 90 percent of the electric power purchased by the DSIs. Of the 12 primary aluminum producers in the United States, seven have smelters in the Pacific Northwest. In recent years, the amount of electric power demanded by the aluminum producers has fluctuated dramatically due, in part, to an increase in the volatility of the price of aluminum.

The volatility of the DSI load in recent years has caused problems for BPA and the Pacific Northwest region. BPA has recently concluded an analysis of mid- to long-term policy and rate options available to the Administrator addressing the problems caused by fluctuations in DSI demand for electricity (the DSI Options Study). Based on the results of the Study and public comment, the Administrator concluded that two of the options should be pursued further: a variable power rate linked to the price of aluminum, and limited financial support for conservation/modernization at DSI plants. In addition, the DSI Option Study announced BPA's decision to initiate a formal rate process to consider the design of a long-term link between rates to the DSIs and rates to preference customers (IP–PF link), a concept the DSIs proposed during the 1985 rate proceeding. The Administrator, in the 1985 rate proceeding, agreed to facilitate development and adoption of a long term policy establishing the relationship between the IP and PF rate schedules.

BPA is proposing a variable rate for its aluminum smelter industrial customers that is tied to the market price of aluminum. This rate option will undergo a formal hearing mandated by section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Pacific Northwest Power Act). A single 7(i) process will be held to allow for public participation in the development of the variable rate and IP–PF link. A separate process will be held to develop the conservation/modernization proposal.

Opportunities will be available for interested persons to review the proposed rate design and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate design, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final proposed rate design differing from the design proposed in this Notice. The rate design will be filed with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for developing a Variable Industrial Power rate schedule.

DATES: Persons wishing to become a formal "party" to the proceedings must so notify BPA in writing. The notification must be received by January 6, 1986, and should be addressed as follows: Hearing Officer (VI–86)—APR, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice

are parties of right. Others may become parties by demonstrating in their notice and at the prehearing conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; (4) if no contractual interest exists, the interest the person believes would be served by the person or entity being a party. All timely applications will be ruled on by the Hearing Officer.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m., in the cafeteria of Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. on January 6, 1986.

During the prehearing conference, dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearing will be mailed to all parties of record. All formal hearing sessions after the prehearing conference will be held in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

A series of public field hearings regarding BPA's proposal will be held at various locations around the region. The field hearings, like the rest of the section 7(i) hearings process, will be open to the discussion of both the proposed variable rate and the proposed IP-PF rate link methodology. Both the public's comments contained in a verbatim transcript of the field hearings and all written comments received before the close of comment deadline will be made a part of the Official Record. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the field hearings will be at 7 p.m. and the hearings will begin at 7:30 p.m. The dates and locations are:

January 27, 1986—Thunderbird Motor Inn-Jantzen Beach, 1401 North Hayden Island Drive, Portland, Oregon

January 28—City Hall Council Chambers, West 808 Spokane Falls Boulevard, Spokane, Washington

January 29—Columbia Falls High School Auditorium, Columbia Falls, Montana

January 30—Alki Room, Seattle Center, Seattle, Washington

February 3—Portage Inn, 3223 Frontage Road, The Dalles, Oregon

Written comments may be submitted until the close of the hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement office, at the address above. Telephone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland; toll-free 800-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6959.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Moutana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George T. Reich, Acting Puget Sound Area Manager, 415 First, Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376, Box 035, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: A study that explains the variable rate in more detail will be available December 23, 1986. Requests may be made of the Public Involvement office at the above address or by calling the documents request line: 800-841-5867 for Oregon; 800-624-9495 for other Western states. Callers will reach a recorded message where they may leave a request for the "Variable Rate Study."

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I. Background

In developing the proposed Variable Industrial Power (VI-86) rate, BPA considered revenue and load impacts, environmental impacts, revenue stability, and statutory obligations. The environmental impacts of all three proposals, conservation/modernization, a variable rate, and the IP-PE link, will be reviewed in a single environmental impact statement (EIS). A draft will be available by mid-January 1986. The availability of the EIS will be announced in a later **Federal Register** Notice.

A. Statutory Provisions

Design of a variable rate for the DSIs must comport with BPA's statutory rate directives contained in applicable legislation.

1. General Rate Guidelines

Section 6 of the Bonneville Project Act, 16 U.S.C. 832e, requires that the Administrator prepare schedules of rates and charges for electric energy sold to purchasers to be effective upon confirmation and approval by the FERC. Section 6 directs the Administrator to establish rates with a view toward encouraging the widest possible diversified use of electric energy.

The Federal Columbia River Transmission System Act (Transmission Act), 16 U.S.C. 838, contains requirements similar to those of the Bonneville Project Act. The Transmission Act provides three specific guidelines for the establishment of rates by the Administrator: (1) To set rates with a view toward encouraging the widest possible diversified use of electric power a tthe lowest possible rates to consumer consistent with sound business principles; (2) to set rates with regard to the recovery of the costs of producing and transmitting electric power, including the amortization of the capital investment allocated to power over a reasonable period for years; and (3) to set rates at levels which produce such additional revenues as may be required to pay when due the principal, premiums, discounts, expenses, and interest in connection with bonds issued under the Transmission Act, including

amounts required to establish and maintain reserve accounts.

The Flood Control Act of 1944 directs that the sale of electric power from certain reservoir project take place "in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles." 16 U.S.C. 825s. The Act also provides that "rate schedules should be drawn having regard to the recovery . . . of the cost of producing and transmitting such electric energy." 16 U.S.C. 825s.

The Pacific Northwest Power Act, 16 U.S.C. 839e, provides additional rate guidelines. Section 7 of the Pacific Northwest Power Act directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. BPA has an obligation under section 7(a)(1) of the Pacific Northwest Power Act to establish rates in accordance with sound business principles to recover costs "associated with acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law." Specifically, BPA is required to set rates to produce revenues that allow BPA to meet its United StatesTreasury obligation. Section 7(c)(2) directs the Administrator to design a rate for the DSIs that is equitable in relation to the retail industrial rates of the region's public agency and cooperative utilities, but stipulates that the rate shall not be "less than the rates in effect for the contract year ending on June 30, 1985."

2. Confirmation and Approval

The Pacific Northwest Power Act specifies in section 7(a)(2) that rates become effective upon final or interim approval by the FERC. The FERC must review the rate proposal to determine that (1) rates are sufficient to assure repayment of the Federal investment in the FCRPS over a reasonable number of years after first meeting BPA's other costs; (2) rates are based on BPA's total system costs; and (3) transmission rates equitably allocate the costs of the Federal transmission system between Federal and non-Federal power uses of the system. Pursuant to section 7(i)(6) of the Pacific Northwest Power Act, the Commission has promulgated rules found at 18 CFR Part 300 establishing procedures for the approval of BPA rates.

B. Current DSI Rates

Currently all DSIs purchase power under the Industrial Firm Power (IP-85) rate schedule. The IP-85 rate schedule contains a Standard rate (which averages 22.8 mills per kilowatthour), a Premium rate, and an Incentive rate. The Incentive rate provisions allow BPA to offer temporary discounts to the DSIs when such discounts increase BPA's total revenues based on the companies' commitments to purchase certain amounts of power from BPA. An Incentive rate was offered in September 1985 and terminates June 30, 1986. The average rate paid by the DSIs under the current Incentive rate offer is 18.8 mills per kilowatthour.

C. DSI Options Study

During the development of BPA's 1985 wholesale power rates, the issue of DSIs' long term viability was raised. The DSIs indicated that predictable and stable rates were necessary for any long term investment decisions. The Administrator was not prepared to adopt any long term rate policy or option during the course of the 1985 rate filing. Instead, shortly after the start of the 1985 rate case, the Administrator announced that a separate process, the DSI Options Study, would be undertaken to study various long-term DSI options.

BPA recently concluded this analysis of mid- to long-term policy and rate options available to the Administrator addressing the problems caused by fluctuations in DSI demand for electricity (the DSI Options Study). Within the Study five options were examined: (1) A variable DSI rate tied to the price of aluminum; (2) a reduction in current rates in return for increased power interruptibility rights in the future; (3) allowing the DSIs to purchase electricity from other suppliers who could provide more attractive rates; (4) financial support to encourage conservation/modernization investments in DSI plants; and (5) "no action" or pursuing a business-as-usual course. Based on the results of the Study and public comment, the Administrator concluded that two of the options should be pursued at this time: A power rate linked to the price of aluminum and limited financial support for conservation/modernization of DSI plants.

A number of factors influenced the Administrator's decision to pursue a variable rate. Probably the significant factor was the regional perception that BPA's actions to stabilize revenues from its aluminum customers should be directed more toward the "intermediate term" (5-10 years). BPA has brought its costs under control after the dramatic increases in costs from 1979 to 1983. Stabilizing BPA's costs will enable BPA's rates to be relatively stable through the rest of the century. Over the long term, this should allow the Northwest aluminum plants to be competitive in the world market as the costs for other smelters increase more rapidly.

The variable rate concept appeared to have the greatest intermediate term advantages. When implementation of a variable rate was modeled in the DSI Options Study, the variable rate consistently provided benefits to BPA's non-DSI customers greater than those in the "no action" case. Although the model results showed negative benefits to the DSIs, comments received from the DSIs suggested that other considerations outside the model made this option attractive to them. The primary advantage to the DSIs is that the predictability offered by a variable rate would enable the aluminum companies to maintain higher production levels, thereby reducing their average unit production costs by avoiding shutdown and startup costs. Further, the variable rate does not contain the same degree of uncertainty and time lag as the current Incentive rate. These factors would enhance the Northwest smelters' competitiveness position on the worldwide supply curve.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), provides procedures for encouraging participation of the public in the development of BPA's rates. In order to give the public notice of how it may participate in BPA's rates adjustment proceedings and to elaborate on the procedures established in section 7(i), BPA published on February 10, 1982, "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" (46 FR 8240). These procedures were used in BPA's 1985 wholesale power and transmission rate adjustment proceedings. On March 23, 1984, BPA published its "Interim Amendment of Procedures Governing BPA Rate Adjustments" (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the Administrative

Procedures Act. See 5 U.S.C. 557(d). BPA is the process of evaluating comments on the Interim Amendment. BPA's procedures, as amended on an interim basis, will be applicable to the section 7(i) hearings on the variable rate.

The Pacific Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the Official Record developed during the hearing process. BPA's procedures expand these requirements. They provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the FERC.

The process begins with publication in the **Federal Register** of the notice of the proposed rates, which includes a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a prehearing conference if scheduled by the Hearing Officer. A prehearing conference has been scheduled before the Hearing Officer on January 6, 1986, 9 a.m., in the cafeteria of Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the prehearing conference.

BPA will also convene a series of public field hearings at certain locations throughout the region. The purposes of these hearings is to present to interested members of the public a summary of BPA's rate proposal and to receive comments and information from the general public. The conduct of these hearings will be substantially the same as that of the public field hearings held for previous BPA rate adjustment proceedings. BPA staff will present a synopsis of the proposed rate followed by comments from the public. The public will then have an opportunity to present their comments on the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments and information from "participants," who are defined in the procedures as interested persons who may express their views, but who may not cross-examine witnesses or participate in the prehearing conference. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties."

The second category of interest is that of a "party." A party may be considered a part of right because of its legal and/or contractual relationship with BPA, and hence its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties also may be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interest and positions, the Hearing Officer, to expedite the hearing, may order limitations on the number of attorneys (or parties appearing pro se) who will be permitted to cross-examine witnesses and file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentaton of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

To facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions on technical matters. BPA expects that clarification sessions for BPA witnesses will be followed by the presentation of the parties' direct cases, clarification of the parties' witnesses, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record, which will address significant technical issues. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the pertinent law through briefs. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Procedures for submitting comments to BPA's Public Involvement Manager are detailed in the Dates and Addresses sections of this notice. Participants will be kept informed of activity at the formal hearings through the field hearings and regular summary letters.

The Official Record will include, among other things, transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the BPA Administrator for decision.

The Administrator will develop any final proposed Variable Industrial Power (VI–86) Rate Schedule based on the entire Official Record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for any final proposal will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file any final proposal and the record with the FERC for confirmation and approval.

III. Rate Schedule

Schedule VI–86 Variable Industrial Power Rate

Section 1. Availability

This schedule is available to direct service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is only available for that portion of a DSI's load used in primary aluminum reduction. DSIs electing to purchase power under this rate schedule must contractually agree to the terms and conditions under this rate schedule and waive future rights to purchase under the Industrial Firm Power Rate Schedule for ten years from the effective date of this rate schedule. This rate schedule shall be effective July 1, 1986. General Rate Schedule Provisions (GRSPs) effective July 1, 1985 a modified herein are applicable to this rate schedule.

Section II. Rate

This rate schedule provides for the energy charge to vary monthly in response to changes in the average price of aluminum in U.S. markets. The energy charge contained herein has already been reduced for the value of reserves provided by purchasers of Industrial Firm Power; therefore a separate billing adjustment for the value of reserve will not be made.

A. *Base Variable Industrial Rate.*—1. *Demand Charge.*

a. $5.28 per kilowatt of billing demand occurring during the Peak Period for all billing months.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.*

a. *Plateau Energy Charge.*

When the average monthly aluminum price is between the Lower Pivot Aluminum Price, which is initially 61 cents per pound, and the Upper Pivot Alumnium Price, which is initially 72 cents per pound, the monthly energy charge shall be 16.0 mills per kilowatthour of billing energy for all billing months.

b. *Reductions to Plateau Energy Charge.*

When the monthly aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

(1) the Plateau Energy Charge—(LP—AMP)*(LS) where LP = the Lower Pivot Aluminum Price, initially set at 61.0 cents per pound. AMP = the average monthly aluminum price in cents per pound determined pursuant to section III of this rate schedule.

$$\text{LS} = \text{lower slope} = \frac{\text{1 mill per kilowatthour}}{\text{1 cent per pound}}$$

or;

(2) The applicable Lower Rate Limit.

(a) *Fall Lower Rate Limit.* 12.0 mills per kilowatthour for the billing months August through February.

(b) *Spring Lower Rate Limit.* 7.0 mills per kilowatthour for the billing months March through July.

c. *Increases to Plateau Energy Charge.*

When the monthly aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

(1) the Plateau Energy Charge + (AMP—UP)*(US) where: AMP = the average monthly aluminum price in cents per pound determined pursuant to section III of this rate schedule. UP = the Upper Pivot Aluminum Price, initially set at 72.0 cents per pound.

$$\text{US} = \text{upper slope} = \frac{\text{0.5 mills per kilowatthour}}{\text{1 cent per pound}}$$

or;

2) the upper rate limit of 22.3 mills per kilowatthour.

Section III. Monthly Average Aluminum Price Determination

A. Calculation of the Monthly Average Aluminum Price.

The monthly average price of aluminum shall be determined by BPA for each billing month. For purposes of this rate schedule, the monthly average aluminum price shall be based on the U.S. market price. The price of aluminum in U.S. markets for the billing month shall be defined as the average U.S. Transaction Price for that calendar month reported by *Metals Week*, in cents per pound, rounded to the nearest tenth of a cent.

B. Notification of the Monthly Average Aluminum Price.

BPA shall provide written notification and documentation to purchases under this rate schedule of the monthly average aluminum price to be used for billing purposes as soon as possible after the 10th of the month and prior to rendering the final monthly bill. C. Changes in Aluminum Price Indicators

In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least one complete billing month prior to subsitution of another aluminum price indicator. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA shall also describe the methodology to determine the monthly average aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business three weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodoloy and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination prior to the billing month the new indicator shall be effective.

Section IV. Billing Factors

A. *Billing Demand.*

The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the GRSPs.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

B. *Billing Energy.*

The billing energy for power purchased shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section V. Adjustments to the Lower and Upper Pivot Aluminum Prices

Effective July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices in sections II.A.2.b and II.A.2.c, respectively, shall be subject to change for billing purposes.

A. *Implementation Procedures.*

Each year beginning in 1987 and every year thereafter, prior to April 1 BPA shall provide the purchasers under this rate schedule preliminary written estimates of changes to the Upper and Lower Pivot Aluminum Prices. By the last working day in the month of April, BPA shall notify interested parties in writing of BPA's revised determinations concerning changes to the Upper and Lower Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Interested persons may submit comments on the determinations to BPA and other parties. Comments will be accepted until close of business on the third working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 1, BPA shall notify all affected parties, and those parties that submitted comments, of the final determination.

B. *Inflation Escalator.*

An inflation escalator shall be calculated prior to the July 1 adjustment date following the procedures set forth below:

1. The average VI–86 rate for the previous calendar year, assuming the plateau energy charge and the Discount for Quality of First Quartile Service were in effect for the entire year and a load factor of 98.5 percent, will be divided by 22.8 mills per kilowatthour to obtain an Electricity Cost Index.

2. The average U.S. Producer Price Index for Intermediate Materials Less Foods and Energy (PP–FE) will be obtained for each month of the previous calendar year from the monthly report, *Producer Price Indexes*, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The index for each month used by BPA for this purpose will be the *revised* index for the month published by the BLS in the fourth month following each given month.

3. The revised PPI–FE for each month of the calendar year will be summed and divided by 12 to obtain the average PPI–FE for the year.

4. The average PPI–FE for the previous calendar year will be divided by the PPI–FE for calendar year 1985 to obtain an Other Cost Index.

5. A Weighted Average Cost Index will be calculated by averaging the Electricity Cost Index and Other Cost Index calculated above, using the following weights:

a. electricity cost, .25.

b. other costs, .75.

In the event that the PPI–FE series is discontinued or revised by the Bureau of Labor Statistics (BLS) in a way that BPA determines has rendered it unusable for calculating a consistent cost index, BPA will adjust it or substitute another similar price index available from the BLS, following advance notification and opportunity for public comment described in section V.A.

C. *Rolling Average Aluminum Price.*

Prior to the July 1, 1991 adjustment date, and each annual adjustment date thereafter, a five year average aluminum price shall be calcuated for the previous five calendar years following the procedures set forth below:

1. The average U.S. Transaction Price for aluminum reported by *Metals Week* for each of the first four calendar years of the five-year period shall be escalated to current dollars of the fifth year by multiplying the reported price by the ratio of (a) the Weighted Average Cost Index calculated for the fifth year to (b) the Weighted Average Cost Index for the given year. Both cost indexes are calculated pursuant to procedures described in section V.B.

2. The escalated U.S. Transaction Price for each of the first four calendar years, rounded to the nearest tenth of a cent, shall be added to the average U.S. Transaction Price of the fifth year reported by *Metals Week*. This sum shall be divided by five and rounded to the nearest tenth of a cent to obtain the 5-Year Average Price.

In the event that BPA determines that factors outside its control render the average U.S. Transaction Price for aluminum unusable for calculating average annual U.S. market prices, BPA will substitute another indicator of prices in U.S. markets following advance notice and opportunity for public comment as described in section V.A.

D. *Annual Adjustment Procedures.*

1. *For the period beginning July 1, 1987 and ending June 30, 1991.* The initial Lower and Upper Pivot Aluminum Prices in section II shall be multipiled by the weighted average cost index determined in section V.B.5. of this rate schedule to obtain adjusted Lower and Upper Pivot Aluminum Prices, rounded to the nearest tenth of a cent. These adjusted aluminum prices shall replace, respectively, the initial Lower and Upper Pivot Aluminum Prices and shall be used to determine the energy rate in the subsequent twelve billing months.

2. *For the period beginning July 1, 1991 and ending June 30, 1996.* To determine the Lower and Upper Pivot Aluminum Prices beginning July 1, 1991, the following calculations shall be made by BPA:

a. The Lower Pivot Aluminum Price shall be multiplied by the weighted average cost index determined in section V.B.5 of this rate schedule and rounded to the nearest tenth of a cent to obtain an adjusted Lower Pivot Aluminum Price.

b. If the adjusted Lower Pivot Aluminum Price determined in section V.D.2.a is less than the 5-Year Average Price determined pursuant to section V.C.2:

(1) the Lower Pivot Aluminum Price shall equal the adjusted Lower Pivot Aluminum Price determined in section V.D.2.a.

(2) the Upper Pivot Aluminum Price will be adjusted so that the 5-year Average Price will be equidistant between the Lower and Upper Pivot Aluminum Prices.

The Upper Pivot Aluminum Price shall equal: 2M—ALP; where M = the 5-Year Average price; ALP = the adjusted Lower Pivot Aluminum Price calculated in V.D.2.b.(1) above.

c. If the adjusted Lower Pivot Aluminum Price, determined in section V.D.2.a, is equal to or greater than the 5-Year Average Price determined pursuant to section V.C.2, then both the Lower and Upper Pivot Aluminum Prices are set equal to the greater of:

(1) 55.0 cents per pound escalated to current dollars of the fifth year of the five years used to calculate the 5-Year Average Price by applying the escalation factor determined in section V.B.5, or;

(2) the 5-Year Average Price.

These adjusted aluminum prices shall replace, respectively, the initial Lower and Upper Pivot Aluminum Prices and shall be used to determine the energy rate in the subsequent 12 billing months.

Section VI. Other Adjustments and Special Provisions

A. *Rate Adjustments.*

This rate shall be subject to adjustments in BPA's general wholesale power rate case following the procedures of section 7(i) of the Northwest Power Act. In such a process, the rate level shall be determined consistent with the rate directives contained in sections 7(c)(2) and 7(c)(3) of the Northwest Power Act and other applicable legislation. The Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in this rate schedule shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The lower and upper rate limits contained in section II.A shall be adjusted by an amount equal to the change in the mills per kilowatthour in the Plateau Energy Charge net of the discount for the first quartile service. The Upper and Lower Pivot Aluminum Prices and corresponding slopes shall not be adjusted in the rate case; rather they shall be adjusted pursuant to the procedures described in section V of this rate schedule. The rate for unauthorized increase shall be separately determined in each rate case.

B. *Discount for Quality of First Quartile Service.*

When a purchaser requests that First Quartile service be provided with other than Surplus FELCC, a discount of 0.5 mills per kilowatthour shall be granted. This billing credit shall be applied to the monthly billing energy under section IV.B for all power purchases under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section VI.D of this rate schedule. By making such a request for discounted service, the purchaser waivers any right to First Quartile service with Surplus FELCC, and BPA shall have no obligation to conserve Surplus FELCC for future First Quartile service to any purchaser under the discounted rate.

C. *Curtailments.*

BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge.

D. *Unauthorized Increase.*

1. *Rate of Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Application of the Charge.* During the billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

E. *Power Factor Adjustment.*

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

F. *Outage Credit.*

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI-86 rate is 95 percent Exchange and 5 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.6 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 33.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88-552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

IV. General Rate Schedule Provisions (GRSP)

The GRSPs effective July 1, 1985 are applicable to the VI-86 rate with modifications proposed for Auxiliary Demand and Operating Demand contained in section III.A.9 and III.A.10, respectively of the GRSPs.

1. Auxiliary Demand

Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels of Auxiliary Demand during a biling month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power Rate Schedule at the Standard Industrial Rate, except that the Industrial Incentive Rate shall apply if the DSI is making its purchases under the IP-85 Industrial Incentive Rate.

Auxiliary Power sales to DSIs purchasing under the Variable Industrial Rate Schedule shall be made at the rate determined pursuant to section II of the VI-86 Rate Schedule. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

2. BPA Operating Level

The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for the DSI can be detemined by summing the hourly BPA Operating Levels and dividing by the number of hours in the billing month.

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request and BPA may agree to a level of service for the Offpeak Periods other than that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level will be the same for both periods. The BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

Any DSI whose Measured Demand, before adjustment for power factor, during any one hour exceeds the BPA Operating Level for that hour shall be subject to unauthorized increase charges for each kilowatthour of unauthorized increase associated with each overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power Rate Schedule, the Variable Industrial Power Rate Schedule, and the Standard Rate under the Special Industrial Rate Schedule. During the Peak Period the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

V. Rate Derivation and Design

1. Concept

BPA is proposing a Variable rate option for aluminum smelter loads which would provide a predetermined contractual tie between the price of BPA's power and the U.S. aluminum ingot price. Establishing a tie between input price (electricity) and output price (aluminum) will enhance the ability of aluminum producers to operate over the entire business cycle. With this type of rate, when the price of aluminum decreases (increases) so will the price of power, within certain limits. Decreasing the price of power when aluminum prices are low reduces the operating costs at the smelters and should encourage higher production levels than if a fixed rate were in place. This in turn should serve to reduce the cyclicality of smelter operations. Increasing the price of power during prosperous aluminum markets is intended to make up the decrease in BPA's revenues when the lower rate occur.

2. Definitions

Variable rate has the following parameters:

a. Plateau: A range of aluminum prices over which the price of power remains constant. The plateau electricity charge equals the Standard Industrial Firm Power rate on average.

b. Pivot Points: The Variable rate is designed with two pivot points: A lower pivot point and an upper pivot point.

d. Lower Pivot Point: The point on the plateau at which a further decrease in the market price of aluminum results in a decrease in the electricity price.

e. Upper Pivot Point: The point on the plateau at which a further increase in the market price of aluminum results in an increase in the electricity price.

f. Slope: The rate of change in the power rate to the DSSIs as a function of the change in the market price of aluminum.

g. Lower Slope: The rate of change in the price of electricity due to a change in the market aluminum price below the lower pivot point.

h. Upper Slope: The rate of change in the price of electricity due to a change in the market aluminum price above the upper pivot point.

i. Rate Limits: The point at which the electricity rate no longer changes in responses to a change in aluminum prices from the pivot points. The two rate limits establish the range of possible electricity prices under the Variable rate.

j. Lower Rate Limit: The limit below which a change in aluminum prices below the lower pivot point will not result in a change in the electricity rate. The lowest electricity rate possible under the Variable rate.

k. Upper Rate limit: The limit above which a change in aluminum prices above the upper pivot point will not result in a change in the electricity rate. The highest electricity rate possible under the Variable rate.

VI. Major Rate Issues

1. Goals of the Variable Rate

BPA has identified the following goals for the Variable rate.

a. Discourage aluminum plant closures during the short run, i.e., 1 to 3 years. The Variable rate is not intended to forestall closure of those plants that are not economic over the medium to long term at the Standard Industrial Firm Power (IP) rate.

b. Encourage high aluminum plant operating rates and discourage swing operations during BPA's surplus period.

c. Increase BPA's total revenues over the revenues anticipated if the Standard IP rate to the DSIs were to remain in effect. If possible, the average rate forecasted to be paid under the Variable rate option should equal the Standard IP rate.

2. Eligibility

Because the Variable rate is a function of the price of aluminum, this option is available only for aluminum smelter operations. Other aluminum operations (i.e., aluminum fabrication) and all nonaluminum DSI customers, are ineligible to purchase power at the Variable rate, but will continue to purchase power at the IP–85 rate and its successor rate schedules. Further, once a company has elected to purchase at the Variable rate, it is precluded from switching to the Industrial Firm Power rate for the duration of the Variable rate.

3. Terms of the Rate

The Variable rate is available on a voluntary basis for those aluminum smelters that elect to purchase power under this rate schedule. This rate schedule is available for 10 years from its effective date July 1, 1986.

4. Rate Plateau

The Variable rate contains demand and energy charges. The demand charge is time differentiated on a daily basis. There is no demand charge for deliveries during offpeak hours. The demand and plateau energy charges are based on the average IP–85 Standard rate of 22.8 mills per kilowatthour and assuming a 98.5 percent load factor. The plateau energy charge calculation includes credit for the value of reserves provided by BPA's right to restrict the DSI load and an adder for firm service to the first quartile of the DSI's load. The IP–85 Standard rate was determined in BPA's 1985 general rate proceeding and approved on an interim basis by the Federal Energy Regulatory Commission Order issued June 28, 1985 (Docket No. EF85–2011–000). The plateau energy charge is reduced 0.5 mills per kilowatthour for all energy purchased when the purchaser requests service with other than Surplus FELCC. The demand charge does not vary with changes in aluminum price. For simplicity, all the rate levels discussed hereafter are average rates, combining demand and energy charges including the value of reserves credit and the discount for first quartile service. The plateau energy charge initially remains unchanged when aluminum prices are between 61.0 cents per pound and 72.0 cents per pound.

5. Lower Rate Components

The lower pivot point, the lower slope and the lower rate limit constitute the lower rate components. The lower rate components define the parameters for rate reductions from the plateau.

The lower portion of the rate is designed so that when the market price of aluminum falls below the production costs (variable costs) at the region's highest-cost smelter, the price of electricity decreases. In the short run, a smelter will operate when the market price of aluminum is equal to or greater than the short-run variable cost of producing aluminum. When the price of aluminum is depressed, a smelter will reduce production costs by curtailing output. BPA has estimated the current short-run variable cost at the highest cost smelter to be approximately 61 cents per pound. This estimation is based on the costs that a smelter can avoid, in the short-run, if production is reduced or suspended. Short-run variable costs include a portion of alumina and labor costs, electricity costs, and a portion of other costs (i.e., transportation and other raw materials.)

For every 1 cent per pound decrease in the market price of aluminum below 61 cents per pound, the electricity rate would decrease 1 mill per kilowatthour. Since it is difficult to predict the extent to which aluminum prices would fall, the rate contains a lower rate limit, below which changes in aluminum prices do not result in changes in electricity prices. The lower rate limit is seasonally differentiated to recognize that BPA's revenues in alternative markets vary by season, primarily because of water conditions. In the spring, which is defined here as March through July, the lower rate limit (including demand and energy charges) initially is 13.8 mills per kilowatthour. In the remaining months, September through February, the lower rate limit initially is 18.8 mills per kilowatthour. The lower rate limits were established to balance recognition of BPA's alternative markets and the promotion of DSI loads. Seasonal differentiation should lessen the cost to BPA of DSI load fluctuations during very low aluminum prices.

6. Upper Rate Components

The upper pivot point, the upper slope and the upper rate limit form the upper rate components. The upper rate components increase the rate, enabling BPA to offset the revenue decrease on the lower portion of the rate.

The upper portion of the rate is designed so that the price of electricity increases after the market price of aluminum exceeds the long-run variable cost at the region's highest cost smelter. The long-run variable cost includes total alumina, labor, electricity, and other cost. The long-run variable cost does not include a return to equity nor does it include interest, depreciation, or amortization associated with plant investment in place at the time the rate is offered. BPA estimated the long-run variable cost of the highest cost smelter to currently be 72 cents per pound. The design of the upper portion of the Variable rate provides for the price of power to increase more gradually in response to an increase in aluminum prices than the speed at which the rate decreases on the lower portion of the rate. The rate is set so that a one cent per pound increase in the market price of aluminum above 72 cents per pound causes the electricity rate to increase one half mill per kilowatthour. This results in a sharing of the benefits of prosperous markets between BPA and the DSI. BPA revenues are higher than under a fixed tariff and the DSI's potential net earnings are not all lost to higher power rates.

The rate also contains an upper rate limit, above which changes in aluminum prices do not result in changes in electricity prices. The upper rate limit initially is 29.1 mills per kilowatthour, which is an equal difference in mills per kilowatthour from the plateau rate as the weighted average lower rate limit.

7. Annual Adjustments

The rate schedule provides for an annual adjustment of the upper and lower pivot aluminum prices on the anniversary date of the rate. During the first 5 years of the rate, August 1, 1987 through July 30, 1991, the pivot points would be adjusted annually for inflation. The inflation adjustment is based on a weighted average of changes in (1) U.S. producer costs for intermediate materials, excluding food and electricity and (2) the regional cost of electricity to the DSIs. During the last 5 years of the Variable rate, August 1, 1991 through July 30, 1996, pivot points would be

adjusted annually to reflect both inflation and the average real aluminum prices that occurred during the previous 5 years that the rate was in effect. As a result of this last adjustment the size of the plateau may change. That is, the range of aluminum prices over which the plateau rate is in effect could become larger, smaller, or could disappear altogether. If low aluminum prices were to persist over the first 5 years, the plateau could collapse, creating a single pivot point rate. In this case the upper and lower pivot points would be the same. However, the single pivot point may not go below 55 cents per pound adjusted for inflation.

8. Rate Case Adjustments

The plateau rate level would be adjusted concurrently with adjustments to BPA's other wholesale power rates, following the procedures of section 7(i) of the Pacific Northwest Power Act, and subject to approval by the Federal Energy Regulatory Commission. The overall rate level would be determined following the rate directives contained in sections 7(c)(2) and 7(c)(3) of the Pacific Northwest Power Act and other applicable legislation. The demand and energy charges and first quartile service discount will be adjusted by a uniform percentage based on the percentage change in the overall rate level. The lower and upper rate limits will be adjusted based on the change in the mills per kilowatthour of the plateau energy charge less the discount for the first quartile service.

9. Treatment of Over (Under) Recoveries

If on an actual basis BPA over- or underrecovers its revenue requirement because of a variance between actual and forecasted DSI revenues, those over- (under-) recoveries will be handled according to BPA's cash management practices and will effect future rates in the same way as over- (under-) recoveries for other reasons.

There is a possibility that in developing the rates during general rate cases, the forecast of revenues from the Variable rate may differ from the forecast of revenues from the IP Standard rate. This difference will be included with the section 7(c)(2) delta and allocated to customers' rates. The section 7(c)(2) delta is the difference between the costs allocated to the DSIs and the revenues forecasted at the IP rate determined according to the section 7(c)(2) rate directives. Therefore, in every rate case BPA will develop its rates to recover its overall revenue requirement.

10. Take or Pay Obligations

The rate does not contain any additional take-or-pay provisions beyond the curtailment charge provided in section 9(c) of the DSI's Power Sales Contract. The Power Sales Contract states that when an industrial purchaser curtails power purchases below 75 percent of its Operating Demand, the purchaser shall pay BPA an additional charge based on a percentage of the demand charge currently in effect.

11. Implementation Date

BPA anticipates that the Variable rate will be effective July 1, 1986, although it is possible that the FERC will not grant interim approval until a late date. Currently, the aluminum smelters are purchasing power at the IP–85 Incentive rate offered in September 1985. The Incentive rate offer will expire June 30, 1986. BPA does not propose to offer the Variable rate prior to termination of the current Incentive rate.

12. Implementation

The Variable rate is available to aluminum smelters on a voluntary basis. Prior to the rate becoming effective, BPA will request that each regional smelter select either the VI–86 rate schedule or the IP–85 rate schedule and its successors. BPA proposes that this offer will only be made once. Once the choice is made a smelter is precluded from switching between rate schedules for 10 years from the effective date of the Variable rate.

The analysis conducted by BPA in support of the Variable rate assumes that all the regional smelters elect to purchase under this rate. Implementation of the Variable rate may not require participation of all regional smelters. BPA expects that most, if not all, the smelters will participate. The Administrator retains the discretion to determine whether the level of participation warrants actual implementation of a Variable rate once offered. BPA expects that after the VI–86 rate schedule is implemented, future IP–85 Incentive rate offers will not be made. BPA also expects that future IP rate schedules will not retain the incentive rate provision. In the event that the Administrator finds that the participation level is not sufficient to implement a Variable rate, a record of decision will be published and the Variable rate offer will be rescinded.

13. Revenue Test

In designing the Variable rate, BPA looked at the impact on total revenues and on revenues from the DSIs. Two revenue tests can be used in evaluating the Variable rate. One is whether the Variable rate increases BPA's total revenues over those received if the IP Standard rate were in place. A similar revenue test is employed when BPA determines the feasibility of implementing an incentive rate under the IP rate schedule. BPA's other customers will be held harmless from the Variable rate if the agency's total revenues are at least as high as with the IP Standard rate.

The other test is whether the Variable rate results in average revenue from the DSIs forecasted to be equal to the average IP Standard rate over the ten year period. Even if forecasted to recover the IP Standard rate, the Variable rate may not, in practice, accomplish this under all situations (i.e., prolonged periods of low aluminum prices) without an adjustment mechanism or some form of "truing-up" device. The annual adjustment procedures proposed by BPA enhance but do not insure the recovery of the average IP Standard rate over the 10 year period.

Issued in Portland, Oregon on December 9, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85-29932 Filed 12-13-85; 3:06 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Order; Shepherd Oil Inc. and Shepherd Trading Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Shepherd Oil Inc. and Shepherd Trading Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Shepherd Oil Inc. and Shepherd Trading Corporation at P.O. Box 100, Morristown, Arizona 85342. This Proposed Remedial Order alleges that incorrect volumes of exempt crude oil were reported in the Refiners Monthly Reports in violation of 10 CFR 211.66 (b) and (h) and 205.202 during the period May 1980 through December 1980 in the amount of $5,666,402.

A copy of the Proposed Remedial Order, with confidential information, if any, deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen

Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 26th day of November, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29873 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Edwin L. Cox & Berry R. Cox

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Edwin L. Cox & Berry R. Cox (Cox) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by January 17, 1986.

ADDRESS: Send comments to: Sandra k. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002. Copies of the Consent Order may be obtained free of charge by writing or calling this office (713/229-3715).

SUPPLEMENTARY INFORMATION: On November 7, 1985, the ERA executed a proposed Consent Order with Cox. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. The ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

Cox engaged in the production and sale of crude oil during the period June 1, 1979 through December 31, 1980. ERA audited Cox's compliance during this period with the Mandatory Petroleum Price and Allocation Regulations applicable to the production and sale of "newly discovered" crude oil. 10 CFR Part 212. As a result of this audit, disputes arose between Cox and DOE concerning Cox's compliance with applicable federal petroleum price regulations in its production and sale of "newly discovered" crude oil during the period covered by this Consent Order.

Cox and DOE each maintain that their respective positions on the legal issues underlying such disagreements are meritorious. However, to resolve the issues raised by the audit without further litigation, Cox and DOE would enter into this Consent Order. Cox would do so without admitting it has violated any provision of the Regulations. Except for those matters explicitly excluded therein, the Consent Order would resolve all administrative and civil judicial claims, demands, liabilities, or causes of action between DOE and Cox with respect to the matters and the time period covered by the audit.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims and causes of action by DOE relating to Cox's compliance in its sales of "newly discovered" crude oil during the period of June 1, 1979 through December 31, 1980. Although Cox contends that in all respects it correctly construed and applied the applicable regulations, Cox has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the terms of the proposed consent Order, within ten days of the effective date of the Consent Order, Cox will pay the sum of $1,206,698 to DOE. The monies will be deposited in a suitable account for ultimate disposition by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Houston, Texas, on November 26, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29935 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-2-1-002]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 11, 1985.

Take notice that on December 4, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute Eighth Revised Sheet No. 4

This tariff sheet is proposed to become effective January 1, 1986. Alabama-Tennessee states that the purpose of this filing is to reflect a correction in rates filed by Tennessee Gas Pipeline Company in its PGA filing to be effective January 1, 1986.

The tariff sheet submitted herewith provides for the following rates:

Rate schedule	Rate after current adjustment
G-1:	
Demand	D_1 $7.96
	D_2 08.26¢
Commodity	12.85¢
Gas	282.55¢
SG-1:	
Commodity	21.41¢
Gas	332.14¢
I-1:	
Commodity	16.71¢
Gas	304.86¢

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December

20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29937 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-15-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia), on December 2, 1985, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

November 1, 1985

Twelfth Revised Sheet No. 1
Second Revised Sheet No. 1A
Third Revised Sheet No. 16A1
Second Revised Sheet No. 16A2
Second Revised Sheet No. 45
Second Revised Sheet No. 45D
Original Sheets Nos. 45G through 45Q, constituting Rate Schedule GTS
Fourth Revised Sheet No. 65
Original Sheets Nos. 72F through 721, constituting Form of Service Agreement for Rate Schedule GTS

January 1, 1986

Third Revised Sheet No. 16A2

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 5, 1985.

The proposed changes were filed pursuant to an order issued by the Federal Energy Regulatory Commission on November 25, 1985, in Docket No. RP86-15, 33 FERC ¶ 61,259 (1985). The proposed changes would implement a new General Transportation Service (GTS) Rate Schedule for firm and interruptible transportation which, if effective, would supersede and cause the elimination of Columbia's existing interruptible Rate Schedules TS-1 and TS-2.

Copies of the filing were served upon the Company's jurisdictional customers, interested state regulatory commissions, and other relevant persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29938 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-14-001]

Columbia Gulf Transmission Co.; Proposed changes in FERC Gas Tariff

December 11, 1985.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on December 2, 1985, tendered for filing six (6) copies of the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective on November 1, 1985:

Second Revised Sheet No. 1 (Table Of Contents)
First Revised Sheet No. 57
Original Sheet Nos. 73 thourgh 101 constituting Rate Schedule GTS-1
First Revised Sheet No. 116
Original Sheet Nos. 135 thourgh 156 constituting Rate Schedule GTS-2

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 5, 1985.

By order issued on November 25, 1985, in Docket No. RP86-14, the Commission accepted Columbia Gulf's transportation rate filing dated October 31, 1985, without suspension to be effective November 1, 1985. 33 FERC 61,259 (1985). The Commission's acceptance was made subject to the condition that Columbia Gulf file the terms and conditions under which it will provide transportation services pursuant to Part 284 of the Commission's Rules and Regulations within seven (7) days of the date of the order eliminating the proposed reservation fee on Columbia Gulf's Rate Schedule T-2. Accordingly, the Columbia Gulf tendered for filing GTS-1 and GTS-2 Rate Schedules under which it proposes to perform such transportation services.

Columbia Gulf states that the interim transportation rates of Rate Schedules GTS-1 and GT-2 have been derived from Columbia Gulf's currently effective interruptible transportation rates applicable to its Rate Schedules T-2 and T-3. The interim rates also reflect a reservation charge for firm transportation which has been developed in accordance with § 284.8(d) and in compliance with the Commission's order issued November 25, 1985. Columbia Gulf has requested any waivers necessary to make its requested rates effective November 1,1985. Upon the effectiveness of Rates Schedules GTS-1 and GT-2, Rate Schedules T-2 and T-3 will be cancelled, all as more fully explained in the filing.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29939 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-119-000]

The Connecticut Light and Power Co.; Filing

December 11, 1985.

Take notice that on November 12, 1985, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO, and together with CL&P, the

NU Companies) and the Connecticut Municipal Electric Energy Cooperative (CMEEC) dated as of August 12, 1985.

CL&P states that the Purchase Agreement provides for a sale to CMEEC, on a weekly basis, of a percentage of capacity and related pondage from the NU Companies' Northfield Mountain Pumped Storage Hydro Electric Project (Project) commencing August 12, 1985 and terminating December 31, 1985.

CL&P requests that the Commission waive its standard notice period and permit the rate schedule to become effective on August 12, 1985.

CL&P states that the capacity charge rate for the Project is a rate determined on a cost-of-service basis for the entire Project. The station service charge is equal to the average cost of oil-fired generation on the system of the NU Companies for the prior month, multiplied by CMEEC's share of the Project's station service energy requirements.

Except for the weekly nature of the transactions, CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by the NU Companies relating to a sale of capacity from the Project to the Braintree Electric Light Department pursuant to a rate schedule dated as of May, 1982. (Rate Schedule FERC Nos. CL&P 272 and WMECO 206).

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

WMECO has filed a Certificate of Concurrence in this docket.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-29921 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-394-004 et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

December 10, 1985.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP82-394-004]

Take notice that on November 1, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-394-004 a petition to amend the order issued March 11, 1983, in Docket No. CP82-394-000 pursuant to section 7(c) of the Natural Gas Act so as to authorized (i) an increase in the authorized aggregate natural gas exchange volumes between El Paso and Phillips Petroleum Company (Phillips) from 95,000 Mcf to 130,650 Mcf per day, (ii) the establishment of three new El Paso delivery points, and the modification of certain provisions necessary to clarify the exchange arrangement between the parties, all as more fully set forth in the petition to amend order which is on file with the Commission and open to public inspection.

El Paso states that it and Phillips propose to exchange additional quantities of natural gas from additional areas within Texas under the existing gas exchange agreement, dated June 18, 1982. It is explained that the proposal facilitates the continuing desire of both El Paso and Phillips to operate more effectively and efficiently their respective pipeline systems located in the Anadarko Basin and the Permian Basin areas in Texas. Moreover, El Paso desires to continue to aid Phillips by making quantities of natural gas dirctly available to Phillips at designated points on El Paso's system in order to meet certain of Phillips system requirements. Therefore, El Paso and Phillips have entered into an amendatory agreement dated May 20, 1985

Under the amendatory agreement between the parties El Paso has agreed to accept for the account of Phillips such volumes of natural gas, if any, up to 130,650 Mcf per day, as Phillips may tender to El Paso at three existing points of interconnection. El Paso states that the three existing points of interconnection are located at the discharge side of Phillips' Benchen plant at a point between the facilities of El Paso Hydrocarbon Company and El Paso in Upton County, Texas, Phillips Fullerton in Andrews County, Texas, and at an existing point of interconnection between the pipeline facilities of El Paso and Phillips in Pecos County, Texas, respectively. Said points are hereinafter referred to as the Benedum receipt point, the Fullerton plant receipt point and the Coates area receipt point. It is asserted that no new or additional facilities are required by any party in order to effectuate deliveries to El Paso at the existing Benedum plant receipt point, the existing Fullerton plant receipt point or the existing Coates area receipt point.

El Paso states that in exchange, it has agreed to deliver concurrently the proposed additional quantities of natural gas to Phillips at two existing delivery points between the facilities of El Paso and Westar Transmission Company, a Division of Cranberry Pipeline Corporation, in Pecos County, Texas and between the facilities of El Paso and Phillips in Gaines County, Texas, delivery point and the Phillips-Gaines delivery point, respectively, and at four proposed delivery points between the facilities of El Paso and Phillips located in Moore, Hutchinson and Gaines Counties, hereinafter referred to as the Zell, Sneed, Sanford and Demprey Booster delivery points, respectively. El Paso states that it would deliver a volume of natural gas thermally equivalent to the total volumes of natural gas delivered by Phillips to El Paso. It is asserted that no new or additional facilities are required by either party in order to effectuate deliveries by El Paso to Phillips at the existing Westar delivery point, to El Paso tap delivery point, and the Phillips-Gaines delivery point. However, in order to effectuate the delivery of natural gas by El Paso to Phillips at the proposal Zell, Sneed, Sanford and Dempsey Booster delivery points, El Paso proposes to construct and operate certain miner tap and valve facilities. El Paso states that the total estimated cost of those minor facilities prepared to be constructed and operated by El Paso to implement the Zell, Sneed, Sanford and Dempsey Booster delivery points, including contingency and filing fees, is $199,638.

El Paso says it would file, pursuant to Part 154 of the Commission's Regulations, the amendatory agreement, dated May 20, 1985, to special Rate Schedule X-63, FERC Gas Tariff, Third Revised Volume No. 2, upon receipt of the requested authorization.

Comment date: December 31, 1985, in accordance with the first subparagrpah of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company; Columbia Gas Transmission Corporation; Southern Natural Gas Company

[Docket No. CP80-72-005]

Take notice that on November 1, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Transmission Corporation (Columbia Gas), 1700 Mac Corkle Avenue, S.E., Charleston, West Virginia 25314, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, (Petitioners) filed in Docket No. CP80-72-000 a petition to amend the order pursuant to section 7(c) of the Natural Gas Act issued January 17, 1980, in Docket No. CP80-72-000, so as to authorize the increase of gas from an additional source as part of the volumes of gas presently being transported and exchanged for Southern's account in accordance with the arrangements authorized, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that, pursuant to the order issued January 17, 1980, they are exchanging up to 25,000 Mcf per day of Columbia Gas' gas reserves from the Cutoff field, Lafourche Parish, Louisiana, made available to Southern at an interconnection of Southern's and Columbia Gulf's pipelines in Lafourche Parish, Louisiana, and Southern's gas reserves from West Cameron Block 563 and Mississippi Canyon Blocks 267, 268,and 312, offshore Louisiana, made available to Columbia Gulf for the account of Columbia Gas at a point at or near the outlet of Texaco's Henry processing plant near Erath, Vermilion Parish, Louisiana. It is stated that any imbalances are corrected at existing Souther and Columbia Gulf redelivery points.

Petitioners request authorization to include, as part of Southern's exchange volumes, gas Southern is purchasing from West Cameron Blocks 537, 551, 552 and 560, offshor Louisiana, which gas Southern Would deliver to Columbia Gulf at a point near Erath, Vermilion Parish, Louisiana.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket Nos. CP86-92-000, CP86-93-000, CP86-94-000, and CP86-95-000]

Take notice that on October 30, 1985, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP86-92-000, CP86-93-000, CP86-94-000 and CP86-95-000 applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing continued natural gas transportation services on behalf of interstate pipelines which were previously initiated pursuant to § 284.221 of the Commission's Regulations and National Fuel's Order No. 60 blanket certificate issued in Docket No. CP81-198 pursuant to section 7 of the Natural Gas Act, all as more fully forth in the applications which are on file with the Commission and open to public inspection.

National Fuel proposes to transport natural gas for the following interstate pipeline companies:

Docket No.	Shipper	Quantities (Mcf per day)
CP86-92-000	Transcontinental Gas Pipe Line Corp. (Transco).	25,000
CP86-93-000	Columbia Gas Transmission Corp. (Columbia Gas).	3,500
CP86-94-000	Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee).	40,000
CP86-95-000	Columbia Gas	10,000

It is explained that National Fuel would transport the natural gas which Transco would purchase from Sulpetro Limited of Canada in Docket No. CP86-92-000; the natural gas to Columbia Gas of Pennsylvania, Inc., on behalf of Columbia Gas in Docket No. CP86-93-000; the natural gas between the interconnection of National's facilities with Tennessee's facilities at the Ellisburg storage field in Potter County, Pennsylvania, and at the Colden storage field in Erie Country, New York, in Docket No. CP86-94-000; and the natural gas on behalf of Columbia Gas from a tap on Line K located in Little Valley, New York, to a compressor station located in Elwood City, Pennsylvania, in Docket No. CP86-95-000.

National Fuel states that it would initially charge 26.72 cents per Mcf of gas transported for all the proposed services except Tennessee's proposed service in Docket No. CP86-94-000. National Fuel and Tennessee have a no fee arrangement for this exchange service, it is stated. It is asserted that the proposed rate of 26.72 cents per Mcf is the rate assessed in accordance with National Fuel's Rate Schedule T-1. Revenues resulting from these services would be treated in accordance with the settlement agreement in Docket No. RP83-63-000, *et al.*, it is asserted.

National Fuel states that it has advised these interstate pipeline companies that it is unable to continue to provide transportation pursuant to National Fuel's current self-implementing authorizations because of the considerable uncertainty that exists with respect to the effect of such action in light of Order No. 436, issued October 9, 1985. In particular, National Fuel advised the shippers that while Order No. 436 would provide for the "grandfathering" of these transportation services, it may subject National Fuel to § 284.7 of the Commission's Regulations which seems to require a rate filing under section 4 of the Natural Gas Act to be effective no later than July 1, 1986, it is stated.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket Nos. CP86-96-000 and CP86-97-000]

Take notice that on October 30, 1985, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP86-96-000 and CP86-97-000 applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the continued respective transportation services on behalf of The Southern Connecticut Gas Company (Southern Connecticut) and Delmarva Power and Light Company (Delmarva) which were previously initiated pursuant to Subpart B of Part 284 of the Commission's Regulations and Section 311(a)(1) of the Natural Gas Policy Act of 1978, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

National Fuel proposes to transport up to 1,500 Mcf of natural gas per day on behalf of Southern Connecticut and 10,000 Mcf of natural gas per day on behalf of Delmarva. It is explained that the proposed charge for both services would be in accordance with National Fuel's Rate Schedule T-1, currently 26.72 cents per Mcf. Revenues resulting from these services would be treated in accordance with the settlement agreement in Docket No. RP83-63-000, *et al.*, it is asserted.

National Fuel states that it has advised Southern Connecticut and Delmarva that it is unable to continue to provide transportation pursuant to National Fuel's current self-implementing authorizations because of the considerable uncertainty that exists with respect to the effect of such action in light of Order No. 436, issued October 9, 1985. In particular, National Fuel advised the two shippers that while

Order No. 436 would provide for the "grandfathering" of these transportation services, it may subject National Fuel to Section 284.7 of the Commission's Regulations which seems to require a rate filing under Section 4 of the Natural Gas Act to be effective no later than July 1, 1986, it is stated.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-199-000]

Take notice that on November 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-199-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and delivery of natural gas to Northern States Power Company (NSP) for the account of Minnegasco dated June 18, 1975, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Minnegasco notified NSP that it wished to terminate their agreement and, in turn, NSP notified Applicant that it wished to terminate the transportation service provided by Applicant since this service is no longer needed. Applicant states that it is currently authorized to deliver up to 5,200 Mcf of gas per day during each summer period to NSP at the St. Paul town border station at Inver Grove, Minnesota. NSP then transports such gas to its Wescott liquefied natural gas plant, where the gas is liquefied and stored for Minnegasco, it is stated.

Comment date: December 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

Raton Gas Transmission Company; Raton Natural Gas Company

[Docket No. CP86-122-000]

Take notice that on October 31, 1985, Raton Gas Transmission Company (Raton Transmission) and Raton Natural Gas Company (Raton Natural), both of P.O. Box 308, Raton, New Mexico 87740, filed in Docket No. CP86-122-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission to abandon facilities and services provided by Raton Natural and a certificate of public convenience and necessity authorizing Raton Transmission to acquire and operate the pipeline facilities now owned and operated by Raton Natural, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Raton Natural is proposing to abandon those facilities and services for which Raton Transmission is seeking certificate authority. Raton Transmission proposes to acquire and operate the pipeline transmission facilities now owned and operated by Raton Natural. Raton Transmission further seeks authority to continue the sales and transportation services currently rendered by Raton Natural pursuant to Commission certificate authorization and authority to initiate sales for resale to Raton Natural at various city gates and other points of delivery.

It is stated that Raton Transmission is not proposing to construct any facilities. It is further stated that upon granting of the requested certificate authorization, Raton Transmission would be regulated solely by the Commission and that Raton Natural would be regulated by the New Mexico Public Service Commission. It is asserted that the sole source of supply for Raton Natural's operations is Colorado Interstate Gas Company, which would continue to be Raton Transmission's supplier.

It is stated that Raton Transmission would continue all sales and services currently rendered by Raton Natural pursuant to certificates issued by the Commission. It is further stated that Raton Transmission seeks authority to make sales for resale of natural gas to Raton Natural. The sales and deliveries would be made at existing city gate and main line delivery points. Raton Transmission would sell and deliver gas to Raton Natural under its proposed Rate Schedules CD-1 and I-1. Raton Transmission proposes to adopt Raton Natural's FERC Gas Tariff as its own, with conforming changes as needed.

It is asserted that the cost of the transmission facilities and other properties as acquired by Raton Transmission from Raton Natural would be reflected on the Raton Transmission books of account at the depreciated original cost as reflected on Raton Natural's books on the closing date. It is further asserted that the financing of the transfer of facilities from Raton Natural to Raton Transmission would be accomplished by the exchange of shares of stock for the facilities. It is stated that Raton Transmission would exchange 612 shares of stock to Raton Natural for the transfer of easement, real estate, property and assets as set forth in the bill of sale between the parties.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company; Natural Gas Pipeline Company of America; Columbia Gulf Transmission Company; United Gas Pipe Line Company

[Docket No. CP77-489-007]

Take notice that on November 1, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, Columbia Gulf Transmission Company (Columbia), 3805 West Alabama Avenue, Houston, Texas 77027, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77-489-007 a petition to amend the Commission's order issued September 7, 1977, in Docket No. CP77-489, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of certain volumes of gas produced from West Cameron Blocks 537, 551, 552, and 560, offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by Commission order issued on September 7, 1977, Petitioners were authorized to exchange certain volumes of natural gas produced from West Cameron Blocks 532, 533, and 586, offshore Louisiana, and purchased by Southern from Sea Robin Pipeline Company (Sea Robin), as provided for pursuant to an exchange agreement among Petitioners dated June 14, 1977. Petitioners state that said gas is transported onshore to a point near the tailgate of Texaco Inc.'s Henry plant located on Section 21, Township 13 South, Range 4 East, Vermilion Parish, Louisiana (Henry point). Petitioners state under the exchange agreement, United agreed to instruct Natural to take delivery of Southern's share of the gas, up to 8,000 Mcf per day, at the existing point of interconnection between United and Natural near the Henry plant (Erath point). Petitioners state, thereafter, Natural agreed to deliver a thermally equivalent volume of gas to Columbia Gulf (Henry point). Petitioners state Columbia Gulf agreed to redeliver thermally equivalent quantities to Southern at the tailgate of the Venice Plant located in Plaquemines Parish, Louisiana (Venice point).

It is stated that on October 26, 1979, Petitioners amended the exchange agreement to facilitate the exchange of up to 25,000 Mcf of additional gas per day produced from West Cameron Block 563, offshore Louisiana, purchased by

Southern from Sea Robin to be delivered for Southern's account near the tailgate of the Henry plant. It is stated that the amendment, approved by the Commission by order issued January 17, 1980, increased the volume of Southern's gas from West Cameron to be exchanged to a total of 33,000 Mcf per day.

Petitioners further state that as a result of Southern's purchase of gas to be produced from West Cameron Blocks 537, 551, 552, and 560, offshore Louisiana, Petitioners executive and amendment to the exchange agreement dated March 11, 1982 to include said gas in the exchange arrangements provided for by said exchange agreement.

Petitioners request authorization to include as part of the authorized exchange volume, the gas Southern is purchasing that is produced from West Cameron Blocks, 537, 551, 552, and 560, offshore Louisiana.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-198-000]

Take notice that on November 8, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-198-000 an applicaiton pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the city of Lawrenceville, Georgia (Lawrenceville), and existing Transco sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it is requesting authorization to transport for Lawrenceville, on an interruptible basis, quantities of natural gas up to 9,000 dt equivalent per day pursuant to a transportation agreement between Transco and Lawrenceville.

It is explained that Lawrenceville would purchase such gas from the following suppliers in the following quantities: Bessemer City, North Carolina (Bessemer), up to 1,000 dt equivilent per day; Laurens, South Carolina (Laurens), up t 3,000 dt equivalent per day; city of Monroe, Georgia (Monroe), up to 2,000 dt equivalent per day (hereinafter collectively referred to as "Suppliers"). The suppliers, all of which are existing Transco sales customers, would make sales to Lawrenceville pursuant to the Commission's emergency regulations, § 157.45, *et seq.* (18 CFR 157.45, *et seq.*). It is averred that Transco would receive the gas at existing interconnection points between Transco and the suppliers, except that quantities from United Cities would be received at an existing point of interconnection between Transco and Southern Natural Gas Company at Jonesboro, Clanton County, Georgia. In turn, Transco would delivery, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at existing interconnection points between Transco and Lawrenceville.

Transco states that for this transportation service it would retain a percentage of the gas received for compressor fuel and line loss make-up and would charge Lawrenceville a transportation rate according to Transco's currently applicable Rate Schedule T-1, as the same may be legally amended or superseded from time to time. It is explained that the transportation agreement which forms the basis of the subject applicable provides for such service to continue in effect for a period of five years from the date of initial deliveries. However, Transco states it would render such transportation service only during periods when the suppliers are authorized to sell such gas to Lawrenceville pursuant to Section 157.45, *et seq.*, of the Commission's Regulations. Further, it is explained that transportation would be conditioned upon the availability of sufficient capacity to provide this service without detriment or disadvantage to Transco's existing customers which depend on Transco's general system supply.

Transco further states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations (promulgated in Order No. 346).

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protect with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 826 North Capitol Street NE., Washington, DC. 20426, a motion to intervene or a protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29918 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6856-001 et al.]

City of Petersburg, AK, et al.; Surrender of Preliminary Permits

December 11, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. City of Petersburg, Alaska

[Project No. 6856-001]

Take notice that The City of Petersburg, Alaska, Permittee for the Thomas Bay Hydropower Project No. 6856, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6856 was issued April 15, 1983, and would have expired May 1, 1986. The project would have been located on Cascade Creek, in the North Tongass National Forest near Petersburg, Alaska.

The Permittee filed the request on November 18, 1985.

2. TKO Power

[Project No. 8687-001]

Take notice that TKO Power, Permittee for the proposed Sugarloaf Hydroelectric Project No. 8687, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 4, 1985, and would have expired on February 28, 1987. The project would have been located on Hat Creek in Shasta County, California.

The Permittee filed the request on November 19, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenenth F. Plumb,

Secretary.

[FR Doc. 85-29922 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 618-004]

Alabama Power Co.; Filing of Minimum Flow Study Report

December 12, 1985.

Public notice is given that Alabama Power Company (APC) filed the results of a minimum flow study with the Federal Energy Regulatory Commission on July 31, 1984. APC was required to conduct a minimum flow study pursuant to Article 29(b) of its license issued on October 27, 1980, for the Jordan Dam Project (Project No. 618) and pursuant to an order approving minimum flow studies issued on October 29, 1982. The project is located on the Coosa River in Elmore, Chilton, and Coosa Counties, Alabama.

In accordance with the requirements set forth in Article 29(a) of its license, APC consulted with the Alabama Department of Conservation and Natural Resources (ADCNR), U.S. and Wildlife Service (FWS), U.S. Environmental protection Agency, and U.S. Army Corps of Engineers in developing a minimum flow study plan. The plan, as approved by the order dated October 29, 1982, was designed to determine the minimum flow releases from the Jordan Dam that would protect fishery, recreational and wildlife resources, water quality of the Coosa River, and navigation on the Alabama River, consistent with other project purposes including, but not limited to, power production and recreation. Based upon the results of the minimum flow analysis and recommendations by APC and the resource agencies, the plan and order called for APC to file a report of its minimum flow study and for the Commission, on the basis of that report, to approve release of an interim minimum flow. For a period of one year following implementation of this interim minimum flow release approved by the Commission, the impacts associated with the interim minimum flow release would be evaluated and, based upon the data obtained from their interim flow assessment, a long-term minimum flow release would be approved by the Commission.

APC's minimum flow study, filed on July 31, 1984, recommended that an interim flow of 188 cubic feet per second (cfs) be released from the Jordan Dam and that this flow be evaluated for a period of one year.

The ADCNR and FWS filed the results of an independent minimum flow study with the Commission on November 13, 1984. Based upon the results of their minimum flow study, the agencies jointly recommended interim flow releases of 4,475 cfs from June through February and 8,950 cfs from March through May. These agencies also recommended that the interim flow assessment be for a period of 2 years. Both agencies have subsequently indicated, however, that they do not support flow recommendations through Jordan Dam that would affect the normal fluctuations of any reservoir on the Coosa River upstream of Jordan Dam.

In this proceeding, the Commission is considering what the interim minimum flow should be and for how long this interim minimum flow should be studied.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in regard to the interim minimum flow issue in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider any protests or other comments filed in regard to this issue, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before February 11, 1986. All comments, protests, and motions to intervene in this interim minimum flow proceeding filed prior to the issuance of this notice will be considered by the Commission as if timely filed; they need not be refiled pursuant to this notice.

Copies of the minimum flow studies filed by APC and by ADCNR and FWS may be obtained from: Federal Energy Regulatory Commission, Division of Public Information, Room 9200, 825 North Capitol Street, NE., Washington, DC 20426.

Filings and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above-named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any motion to intervene must also be served upon Mr. William O. Whitt, Vice President, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29875 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-23-001]

Freeport-McMoran Inc. and Gunnison Capital, Ltd., Notice of Amendment Requesting Commission Certification of Qualifying Status of a Small Power Production Facility

December 13, 1985.

On October 15, 1985, Freeport-McMoRan Inc., 1615 Poydras Street, New Orleans, Louisiana 70161, and Gunnison Capital, Ltd., 3050 Post Oak Blvd., Suite 1175, Houston, Texas 77056 ("Applicant"), filed with the Federal Energy Regulatory Commission ("Commission") an application for certification of a facility as qualifying bottoming-cycle cogeneration facility pursuant to § 292.207 of the Commission's rules. On December 11, 1985, Applicant filed an amendment to its application in which it requested that the Commission also certify the facility as a qualifying small power production facility.

The small power production facility will have a net electric power

production capacity of 49.9 megawatts. The primary energy source for the facility will be waste heat produced in the production of pozzolan. This waste heat will be used to produce steam to drive a turbine generator for the generation of electricity. The facility will be located in Santa Barbara County, California, approximately six miles southwest of Santa Maria.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within ten days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29940 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6845-001]

Hopewell Power Co.; Notice of Surrender of Preliminary Permit

December 12, 1985.

Take notice that Hopewell Power Company, Permittee for the proposed Hopewell Hydro Project No. 6845, has requested that its preliminary permit be terminated. The permit was issued on April 25, 1983, and would have expired March 31, 1986. The project would have been located on the Broad River near Hopewell, Cherokee County, South Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on November 1, 1985, and the preliminary permit for Project No. 6845 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29941 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6847-001]

Lilesville Power Co.; Notice of Surrender of Preliminary Permit

December 12, 1985.

Take notice that Lilesville Power Company, Permittee for the proposed Lilesville Hydro Project No. 6847, has requested that its preliminary permit be terminated. The permit was issued on April 25, 1983, and would have expired March 31, 1986. The project would have been located on the Pee Dee River near Lilesville, Anson County, North Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on November 4, 1985, and the preliminary permit for project No. 6847 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29942 filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-25-000]

Pacific Power & Light Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions, and Establishing Hearing Procedures

Issued December 13, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On October 15, 1985, Pacific Power and Light Company (Pacific) submitted for filing with the Commission a rate schedule providing for charges for load control and load following services.[1] The charges apply to the wheeling of power by Pacific for Bonneville Power Administration (BPA) to BPA's customers located in Pacific's load control area. These services are necessary because some of BPA's customers have not installed appropriate telemetering equipment which would allow BPA to precisely match its generation with the changes in load of its customers in Pacific's service area. The only BPA customer for which Pacific is proposing to charge BPA is the Emerald People's Utility District (Emerald). Pacific wheels power to Emerald for BPA pursuant to a General Transfer Agreement (GTA) between Pacific and BPA which became effective on November 17, 1983. Pacific provides the service to meet the difference between Emerald's instantaneous demand and the demand scheduled to be delivered.[2] The charge is $3.73 kW per month which would result in revenues of about $14,000 per month, until the telemetering equipment is installed. Pacific requests waiver of the notice requirements and an effective date of November 17, 1983, the date on which Emerald commenced providing retail electric service. Pacific characterizes its filing as an initial rate.

Notice of Pacific's filing was published in the **Federal Register**,[3] with comments due on or before October 31, 1985. Timely motions to intervene were submitted by Emerald and BPA. Emerald moved to reject the filing, or, in the alternative, that the filing be determined to be a rate change rather than an initial rate and suspended for five months. Emerald alleges that, under the terms of the *Mobile-Sierra* doctrine,[4] Pacific's unilateral filing of proposed rates for load control and load following services is prohibited because this contradicts the GTA between Pacific and BPA. Emerald notes that the GTA provides that "BPA shall pay Pacific a *mutually-agreeable* Load Control and Load Following Services Charge." Emerald states that the language in the GTA clearly provides that BPA is only required to pay Pacific a load control and load following services charge upon which there has been mutual agreement, that BPA and Pacific have not reached agreement, that Pacific did not reserve any contractual right in the GTA to make a unilateral rate schedule filing in the event of an impasse, and that Pacific did not provide for the Commission to

[1] *See* Attachment for rate schedule designation.

[2] The original GTA between BPA and Pacific was signed on May 4, 1982. Emerald was added as a customer in 1983. While BPA is Pacific's direct customer, by agreement BPA passes on all of its charges to Emerald.

[3] 50 FR 43,422 (1985).

[4] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.: 350 U.S. 332 (1956); FPC* v. *Sierra Pacific Power Co.* 350 U.S. 348 (1956).

act as an arbitrator if the parties were unable to agree upon a charge.

Emerald further argues that Pacific's filing should be rejected because Pacific has failed to provide adequate cost justification for the proposed charge. In this regard, Emerald states that Pacific's purported cost justification is based upon the erroneous assumption that there is a net sale of capacity by Pacific to meet Emerald's load when, Emerald claims, there are times when BPA's deliveries exceed Emerald's load and offset capacity shortages. Emerald also argues that the filing should be rejected as unduly discriminatory. Emerald states that Pacific transfers capacity and energy to 21 other customers of BPA under the GTA, and that the service provided to these other customers does not differ significantly from that provided to Emerald. Pacific's tariff, however, is applicable only to Emerald.

In support of its alternative motion that Pacific's filing be suspended, Emerald notes that since November 17, 1983, Pacific has been compensated through a single rate under the GTA. Emerald contends, therefore, that the proposed rate filing would "supersede, supplement, cancel or otherwise change" provisions of the rate of file with the Commisson, constituting a change in rate. Emerald requests a full five month suspension under this alternative motion because the rate is allegedly not cost-justified and is excessive. Finally, Emerald states that Pacific's requests for waiver of the notice requirements should be denied on the basis that Pacific has failed to demonstrate that good cause exists to justify retroactive application of the proposed rate. Emerald adds that Pacific showed no reason why it delayed filing a "mutually-agreeable" rate, and notes that the clearly-expressed intent of the parties was that a retroactive effective date for the rates was contemplated only for a mutually-agreeable rate.

BPA, in its motion to intervene, request, that Pacific's filing be rejected, or, in the alternative, suspended for five months. BPA reiterates many of the arguments raised by Emerald. Additionally, BPA adds that the filing should also be rejected because it would result in an unlawful double recovery of costs already paid by BPA under the residential exchange subsidiary program of the Northwest Power Act. BPA reasons that, if Pacific's transmission rate does not already recover all costs in serving BPA, one can assume that any shortfall is recovered in Pacific's retail rates. Since these form the basis for the exchange subsidy, BPA concludes that Pacific has already been made whole.

On November 15, 1985, Pacific filed an answer to the motions to intervene. Pacific disputes the claim that its filing is a change in rate. Pacific argues that the rate is an initial rate because there is currently no existing rate on file with the Commission for the services in question. Pacific further states BPA has delayed and consistently fails to review Pacific's proposals for determining the charge, that BPA has refused to deal or negotiate in good faith for a mutually-agreeable charge, and that the Commisson should conclude either that the BPA has by its conduct agreed to Pacific's proposals, or that in absence of mutual agreement, the parties intended that the Commission would approve the charge for the service. Therefore, according to Pacific, the Commission has the authority and duty to accept Pacific's filing, citing *Cities of Bethany et al., v. FERC*, 727 F.R.2d 1131 (D.C. Cir 1984). [5] Pacific also insists that it has provided adequate support for its filing and that, given BPA's conduct during the negotiations, good cause exists to waive the notice requirements.

Finally, Pacific disputes Emerald's contentions that its filing is not cost-justified and is unduly discriminatory.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make Emerald and BPA parties to this proceeding.

The Commission will deny Emerald's and BPA's motions to reject Pacific's filing. First, we note that the parties have provided for Emerald's power deliveries a separate charge for a separate service under the GTA. This provision was added as a supplement to the GTA after a rate was already established for the other services specified in the GTA. The additional service applies specifically to Emerald and not to Pacific's other customers under the GTA. Thus, the charge for the supplemental service appropriately applies only to Emerald.[6]

Second, the Commission disagrees with the intervenors that we cannot accept the charge for filing simply because it has not been agreed to by both parties. Reasonably interpreted, we believe that the provision in the parties' agreement regarding the load control and load following charge provides a two-step procedure which allows for a charge to be established by Pacific prior to mutual agreement on that charge. The provision (Exhibit B of Table 22) reads as follows:

> If the *initially proposed charge* is developed by the Company *within 60 days* of the effective date hereof, *then* the *mutually agreeable charge* shall be paid *retroactively* to the effective date of this exhibit. (emphasis added.)

Pacific complied with the first step by developing an initially proposed charge within 60 days of the effective date of the agreement. It has provided the agreed-upon service for two years and has billed this proposed charge, although the pleadings suggest that payment has not been made. This proposed rate has been the basis for the discussions regarding a mutually agreeable charge, however unsuccessful they have been to date. In our view, the only reasonable construction of the above language is that a preliminary rate was to be proposed to take effect during the process of negotiating a final rate. We are not prepared to conclude that Pacific agreed to provide additional service free of charge for an indefinite period while negotiations were pending, even on the assumption that a mutually agreeable rate would be retroactively applied years after the fact.

In any event, the Federal Power Act requires that the applicable rate be on file with the Commission for the jurisdictional service being provided.[7] The parties cannot negotiate away this obligation. If the Commission were to reject the filing because it has not been mutually agreed upon by the parties, there would be no other method for the supplying utility to submit any charge for filing with the Commission, if both parties did not otherwise agree to an appropriate charge. We shall therefore accept the proposed rate for filing and initiate procedures to resolve the parties' controversy. We strongly encourage the parties to utilize our settlement procedures under Subpart F of the Commission's Rules of Practice and Procedure (18 CFR Part 385), to assist in more quickly reaching a satisfactory agreement.

Our review of Pacific's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates

[5] BPA and Emerald also cite *Cities of Bethany* in support of their request that Pacific's filing be rejected.

[6] This discussion also explains why Pacific's characterization of the submittal as an initial rate filing is erroneous.

[7] 16 U.S.C. 824d(c). *See also* 18 CFR 35.1; *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1961).

for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that Pacific's proposed rates may not yield substantially excessive revenues. In light of the fact that Pacific has been providing the load control and load following services on Emerald's behalf without compensation since November 17, 1983, we find that good cause exists to waive the notice requirements. Therefore, we shall suspend Pacific's rates to become effective on November 17, 1983, subject to refund.

The Commission orders:

(A) Emerald's and BPA's motions to reject Pacific's filing are hereby denied, as provided in the body of this order.

(B) Pacific's request to waive the notice requirements is hereby granted.

(C) Pacific's proposed rates are hereby accepted for filing and suspended to become effective, subject to refund, on November 17, 1983.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(b) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Pacific's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by Pacific, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Subdocket No. -000 of Docket No. ER86-25 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-25-001.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Rate Schedule Designation

Designation	Description
(1) Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 237	Service Schedule LF-1

[FR Doc. 85-29943 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-47-000]

Samedan Oil Corp.; Notice of Petition for Issuance of a Rule

December 12, 1985.

Take notice that on August 26, 1985, Samedan Oil Corporation (Samedan), filed a petition pursuant to Rule 207(a)(4) of the Commission's rules of practice and procedure requesting the Commission to issue a "rule of general applicability" determining that the Commission has jurisdiction under the Natural Gas Policy Act of 1978 (NGPA) over royalties received by royalty interest owners for sales of natural gas subject to NGPA maximum lawful prices. Alternatively, Samedan requests the Commission to issue an order stating that Samedan and other operators similarly situated are not obligated to make Btu refunds under Commission Order Nos. 399, 399-A and 399-B, attributable to defaulting royalty interest owners.

Samedan argues that Commission jurisdiction over first sales of natural gas should be extended to encompass royalties received by royalty interest owners because royalty payments represent a transfer for value within the meaning of section 2(20) of the NGPA. Samedan states that royalty owners transfer their rights to the natural gas underlying leased lands in exchange for value in the form of royalty payments. This transfer for value is a first sale within the meaning of section 2(21) of the NGPA, according to Samedan, because it precedes the sale of gas by Samedan to its purchasers.

Samedan's request for alternative relief is based on the assertion that it is the Commission's responsibility to relieve operators from the obligation to pay uncollectible Btu refunds attributable to royalty interest owners if the Commission in unwilling to assert jurisdiction owner royalty owners as first sellers under the NGPA.

Any person desiring to be heard concerning Samedan's petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register**. Copies of the petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29944 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-29-004]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 11, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 4, 1985 the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Tariff Sheets Proposed To Be Effective November 1, 1985

Second Substitute Thirty-Seventh Revised Sheet No. 12

Substitute Thirty-Seventh Revised Sheet No. 15

Second Substitute Second Revised Sheet No. 15-A

Tariff Sheets Proposed To Be Effective January 1, 1986 [1]

Substitute Thirty-Eighth Revised Sheet No. 12

Substitute Thirty-Eighth Revised Sheet No. 15.

These revised tariff sheets reflect an increase of 0.6¢ per dt above the rates originally proposed to be effective November 1, 1985 in this docket.

On October 1, 1985, Transco filed with the Commission its regularly scheduled semi-annual PGA rate filing in Docket No. TA86-1-29, *et al.* proposed to become effective November 1, 1985. Such filing reflected no change in the current commodity gas cost component (approximately $3.01 per dt) of Transco's rates from that reflected in Transco's filing in Docket No. TA85-3-29, effective April 1, 1985. Such filing did reflect, however, a 3.5¢ per dt increase

[1] These sheets are being filed in order to include the rate changes reflected in this filing on the revised tariff sheets filed by Transco on November 27, 1985 with a proposed effective date of January 1, 1986 to reflect the 1986 Gas Research Institute (GRI) Adjustment.

due to a revision in the Deferred Adjustment necessary to discharge the balance in the appropriate subaccount of FERC Account No. 191.

In response to an informal Staff request, Transco submitted supporting information on October 18, 1985 as a supplement to its October 1, 1985 filing. This supporting information included a detailed estimate of Transco's projected commodity cost of gas (approximately $3.02 per dt) for the six month period commencing November 1, 1985.

By order dated November 15, 1985, the Commission accepted Transco's tariff sheets for filing and suspended the filing to become effective November 1, 1985 subject to refund and subject to conditions as set forth in the order.

Concurrently with the instant filing, Transco has filed a Petition for Clarification or Rehearing and Notice of Contingent Substitute PGA Filing Effective November 1, 1985 (Petition). The purpose of Transco's Petition is to request clarification of the November 15, 1985 order in Docket No. TA86-1-29, *et al.* with respect to the "at risk" condition placed on Transco in such order. As more fully described in the Petition, Transco is requesting that the Commission clarify whether the intended magnitude of the financial risk the Commission is placing on Transco is limited to the difference between the detailed rate supported by Transco in its Supplemental Information filing in Docket No. TA86-1-29 and the rate which Transco voluntarily elected to charge its customers in order to reflect no change in its resale rates effective November 1, 1985. Such difference amounts to approximately $2.4 million.

The purpose of the instant filing is to adjust Transco's commodity rates to reflect the approximately $3.02 per dt cost of gas which was fully supported by the detailed information contained in the Supplemental Information Filing. As more fully described in Transco's Petition, the instant filing is being requested to be made effective contingent upon the Commission either (1) not clarifying its Order as requested in Transco's Petition or alternatively, (2) not granting rehearing and vacating the "at risk" condition for the reasons set forth in Transco's Petition.

Transco states that copies of the instant filing are being mailed to its jurisdiction customers, interested state commissions and intervenors in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29945 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-395-002 et al.]

TXP Operating Co.; Notice of Application to TXP Operating, Co., as Successor in Interest, for Certificate of Public Convenience and Necessity To Render Service Previously Authorized in Certificates of Public Convenience and Necessity Issued to Transco Exploration Co.

December 10, 1985.

Take notice that on November 18, 1985, TXP Operating Company (TXPO), of P.O. Box 1398, Houston, Texas, 77251, filed an application pursuant to Section 7 of the Natural Gas Act and § 157.23 *et seq.* of Subpart E of the regulations of the Federal Energy Regulatory Commission (Commission), requesting authority, as successor in interest to Transco Exploration Company (TXC), to render natural gas service previously authorized by the Commission in all the properties covered by TXC's certificates of public convenience and necessity issued in the docket listed on Exhibit "A" attached hereto. TXOP also requests to be substituted for TXC in any proceedings related to such dockets.

By general conveyance document dated effective as of July 20, 1983, TXC conveyed its interest in certain properites to TXPO. As a result, TXPO acquired all of the interests of TXC in the properties which are subject to the certificates of public convenience and necessity issued to TXC in the dockets listed on Exhibit "A". In all but one case, assignments from TXC to TXPO are not available because either the leases related to a particular property have expired or TXC acquired its interest in a particular property pursuant to its participation in a joint venture and legal title to such property is held in the joint venture operator's name. Legal title to the properties will eventually be assigned by such operators; however, such operators will assign title directly to TXPO. TXPO requests authority to continue the natural gas service authorized by the Commission in such dockets as successor in interest to TXC and that TXC's rate schedules as identified in Exhibit "A" be redesignated as those of TXPO.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Field/State	Rate schedule No.	Certificate docket No.	Purchaser	Joint venture program	TXC-TXPO assignment
South Ewing Field, San Patricio County, TX	2	C175-395	TGPL	N/A	All leases have expired.
Southwest Bird Island Field, Kleberg County, TX	3	C176-296	TGPL	Transmac I Exploration Program	No.
LaFourche Crossing Field, Lafourche Parish, LA	5	C176-232	TGPL	N/A	All leases have expired.
Loisel Field, Iberia Parish, LA	8	C177-303	TGPL	Transmac I Exploration Program	No.
Myette Point Field St. Mary Parish, LA	9	C177-306	TGPL	do	No.
Myette Point Field, St. Mary Parish, LA	10	C177-308	TGPL	do	No.
Kawitt Field, Karnes County, TX	11	C177-383	TGPL	do	No.

EXHIBIT A—Continued

Field/State	Rate schedule No.	Certificate docket No.	Purchaser	Joint venture program	TXC-TXPO assignment
Myette Point Field, St. Mary Parish, LA	12	C177-401	TGPL	do	No.
N. Hester Field, St. James Parish, LA	15	C177-515	TGPL	M-T 1976 Exploration Program	No.
Southeast Avery Island Field, Iberia Parish, LA	18	C177-539	TGPL	Transmac I Exploration Program	No.
Bastian Bay Field (Bolivar Point), Plaquemines Parish, LA	19	C177-541	TGPL	do	No.
Stephenson Point Field, Galveston County, TX	20	C177-711	TGPL	M-T 1976 Exploration Program	No.
East Collins Field, Covington County, MS	22	C177-776	TGPL	do	No.
Chandeleur Sound Block 56 & 59, Offshore, LA	31	C176-151	TGPL	Transmac I Exploration Program	No.
Northeast White City Field, Eddy County, NM	35	C179-20	TGPL	C&K/Enstar 1977 Exploration Program	No.
Campbell Ranch Field, Hemphill & Roberts Counties, TX	39	C178-1190	TGPL	do	No.
West Hickishaugh Field, Tyler County, TX	42	C179-433	TGPL	M-T 1977 Exploration Program	No.
South Bayou Pigeon Field, Iberia Parish, LA	43	C179-348	TGPL	N/A	Yes.
Big Point Field, St. Tammany Parish, LA	44	C179-485	TGPL	M-T 1975 Exploration Program	No.
Matagorda Island Block 555, Offshore, LA	67	C183-173	Florida Gas Transmission Co.	Moxy II Exploration Program	No.

[FR Doc. 85-29946 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-86-002 et. al.]

Valero Interstate Transmission Co. et al.; Notice of Filing of Pipeline Refund Reports and Refund Plans

December 11, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 23, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
11/14/85	Valero Interstate Transmission Co.	RP85-86-002	Report.
11/15/85	Panhandle Eastern Pipe Line Co.	TA84-2-30-011	Do.
11/15/85	Natural Gas Pipeline Co. of America.	RP72-132-003	Do.
11/15/85	East Tennessee Natural Gas Co.	RP71-15-019	Do.
11/20/85	Alabama-Tennessee Natural Gas Co.	RP85-117-007	Do.
11/22/85	Transwestern Pipeline Corp.	RP85-88-002	Btu.[1]

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings receive new sub-docket numbers.

[FR Doc. 85-29947 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

Cases Filed; Office of Hearings and Appeals Week of November 22 Through November 29, 1985

During the Week of November 22 through November 29, 1985, the applications for 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.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 10, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 22 through Nov. 29, 1985]

Date	Name and location of applicant	Case No.	Type of submission
November 25, 1985	Consolidated Materials, Inc. New Orleans, LA	KRX-0006	Supplemental Order. If granted: The Office of Hearings and Appeals would modify the procedures for the evidentiary hearing to be convened in connection with the enforcement proceeding initiated against Consolidated Materials, Inc. (Case No. HRO-0107).
November 27, 1985	Fields Energy Resources, Inc. Houston, TX	KRW-0001	Remedial Order Finalization. If granted: The Economic Regulatory Administration has requested that a Proposed Remedial Order issued to Fields Energy Resources, Inc. on January 23, 1985, would be issued as a final Remedial Order.

Date received	Name of refund proceeding/name of refund applicant	Case No.
November 25, 1985	Gulf/W. T. Garrick Gulf	RF40-3078
Do	Quaker State/Central Electric Cooperative, Inc.	RF213-4
Do	Gate/Weiss Oil Corporation	RF205-3
Do	Peterson/Midway Oil Corporation	RF199-3
Do	Pennzoil/Puerto Rico	RQ10-245
Do	Hendel's/Kyttle's Chevron	RF79-24
November 26, 1985	Husky/Bonded Petroleum, Inc.	RF161-88
November 25, 1985	Champlain/Armand Kaigle	RF167-15
November 26, 1985	VGS/Gresham Petroleum Company	RF191-3
November 27, 1985	Quaker State/ACCO, Inc	RF213-5
Do	True/Little America Refining	RF195-8
November 29, 1985	Quaker State/Ross Corporation	RF213-6
Do	VGS/Defense Fuel Supply Center	RF191-4

Date received	Name of refund proceeding/name of refund applicant	Case No.
Do	Union Texas/Dawson Oil Co., Ltd.	RF140-34
November 25, 1985.	Charter/Georgia	RQ23-246
Do	Perry Gas/Georgia	RQ183-247

[FR Doc. 85-29933 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of December 2 Through December 6, 1985

During the week of December 2 through December 6, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application 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 it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order 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.

December 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Bill's Oil Company, Inc., Fitzwilliam, New Hampshire; KEE-0008

Bill's Oil Company, Inc. filed an Application for Exception from the Energy Information Administration reporting requirements. The exception request, if granted, would relieve the firm of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On December 4, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-29934 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1555]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 11, 1985.

In FR Doc. 85-29418, published on December 12, 1985, pg. (50) FR 50842, the following change is made:

The docket number appearing on pg. 50843, first column, lines 9 and 10, should read: "CC Docket No. 85-40".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-29895 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

HPK Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *HPK Financial Corporation,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Hyde Park Bank and Trust Company, Chicago, Illinois.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Frontier National Bancshares Corporation,* Round Rock, Texas; to acquire 100 percent of the voting shares of Security National Bank, Elgin, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bancorp of Arizona, Inc.,* Tucson, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Tucson, Tucson, Arizona. Comments on this application must be received not later than January 3, 1986.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29876 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Meridian Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to engage *de novo* through its subsidiary, DBS Discount Brokerage Services, Inc., Reading, Pennsylvania, in the provision of securities brokerage services, i.e., the buying and selling of securities solely as agent for the account of customers. In connection therewith, the Company may engage in securities credit activities, pursuant to 12 CFR Part 220, and incidental activities such as offering custodial services. The Company will not engage in securities underwriting or dealing, and will not provide investment advice or research services. This will be done pursuant to § 225.25(b)(15) of Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jamestown Union Bancshares, Inc.*, Jamestown, Tennessee; to engage *de novo* through its subsidiary, Jamestown Loan & Thrift Corporation, Jamestown, Tennessee, in industrial loan and thrift activities, pursuant to § 225.25(b)(2) of Regulation Y. These activities would be conducted in Jamestown, Tentress County, Tennessee. Comments on this application must be received not later than January 9, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Banks, Inc.*, Middleton, Wisconsin; to engage *de novo* through its subsidiary, CBJ Trust and Financial Services, Inc., Madison, Wisconsin, in performing trust company functions, including living trusts, testamentary trusts, agency, guardianships, estates, escrow accounts, custodial form management, employee benefits, and other personal trust services, pursuant to § 225.25(b)(3) of Regulation Y.

2. *LaSalle National Corporation*, Chicago, Illinois; to engage *de nova* through its subsidiary, LaSalle Brokerage Services, Inc., Chicago, Illinois, in securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y. Comments on this application must be received not later than January 9, 1986.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benson Investment Company*, San Antonio, Texas; to engage *de novo* through its subsidiary, Bancshares Life Insurance Company, Phoenix, Arizona, in acting as reinsurer for credit life, and credit accident and life insurance that is directly related to an extension of credit by the bank holding company system, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the State of Texas.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Capital Markets, Inc., Houston, Texas, in the origination, sale and servicing of commercial loans, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29877 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Midwest Financial Group, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The Company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 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 January 2, 1986.

A. **Federal Reserve Bank of Chicago** (Frankin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois, to engage *de novo* through its subsidiary, Midwest Financial Group Brokerage Services, Peoria, Inc., Illinois, in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29878 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Trust and Banking Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Boar of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation*, Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Mitsubishi Trust and Banking Corporation, (USA), New York, New York, a proposed new bank.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylania 19105:

1. *Pennsylvania National Financial Corp.*, Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Hamburg Savings and Trust Company, Hamburg, Pennsylvania.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Randall Bank Employee Stock Option Ownership Trust*, Madison, Wisconsin; to become a bank holding company by acquiring 50 percent of the voting shares of Randall Corporation of Wisconsin, Inc., Madison, Wisconsin, and thereby indirectly acquire Randall Bank, Madison, Wisconsin.

2. *Randall Corporation of Wisconsin, Inc.*, Madison, Wisconsin; to become a bank holding company be acquiring 100 percent of the voting shares of Randall Bank, Madison, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Bank of Oldham Count, Lagrange, Kentucky.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29879 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

New Tripoli Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be avilable for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any coment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that woud be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *New Tripoli Bancorp, Inc.*, New Tripoli, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The New Tripoli National Bank, New Tripoli, Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Vernon Baneshares, Inc.*, Leesville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of The Vernon Bank, Leesville, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ASB Bankcorp, Inc.*, Adrian, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Adrian State Bank, Adrian, Michigan.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29880 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Rurban Financial Corp.; 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 officers 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 January 10, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Rurban Financial Corp.*, Defiance, Ohio; to acquire Rurbanic Data Services, Defiance, Ohio, and provide data processing services to banks including information processing for applications by customers for bank services, deposit account information and data analysis. The Company also provides payroll services for nonbank customers and billing services for independent telephone companies. The Company also assists banks it serves in acquiring related equipment and coordinating group buying of some form documents. Applicant believes these activities are permitted by § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29881 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Shawmut Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection as the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Brokerage Services, Inc., Boston, Massachusetts, in securities brokerage services including the purchase and sale of securities as agent for the account of customers; related securities credit activities, pursuant to Regulation T; custodial services; individual retirement accounts; Keogh accounts; cash management services; and other activities incidental to general securities brokerage, but not including securities underwriting, investment advice or research activities, pursuant to 225.25(b)(15) of Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Fidelcor Brokerage Services, Inc., Philadelphia, Pennsylvania, in securities brokerage services, pursuant to section 225.25(b)(15) of Reguation Y. Comments on this application must be received not later than January 3, 1986.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, SCN Discount Brokerage Services, Inc., Columbia, South Carolina, in securities brokerage services solely as agent for the account of customers, pursuant to 225.25(b)(15) of Regulation Y. These activities would be conducted on a nationwide basis.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to engage *de novo* through its subsidiary, D.C. Investments, Inc., Jackson, Mississippi, in securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15) of Regulation Y.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dryer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal*, Montreal, Quebec, Canada; *Bankmont Financial Corp.*, New York, New York; and *Harris Bankcorp, Inc.*, Chicago, Illinois; to engage *de novo* through Harris Bankcorp, Inc.'s wholly-owned subsidiary, Derivative Markets, Management, Inc., Chicago, Illinois, in investment advice primarily to institutional investors and select individual investors, including pension and profit sharing trusts, insurance companies, foundations and endowment funds, pursuant to § 225.25(b)(4)(i) through (v) of Regulation Y. These activities would be conducted in the U.S. and subject to any required regulatory approvals, in select foreign countries.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebraska National Corporation*, Omaha, Nebraska; to engage *de novo* directly in direct lending and loan servicing activities, such as mortgage lending and mortgage loan servicing activities, pursuant to § 225.25(b)(1) of Regulation Y, and to provide management consulting services to nonaffiliated financial institutions, pursuant to § 225.25(b)(11) of Regulation Y.

G. **Federal Reserve Bank of Dallas**, (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bankshares, Inc.*, Abilene, Texas; to engage *de novo* through its subsidiary, First Independent Computers, Inc., Abilene, Texas, a *de novo* company, in data processing and data transmission services for financial, banking, or economic data to other persons, firms or corporations, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than January 3, 1986.

H. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells & Fargo Company*, San Francisco, California; to engage *de novo* through its subsidiary, Wells Fargo Brokerage Corporation, San Francisco, California; in providing securities brokerage services and related

securities credit activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29882 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Standard Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has 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 securities of a bank or bank holding company. The listed company has 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 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 outweight 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 January 9, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Standard Bancshares, Inc.*, Evergreen Park, Illinois; to acquire 100 percent of the voting shares of Hickory Bancorp, Inc., Hickory Hills, Illinois, thereby indirectly acquiring Bank of Hickory Hills, Hickory Hills, Illinois.

Applicant also has applied to acquire Hickory Insurance Agency, Hickory Hills, Illinois, and thereby engage in acting as agent in the sale of insurance limited to assuring repayment of the outstanding balance on an extension of credit by a finance company in the event of loss or damage to any property used as collateral for such extension of credit, and provided such extension of credit does not exceed the limits set forth in section 4(c)(8)(B) of the Act.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29883 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Suntrust Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 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 January 7, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Brokerage Services, Inc., Atlanta, Georgia, in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29884 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiaries, BancBoston Brokerage, Inc., Boston, Massachusetts (BancBoston) and Colbanc Securities Ltd., Waterbury, Connecticut (Colbanc), in securities brokerage services, related securities credit activities and certain incidental activities, pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted Nationwide and Australia, Bahamas, Belgium, Bermuda, Canada, England, France, Japan, Korea, Sri Lanka, Sweden, Switzerland, and West Germany for BancBoston; and Nationwide for Colbanc. Comments on this application must be received not later than January 6, 1986.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation*, Winston-Salem, North Carolina; to engage *de novo* through its subsidiary, First Wachovia Brokerage Service Corporation, Winston-Salem, North Carolina, in buying and selling publicly-traded securities as agent, solely for the account and on the order of its customers (securities would include common stocks, corporate bonds, municipal bonds and other government securities, certain investment company securities and options); extending related securities credit to its customers, pursuant to Regulation T; offering incidental services to its customers such as securities safekeeping, self-directed individual retirement accounts, and cash management services. The subsidiary would not offer any investment advice or research services to its customers and would not engage in securities underwriting, pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted on a nationwide basis.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dairy State Financial Services, Inc.*, Plymouth, Wisconsin; to engage *de novo* directly in acting as agent or broker in selling credit life insurance and accident and health insurance directly related to extension of credit by its subsidiary bank, Dairy State Bank, Plymouth, Wisconsin, pursuant to § 225.25(8)(i)(A) of Regulation Y.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Marquette Investors Services Incorporated, Minneapolis, Minnesota, in offering securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y. Comments on this application must be received not later than January 6, 1985.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to engage *de novo* through its subsidiary, TABrokerage, Inc., Fort Worth, Texas, in providing securities brokerage activities restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or the provision of investment advice or research services, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29867 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

The Bank of New York Co., 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) of (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 office 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 aggrived 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 January 3, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to acquire RMJ Securities Corporation, New York, New York, and thereby engage in acting as broker to primary dealers for U.S. government securities and agency obligations, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29868 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Bergen Bank A/S; Acquisition of Company Engaged in 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. 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 January 13, 1986.

Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Bergen Bank A/S*, Bergen, Norway; to acquire at least 20 percent of the voting shares of Skandinaviska Enskilda Banken Corporation, New York, New York, an investment company organized under Article XII of the New York Banking Code, and thereby engage in commercial lending; mortgage lending; loan servicing; leasing; issuing letters of credit; purchasing and discounting acceptances, drafts, and similar instruments; buying and selling foreign exchange, coin and bullion; receiving money for transmission to and from the United States; receiving time deposits at branches located outside the United States; and receiving and maintaining credit balances. These activities would be conducted in accordance with the provisions of section 225.25. of Regulation Y and the Board's previous decisions.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29868 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

CB Financial Corp. et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB Financial Corp.*, Warrenton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Warrenton, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bancorp, Inc.*, Joliet, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Joliet, Joliet, Illinois.

2. *Shelby County Bancorp, Inc.*, Shelbyville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Shelby County State Bank, Shelbyville, Illinois.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOS, Inc.*, Naples, Florida; to acquire 88 percent of the voting shares of Sandstone State Bank, Sandstone, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *NBR Financial, Inc.*, Boulder, Colorado; to acquire 100 percent of the voting shares of National Bank of the Rockies in Colorado Springs, Colorado Springs, Colorado, a proposed *de novo* bank.

2. *Tampa State Bankshares, Inc.*, Tampa, Kansas; to merge with Chase County Bankshares, Inc., Strong City, Kansas, thereby indirectly acquiring Chase County Bank, Strong City, Kansas.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American Southwest Bancshares, Inc.*, El Paso, Texas; to acquire 80 percent of the voting shares of Western Bancshares of El Paso, Inc., El Paso, Texas, thereby indirectly acquiring Western Bank of El Paso, El Paso, Texas.

2. *National Bancshares Corporation of Texas*, San Antonio, Texas; to acquire 100 percent of the voting shares of City National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29870 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; 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 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 January 2, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to acquire the assets and liabilities of Northeast Exchange Ltd. 1984–1, a Texas partnership, and thereby engage in data processing and transmission activities, pursuant to § 225.25(b)(7) of Regulation Y. These activities are to be conducted in the States of Connecticut, Delaware, New Jersey, New York, and Pennsylvania.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29871 Filed 12–17–85; 8:45 am]

BILLING CODE 6210–01–M

First United Bancorp et. al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on this question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 3, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Bancorp*, Franklin, Indiana; to acquire Franklin Financial Corporation, Indianapolis, Indiana, and thereby engaged in the origination, package, sale and servicing of commercial and mortgage loans, the origination of small consumer loans, and the origination of finance leases, pursuant to §225.25(b)(1) and § 225.25(b)(5) of Regulation Y, respectively.

2. *First United Bancorp*, Franklin, Indiana; to acquire Franklin Mortgage Corporation, Indianapolis, Indiana, and thereby engage in residential mortgage lending, servicing and brokering, and commercial mortgage loan servicing and brokering, pursuant to § 225.25(b)(1) of Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *T N Bancshares, Inc.*, El Paso, Texas; to acquire Coronado Life Insurance Company, El Paso, Texas, and thereby engage in the activity of underwriting credit life and credit accident and credit health insurance directly related to extensions of credit, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29872 Filed 12–17–85; 8:45 am]

BILLING CODE 6210–01–M

Horizon Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 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 isn 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 January 2, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Horizon Bancorp*, Morristown, New Jersey; to engage *de novo* through its subsidiary, Horizon Brokerage Services, Inc., New York, New York, in providing securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, which will be restricted to buying and selling securities solely as agent for the account of customers as permitted by § 225.25(b)(15) of Regulation.

Board of Governors of the Federal Reserve System, December 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30086 Filed 12-17-85; 9:40 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Extension of Time for Filing of Comments on Proposal To Modify Cigarette Testing Procedure

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has extended for ninety (90) days the time period for filing of comments on its proposal to modify the cigarette testing procedure.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, Program Advisor, Cigarette Advertising and Testing, 6th & Pennsylvania Ave., NW., Washington, DC 20580, (202) 376-8648.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the Federal Trade Commission published a Federal Register Notice proposing modification of its cigarette testing procedure, and requesting comments on the proposal. A sixty (60) day commend period—until December 12, 1985—was announced. In response to a request by Brown & Williamson Tobacco Corporation, the Commission is now extending the comment period an additional ninety (90) days—until March 12, 1986—to enable all interested parties to submit comments.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-28948 Filed 12-17-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-333-CN; BERC-335-CN]

Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

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

ACTION: Correction of proposed notices.

SUMMARY: For purposes of avoiding possible confusion on the part of the public, this document corrects certain technical errors that appeared in two proposed notices published in the Federal Register on November 22, 1985 (50 FR 48304 and 50 FR 48313).

FOR FURTHER INFORMATION CONTACT: Steve Kirsh, (301) 594-9465.

SUPPLEMENTARY INFORMATION:

A. In Federal Register Document 85-27767 beginning on page 48304, in the issue of November 22, 1985, make the following corrections:

1. On page 48307, the "Revised Limit" amount on line five of the third column is corrected by replacing "$40.77" with "$90.77".

2. On page 48312, the first Table IV in the third column, inadvertently included in the proposed notice, is deleted.

As indicated by the information provided in sections III.B.2. and IV of the November 22, 1985 notice [50 FR 48307], the correct cost reporting year adjustment factors are reflected in the second Table IV appearing at page 48312.

B. In Federal Register Document 85-27768 beginning on page 48313, in the issue of November 22, 1985, make the following corrections:

1. On page 48316, the computation for the combined national average monthly hospital wage in column two is corrected to read as follows:

$$\frac{6375+4990}{10}=\$1137$$

2. On page 48319, line six of the first column is corrected by replacing "October 1, 1985" with "January 1, 1986".

3. On page 48322, the nonlabor component A & G add-on under the *Computation of Adjusted Limit* at the beginning of the first column is corrected by replacing ".42" with ".41".

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: December 12, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-29957 Filed 12-17-85; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 1279, January 19, 1985) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

The changes include establishing a new Division of Information Resources Management (DIRM) in the Office of Management and Operations (OMO), Office of the Commissioner (OC), in the Food and Drug Administration (FDA) and transferring the telecommunication function from the Division of Managment Services, the Agencywide systems management function from the Division of Management Systems and Policy, and the Agencywide ADP security function from the Division of Ethics and Program integrity of the new Division.

Section HF-B, Organization and Functions is amended as follows:

1. Insert a new paragraph [h-8], *Division of Information Resources Management (HFA73).*

[h-8] *Division of Information Resources Management (HFA73).* Supervises major information resources management functions including standards development, systems management, telecommunications, and development of an ADP and telecommunications plan and budget.

Develops standards to assist in linking data and systems across center and program lines.

Provides Agency telecommunications.

Designs, implements, and coordinates planning a process that results in an Agency 5-year ADP and telecommunications plan with annual updates.

Advises the Commissioner on information resources management issues.

Represents the Agency to the Office of the Assistance Secretary of Health and the Office of the Secretary on information resources management.

Reviews and approves all Agency telecommunications and automated systems support Memoranda of Need, contract proposals, Interagency Agreements, and requisitions.

Provides consultation, technical advice, and assistance in the selection and use of equipment, options, and services to process information.

Directs the Agency's ADP Security Program.

2. Delete subparagraph [h–2], *Division of Management Services (HFA75)* and insert a new subparagraph [h–2], *Division of Management Services (HFA75).*

[h–2] *Division of Management Services (HFA75).* Provides leadership and guidance to Headquarters staff offices, Headquarters operating activities, and field activities for all management services programs including personal property management and accountability, real property management, space management and utilization, safety management and occupational health, construction and engineering services, graphic, arts, printing and reproduction, microform management, and mail and files.

Develops and conducts management programs in directives management, reports and forms management, and other management areas as assigned.

Responsible for maintaining effective liaison with the Government Printing Office and for the centralized clearance and coordination of all printing and publication services.

Coordinates the development of Agencywide policies and procedures for such services; plans, executes, evaluates, and adjusts efforts in these activities.

3. Delete subparagraph [h–3], *Division of Management Systems and Policy (HFA76)* and insert a new subparagraph [h–3], *Division of Management Systems and Policy (HFA76).*

[h–3] *Division of Management Systems and Policy (HFA76).* Provides leadership and direction in the effective and efficient use of Agency resources; provides Agencywide consulting services organization and operations analysis and in the analysis, design, implementation, and maintenance of operating systems and procedures.

Provides central FDA control for delegations of authority and maintains control files of delegations to and within the Agency.

Conducts Agencywide organization, management, and industrial engineering studies; designs and recommends systems and procedures; develops and recommends policy to implement study conclusions.

Provides computer systems analysis and applications programming services for the staff officers of the Commissioner.

Receives, examines, evaluates, and processes all documents and correspondence required or permitted in Agency administrative rulemaking procedures; distributes this material to appropriate Agency components.

Provides advice and assistance to the Agency in such areas as training, career development, awards, and performance management.

4. Delete suparagraph [h–7], *Divisons of Ethics and Program Integrity (HFA72)* and insert a new subparagraph [h–7], *Division of Ethics and Program Integrity (HFA72).*

[h–7] *Division of Ethics and Program Integrity (HFA72).* Directs and coordinates a multidiscipline team of administrative and/or program specialists who conduct scheduled review of field and Headquarters elements of the Agency to determine adherence to existing managerial policy and practices; assures that recommendations resulting from the review findings are implemented.

Evaluates the Agency's personnel and physical security programs and provides professional leadership and authoritative guidance in these areas. Formulates policy and procedures necessary to maintain the integrity of privileged information submitted by industry.

Provides a centralized Agencywide investigative capability for top management.

Implements Internal Control Reviews in accordance with OMB guidelines.

Directs the formulation of FDA policies and procedures concerning conflicts of interest and employee associations with regulated industries, reviews financial interest including outside activities of FDA employees, decides conflict to interest issues, and counsels and train employees on the avoidance of conflicts of interests.

Effective date: December 5, 1985.

Dated: December 5, 1985.

Donald Ian MacDonald, M.D.,

Acting Assistant Secretary for Health.

[FR Doc. 85–29888 Filed 12–17–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 813]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador and El Dorado Counties

T. 8 N., R. 13 E.

2. This plat, in two (2) sheets, representing the dependent resurvey of a portion of the subdivisional lines and certain boundaries of mineral surveys, and the survey of the subdivision of sections 4 and 18, Township 8 North, Range 13 East, Mount Diablo Meridian, under Group No. 813, California, was accepted October 31, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–29852 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 530]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Del Norte County

T. 18 N., R. 4 E.
T. 18 N., R. 5 E.
T. 18 N., R. 16 E.
T. 19 N., R. 4 E.

2. These plats, representing the dependent resurvey of the north and south boundaries and subdivisional lines, and the survey of the subdivision of sections 2, 3, 4, 9, 10, and 13, T. 18 N., R. 4 E., Humboldt Meridian, California; the dependent resurvey of the west boundary and portions of the north and

south boundaries and subdivisional lines, T. 18 N., R. 5 E., Humboldt Meridian, California; the dependent resurvey of portions of the west and north boundaries, T. 18 N., R. 6 E., Humboldt Meridian, California; the retracement of the Oregon-California State Boundary from the east boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, to the 192 mile, 22 chain corner common with portions of the south boundaries of Tps. 41 S., Rs. 8 and 9 W., Willamette Meridian, Oregon, and the north boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, and the dependent resurvey of a portion of the north boundary, the east boundary and subdivisional lines, T. 19 N., R. 4 E., Humboldt Meridian, California, and the survey of the subdivision of sections 33 and 35, T. 19 N., R. 4 E., Humboldt Meridian, California; and the retracement of the Oregon-California State Boundary from the 181 mile corner to the east boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, common with portions of the south boundary of Tps. 41 S., Rs. 7 and 8 W., Willamette Meridian, Oregon, and a portion of the rejected north boundary of T. 19 N., R. 5 E., Humboldt Meridian, California, and the dependent resurvey of the east boundary and subdivisional lines of T. 19 N., R. 5. E., Humboldt Meridian, California, and the survey of the subdivision of sections 34, 35, and 36, T. 19 N., R. 5 E., Humboldt Meridian, California, under Group No. 530, California, were accepted May 3, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-29853 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-40-M

[C-11-85]

California; Filing of Plat of Survey

December 6, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador and Calaveras Counties

T. 6 N., R. 13 E.

2. This supplemental plat of the SW¼NW¼ of section 1, Township 6 North, Range 13 East, Mount Diablo Meridian, California, showing amended lotting created by the cancellation of a portion of Mineral Survey No. 6653 Am., is based upon the plats accepted May 20, 1960 and November 4, 1975 and the mineral survey record was accepted October 31, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-29854 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-40-M

[C-15-84]

California; Filing of Plat of Survey

December 6, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 4 S., R. 4 E.

2. This supplemental plat of the W½, section 4, T. 4 S., R. 4 E., San Bernardino Meridian, California, showing amended lottings is based upon the plat approved July 19, 1920, the plat accepted May 22, 1958, and the City of Palm Springs Record of Survey, recorded October 8, 1969, in Book 4, at pages 52-55, Riverside County, was accepted May 29, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-29855 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 864]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 8 S., R. 8 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of sections 14 and 22, T. 8 S., R. 8 E., San Bernardino Meridian, under Group No. 864, California, was accepted May 9, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85-29856 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 720]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Butte County

T. 22 N., R. 6 E.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-29857 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-40-M

Publication of Court Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Publication of Court Order.

SUMMARY: On December 4, 1985, the United States District Court for the District of Columbia rendered a memorandum opinion and order in the case of the *National Wildlife Federation v. Burford*, Civil Action No. 85-2238. The court ordered the defendants to publish the court order in the **Federal Register**. In compliance therewith, the order is hereby published:

United States District Court for the District of Columbia

National Wildlife Federation, Plantiff, v. Robert F. Burford, *et al.*, defendants.

[Civil Action No. 85-2238]

Order

Upon consideration of plaintiff's motion for a preliminary injunction, defendants' opposition thereto and plaintiff's reply, and

Finding that a preliminary injunction is necessary to preserve the relative positions of the parties until this case can be decided on the merits, and further

Finding that the plaintiff has shown a substantial likelihood of success on the merits, and further

Finding that the plaintiff will suffer irreparable harm if the requested injunction is not issued, and further

Finding that issuance of the requested injunction would serve the public interest, it is by the court this 4th day of December 1985,

Ordered that plaintiff's motion for a preliminary injunction is granted, and it is

Ordered that as used in this order, the terms "public lands" and "withdrawal" shall have the meaning given them by the Federal Land Policy and Management Act, 43 U.S.C. 1702(e), (j), and it is

Ordered that the defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them are hereby enjointed from:

1. Modifying, terminating or altering any withdrawal, classification, or other designation governing the protection of lands in the public domain that was in effect on January 1, 1981, or

2. Taking any action inconsistent with any withdrawal, classification, or other designation governing the protection of lands in the public domain that was in effect on January 1, 1981, including, but not limited to, the issuance of leases, the sale, exchange or disposal of land or interests in land, the grant of rights-of-way, or the approval of any plan of operations; and it is

Ordered that all persons holding interests, including but not limited to, ownership, possession, mining claims and their development, leases and rights-of-way, in lands that were the subject of classification terminations or withdrawal revocations since January 1, 1981 are hereby enjoined from taking any action inconsistent with the present status quo of these lands, including but not limited to, the staking of additional mining claims, obtaining new leases, mining, timber removal, land clearing, construction, or other forms of development; and it is

Ordered that the defendants shall forthwith cause a copy of this order to be published in the **Federal Register** and posted and made available to the public in defendants' offices in any state where this order might affect any person; and it is

Ordered that pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, plaintiff shall post security for this injunction in the amount of one hundred ($100.00) dollars, and it is

Further Ordered that a status call is scheduled for Monday, January 6, 1986 at 9:30 a.m., Courtroom No. 12, United States Courthouse.

John Pratt,

United States District Judge.

John E. Latz,

Acting Associate Director.

December 13, 1985.

[FR Doc. 85-29936 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-84-M

[UT-040-077]

Proposal To Construct a Range Improvement Project in Mud Springs Canyon Wilderness Study Area

The Bureau of Land Management, Cedar City District, is proposing to construct six segments of conventional steel post and barbed wire fence for a total distance of 3.21 miles. Four of the six segments, totaling 4,618 feet, are proposed to be constructed in the Mud Springs Canyon Wilderness Study Area (WSA). This WSA is located east and southeast of Henrieville, Utah. The location of the proposed fences are in T. 38 S., R. 1 W., Section 12 SLB&M and T. 38 S., R. 1 E, Section 19 SLB&M. Access to install those fence segments within the WSA will be by horseback and does not involve surface distributing activities. This project is one of several needed to implement the Round Valley Allotment Management Plan which will improve range and watershed conditions in the area.

A draft Environmental Assessment has been prepared on this proposal and is now available for public review and comment. To obtain a copy of this document or to obtain additional information on the proposal, contact Rex Rowley, Area Management at the Bureau of Land Management, Kanab Resource Area, P.O. Box 459, Kanab, Utah 84741 or telephone at 801-644-2672. Comments should be submitted by January 20, 1986. Comments postmarked after the above date may not arrive in time to be considered as part of the decisionmaking process on the final Environmental Assessment.

Dated: December 6, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-29858 Filed 12-17-85; 8:45 am]

BILLING CODE 4310-DQ-M

Use of Helicopters and Motorized Vehicles to Gather Wild Horses; Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses in FY 1986.

SUMMARY: In accordance with Pub. L. 92-195 and 92-579, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Elko District during FY 1986.

DATE: January 14, 1986 at 10:00 a.m.

ADDRESS: The hearing will take place at the Elko District Office, 3900 Idaho Street, Box 831, Elso , Nevada 89801. Telephone (702) 738–4071.

SUPPLEMENTARY INFORMATION: The use of helicopters and motorized vehicles to gather horses from the Antelope, Goshute, Cherry Creek, and Maverick-Medicine herd management areas will be discussed.

This hearing is open to the public. Interested persons may make oral or written statements. If you wish to make oral comments, please contact Rodney Harris by January 10, 1086. Written statements must be received by this date, also, for further information contact Rodney Harris, District Manager, P.O. Box 831, Elko, Nevada 89801, telephone (702) 738–4071.

Rodney Harris,

District Manager.

[FR Doc. 85–29455 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

[FES 85–49]

Alaska Offshore; Availability of the Final Environmental Impact Statement for Proposed Oil and Gas Lease Sale 100 in the Norton Basin

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) for proposed oil and gas Lease Sale 100 in the Norton Basin.

Single copies of the final EIS can be obtained from the Office of the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK; Anchor Point Public Library, Anchor Point, AK; Department of the Interior Resource Library, Box 36, 701 C Street, Anchorage, AK; Cordova Public Library, Box 472, Cordova, AK; Kenai Community Library, Box 157, Kenia, AK; Elim Learning Center, Elim, AK; Haines Public Library, P.O. Box 36, Haines, AK; North Star Borough Library, Fairbanks, AK; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK; Homer Public Library, Box 356, Homer, AK; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK; Kodiak Public Library, P.O. Box 985, Kodiak, AK; Metlakatla Extension Center, Metlakatla, AK; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK; Petersburg Extension Center, Box 289, Petersburg, AK; Seldovia Public Library, Drawer D, Seldovia, AK; Seward Community Library, Box 537, Seward, AK; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK; Sitka Community Library, Box 1090, Sitka, AK; Douglas Public Library, Box 469, Douglas, AK; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK; and Wrangell Extension Center, Box 651, Wrangell, AK.

Dated: December 12, 1985.

William D. Bethenberg,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 29898 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service Outer Continental Shelf; Development Operations Coordination Document, Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0839, Block 94, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on December 6, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday throught Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 10, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–29900 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nomination for the following properties being considered for listing in the National Register were received by the National Park Service before December 7, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the signficance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 12, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Greenwich, *United States Post Office-Greenwich Main Post Office*, 310 Greenwich Ave.

FLORIDA

Alachua County

Gainesville vicinity, *Kanapaha*, 8500 FL 24

Brevard County

Cocoa, *Porcher House*, 434 Delannoy Ave.

Leon County

Tallahassee, *Martin, Gov. John W., House*, 1001 Governer's Dr.

Volusia County.

Daytona Beach, *Merchants Bank Building*, 252 S. Beach St.

KENTUCKY

Campbell County.

Bellevue, *Bellevue High School*, Washington & Center Sts.

MASSACHUSETTS

Norfolk County

Foxboro, *Morse, Amos, House*, 77 North St.

Worcester County

Auburn, *Stone, Joseph, House*, 35 Stone St.

MISSOURI

Jackson County.

Kansas City, *Firestone Building*, 2001 Grand Ave.

NORTH CAROLINA

Cabarrus County

Bethpage vicinity, *Pressley, Rev. John E., House*, N. side of SR 1613, .3 mi. E. of SR 1612

Georgeville vicinity, *Bost Mill Historic District*, N. & S. side of NC 200 off US 601

Mount Pleasant, *First Congregational Church*, Wade & C Sts.

Rocky River vicinity, *Rocky River Presbyterian Church Historic District*, Roughly area off SR 1139, SR 1139 & 1136 jct., SW side of SR 1158, & NW of jct SR 1158 & 1139

Surry County

Mount Airy, *Trinity Episcopal Church*, 472 N. Main St.

OHIO

Cuyahoga County

Brecksville, *Brecksville-Northfield High Level Bridge*, OH 82 and Cuyahoga River (also in Summit County, Northfield)

Meigs County

Middleport, *Middleport Public Library*, 178 S. Third St.

Muskingum County

Dresden, *Crescent Hill*, 44 W. Fifth St.

Richland County

Bethlehem, *Sacred Heart of Jesus Churches*, OH 61

Wyandot County

Upper Sandusky vicinity, *Armstrong Farm*, 1376 OH 199

PUERTO RICO

Arecibo County

Arecibo, *Corregimiento Plaza Theater*, Llaguerry & Toribio Pagan Sts.

SOUTH CAROLINA

Bamberg County

Cal Smoak Site (38BM4)

Greenwood County

Trapp and Chandler Pottery Site (38 GN 169)

Orangeburg County

Mack, Alan, Site (38OR67)

TEXAS

Williamson County

Georgetown, *Amos, Martin C., House (Georgetown MRA)*, 1408 Olive

Georgetown, *Arnold—Torbet House (Georgetown MRA)*, 908 Pine

Georgetown, *Atkinson House (Georgetown MRA)*, 911 Walnut

Georgetown, *Belford Historic District (Georgetown MRA)*, Roughly bounded by University Ave., Main, E. Eighteenth, & Austin

Georgetown, *Bowlen House (Georgetown MRA)*, 1405 Forest

Georgetown, *Burcham House (Georgetown MRA)*, 1310 College

Georgetown, *Casey House (Georgetown MRA)*, 705 E. Third

Georgetown, *Caswell House (Georgetown MRA)*, 207 E. Ninth

Georgetown, *Chesser—Morgan House (Georgetown MRA)*, 1202 E. Fifteenth

Georgetown, *Coffee, J.T., House (Georgetown MRA)*, 1403 James

Georgetown, *Daughtrey, E.M., House (Georgetown MRA)*, 1316 E. University

Georgetown, *Easley, S.A., House (Georgetown MRA)*, 1310 Olive

Georgetown, *First Methodist Church (Georgetown MRA)*, 410 E. University

Georgetown, *Fowler, D.D., House (Georgetown MRA)*, 1531 Ash

Georgetown, *Grace Episcopal Church (Georgetown MRA)*, 1314 E. University

Georgetown, *Harper—Chesser House (Georgetown MRA)*, 1309 College

Georgetown, *Harrell, Moses, House (Georgetown MRA)*, 1001 Church

Georgetown, *Harris, E.M., House (Georgetown MRA)*, 404 E. Seventh

Georgetown, *Hawnen, A.W., House (Georgetown MRA)*, 1409 Olive

Georgetown, *House at 214 W. University (Georgetown MRA)*, 214 W. University

Georgetown, *House at 801 West (Georgetown MRA)*, 801 West

Georgetown, *House at 907 Pine (Georgetown MRA)*, 907 Pine

Georgetown, *Hyer, DR. Robert, House (Georgetown MRA)*, 904 Ash

Georgetown, *Imhoff House (Georgetown MRA)*, 208 Austin

Georgetown, *Irvine, George, House (Georgetown MRA)*, 409 E. University

Georgetown, *Johnson, J.J., Farm (Georgetown MRA)*, Rabbit Hill Rd.

Georgetown, *Lane—Riley House (Georgetown MRA)*, 1302 College

Georgetown, *Leake, Will & Mary, House (Georgetown MRA)*, 313 E. Seventh

Georgetown, *Leavell, John, House (Georgetown MRA)*, 803 College

Georgetown, *Lockett, M.B. and Annie, House (Georgetown MRA)*, 811 E. University

Georgetown, *Love, Frank & Mellie, House (Georgetown MRA)*, 1415 Ash

Georgetown, *M.K.T. Bridge (Georgetown MRA)*, M.K.T. tracks over San Gabriel River NE of Georgetown

Georgetown, *Makemson, W.K. and Kate, House (Georgetown MRA)*, 1002 Ash

Georgetown, *McKnight—Ebb House (Georgetown MRA)*, 503 W. Eighteenth

Georgetown, *McMurray House (Georgetown MRA)*, 611 Church

Georgetown, *Miller—Ellyson House (Georgetown MRA)*, 303 E. Ninth

Georgetown, *Old Georgetown High School (Georgetown MRA)*, 507 E. University

Georgetown, *Paige—DeCrow—Weir House (Georgetown MRA)*, I–35 and SR 2243

Georgetown, *Patrick, Woodson & Margaret, House (Georgetown MRA)*, 211 E. Fifth

Georgetown, *Pegues House (Georgetown MRA)*, 904 E. University

Georgetown, *Price, R.H. & Martha, House (Georgetown MRA)*, 209 E. Tenth

Georgetown, *Reedy, J.H., House (Georgetown MRA)*, 908 E. University

Georgetown, *Rouser House (Georgetown MRA)*, 602 Myrtle

Georgetown, *Saint John's Methodist Church (Georgetown MRA)*, 301 E. University

Georgetown, *Sansom—Schmalenbeck House (Georgetown MRA)*, 813 Church

Georgetown, *Saxon Motor Car Store (Georgetown MRA)*, 316 E. Sixth

Georgetown, *Sillure, A.W., House (Georgetown MRA)*, 1414 Ash

Georgetown, *Stone, Robert and Lula, House (Georgetown MRA)*, 1102 Ash

Georgetown, *Taylor—Cooper House (Georgetown MRA)*, 105 E. Fifth

Georgetown, *Vaden, W.C. and Kate, House (Georgetown MRA)*, 711 E.University

Georgetown, *Wesley Chapel AME Church (Georgetown MRA)*, 508 W. Fourth

Georgetown, *Wilcox, D.K. & Inez, House (Georgetown MRA)*, 1307 Olive

Georgetown, *Wilco—Graves House (Georgetown MRA)*, 1403 Olive

Georgetown, *Williamson County Courthouse Historic District (Boundary Increase (Georgetown MRA)*, 114—124 and 113 E. Eight St.

WISCONSIN

Milwaukee County

Milwaukee, *Abresch, Charles, House (West Side Area MRA)*, 2128 Juneau Ave.

Milwaukee, *Calvary Prtesbyterian Church (West Side Area MRA)*, 935 W. Wisconsin Ave.

Milwaukee, *Cook, Thomas, House (West Side Area MRA)*, 853 N. Seventeenth St.

Milwaukee, *Dahinden, Edward J., House (West Side Area MRA)*, 3316 W. Wisconsin Ave.

Milwaukee, *Eagles Club (West Side Area MRA)*, 2401 W. Wisconsin Ave.

Milwaukee, *Esbenshade, Abraham H., House (West Side Area MRA)*, 3119 W. Wells St.

Milwaukee, *Gesu Church (West Side Area MRA)*, 1145 W. Wisconsin Ave.

Milwaukee, *Grand Avenue Congregational Church (West Side Area MRA)*, 2133 W. Wisconsin Ave.

Milwaukee, *Highland Avenue Methodist Church*, 2024 W. Highland Ave.

Milwaukee, *Hope Parish House (West Side Area MRA)*, 1115 N. Thirty-fifth St.

Milwaukee, *Howie, David W., House (West Side Area MRA)*, 3026 W. Wells St.

Milwaukee, *Johnson Hall (West Side Area MRA)*, 1121 W. Wisconsin Ave.

Milwaukee, *Kilburn Avenue Row House Historic District (West Side Area MRA)*, N.

Fourteenth St., W. Kilbourn Ave., and N. Fifteenth St.
Milwaukee, *Kilbourn Masonic Temple (West Side Area MRA)*, 827 N. Eleventh St.
Milwaukee, *Milwaukee Normal School—Milwaukee Girls' Trade and Technical High School (West Side Area MRA)*, 1620 W. Wells St.
Milwaukee, *Schlitz, Victor, House (West Side Area MRA)*, 2004 W. Highland Ave.
Milwaukee, *Schuster, George, House & Carriage Shed (West Side Area MRA)*, 3209 W. Wells St.
Milwaukee, *Second Church of Christ Scientist (West Side Area MRA)*, 2722 W. Highland Blvd.
Milwaukee, *Sivyer, Fred, House (West Side Area MRA)*, 761 N. Twenty-fifth St.
Milwaukee, *St. George Melkite Catholic Church (West Side Area MRA)*, 1617 W. State St.
Milwaukee, *Tripoli Temple (West Side Area MRA)*, 3000 W. Wisconsin Ave.
Milwaukee, *Walker, Harry B., House (West Side Area MRA)*, 3130 W. Wells St.
Milwaukee, *Zion Rock Missionary Baptist Church (West Side Area MRA)*, 1338—1340 W. Juneau Ave.

Racine County

Racine, *Johnson, Peter, House*, 1601 State St.

Rock County

Jamesville, *Courthouse Hill Historic District*, Roughly bounded by E. Milwaukee St., Garfield & Oakland Aves., S. Main & E. Court Sts., and Parker Pl.

[FR Doc. 85-29841 Filed 12-17-85; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Notice of availability.

SUMMARY: OSM is announcing the availability of six annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The six reports, covering the States of Indiana, Iowa, Kansas, Louisiana, Missouri, and Oklahoma were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Indiana: Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204.

Iowa, Kansas and Missouri: Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106.

Louisiana and Oklahoma: Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress.

The first six evaluation reports for this year (Illinois, Kentucky, Maryland, Mississippi, Montana, and North Dakota) were completed and sent to Congress on November 5, 1985. These final reports were made publicly available on November 14, 1985 (50 FR 47122). Four additional evaluation reports for Alabama, Alaska, Ohio, and Wyoming were completed and sent to Congress on November 25, 1985, and were made publicly available on November 29, 1985 (50 FR 49138). Six additional evaluation reports for Indiana, Iowa, Kansas, Louisiana, Missouri and Oklahoma were completed and sent to Congress on December 10, 1985, and are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: December 12, 1985.

Brent Wahlquist,

Assistant Director, Program Operations, Office of Surface Mining.

[FR Doc. 85-29925 Filed 12-17-85; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-219]

Competitive Position in U.S. Markets of Certain Vegetables Produced in the United States Great Lakes States and in Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 12, 1985.

SUMMARY: Following receipt of a request from the Subcommttee on Trade of the House Committee on Ways and Means, the Commission has instituted on its own motion investigation No. 332-219 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of assessing the competitive position in U.S. markets of certain vegetable produced in the U.S. Great Lakes States and in Canada.

FOR FURTHER INFORMATION CONTACT: Mr. Tim McCarty, principal analyst (telephone 202-274-1753) or Mr. David L. Ingersoll, Chief, Agriculture, Fisheries, and Forest Products Division (telephone 202-274-0068). U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

The Subcommittee on Trade specifically asked the Commission to provide:

(A) Background information on each of the six vegetables in the Great Lakes States region, including levels and trends in production, share of production sold in the fresh market or sold for processing, and the number of producers for all uses along with the number selling to fresh market outlets. Also, a discussion of the relationship between the Great Lakes States production of the six vegetables under study and the U.S. supplies of the six vegetables in other States that are marketed during the same season as the Great Lakes supplies;

(B) A comparison of U.S. and Canadian tariffs, surtaxes, and nontariff trade regulations, such as grading and packaging requirements, plant health regulations, and other regulations that apply to the U.S.-Canada trade in these six vegetables;

(C) A discussion of the level and trends in production of the six vegetables in the Ontario and Quebec Provinces, the nature of the imported Canadian products, the degree to which such products are like or directly competitive with the regional domestic products, and the principal U.S. markets in which the imported Canadian products are sold;

(D) A description of the marketing channels used for the six fresh-market vegetables when produced in the region and when exported from Canada to the United States;

(E) A description of the principal price indicators used by the regional domestic industry for their fresh-market sales, the principal wholesale markets where the regional production is sold, and the prices for the regional domestic and Canadian products sold competitively in the United States;

(F) A discussion of U.S.-Canada currency exchange rates as they relate to the pricing practices of the imported vegetables; and

(G) A discussion of other factors of competition between regional U.S. and Canadian suppliers, including a discussion of the levels and trends in U.S. consumption, U.S. imports, and U.S. exports during the regional supply season.

The Committee specified that the products to be investigated should be cabbage, carrots, celery, lettuce, radishes, and onions (except pearl onions and onions with tops attached), which are fresh, chilled, or frozen, but not reduced in size or otherwise prepared or preserved, provided for in part 8A of Schedule 1 of the Tariff Schedules of the United States. The Committee asked the Commission to complete its study by March 31, 1986.

Written Submission

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received by the Commission at the earliest practicable date, but no later than January 31, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washingon, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: December 12, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29958 Filed 12–17–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–300 (Preliminary)]

Dynamic Random Access Memory Semiconductors (DRAM's) of 256 Kilobits and Above From Japan; Antidumping Investigation

[Editorial Note.—The following document should have appeared in the issue of Tuesday, December 17, 1985.]

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–300 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dynamic random access memory semiconductors (DRAM's) having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices, as provided for in item 687.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 27, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and Part 201, Subparts A through E (19 CFR part 201).

EFFECTIVE DATE: December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to notification from the Department of Commerce that it is self-initiating an antidumping investigation on the subject products.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

A conference is scheduled in connection with this investigation for 9:30 a.m. on January 3, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lynn Featherstone (202–523–0242) not later than December 31, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such

duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before January 7, 1986, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: December 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29634 Filed 12-16-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-158]

Seaboard System Railroad, Inc; Abandonment Between Suffolk and College Park in the Cities of Portsmouth, Suffolk, and Chesapeake, VA; Findings

This Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its 18.61-mile rail line between Suffolk (milepost AB-218.0) and Bruce (milepost AB-230.88) and from milepost ABE-229.00 to milepost ABE-234.73 near College Park, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-29956 Filed 12-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

Correction

In Fr Doc. 85-23356 appearing on page 40069 in the issue of Tuesday, October 1, 1985 make the following correction in the the table appearing in the third column:

The quota for meperidine should read "9,831,000".

BILLING CODE 1505-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (85-74)]

Calendar Year 1984 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of public availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the NASA advisory committees that held closed or partially closed meetings in 1984, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC History Advisory Committee, NAC Life Sciences Advisory Committee, and NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Mary R. Lippolis, Code NI, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2986).

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

December 11, 1985.

[FR Doc. 85-29859 Filed 12-17-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice (85-75)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Space Station Task Force.

DATE: January 8-9, 1986, 8:30 a.m. to 5:30 p.m., and January 10, 1986, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Sade, Code E, NASA Headquarters, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Task Force was established under the NAC Space and Earth Science Advisory Committee to counsel NASA on plans for and work in progress on the scientific utilization of the new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program. This advice includes periodic updates of scientific requirements on Space Station hardware and operations and interaction with contractors during the definition phase of Space Station development.

This meeting will be open to the public up to the seating capacity of the room (approximately 60 persons, including Committee members and other invited participants). Topics under

discussion at this meeting will include Space Station program status, international science cooperation, and the draft final report.

Type of meeting: Open.

Agenda

January 8, 1986.

8:30 a.m.—Welcome and General Overview.
9 a.m.—Results of Recent Reference Update Review.
10:30 a.m.—Status of Functional Allocations.
11:30 a.m.—Prospects of International Participation.
1 p.m.—NASA Science Operations Planning.
2 p.m.—International Science Cooperation.
3:30 p.m.—Discussion of Draft Final Report.
5:30 p.m.—Adjourn.

January 9, 1986

8:30 a.m.—Significance of Human Medical Research.
10:15 a.m.—Discipline Team Meetings.
1:30 p.m.—Interdisciplinary Team Meetings.
5:30 p.m.—Adjourn.

January 10, 1986

8:30 a.m.—Results of National Commission on Space.
9:30 a.m.—Formulation of Recommendations.
1 p.m.—Discussion with Program Management.
3 p.m.—Adjourn.

Richard L. Daniels,

Deputy Directory, Logistics Management and Information Programs Division, Office of Management.

December 9, 1985.

[FR Doc. 85-29860 Filed 12-17-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Renewal

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the renewal of the Advisory Committee on Preservation for a two-year period, until December 3, 1987.

The Archivist of the United States has determined that the renewal of this advisory committee is in the public interest so that the National Archives has up-to-date information on preservation technologies to ensure the preservation of permanently valuable records accessioned into the National Archives.

Dated: December 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-29897 Filed 12-17-85; 8:45 am]

BILLING CODE 7515-01-M

Records Schedules

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) whch include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before February 18, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, (N1-AFU-85-17). Mail Acceptance and Delivery records.

2. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-6). Master copies of tests and annual test inventories.

3. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-8). Contractor performance documentation prepared by Quality Assurance Evaluations.

4. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-9). Rejected unsolicited proposals.

5. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-12). Three categories of support agreements and related correspondence.

6. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-14). Occupational therapy treatment records.

7. Department of the Air Force, U.S. Air Force Academy (NC1-461-85-3). Final grade sheets for Academy courses.

8. U.S. Department of Agriculture, Forest Service, Area Planning and Development (NC1-95-85-4). Annual Forestry Plans of Work containing funding needs for Resource, Conservation and Development Program projects.

9. Department of the Army, Records Management Operations Office (N1-AU-86-7). Documents relating to installation and maneuver area access roads.

10. Department of the Army, Records Management Operations Office (N1-AU-86-8). Records relating to passports and visas for military and civilian personnel and their dependents.

11. Department of the Army, Records Management Operations Office (N1-338-86-1). Records of various Army proving grounds, 1940-1967, including

routine case files, correspondence, manuals, and publications relating to administrative management. Records with reference and research value will be accessioned by the National Archives.

12. Department of Health and Human Services, Social Security Administration, International Program Service Center (N1–47–86–1). Lists of checks issued by the Treasury Department to beneficiaries residing in foreign countries.

13. Department of Health and Human Services, Public Health Service (N1–90–86–4). Revision to standards for destruction of Privacy Act reports and administrative files.

14. Panama Canal Commission (N1–185–86–2). Records of the Panama Canal Railroad Company, created by the New York Office. Included are facilitative correspondence; accounts, ledgers, vouchers, cancelled bond coupons, and other obsolete financial records; railroad, freight, traffic, purchase, and repair orders; copies of transmittals, duplicate copies of annual reports and other printed records.

15. Office of Personnel Management, Administrative Group, Information Systems Plans and Policies Division (NC1–146–86–6). Civil Service retirement annuity award cards used to record payment information for annuitants and survivor annuitants.

16. Administrative Office of the U.S. Courts (NC1–116–85–7). Facilitative correspondence relating to legal matters and files concerning suits brought against judicial officers in their official capacity.

Dated: December 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–29861 Filed 12–17–85; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440 OL, 50–441 OL]

Cleveland Electric Illuminating Company et al. (Perry Nuclear Power Plant, Units 1 and 2) Cancellation of Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of December 10, 1985, oral argument on the pending appeals of intervenors Ohio Citizens for Responsible Energy and Sunflower Alliance from the Licensing Board's September 3, 1985 Concluding Partial Initial Decision on Emergency Planning, Hydrogen Control and Diesel Generators scheduled for December 19, 1985 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland, is cancelled.

Dated: December 12, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–29951 Filed 12–17–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–412A]

Duquesne Light Co., Toledo Edison Co., Ohio Edison Co., and Cleveland Electric Illuminating Co.; Receipt of Antitrust Information

The Duquesne Light Company acting on its own behalf and as agent for the captioned companies, has submitted additional antitrust information in conjunction with the application for an operating license for a pressurized water reactor known as Beaver Valley, Unit 2, located approximately twenty-two miles northwest of Pittsburgh, Pennsylvania on the southern shore of the Ohio River in Beaver County, Pennsylvania. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. (These data represent an updated response from the applicants' original 9.3 data submission that was noticed in the **Federal Register** on October 14, 1983—Vol. 48, No. 200, pg. 46905.)

On completion of a staff antitrust review, the Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Any person who desires additional information regarding the matter covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before January 17, 1986.

Dated at Bethesda, Maryland this 13th day of December 1985.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 85–29954 Filed 12–17–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant (the facility) at steady state reactor power levels each not in excess of 2436 megawatts thermal. The facility is a boiling water reactor located in Oswego County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operation reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operating of nuclear facilities and significant upgrading of emergency response

capability based on the experience from the accident at TMI-2 and official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983 and supplemented their response by letters dated June 30, 1983 and August 24, 1985. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implmentation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments.

IV

The June 12, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, the licensee, by letter dated November 30, 1984, provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).

1b. SPDS fully operational and operators trained.

3. Regulatory Guide 1.97—Application to Emergency Response Facilities.

3b. Implement (installation or upgrade) requirements.

5. Emergency Response Facilities.

5a. Technical Support Center fully functional.

The staff reviewed the licensee's November 30, 1984 letter and discussed the dates with the licensee. As a result of these discussions, the licensee provided certain revised dates by letters date June 14 and June 28, 1985. The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee.

The NRC finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that facility Operating License No. DPR-59 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in the licensee's submittal noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of BWR Licensing, for good cause.

VI

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay in the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this order.

Dated in Bethesda, Maryland this 11th day of December 1985.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG—0737

Title	Item/requirement	Licensee's completion schedule (or status)
Safety parameter display system (SPDS)	1b. SPDS fully operational and operators trained.	30 days after startup of Cycle 8, or Jan. 31, 1987, whichever is later.
Regulatory guide 1.97—application to emergency response facilities.	3b. Implement (installation or upgrade) requirements.	30 days after startup of Cycle 9, or Apr. 1, 1988 whichever is later.
Emergency response facilities	5a. Technical support center fully functional.	Fully functional.[1]

[1] Does not include SPDS display terminal.

[FR Doc. 85-29952 File 12-17-85; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to pubish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice include all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 4, 1985 (50 FR 49779), through December 9, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By January 17, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of amendment request: October 16, 1985.

Description of amendment request: The proposed amendment would revise paragraph 2.C.(6) of the Palo Verde Unit 1 license to allow an extension of time, from November 30, 1985 to March 30, 1986, for the completion of the environmental qualification of the hydrogen recombiner equipment.

The change to the license condition has been requested because the licensees do not expect to complete the environmental qualification testing and documentation for two hydrogen recombiners before November 30, 1985 due to circumstances beyond their control. By letter dated September 30, 1985 the licensees requested that the Commission grant an extension beyond the November 30, 1985 deadline which is stated in license condition 2.C.(6), to March 30, 1986, for the qualification of this equipment. The Commission has approved the request, by its letter to the licensees dated November 18, 1985 and the approval of the request will be reflected in a change to license condition 2.C.(6). On October 16, 1985, the licensees submitted a request for a license amendment for this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to the design bases or criteria of the equipment in question. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the qualification parameters or standards, the equipment operability requirements, or the design bases for the equipment of the plant. It would only allow the licensees an extension of time to determine that the equipment in question meets those standards and bases. For the reasons stated above, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arther C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Branch Chief George W. Knighton.

Arizona Public Service Company et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Unit Nos. 1 and 2, Maricopa County, Arizona Date of Amendment Request: November 19, 1985

Decription of amendment request: The proposed amendment would allow a one time change to Technical Specification 3.6.4.2 for each unit, March 30, 1986, to complete the installation of environmentally qualified hydrogen recombiner equipment.

The change has been requested to exclude the provisions of Technical Specification 3.0.4 from Technical Specification 3.6.4.2 during the period of time (not to exceed March 30, 1986) that the modifications to the hydrogen recombiners are being performed to install environmentally qualified equipment. The one-time change woud allow implementation of the requirements of 10 CFR 50.49 without impacting plant operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to the design bases or criteria of the hydrogen recombiner equipment. In addition, if the requested one-time Technical Specification change is used to restart the plant during the time that the modifications are being made to the hydrogen recombiner, operation of the plant will be in conformance with Technical Specification 3.6.4.2 for continued operation. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not very or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design bases for the equipment or the plant. It would only allow the licensees time to modity the equipment in question to meet the requirements of 10 CFR 50.59 without impacting plant operations. For the reasons stated above, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Director George W. Knighton.

Duke Power Company et al., Docket No. 50–413, Catawba Nuclear Station, Unit No. 1, York County, South Carolina

Date of amendment request: July 22, 1985 as suplemented September 11, 1985.

Description of amendment request: The proposed amendment would revise the Catawba Nuclear Station, Unit 1, Technical Specifications (TS) to increase the allowed out-of-service times for Reactor Trip System (RTS) channels. The changes would revise Table 3.3–1 for the following channels:

1. Power Range Neutron Flux.
2. Overtemperature Delta-T.
3. Overpower Delta-T.
4. Pressurizer Pressure-Low.
5. Pressurizer Pressure-High.
6. Pressurizer Water Level-High.
7. Reactor Coolant Flow-Low.
8. Steam Generator Water Level-Low-Low.
9. Reactor Coolant Pumps-Undervoltage.
10. Reactor Coolant Pumps-Underfrequency.
11. Turbine Trip.

For thse channels, the changes would: (1) Increase the time an inoperable channel may be maintained in an untripped condition from one hour to six hours, and (2) increase the time an inoperable channel may be bypassed to allow testing of another channel in the same function from two hours to four hours (or increase the time for channel test in the bypass mode with the inoperable channel tripped). A third change which does not require a change to the TS but is related to these changes, would result in changes to plant procedures to provide for routine testing of these channels in a bypassed condition.

These changes are three of the four changes proposed by WCAP–10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth change discussed in WCAP–10271 and the SER would decrease the surveillance frequency for TRS analog channel operational tests from once per month to once per quarter. This fourth change is not currently being proposed for Catawba, Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain example (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendment and has determined that should this request be implemented, it would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these conclusions follow:

CRITERION 1—Operation of Catawba, Unit 1 in accordance with the proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope.

Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since those consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of an RTS failure. WCAP-10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP–10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP–10271 concluded that the changes in probability were very small. For Catawba, only three of the four changes addressed in WCAP–10271 are being requested—those related to maintenance time, test time and testing in bypass. The change in test interval is not being proposed for Catawba. The change related to testing in bypass does not require a change in Technical Specifications for Catawba.

In its February 21, 1985 Safety Evaluation Report addressing WCAP–10271, the NRC also concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP-10271 was judged by the NRC not to be significant. The proposed subset of three changes would result in a smaller increase in probability than all four WCAP–10271 changes. Therefore, the

increased probability associated with the three changes proposed for Catawba, Unit 1, would also not be significant.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP-10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the probability of that failure as discussed under Criterion 1. As explained under Criterion 1, failures of the RTS have been analyzed.

Since none of the changes proposed by WCAP-10271 create new failure mechanisms, the changes proposed for Catawba, Unit 1 (which are a subset of the WCAP-10271 changes) would not create new failure mechanisms.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2, the changes proposed by WCAP-10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985 SER the NRC concluded that the resultant increase in the overall plant risk of core damage was not significant.

Since the changes proposed for Catawba are a subset of the WCAP-10271 proposal, the resultant increase in overall plant core damage risk would be smaller than the increase for the four WCAP-10271 changes. Therefore, the overall reduction in plant margin of safety is not significant for the three changes proposed for Catawba.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Attorney for licensee: Mr. William L. Porter, Esq., Duke Power Company, P. O. Box 33189, Charlotte, North Carolina, 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et. al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: July 31, 1985.

Description of amendment request: The proposed amendment would revise surveillance requirement 4.8.1.1.2a.4 of Technical Specification 3/4.8.1, "A.C. Sources," relative to the diesel generator surveillance testing.

On July 2, 1984, the NRC issued Generic Letter No. 84-15 entitled "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." The generic letter requested licenses to review the reliability of their diesel generators based on surveillance test data, to review their programs concerning diesel generator surveillance testing, and to determine their plans for attaining and maintaining certain diesel generator reliability goals. By letter dated July 31, 1985, Duke Power Company requested several changes to the Technical Specifications related to the diesel generators. One of the changes requested, in response to the generic letter, is to reduce the diesel generator cold fast starts. The other changes requested by the licensee's letter of July 31, 1985, are outside the scope of this notice.

The proposed revision is based on the Typical Technical Specification provided as an Attachment to Enclosure 1 of Generic Letter 84-15. The proposed revision would reduce the number and severity of diesel generator cold fast starts, thereby decreasing engine wear and increasing reliability.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has viewed the licensee's request for the above amendment and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the change is a reduction in frequency and severity of diesel generator test starts which would result in less wear and stress on engine parts. This would decrease the probability of an accident due to failure of engine parts, and the consequences of an accident would not change. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and function of the diesel generators would not be changed. Finally, it would not (3) involve a significant reduction in a margin of safety because there would be no change in diesel generator automatic response times or emergency loads from those used in the accident analyses. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: York County Library, 138 Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50-369 and 50-370, Mcquire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of Amendment Request: April 25, 1985.

Description of Amendment Request: The proposed amendment would change the record retention period in Technical Specification 6.10 for records of quality assurance activities required by the QA Manual. Specification 6.10.2i presently requires that these records be retained for the duration of the Operating License. The proposed change would substitute a new Specification 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9-1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records for Nuclear Power Plants".

Basis for proposed no significant hazards consideration: ANSI N45.2.9-1974 provides a list of the various types of QA records and divides them into "Lifetime" and "Nonpermanent" categories for retention period purposes. For each record type in the "Nonpermanent" category, ANSI N45.2.9-1974 designates a specific minimum retention period ranging from 0 to 6 years. As stated in Regulatory Guide 1.88, the requirements and guidelines for collection, storage and maintenance of quality assurance records that are included in ANSI N45.2.9-1974 are acceptable to the NRC staff and provide an adequate basis for complying with the pertinent quality assurance requirements forAppendix B to 10 CFR Part 50.

The Comission has provided guidance concerning the application of the standards for determining whether

license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to administrative changes to the technical specifications. The change in this case involves only the substitution of a more specific and more appropriate requirement for QA records retention pursuant to a standard accepted by the NRC staff. Because this substitution would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods, the proposed change has no adverse impact on safety and matches the example.

Therefore, the Commission proposes to determine that this request does not involve a significant hazards consideration.

Local Public Document Room Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 22, 1985 as supplemented September 11, 1985.

Description of amendment request: The proposed amendments would revise the McGuire Nuclear Station, Units 1 and 2, Technical Specifications (TS) to increase the allowed out-of-service times for Reactor Trip System (RTS) channels. The changes would revise Table 3.3–1 for the following channels:

1. Power Range Neutron Flux.
2. Overtemperature Delta-T.
3. Overpower Delta-T.
4. Pressurizer Pressure-Low.
5. Pressurizer Pressure-High.
6. Pressurizer Water Level-High.
7. Reactor Coolant Flow-Low.
8. Steam Generator Water Level-Low-Low.
9. Reactor Coolant Pumps-Undervoltage.
10. Reactor Coolant Pumps-Underfrequency.
11. Turbine Trip.

For these channels, the changes would: (1) increase the time an inoperable channel may be maintained in an untripped condition from one hour to six hours, and (2) increase the time an inoperable channel may be bypassed to allow testing of another channel in the same function from two hours to four hours (or increase the time for channel test in the bypass mode with the inoperable channel tripped). A third change which does not require a change to the TS but is related to these changes, would result in changes to plant procedures to provide for routine testing of these channels in a bypassed condition.

These changes are three of the four changes proposed by WCAP–10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth change discussed in WCAP–10271 and the SER would decrease the surveillance frequency for RTS analog channel operational tests from once per month to once per quarter. This fourth change is not currently being proposed for McGuire, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these conclusions follow:

Criterion 1—Operation of McGuire, Units 1 and 2 in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope. Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since those consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of an RTS failure. WCAP–10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP–10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP–10271 concluded that the changes in probability were very small. For McGuire, only three of the four changes addressed in WCAP–10271 are being requested—those related to maintenance time, test time and testing in bypass. The change in test interval is not being proposed for McGuire. The change related to testing in bypass does not require a change in Technical Specifications for McGuire.

In its February 21, 1985 Safety Evaluation Report addressing WCAP–10271, the NRC also concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP–10271 was judged by the NRC not to be significant. The proposed subset of three changes would result in a small increase in probability than all four WCAP–10271 changes.

Therefore, the increased probability associated with the three changes proposed for McGuire, Units 1 and 2, would also not be significant.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP–10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the

probability of that failure as discussed under Criterion 1. As explained under Criterion 1, failures of the RTS have been anlyzed.

Since none of the changes proposed by WCAP-10271 create new failure mechanisms, the changes proposed for McGuire, Units 1 and 2 (which are a subset of the WCAP-10271 changes) would not create new failure mechanisms.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2, the changes proposed by WCAP-10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985 SER the NRC concluded that the resultant increase in the overall plant risk of core damage was not significant.

Since the changes proposed for McGuire are a subset of the WCAP-10271 proposal, the resultant increase in overall plant core damage risk would be smaller than the increase for the four WCAP-10271 changes. Therefore, the overall reduction in plant margin of safety is not significant for the three changes proposed for McGuire.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte, North Carolina 28242.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, Charlotte (UNCC Station), North Carolina, 28223.

NRC Project Director: B.J. Youngblood.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 4, 1985.

Description of amendment request: Requests approval of an amendment to the license which would extend the date imposed by Order of March 14, 1983, to fully implement NUREG-0737 Item III.D.3.4, Control Room Habitability, from the Cycle 11 Refueling outage to the Cycle 12 refueling outage.

Basis for proposed no significant hazards consideration determination: By a Confirmatory Order dated March 14, 1983, the licensee is required to have the NUREG-0737 Item III.D.3.4, Control Room Habitability, fully implemented before the restart from the Cycle 11 Refueling outage. This outage is presently scheduled to begin April 12, 1986. The licensee has requested by its letter dated June 4, 1985, postponement of some Item II.D.3.4 requirements to Cycle 12 Refueling outage. The Cycle 12 outage is expected in 1988.

The requirements to be deferred to in the Cycle 12 outage to fully implement Control Room Habitability are the following: 1) perform a single failure analysis of the control room ventilation system and provide remedial measures, 2) assess existing diesel generator capability to provide back up power to the control room ventilation system and 3) meet the beta skin dose limits with the final control room ventilation system design. Requirements to complete these items during the Cycle 12 outage rather than the Cycle 11 outage, would be added to the license.

The Control Room envelope consists of the control room panel area, the Shift Supervisor's office, toilet room, kitchen, and Cable Spreading Rooms. Normal ventilation is provided by a system utilizing one supply fan with steam coils for heating and a three-stage refrigeration unit for cooling. The ability to recirculate air is provided, with recirculation varying from 0 to 100 percent.

The system is normally operated to maintain room air at 75 degrees F. Under normal operation of the turbine generator unit, the system cools during winter and summer. Heat to maintain 70 degrees F. in these areas is anticipated to be required only during the winter when the turbine generator is not operating.

An emergency mode is provided for operation with 100 percent outside air to prevent the recirculation of smoke in the Control Room and to clear the area of smoke and fumes. As required by the Oyster Creek Fire Hazards Analysis, the system was modified to prevent smoke from other areas from entering the Control Room.

Major components of the system are the air conditioning unit and the two heating coils.

An analysis of Control Room shielding has been performed. As a result of this study, one significant source contributing to an elevated radiation dose rate in the Control Room has been identified. This source is the core spray booster pump suction and discharge piping located at E1. 51 3' in the Reactor Building. A shadow shield has been installed in the Reactor Building to reduce the Control Room dose to below the 10 CFR Part 50, Appendix A, General Design Criterion 19 limit.

Control Room Habitability is not an initiator of an accident previously analyzed; therefore, this action does not change the probability of an accident previously evaluated. The staff has determined that the licensee has met General Design Criterion 19, Control Room, of Appendix A to 10 CFR Part 50 including the beta skin dose. The issue of toxic gases that may be introduced into the control room is under review by the staff and will be resolved on the schedule in the Confirmatory Order dated March 14, 1983. This is without the control room ventilation meeting single failure and backup power because the control room ventilation has no filters to reduce the radioactivity or toxic gases introduced in the control room during an accident. Therefore, the proposed action is not a significant reduction in a margin of safety. The control room operators have time to manually close dampers to isolate the control room and to provide heating or cooling to the control room from other sources if needed so that the proposed action does not significantly increase the consequences of a previously evaluated accident or create a new or different kind of accident.

Therefore, based on the above, operation of Oyster Creek with these deferments 1) does not involve a significant increase in the probability or consequences of a previously evaluated accident, 2) does not create the possibility of a new or different kind of accident from any accident previously analyzed and 3) does not involve a significant reduction in a margin of safety. Because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff, therefore, proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW, Washington, DC 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 11, 1985.

Description of amendment request: Request approval for an Appendix A Technical Specifications (TS) change to Item B.1, Reactor Isolation, of Table 3.1.1, Protective Instrumentation Requirements, to allow the low-low reactor water level protective instrumentation to be inoperable in the shutdown reactor mode and, under certain conditions, the Main Steam Line Isolation Valves and Isolation Condenser valves are not required to be closed or the reactor is not required to be in the cold shutdown condition.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the Standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of amendments not likely to involve significant hazards considerations is a change that constitutes an additioinal limitation, restriction, or control not persently included in the TS. The licensee has requested in its application to revise the existing TS requirement that the low-low reactor water level instrumentation channels be operable in the shutdown reactor mode or, if it is not, close the Main Steam Line Isolation Valves and close the Isolation Condenser vent valves or place the reactor in the cold shutdown condition. This requirement is for reactor isolation for which this instrumentation would monitor the reactor water level for the case of draining of the reactor vessel due to inadvertent plant operation or an accident. The instrumentation would act at low-low reactor water level (+86 inches above the top of the active fuel) to actuate the following Engineered Safety Feature responses:

1. Core spray initiation.
2. Containment spray initiation.
3. Reactor isolation.
4. Containment isolation.
5. Recirculation pump trip.
6. Isolation condenser initiation.
7. Standby Gas Treatment initiation.
8. Annunciators
9. Reactor Water Cleanup System isolation.
10. Shutdown System isolation.
11. Reactor Building Closed Cooling Water to Drywell isolation.
12. Air/Nitrogen to Drywell isolation.
13. Emergency Diesel Generator startup.

With the proposed TS, this instrumentation would not be required to be operable when secondary containment is not required to be maintained or when the conditions of TS 3.5.B.1.a,b,c and d are met. The conditions of TS 3.5.B.1.a,b,c and d are the following:

1. The reactor is subscritical,
2. The copre reactivity shall be limited such that the core could be made subcritical at any time during the operating cycle with the strongest operable control rod fully withdrawn and all other operable rods fully inserted,
3. The reactor is in cold shutdown,
4. The reactor vessel head or the drywell head are in place, and
5. No work is being performed on the reactor or its connected systems in the Reactor Building which could result in inadvertent releases of radioactive material.

If this instrumentation is inoperable, the licensee's proposed change requires that the reactor water level will be monitored during these periods of inoperability. There are five different types of reactor water level indication in the control room. The instrumentation involved in this action is only one of these five types that provide indication in the control room. Therefore, with the loss through inoperability of the low-low reactor water level instrumentation channels, the control room operators have other indication available. One of these other types has an alarm in the control room at low level (+147 inches above the top of the active fuel). This alarm would alert the operators at +147 inches and the operators would manually actuate the same systems if level indication dropped to +86 inches or low-low level which would have been actuated by the instrumentation if it were operable.

One of the several conditions that must be met in the licensee's proposed action is that the reactor must be in cold shutdown. This is, in fact, the same action required in the existing TS if this instrumentation is inoperable. Having the reactor in the cold shutdown is by itself sufficient to meet the action required in Item B.1, Reactor Isolation, of Table 3.1.1 for inoperable low-low reactor water level instrumentation. In addition to this condition, the licensee proposes other conditions which should reduce the possibility of inadvertent draining of the reactor vessel in the shutdown reactor mode and requires, in addition, that control room operators monitor the reactor water level on other water level instrumentation in the control room.

Based on the above, the staff concludes that the licensee has proposed additional restrictions and controls not presently included in the TS and is consistent with example (ii) of the Commission's guidance. Therefore, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 7, 1985.

Description of amendment request: Requests approval of changes to the Appendix A Technical Specifications (TS) pertaining to (1) the minimum amount of diesel fuel in the standby diesel generator fuel tank and (2) the facility licensed reactor operator staffing requirements. The first change would decrease the minimum amount of diesel fuel in the tank from 14,500 gallons to 14,000 gallons in TS 3.7.C.4 and revise the Bases for this TS. The second change would revise the facility staffing requirements in TS Section 6.2.2 for the minimum number of licensed operators in the control room during the various modes of reactor operation. It would add requirements on the minimum number of licensed senior operators and revise the existing requirements on the number of licensed operators to specifically allow more such operators in the control room.

Basis for proposed no significant hazards consideration determination: The staff issued Technical Specification Amendment 60 on February 3, 1982. This revised the staff's calculation of the expected consumption of diesel generator fuel oil for a 3 day running period. The requirements on the licensee were that the Oyster Creek site had to have a minimum supply of diesel fuel to run one diesel for 3 days continuously. The Safety Evaluation for Amendment 60 revised the minimum amount of diesel fuel expected to be consumed in the 3 days from 14,230 gallons to 12,480 gallons. This amount was revised by adding Security System loads to and removing the Reactor Building Closed Cooling Water pump and Service Water pump loads from the emergency diesel generator. This 12,480 gallons of fuel is for the worst case considered by the staff in the Safety Evaluation for Amendment 60. This 12,480 gallons is less than the licensee's proposed minimum amount of 14,000. As indicated in Amendment 18 dated December 30, 1976, there are numerous sources of

diesel fuel which can be obtained within 6 to 12 hours and the heating boiler fuel in a 75,000 gallon tank on the site could also be used.

The licensee's proposed reduction in the minimum amount of diesel fuel onsite in the standby diesel generator fuel tank is to provide sufficent margin above the TS limit to provide for operating flexibility. As reported by the licensee, in Oyster Creek Licensee Event Report, LER 84–001, the potential exists for overfilling and underfilling the Diesel Generator Fuel Oil Tank. The current TS required capacity is 14,500 gallons and the maximum capacity of the tank is 14,986 gallons. When the diesel generator test is run, the fuel comsumption is approximately 200 gallons for a 1-hour test. In addition, the day tank (capacity 130 gallons) at the diesel generator may be partially full at the start of the test and may require approximately 100 gallons to fill after the diesel generator is started. Therefore, about 300 gallons in excess of the 14,500 gallon minimum may be required before the test is started to ensure that the TS requirement is met during and after the tests and the maximum capacity of the tank provides insufficient margin above the TS limit for minimum fuel capacity and, therefore, does not allow sufficient operating flexibility.

The proposed action of reducing the minimum amount of diesel fuel required onsite does not increase the probability of an accident previously analyzed or create the possibility of a new or different accident. The hazards of having diesel fuel onsite and fire protection hazards have been analyzed by the staff and the staff has required a minimum amount of diesel fuel to be onsite. Reducing the minimum amount specified in TS 3.7.C.4 does not remove diesel fuel from the site nor does it introduce diesel fuel to the site; therefore, it does not change the proability of an accident previously analyzed nor does it create a new or different accident from those previously analyzed. Because the licensee is proposing to reduce the minimum amount of diesel generator fuel required in the TS, the proposed action may reduce the consequences of an accident but because the licensee may store diesel fuel in the standby diesel generator fuel tank at the maximum possible amount, the proposed action will not increase the consequences of an accident previously evaluated. The licensee's proposed action does not involve a significant reduction in the margin of safety because the proposed minimum amount of diesel fuel is greater than the minimum amount required by the staff. Thus, this change meets the three criteria in 10 CFR Part 50.92(c) and does not involve significant hazards considerations.

For the second change, the licensee has also proposed to revise the facility staffing requirements in TS Section 6.2.2. for the minimum number of licensed operators in the control room. The TS are being revised to be in accordance with the licensed operator staffing requirements in 10 CFR 50.54(m)(2). The station has been operating in accordance with these Commission regulations since January 1, 1984, as required; but the TS have not been revised to reflect these requirements. The proposed change adds requirements on the minimum number of licensed senior operators and revises an existing requirement on the number of licensed operators to state "*At least* two licensed reactor operators shall. . . ." instead of "Two licensed reactor operators shall. . . ."

The second proposed change is an administrative change to the TS to achieve consistency between the TS and the Commission's Regulations. It is also an additional requirement not presently included in the TS. Thus, this change is encompassed by the Commission's examples (i) and (ii) provided in 48 FR 14870 of actions not likely to involve significant hazards considerations.

Based on the above discussion on the two proposed actions, the staff, therefore, proposed to determine that the requested actions do not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director. John A. Zwolinski.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Mihigan

Date of amendment request: November 4, 1985.

Description of amendment request: The proposed amendments would revise the Technical Specifications by adding provisions for the containment hydrogen monitor in response to the requirements of NUREG–0737 following the Three Mile Island accident.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example a more stringent surveillance requirement." The proposed Technical Specifications add limiting conditions of operation and surveillance requirements on the containment hydrogen monitor pursuant to a Commission request in Generic Letter 83–37 dated November 1, 1983. Therefore, the Commission proposes that the changes would fall into the category of a no significant hazard consideration determination as it contains additional limitations or controls.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Steven A. Varga.

Long Island Lighting Company, Docket No. 50–322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: November 16, 1985 and December 9, 1985.

Description of amendment request: The proposed amendment would (1) revise the footnote to Technical Specification paragraph 4.4.3.1.C, on page 3/4 4–9, from "*Not required if containment is closed and inerted." to "Not required if containment is closed," and (2) revise Technical Specification 3/4.3.7.9 to reflect changers in the number and type of plant fire detectors.

The licensee as requested the change to the footnote on page 3/4 4–9 to reflect the fact that, during the power ascension test program (PATP), the Shoreham containment will be closed, but may be inerted. As this condition is currently worded, the licensee would have to make a monthly entry into the containment to perform the surveillance inspection required by paragraph 4.4.3.1.C if the containment is not inerted. the plant would have to be shutdown, or at the very least, power would have to be severely reduced, to allow personnel entry for this test, and, as a result, completion of the PATP would be delayed.

The change to the number and type of the fire detectors is required because of modifications performed as a result of inspection 50–322/84–46, to bring the fire

protection system into compliance with National Fire Protection Association (NFPA) standards 72D and 72E.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment wold not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to these amendment requests follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Containment Surveillance

The proposed change relates to a surveillance inspection for the primary containment air cooler condensate flow instruments. the intent of the current surveillance requirement footnote is to recognized that the test cannot be run without personnel access to the containment. The proposed change would clarify the footnote in recognition of the fact that, during the PATP, the containment may be closed for long periods, but may not be inerted. This clarification would not significantly increase the probability or consequences of an accident previously evaluated, because it changes nothing about the instrument in question, except the conditions under which it is required to be tested.

Fire Detectors

The proposed change would reflect an increase in the number of fire detectors in the plant. This change reduces the probability that a fire will not be detected and extinguished before it can cause significant damage.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The requested amendment does not physically alter the condensate flow instrument in any way. It does not modify any setpoints or change any plant operating conditions or parameters. For these reasons, the NRC staff has determined that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Similarly, the installation of the additional fire detectors does not create the possibility of a new or different king of accident. It only serves to better alert the operators if a fire were to occur.

Standard 3—Involve a Significant Reduction in a Margin of Safety Containment Surveillance

The condensate flow instrument does not perform any automatic function. It only monitors liquid condensate flow from the primary containment air coolers. The proposed change would not reduce the operability requirements for the instrument or its alarm setpoints and would therefore not reduce or even change any margin of safety.

Fire Detectors

The proposed change would increase the number of detectors and would therefore increase the margins of safety in detecting fires.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786.

Attorney for licensee: Anthony F. Earley, Esquire, Long Island Lighting Company, 175 East Old Country Road, Hicksville, New York 11801.

NRC Project Director: Walter R. Butler.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: August 30, 1985.

Description of amendments request: The Service Water System at the Salem Nuclear plants utilizes water from the Delaware River as its heat sink. This water source is typically brackish and has a relatively high silt content. In order to ensure high integrity of the Service Water System, PSE&G has decided to conduct detailed inspections of the Service Water System, for both Units 1 and 2, during the refueling outage. In order to perform these inspections it is necessary to take one of two service water headers out of service for an extended time period while the plant is in modes 5 and 6. The current Salem technical specifications require residual heat removal (RHR) loops to be available in modes 5 and 6 as follows:

Mode 5—Two RHR loops are required to be operable if no steam generators are available.

Mode 6—Two RHR loops re required to be operable if the water level in the refueling cavity is less than twenty three (23) feet above the reactor vessel flange.

Since service water supplies the ultimate heat sink for the RHR system, the requirement to have two RHR loops operable requires that both service water headers be available. The proposed changes would revise Specifications 3.4.1.4 and 3.9.8.2 to allow a modified Residual Heat Removal System line up and/or an alternate method of decay heat removal thereby permitting operation in Modes 5 and 6 with one service water loop isolated for inspection and upgrading as necessary.

Basis for proposed no significant hazards consideration determination: The staff has reviewed the proposed amendment request against the criteria provided in 10 CFR 50.92 and has determined:

1. Plant operation using the alternate cooling methods described in this change request were reviewed against the accidents covered in the FSAR and were examined for the potential for creating any new accidents. The results of the evaluation determined that plant operation will remain within the bounds of the previously analyzed accidents and will not create the possibility for any accident not previously evaluated.

2. Plant operation in modes 5 and 6 with one service water header out of service results in no significant increase in the probability or consequences of accidents previously evaluated in he FSAR. A review of all previously postulated accidents concluded that the ony accidents that could occur while in modes 5 and 6 were the boron dilution accident and the loss of off-site power accident. The probability of occurrence and the capability to mitigate a boron dilution accident are not affected by the proposed operation with one service water header because the boron paths assumed in the analysis are not affected. Loss of off-site power concern addressed in the FSAR relate to the loss of primary and secondary flow which are not a consideration in modes 5 and 6. Loss of decay heat removal capability could be affected by a loss of off-site power; however, the licensee has provided for alternate safety-grade methods of decay heat removal and has identified compensatory actions that significantly minimize the likelihood of a loss of cooling that would require the use of those alternate cooling methods.

3. The compensatory actions and the reliability of the RHR systems as

configured for the described alternate cooling modes assure that existing margins of safety are not significantly decreased. The increase in reliability of the Service Water System afforded by this change will measurably improve the overall margin of safety for the Salem plants.

Based on the above, the staff proposes to find that this change does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Branch Chief: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: July 16, 1985.

Description of amendment request: The proposed Technical Specification amendment provides additional restrictions to plant operating procedures to decrease the potential for a low temperature overpressurization (LTOP) event. This proposed Technical Specification change was initiated by the Commission in a letter to the utility dated June 29, 1984, and is based on operating experiences at other pressurized water reactors. Material toughness of primary system components is reduced at lower operating temperatures. The additional operating restrictions being proposed add steps to protect the primary system from exceeding pressure limits when the system temperature is less than 350° F.

Specific features being added to protect against LTOP Include the following:

(1) The setpoint on the pressurizer relief valve will be decreased and tested before system temperature is lowered to 350° F.

(2) Restrictions will be placed on the operation of the high pressure injection system at the lower temperatures.

(3) Additional restrictions will be placed on the operating procedures for the pressurizer, the make up tank, and the core flood tanks.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include example (ii), changes that constitute an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The change proposed in the amendment application is encompassed by this example in that additional operating restrictions are being proposed to reduce the likelihood of exceeding design pressure/temperature limits. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the Commission's staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: February 20, July 1, October 10, and October 22, 1985 (Reference PCN–165).

Description of Amendment Request: The proposed change would revise Surveillance Requirement 4.4.8.2.2 of Technical Specification 3/4.4.8.2, "Reactor Coolant System—Pressurizer—Heatup/Cooldown", and Table 5.7–1 of Technical Specification 5.7, "Component Cyclic or Transient Limits". Specifically, the change would revise Surveillance Requirement 4.4.8.2.2 to incorporate additional thermal transient conditions for calculation of cumulative thermal cycle usage factors.

The proposed change also would revise Table 5.7–1, which identifies components subject to thermal fatigue when subjected to thermal cycling. The pressurizer spray system (used for control of pressurizer level and RCS pressure) is one such system identified in Table 5.7–1 which is routinely subjected to thermal cycling. Table 5.7–1 identifies the number of thermal cycles to which a component can be subjected and actions to be taken when the limit is approached. The severity of a thermal cycle on the pressurizer spray system is a function of the temperature differential between the pressurizer and the pressurizer spray. The greater this temperature differential, the fewer the number of spray cycles allowed before action must be taken. The threshold for determining when action must be taken is identified as the cumulative usage factor which is the sum of the usage factors for each differential temperature range. The usage factor for each temperature range is defined as the number of cycles accumulated in that temperature range divided by the number allowed.

Table 5.7–1 defines a spray cycle, the threshold temperature, the threshold differential temperature above which a spray cycle must be counted, differential temperature ranges and the number of spray cycles allowed for each range, the method for calculating the usage factor, the cumulative usage factor limit, and the action to be taken when the cumulative usage factor is exceeded. The proposed change revises Table 5.7–1 as follows: It (1) makes the table apply to the entire pressurizer spray system rather than just the pressurizer spray nozzle; (2) redefines a spray cycle; (3) increases the differential threshold pressurizer temperature from 150 °F to 200 °F; (4) redefines the temperature differential ranges and the number of allowed spray cycles for each range; and (5) reduces the cumulative usage factor limit from 0.75 to 0.65.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a refinement of a previously used calculational model or design method. All revisions addressed

in the proposed change are similar to Examples (i), (ii), or (vi) of 48 FR 14870. A description of each proposed revision to the technical specifications and a discussion of how it is related to the stated examples follows:

The proposed change to Surveillance Requirement 4.4.8.2.2 would state that the spray water temperature differential shall be determined for use in Table 5.7–1 for each cycle of main spray when less than four reactor coolant pumps are operating and for each cycle of auxiliary spray operation. This would change the existing requirement specifying that the temperature differential be determined at least once per twelve hours during auxiliary spray operation.

This change constitutes an additional restriction or control not presently included in the technical specifications. The proposed change would provide a more accurate and stringent evaluation of the modified pressurizer spray system by incorporating the temperature transient effect for each cycle of main spray when less than four reactor coolant pumps are operating and for each cycle of auxiliary spray operation. This new surveillance requirement will therefore cover thermal transients which are not considered in the existing one. Because the change imposes a monitoring requirement to include thermal transients which are more severe and more numerous than those previously accounted for, it is more restrictive and, therefore, is similar to Example (ii) of 48 FR 14870.

Currently, Table 5.7–1 applies only to the pressurizer spray nozzle. The proposed change will make this table apply to the entire pressurizer spray system and will require accounting for both main spray cycles when less than four reactor coolant pumps are operating and for all auxiliary spray cycles if the temperature differential is greater than 200 °F. This change is an additional restriction which is currently not included in the current technical specification since the existing specification only applies to the pressurizer spray nozzle; therefore, this change is similar to Example (ii) of 48 FR 14870.

The existing specification defines a spray cycle as the opening and closing of spray valve by main or auxiliary spray. The proposed change redefines the spray cycle as any initiation and termination of main or auxiliary spray flow through the pressurizer spray nozzle. This proposed change redefines the spray cycle to more closely correspond to the actual monitoring of spray cycles within the plant. Spray cycles are monitored by counting demands made by the spray valves in conjunction with monitoring spray line temperature rather than by monitoring actual opening and closing of the spray valves. This is more accurate since the spray valves often are not completely closed and a small bypass flow is allowed to minimize thermal transients on the system. This change is essentially a change in nomenclature and, therefore, is similar to Example (i) of 48 FR 14870.

The existing Table 5.7–1 requires logging of all pressurizer spray cycles where the differential temperature is greater than 150 °F. The proposed change would require logging of pressurizer spray cycles only if the differential temperature is greater than 200 °F. This increase in the threshold temperature may be perceived to reduce, in some way, a margin of safety. However, the new threshold limit has been incorporated into the analysis of the pressurizer spray system and is compensated for by a decrease in the cumulative usage factor. Although the proposed change may result in fewer spray cycles being logged, with the lower cumulative usage factor limit, fewer cycles will have to be logged before action must be taken. The reanalysis of the pressurizer spray system and accounting for thermal cyclesis consistent with the requirements of SRP Section 3.9.1 "Specific Topics and Mechanical Components." Therefore, this change is similar to Example (vi) of 48 FR 14870.

The existing specification defines the differential temperature ranges and the number of allowed spray cycles for each range. Currently, 50,000 spray cycles are allowed in the temperature range of 150 °F to 200 °F, 7,000 cycles are allowed in the range 201 °F to 300 °F, 2,000 cycles in the range 301 °F to 400 °F, 1,000 cycles in the range of 401 °F to 500 °F and 800 cycles in the range of 501 °F to 600 °F. The proposed change allows unlimited cycles below 200 °F since, as discussed above, 200 °F is the new threshold limit. The new ranges are defined in 50 °F increments from 201 °F to 600 °F with 11,000 cycles allowed to 250 °F, 4,000 cycles between 251 °F and 300 °F, 2,200 cycles allowed between 301 °F and 350 °F, 1,300 cycles between 351 °F and 400 °F, 900 cycles between 401 °F and 450 °F, 500 cycles between 451 °F and 500 °F, 300 cycles between 501 °F and 550 °F and 200 cycles between 551 °F and 600 °F. Comparing the number of spray cycles allowed by the existing specification between 201 °F and 300 °F and by the proposed specification, the existing specification allows 7,000 cycles whereas the proposed change would allow a total of 15,000 cycles (11,000 cycles between 201 °F and 250 °F, and 4,000 cycles between 251 °F and 300 °F).

Because the severity of the transient increases with the differential temperature, splitting the ranges into smaller increments allows considerably more cycles at the lower temperature without significantly increasing the overall severity of the allowed transients. For example, in the existing technical specification, in the range of 201 °F to 300 °F, 7,000 cycles are allowed, but from an analysis standpoint, all 7,000 cycles could occur at 300 °F, whereas in the proposed change, 11,000 cycles are allowed to 250 °F which are less severe than cycles at 300 °F and 4,000 cycles are allowed at 300 °F. Although the increased number of spray cycles allowed by the proposed change may be perceived to reduce, in some way, a margin of safety, the number of allowed spray cycles are accounted for in the analysis of the spray system in accordance with SRP Section 3.9.1; therefore, this change is similar to Example (vi) of 48 FR 14870.

Currently, the cumulative usage factor limit is 0.75. When the cumulative factor limit is exceeded, spray cycles must be limited to less than the threshold differential temperature and an engineering evaluation must be performed to show that the spray system remains acceptable prior to removing this restriction. The proposed change reduces the cumulative usage factor limit to 0.65. This reduction in the cumulative usage factor limit is an additional restriction and, in some ways, compensates for the relaxations in the threshold differential temperature and the increased number of allowed spray cycles in the redefined temperature ranges. Because this change is an additional restriction, it is similar to Example (ii) of 48 FR 14870.

In summary, because each part of the proposed change is similar to one of the examples of 48 FR 14870, the NRC staff proposes to determine that the change does not involve a significant hazards consideration. *Local Public Document Room Location:* San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672. *Attorney for Licensees:* Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111. *NRC Branch Chief:* George W. Knighton.

Southern California Edison Company et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 9, 1985 (Reference PCN-200, 201, 202, 203, 204 and 206).

Description of Amendment Request: On October 9, 1985, Southern California Edison Company (SCE or the licensee) requested several technical specification changes that are necessary to accommodate Cycle 3 operation of San Onofre 2 and 3. Six of these proposed changes are discussed herein. These are Proposed Change Number (PCN) 200, 201, 202, 203, 204, and 206. PCN-199, which is also required for Cycle 3 operation, is discussed elsewhere.

1. PCN-200—This proposed change would revise Technical Specifications (T.S.) 3/4.1.2.1, "Boration Systems—Flow Paths—Shutdown," T.S. 3/4.1.2.2, "Boration System—Flow Paths—Operating," T.S. 3/4.1.2.6, "Boric Acid Makeup Pumps—Operating," T.S. 3/4.1.2.7, "Borated Water Sources—Shutdown," T.S. 3/4.1.2.8, "Borated Water Source—Operating," T.S. 3/4.5.1, "Safety Injection Tanks," T.S. 3/4.5.4, "Refueling Water Storage Tank," and associated bases.

These specifications define: (1) the volume and concentration of boric acid to be maintained in the refueling water storage tank (RWST) for mitigation of a loss of coolant accident (LOCA) and cooldown of the plant; (2) the concentration and volume of boric acid to be maintained in the safety injection tanks (SIT) for mitigation of a LOCA; (3) the volume and concentration of boric acid to be maintained in the boric acid makeup tanks (BAMU); and (4) the flow paths from the borated water sources to the reactor coolant system required during the various modes of plant operation.

The proposed change consists of four parts, which would (a) increase the upper limit or boron concentration for the RWST and SIT's from 2300 to 2500 ppm; (b) reduce the maximum BAMU concentration to allow elimination of heat tracing; (c) better define boration flow path requirements, and (d) decrease the lower limit on SIT boron concentration for Unit 3, Cycle 2 only from 1720 to 1420 ppm;

(a) T.S. 3/4.5.1, "Safety Injection Tanks," and 3/4.5.4, "Refueling Water Storage Tank" specify a maximum boron concentration for the RWST and SIT's of 2300 ppm.

The limit on maximum boron concentration ensures that boric acid does not precipitate in the core following a LOCA and hinder core coolability. Part (a) of proposed change PCN-200 would increase the upper limit from 2300 to 2500 ppm.

(b) T.S. 3/4.1.2.8, "Borated Water Source—Operating" requires that at least one boric acid makeup tank and associated heat tracing circuit be operable, with the contents of the tank as specified in Figure 3.1-1. In Modes 1 through 4, Figure 3.1-1 requires a minimum of 5450 gallons at a minimum boric acid concentration of 8.5 wt% be maintained. T.S. 3/4.1.2.8 also requires that the refueling water storage tank be operable containing a minimum of 362,800 gallons borated water with concentration between 1720 and 2300 ppm. T.S. 3/4.1.2.2 requires a minimum of two of the following three paths: (1) A BAMU tank gravity feed path and associated heat tracing; (2) a BAMU tank path via a boric acid makeup pump and associated heat tracing, or (3) the gravity feed path from the RWST to the charging pump suctions.

The purpose of the required borated water sources and flow paths to the RCS is to ensure that sufficient borated water is available to maintain the reactor subcritical and provide makeup water to account for reactor coolant system (RCS) shrinkage during cooldown to cold shutdown conditions.

Part (b) of proposed change PCN-200 would revise T.S. 3/4.1.2.8 to reduce the concentration range to be maintained in one or both BAMU tanks and to eliminate heat tracing. The range of volumes and concentrations to be maintained in the BAMU tanks is specified in a revised Figure 3.1-1. The revised Figure 3.1-1 would represent the minimum required volume at a given concentration of boric acid to be maintained. Part (b) of proposed change PCN-200 would also allow this volume to be maintained as a combined volume in either or both of the BAMU tanks. The concentration range is approximately 2.25 to 3.5 weight percent boric acid. The BAMU tank boric acid requirements depend on the concentration currently maintained in the refueling water storage tank since both are required to provide boration during plant cooldown. Figure 3.1-1 incorporates four curves which represent the minimum boric acid volume required from BAMU tanks for a given RWST concentration.

(c) T.S. 3/4.1.2.2 "Boration System—Flow Paths—Operating" would be revised to reflect the flow paths required from the borated water sources credited in meeting T.S. 3/4.1.2.8. Currently, T.S. 3/4.1.2.2 requires two out of three available flow paths.

T.S. 3/4.1.2.2 also requires heat tracing to be operable and verification at least once per 18 months that the flow paths from the BAMU tanks are capable of delivering a flow of at least 40 gpm to the reactor coolant system (RCS). T.S. 3/4.1.2.6, "Boric Acid Makeup Pumps—Operating," requires the boric acid makeup pump, in any boration flow path credited in meeting the requirements of T.S.3/4.1.2.2, to be operable with an operable emergency power source. Part (c) of proposed change PCN-200 would require that both the gravity feed and boric acid pump paths from any BAMU tank credited in satisfying the boric acid requirements of T.S. 3/4.1.2.8 be operable and that the RWST gravity feed path to the charging pumps be operable. There is one gravity feed path and one boric acid pump path from each of the BAMU tanks. If the combined volume of boric acid required is contained as a combined volume between the two BAMU tanks, then the proposed change will require both gravity feed paths and both boric acid makeup pump paths to be operable. If the boric acid requirements are being satisfied by one BAMU tank, then the proposed change will require only the gravity feed path and the boric acid makeup pump path from that tank to be operable. Since the proposed change always requires a boric acid makeup pump path to be operable, T.S. 3/4.1.2.6 is revised, for consistency, to reflect that a BAMU pump is always required. The T.S. 3/4.1.2.6 requirement that operable BAMU pumps be capable of being powered from an operable emergency power source is deleted since it is redundant to the requirements of T.S. 3/4.8.1.1, "Electrical Power Systems—AC Sources." The proposed change will require the RWST gravity feed path to be operable at all times regardless of the BAMU tank flow paths required. The proposed change removes the requirement for heat tracing from Technical Specification T.S. 3/4.1.2.2 and the requirement to verify at least one per 18 months that the flow paths from the BAMU tanks are capable of delivering a flow of at least 40 gpm to the RCS. Both of these requirements relate to the potential for obstruction of the boration flow paths due to precipitation of boric acid at the high concentrations currently required. Limiting the maximum concentration in the BAMU tanks to 3.5 wt% eliminates the need for the heat tracing and flow verification.

T.S. 3/4.1.2.7, "Borated Water Source-Shutdown" and T.S. 3/4.1.2.1, "Boration System-Flow Path-Shutdown" define the borated water sources and flow paths to

be maintained during cold shutdown and refueling operations. T.S. 3/4.1.2.7 requires either one boric acid makeup tank and associated heat tracing to be operable with the tank's contents in accordance with Figure 3.1–1, or the refueling water storage tank with a minimum contained volume of 9,970 gallons with a minimum boron concentration of 1720 ppm. T.S. 3/4.1.2.1 requires that one boron injection flow path and associated heat tracing circuit be operable from the credited borated water source. The available flow paths are: (1) A BAMU tank gravity feed path to be charging pump suctions; (2) a boric acid makeup pump path to the charging pump suctions; (3) a gravity feed path from the RWST to the charging pump suctions, or; (4) a flow path from the RWST to the RCS via a high pressure safety injection pump. Part (c) of proposed change PCN–200 would also revise T.S. 3/4.1.2.7 to require a minimum of 5,150 gallons to be maintained in a BAMU tank or the RWST with a minimum concentration of 1720 ppm. The proposed change deletes the requirement for heat tracing from T.S. 3/4.1.2.1 and T.S. 3/4.1.2.7.

(d) T.S. 3.4.5.1, "Safety Injection Tanks" requires a minimum concentration of 1720 ppm to be maintained in the SIT tanks. The minimum concentration ensures that the reactor would be sub-critical during reflood following a large break LOCA. Part (d) of propsed change PCN–200 would revise the minimum concentration required in the SIT tanks from 1720 to 1420 ppm for Unit 3, Cycle 2 only.

2. PCN–201—The proposed change would revise Technical Specifications 3/4.2.4, "DNBR Margin", and 3/4.3.1, "Reactor Protective Instrumentation". Technical Specification T.S. 3/4.2.4 requires that the departure from nucleate boiling ratio (DNBR) be maintained by operating within the region of acceptable operation as indicated by either the Core Operating Limit Supervisory System (COLSS) or the Core Protection Calculator (CPC). Technical Specification T.S. 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, response times, periods testing required to assure operability, and actions to be taken when the required RPIS is out of service.

Proposed change PCN–201 consists of the following four parts:

(a) The proposed change would revise Figures 3.2–1, "DNBR Operating Limit Based on COLSS", Figure 3.2–2, "DNBR Margin Operating Limit Based on Core Protection Calculators (COLSS out of service, with power greater than or equal to 80% of rated thermal power)", and Figure 3.2–3, "DNBR Margin Operating Limit Based on Core Protection Calculators (COLSS out of service, with power less than 80% of rated thermal power)". Specifically, Figure 3.2–1 shows the minimum calculated Power Operating Limit (POL) based on DNBR for a given reactor power level. Provided that the COLSS POL is greater than that required by Figure 3.2–1 from a given reactor power, the plant is operating in the region of acceptable operation. The existing Figure 3.2–2 defines the required minimum DNBR margin for reactor operation at greater than or equal to 80% power. Figure 3.2–3 defines the required minimum DNBR margin for reactor operation at less than 80% power. The proposed change to Technical Specification 3.2.4 replaces the existing Limiting Condition for Operation (LCO) with four parts, 3.2.4.a through 3.2.4.d. 3.2.4.a and 3.2.4.b replace the existing Figure 3.2–1 with words to the same effect. 3.2.4.a states that when COLSS is in service and either one or both Control Element Assembly Calculators (CEACs) are operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR. 3.2.4.b. states that when COLSS is in service and neither CEAC is operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR decreased by a penalty factor of 13.0% of rated power. 3.2.4c. states that when COLSS is out of service and either one or both CEACs are operable, CPC calculated DNBR on any operable channel must be kept within the limits of Figure 3.2–1. The new Figure 3.2–1 is a power independent figure replacing the existing Figures 3.2–2 and 3.2–3. Section 3.2.4.d states that when COLSS is out of service and neither CEAC is operable, CPC calculated DNBR on any operable channel must be kept within the limits of Figure 3.2–2. the new Figure 3.2–2 is a power independent figure similar to the new Figure 3.2–1 but it accommodates the increased margin required when both CEAC's are inoperable.

(b) The proposed change would revise Surveillance Requirement 4.2.4.4, which provides the rod bow penalty factors on DNBR as a function of fuel burnup, which are included in COLSS and the CPC DNBR calculations. Specifically, this Surveillance Requirement requires that the rod bow penalty factor on DNBR as a function of fuel exposure should be verified to be included in COLSS and CPC DNBR calculations at least once per 31 days. The justification for removal of this surveillance requirement is that the rod bow penalty factor has been determined to be less than 2.0 percent at a fuel exposure of 30,000 MWD/MTU. This is unchanged from cycle 2. Because of the physical radial power peak burndown effect, no fuel assembly with burnup exceeding 30,000 MWD/MTU would produce sufficient power to be subject to a limiting DNBR condition. Therefore, 30,000 MWD/MTU is a cutoff point for rod bow penalty calculation. The rod bow penalty factor will be verified for each cycle by design analysis. Since the rod bow penalty at 30,000 MWD/MTU has been incorporated in the minimum DNBR limit of the CPC's Surveillance Requirement 4.2.4.4 is not required.

(c) The proposed change would revise Technical Specification 3.3.1, Table 3.3–1, ACTION 6 which provides conditions under which operation may continue with COLSS out of service, for various operability conditions of the CEAC's. ACTION 6.b addresses operation with COLSS out of service and either one or both CEAC's are operable. ACTION 6.c addresses operation when COLSS is out of service and neither CEAC is operable. The proposed Action change to ACTION 6 combines ACTIONs 6.b and 6.c. Except for whether or not the CEAC's are operable, these two ACTIONs are essentially the same. The reference to Figure 3.2–1 in the existing ACTION 6.b is replaced by reference to Specification 3.2.b. The reference to the penalty factor on the BERR1 constant in the existing ACTION 6.c replaced by reference to Specification 3.2.4.d, where the same penalty definition is applied by a new mechanism.

(d) The proposed change will revise Surveillance Requirement 4.2.4.2 which specifies monitoring of DNBR whenever THERMAL POWER is above 20% of RATED THERMAL POWER. Specifically, Surveillance Requirement 4.2.4.2 requires that DNBR be determined by continuously monitoring core power distribution using COLSS, or, with COLSS out of service, by verifying every two hours that the DNBR on all OPERABLE CPS system DNBR channels is within the limits of Figures 3.2–2 or 3.2–3, and that the penalties in Table 3.3–2b are implemented. The proposed change to Surveillance Requirement 4.2.4.2 removes the requirement to verify that the appropriate penalty factors have been implemented on all CPC system channels, with a requirement to verify that operation is within the limits of new Figures 3.2–1 or 3.2–2 on any CPC system channel. The proposed change

recognizes that it is only necessary to monitor one channel for control purposes during steady state operation, as is done for other parameters. Since sufficient margin is already implemented in the CPC trip setpoint, it is not necessary that this be the most limiting channel. The four CPC channels continue to provide the protection required during transient operation.

3. PCN–202—This proposed change would revise Technical Specification 3/4.1.1.3, "Moderator Temperature Coefficient". Technical Specification 3/4.1.1.3 imposes limitations on moderator tempeature coefficient (MTC) to ensure that the assumptions used in the accident and transient analyses remain valid through each fuel cycle. The surveillance requirements for measurement of the MTC during each fuel cycle will be performed to confirm the MTC value since this coefficient changes slowly due principally to the reduction in reactor coolant system (RCS) boron concentration associated with fuel burnup. The confirmation that the measured MTC value is within its limit provides assurances that the coefficient will be maintained within acceptable values throughout each fuel cycle.

Technical Specification 3/4.1.1.3 currently states that the moderator temperature coefficient shall be less negative than -2.5×10^{-4} delta k/k/°F at rated thermal power. The proposed change will state that the moderator temperature coefficient shall be less negative than -3.3×10^{-4} deltal k/k/°F. This change is required to reflect the use of higher enrichment fuel in uranium-235 beginning in Cycle 3 and the increased burnup to which this fuel will be subjected by end of cycle.

4. PCN–203—This proposed change would revise Technical Specification 3/4.3.1, "Reactor Protective Instrumentation," and Technical Specification 3/4.2.4, "DNBR Margin." Technical Specification 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, their setpoints and their response times and periodic testing requirements to assure operability. This technical specification defines maximum reactor protection instrumentation response times in order to verify that the maximum response times for RPIS assumed in the Final Safety Analysis Report (FSAR) are not exceeded. Technical Specification 3/4.2.4 requires that the DNBR be maintained by operating within in region of acceptable operation as indicated by either the COLSS or the CPC.

The proposed changes consists of the following two parts:

(a) The proposed change revise Table 3.3–2, "Reactor Protective Instrumentation Response Times," Table 3.3–2a, "Increases in BERR Constants," and Table 3.3–2b, "DNBR LCO Power Operating Limit Adjustments," of Technical Specification 3/4.3.1. Specifically Item 10, "DNBR–Low," specifies a response time of 0.68 second for RCS Hot Leg and Cold Leg Temperature. The table notes that these response times are based on a resistance temperature detector (RTD) response time of less than or equal to 13.0 seconds. For Cycles 1 and 2, the accident analysis used an initial RTD response time of 6 seconds. Table 3.3–2a and 3.3–2b require adjustments to the CPC addressable constants and the reduction in the DNBR power operation limit in the COLSS to compensate for measured RTD response times greater than 6 seconds. For Cycle 3, the accident analysis uses and RTD response time of 8.0 seconds. The proposed change revises the RTD maximum response time from 13.0 seconds to 8.0 seconds in Note (# #) of Table 3.3–2, and deletes Tables 3.3–2a and 3.3–2b, since adjustments are no longer necessary for response times greater than 6 seconds. For consistency, the references to Table 3.3–2b are deleted from Surveillance Requirement 4.2.4.2 of Specification 3/4.2.4.

b. The proposed change also revises Note (#) appended to Item (10(e), "Primary Coolant Pump Shaft Speed." It presently states that the response time shall be measured from the onset of coastdown of two out of the four reactor coolant pumps. This note would be revised to clarify that the response time measured using simulated pump coastdown.

One of the ways to simulate the reactor coolant pump (RCP) coastdown is using the response time test box. The fly-disk on the RCP generates the pulses which are sent to the CPC. The CPC counts the pulses to determine the frequency, which represents the RCP speed. Appropriate initial conditions are entered in the CPC. The pump coastdown is then simulated by changing the frequency using the response time test box that would represent the pump speed at the end of the transient marking the point at which the CPC generates a trip. Therefore, response time measurement is done using the simulation rather than from the onset of a 2 out of 4 RCP coastdown.

5. PCN–204—This proposed change would revise Technical Specification 2.2.1, "Reactor Trip Setpoints," and its associated bases. Table 2.2–1, "Reactor Protective Instrumentation Trip Setpoint Limits," requires that the setpoints for trip values of the Reactor Protective System (RPS) be set at spectified values and kept within a specified allowable value range. The Local Power Density—High Trip Setpoint of Table 2.2.1 specifies the required trip setpoint to prevent the peak linear heat rate from exceeding its safety limit for transients and anticipated operational occurrences and to mitigate the consequences of accidents. The proposed change revises the value of the Local Power Density—High Trip Setpoint and Allowable Value of LSSS 2.2.1, Table 2.2–1. Specifically, Table 2.2–1, Functional Unit 9, requires that both the Trip Setpoint and Allowable Value for the Local Power Density—High trip be 19.95 kw/ft. The proposed change increases both the Trip Setpoint and Allowable Value to 21.0 kw-ft, and reflects this revised setpoint in the Bases. This trip setpoint is a generic value with which the Core Protection Calculator System (CPCS) acts to prevent the Safety Limit from being exceeded during anticipated operating occurrences. Previously the trip setpoint incorporated an adjustment for dynamic effects that will now be accounted for elsewhere in the OPCS algorithms. Any changes to this adjustment on a cycle dependent basis can be incorporated in the addressable constants. Effectively, the CPCS local power density protection is not being changed.

General Design Criterion 10, Reactor Design, requires that the reactor core and associated coolant, control and protection systems be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. The specified trip settings result in confidence that the specified acceptable fuel design limits will not be exceeded during normal operation or as the result of anticipated operational occurrences.

6. PCN–206—This proposed change would revise Technical Specifications 2.2.2, "Core Protection Calculator Addressable Constants", 6.5.1.6, "Onsite Review Committee", 6.8.1, "Procedures and Programs," and the Bases for Specifications 3/4.3.1 and 3/4.3.2, "Reactor Protective and Engineered Safety Features Actuation System Instrumentation". These specifications relate to CPC addressable constants and define allowable ranges for certain constants and administrative controls

on changes to addressable constants values.

The CPC's are digital computers which form part of the reactor protection system which monitors vari&us plant parameters and automatically generate a reactor trip when specified conditions are exceeded. The CPC's monitor various reactor parameters and calculate DNBR and local power density (LPD). If DNBR and LPD are calculated to exceed the DNBR and LPD trip setpoints, the CPC's automatically initiate a reactor trip.

The CPC addressable constants provide a mechanism to calibrate CPC calculations to account for physics tests measurements, uncertainties, sensor operability status, flow and power measurements, and changes in core design from cycle to cycle. Addressable constants are categorized as either Type I or Type II. Type I constants are calibrating constants, sensor operability status flags and pre-trip alarm setpoints which potentially could change frequently during a fuel cycle. Type I addressable constant values are entered using the CPC operator module.

Type II addressable constants are related to measured physics test parameters, uncertainties, allowances, adjustments and values determined during startup tests following each fuel loading, and are not expected to change during cycle operation. Values for Type II addressable constants are typically entered via diskettes but also can be entered via the operator module.

The CPC software includes range limits on addressable constants. These range limits prevent errors from being made during addressable constant entry. However, the range limit values are not related to the safety analysis; that is, having addressable constant values within the software limits does not in itself guarantee conservative CPC operation.

Technical Specification 2.2.2, "CPC Addressable Constants", requires that CPC addressable constants be in accordance with Table 2.2–2. Table 2.2–2 lists the addressable constants used in the CPC's, and gives limiting values for Type I constants Type II constants are listed without limits. The proposed change would delete Table. 2.2–2 from the Technical Specifications.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (ii) relates to changes which may constitute an additional limitation, restriction, or control not presently included in the Technical Specification. Example (iii) relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and the NRC has previously found such methods acceptable. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). The six proposed changes are similar to one or more of these examples. The specifics of how each proposed change is similar to the examples of 48 FR 14870 is discussed below.

1. PCN–200—The pertinent acceptance criteria for change is found in SRP Sections 4.3, "Nuclear Design," Section 5.4.7, "Residual Heat Removal System," Section 6.3, "Emergency Core Cooling System," and Section 9.3.4 "Chemical and Volume Control System."

Part (a) of proposed change PCN–200 would increase the maximum concentration allowed in the SIT and refueling water storage tanks from 2300 ppm to 2500 ppm. SRP Section 6.3 "Emergency Core Cooling System" requires that there not be an unacceptably high concentration of boric acid in the core resulting in precipitation in the long-term cooling phase following a LOCA. The proposed increase in maximum concentration will result in a higher post-LOCA concentration in the recirculated water. However, the post-LOCA resulting from the proposed change is less than the solubility limit. Therefore, precipitation will not occur and the SRP acceptance criteria are satisfied.

Parts (b) and (c) of proposed change PCN–200 relax boric acid concentration and volume requirements for the BAMU tanks, removes the requirements for heat tracing of the chemical and volume control system (CVCS) and verification that the BAMU tank flow paths can deliver 10 gpm to the RCS. Preposed change PCN–200 also implements more restrictive requirements on boration flow paths. The CVCS provides RCS inventory control and control of RCS boron concentration for control of reactivity. The functional requirements and acceptance criteria for the CVCS are contained in SRP Section 5.4.7 "Residual Heat Removal System" and Section 9.3.4 "Chemical and Volume Control System." SRP Section 5.4.7 by reference to Branch Technical Position 5–1 "Design Requirements of the Residual Heat Removal System" require the capability to take the plant from normal operating conditions to cold shutdown assuming a loss of offsite power and the limiting single failures. SRP Section 9.3.4 requires that the CVCS: (1) be capable of providing negative reactivity to the reactor by supplying borated water to the reactor coolant system in the event of anticipated operational occurrences; (2) be capable of providing makeup for small breaks to the RCS pressure boundary and to function as part of the ECCS assuming a single active failure coincides with loss of offsite power, and (3) be capable of providing boration of the reactor coolant system through either of two flow paths and from either of two sources. In addition, SRP Section 9.3.4 requires that the amount of boric acid stored in the CVCS exceeds the amount required to borate the RCS to cold shutdown conditions assuming the highest worth CEA is held fully withdrawn from the core. To satisfy these requirements, an adequate volume of sufficiently borated water must be available in the BAMU tanks and RWST, and flow paths must be available to inject water into the RCS. The proposed requirements ensure that an adequate volume of borated water and flow paths are available to enable cooldown of the plant assuming letdown is unavailable in conjunction with a loss of offsite power and the limiting single failure. The proposed concentration requirements ensure that sufficient boron is available to maintain shutdown margin during plant cooldown from normal operating to cold shutdown conditions. The proposed boration flow path requirements ensure that borated water is available from either of two sources and that a borated water source is available to function as part of the

ECCS assuming a single active failure coincident with a loss of offsite power. Therefore, the proposed change meets all applicable SRP acceptance criteria.

Part (d) of proposed change PCN–200 would lower the minimum SIT boron concentration for Unit 3, Cycle 2 from 1720 to 1420 ppm. SRP Section 4.3 "Nuclear Design" requires reactivity control systems to have a combined capability in conjunction with poison addition from the ECCS to reliably control reactivity changes under postulated accident conditions with a margin for stuck control rods. The proposed change would lower the boric acid concentration during reflood following a large break LOCA. In the large break LOCA analysis, conservatively, no credit is taken for control rod insertion. Analysis has confirmed that with 1420 ppm boric acid from the SIT tanks, the reactor will be sub-critical following a postulated LOCA. Therefore, the proposed change satisfies the SRP acceptance criteria.

Based on the above, proposed change PCN–200 is similar to Example (vi) of 48 FR 14870 in that it may, in some way, reduce existing requirements but where the changes satisfy the SRP acceptance criteria.

2. PCN–201—In this case, the proposed change described in part (a) of PCN–201 not only revises Figures 3.2–1, Figure 3.2–2, and Figure 3.2–3 but also replaces the existing Limiting Conditions for Operation (LCO) with four parts, i.e., Sections 3.2.4.a through 3.2.4.d. This modification is similar to Example (i) and (iii) of 48 FR 14870 as discussed below.

Part (a) of PCN–201 is similar to Example (i) in that it relates to a purely administrative change to technical specifications by imposing four applicable administrative control methods and two new figures in lieu of six existing figures to maintain an adequate DNBR margin under different states of plant operations. 3.2.4.a and 3.2.4.b replace the existing Figures 3.2–1 with words to the same effect when COLSS is in service. Additionally, both new figures supplant the existing Figures 3.2–2 and 3.2–3 in compliance with 3.2.4.c and 3.2.4.d when COLSS is out of service. Thus, DNBR will be maintained by 3.2.4.a (or 3.2.4.c) when either one or both CEAC are operable and by 3.2.4.b (or 3.2.4.d) when neither CEAC is operable. Since the proposed change pertains to a revision of graphic representations in LCO with a set of plain administrative control statements easy for understanding and two consolidated figures for simplification, it is a change within the scope contemplated by Example (i).

Also, Part (a) of PCN–201 is similar to Example (iii) in that it relates to a change resulting from a nuclear reactor core loading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not specifically changed, and the NRC has previously found such methods acceptable. This change requires an updating of the DNBR operating limits with the aid of two new figures as a result of the reload analysis for Cycle 3 which involves a nuclear reactor core loading. There are no fuel assemblies in Cycle 3 which are significantly different from those found previously acceptable to the NRC for the previous core. The DNBR operating limits are derived in compliance with the acceptance criteria used for the previous core on the basis of the analytical methods which were approved by the NRC and found acceptable. Hence the proposed change is similar to Example (iii) in that the DNBR operating limits are updated because of a new core loading in Cycle 3.

The proposed change described in Part (b) of PCN-201 revises Surveillance Requirements 4.2.4.4 concerning the rod bow penalty factors on DNBR as a function of fuel burnup. This modification is similar to Example (vi) in that the removal of such penalty factors may reduce in some way a margin of safety, but where the results are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Sections 4.4 and 7.2 of the SRP delineates acceptance criteria to maintain fuel integrity. Specifically, the Core Protection Calculator (CPC) and the Reactor Protective Instrumentation System (RPIS) must assure with high probability that acceptable fuel design limits are not exceeded during normal operation or anticipated operational occurrences (AOOs). The removal of Surveillance Requirement 4.2.4.4 does not imply a reduction in the margin of safety because of the deletion of the DNBR rod bow penalty factors from Technical Specification 3/4.2.4. In fact, effects of fuel rod bowing on DNBR margin have been incorporated in the safety and setpoint analysis and combined with other uncertainty factors at the 95/95 confidence/probability level to define a design DNBR limit. They are adequately validated in the CPC software and verified for Cycle 3. In addition, the RPIS will automatically initiate a reactor trip to prevent Specified Acceptable Fuel Design Limits (SAFDLs) from being exceeded during transients and AOOs. Hence, the proposed change will not result in an increase in the probability or ocnsequences of an accident as the application of the appropriate penalty factors remains adequately validated and the protection of RPIS is available. In short, the relaxation of existing surveillance requirement will not compromise the safety margin, and the results of the reload analysis related to this proposed change are further verified to ensure that the established criteria of the SRP are met in view of Example (vi).

The proposed change described in Part (c) of PCN-201 revises the ACTION statements in Table 3.3–1 of Technical Specification 3.3.1. It is similar to Example (i) in that it is purely administrative change to delete requirements which have been placed in another Technical Specification. The proposed change to ACTION 6 combines ACTIONs 6.b and 6.c for consistency with respect to the proposed changes described in (a) and (b) above. The existing ACTION 6.b.1 is revised to incorporate Specification 3.2.4.b and 3.2.4.d whereas the existing ACTION 6.c is deleted because the penalty factor on the BERRI constant referenced therein is applied by a new mechanism per the proposed change (b). Hence the proposed change is similar to Example (i) in that it relates a change to achieve consistency throughout the technical specifications.

The proposed change described in Part (d) of PCN-201 revises Surveillance Requirements 4.2.4.2 by removing the verification requirement that the appropriate penalty factors have been implemented on all CPC system channels to ensure conformance of the operating limits on any CPC system channel per Figures 3.2–2 or 3.2–3. It is similar in Example (vi) in that the removal of such a surveillance requirment may reduce in some way a margin of safety, but where the results are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Specifically, the proposed change recognizes that it is only necessary to monitor one channel for control purposes during steady state operation so long as the plant is operated within the limits of Figures 3.2–1 and 3.2–2 as described in the proposed change (a). Since sufficient margin is already implemented in the CPC trip setpoint for transient protection in a similar way

discussed in the proposed change (b), it is not necessary to monitor with all CPC system channels. This proposed change thus relieves the operators of an unnecessarily frequent surveillance without any reduction to a margin to safety. The CPC trips will continue to provide the same protection that they always have during transient operation. Hence the proposed change is similar to Example (vi) in that it is a relaxation of a surveillance requirement without compromising any safety operation.

3. PCN-202—This proposed change is similar to Example (iii) of 48 FR 14870 in that the technical specification on the moderator temperature coefficient will reflect the use of more highly enriched fuel that will be exposed to increased burnup by cycle. This change is not significant and does not make changes in analytical methods used to demonstrate conformance with the technical specifications and regulations, and the NRC has previously found such methods acceptable.

4. PCN-203—Part (a) of this proposed change would revise the RTD response time form 13.0 seconds to 8.0 seconds. This change is similar to Example (ii) of 48 FR 14870 in that proposed RTD response time is more restrictive than the current one. The proposed change described in part (b) above is similar to example (i) in that it more accurately specifies the method for response time testing.

5. PCN-204—SRP Section 7.2, "Reactor Trip System", requires that the reactor protection system automatically initiates a reactor trip to assure that specified acceptable fuel design limits are not exceeded. Proposed Change PCN-204 is similar to example (vi) of 48 FR 14870. Although the increased LPD trip setpoint may be perceived to reduce in some way a margin of safety, adjustments for dynamic effects which were previously included in the trip setpoint are now accounted for elsewhere in the CPC algorithms. The net effect is that the CPC's with the revised setpoint will continue to initiate a reactor trip to assure that specific acceptable fuel design limits are not exceeded. Therefore, the proposed change satisfies SRP Section 7.2 acceptance criteria and is similar to example (vi) of 48 FR 14870.

6. PCN-206—This proposed change deletes T.S. 2.2.2 (and Table 2.2–2) and the T.S. 6.5.1.6 requirement for OSRC review and approval for the use of addressable constant values outside the allowable ranges stated in T.S. 2.2.2. The proposed change emplifies Bases Section 3/4.3.1 in regards to the function and control of changes to addressable constants.

The allowable range of values in T.S. 2.2.2 are not related to the safety analysis and the use of value within these ranges does not ensure conservative CPC operation. Actual values to be used for addressable constants result from surveillance requirements for reactor protective instrumentation (T.S. 3/4.3.1) and action requirements (e.g., T.S. 3/4.6.1 Action 6c which rquires adjustments to addressable constant values when certain equipment is out of service). There have been occassions where satisfaction of the surveillance requirements have resulted in addressable constant values outside the allowable range, a conflict in existing technical specification requirements. Because of this conflict and because other technical specifications control the actual values of addressable constants, the proposed deletions are editoral and correct an existing conflict. Therefore the proposed change is similar to example (i) of 48 FR 14870. The proposed change to T.S. 6.8.1 deleting the requirements for prior OSRC approval of the use of the plant computer—CPC data link may be perceived to in some way decrease a safety margin. It should be noted that values for CPC addressable constants can be generated from CPC data manually collected from the CPC's without OSRC approval and that manual collection of data would be more prone to errors than use of the data link. The proposed change does not affect the functioning of the CPC's as part of the reactor protection system but merely revises administrative control of how addressable constant values are generated. Thus, with the proposed change, the CPC's will continue to satisfy the SRP Section 7.2, "Reactor Trip System", requirement for the reactor protection system to automatically initiate a reactor trip to assure that specified acceptable fuel design limits are not exceeded. Therefore this change is similar to exemple (vi) of 48 FR 14870.

Based on the above, the NRC proposes to determine that Proposed Changes PCN-200, 201, 202, 203, 204, and 206 do not constitute a signficant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensees: Charles R. Kocher, Esq. Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq. 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: April 12, 1985, as supplemented September 9, and October 7, 1985.

Description of amendment requests: The request for amendments was initially noticed on May 28, 1985 (50 FR 20995). The amendments proposed changes to the Technical Specifications to revise the Limiting Condition for Operation (LCO) and Surveillance Requirments (SR) for the reactor trip and bypass breakers, undervoltage trip logic and shunt trip logic. The proposed changes were requested in response to a generic letter, dated July 8, 1983, addressing "required actions based on generic implications of Salem ATWS events" (Generic Letter (GL) 83–28). Item 4.3 of the letter, "Reactor Trip System Reliability," states that Westinghouse reactors shall be modified by providing automatic reactor trip system actuation of the breaker shunt trip attachment.

This notice includes changes requested in subsequent submittals dated September 9, and October 7, 1985. The September 9, 1985 submittal modifies the original change request to include subsequent staff guidance provided in GL 85–09, "Technical Specifications for GL 83–28, Item 4.3" regarding the Limiting Conditions for Operation and Surveillance Requirements of the reactor trip and bypass breakers, the undervoltage and shunt trip logic and the manual scram switches. Specifically, the description of the proposed LCOs and SRs are more specific, descriptive and detailed in that actions based on conditions of redundancy have been specified, and time limits for restoration of operability have been established for the reactor trip breakers and automatic trip logic, and the independent testing of the undervoltage and shunt trip attachments for the reactor trip and bypass breakers, and manual scram switches have been clarified.

The October 7, 1985 submittal reinstates two surveillance requirements which were inadvertently omitted in the April 12, and September 9, 1985 submittals. These two surveillance requirements were not affected by, nor were they a part of, the proposed changes.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Examples of actions not likely to involve a significant hazards consideration are "(i) A purely administrative change * * * of example* * * a correction of an error, or a change in nomenclature"; and "(ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement."

The supplemental proposed changes are similar to Example (i) in that the reinstatement of the inadvertent omission of two surveillance requirements is a correction of an error; and to Example (ii) in that the additional description and detail clarifies the intent of (a) the surveillance testing requirements for reactor trip and reactor trip bypass breakers, and the manual scram switches; and (b) the LCOs for the reactor trip breakers but constitute additional restriction or controls.

As such, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubeinstein.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern California Edison Company, et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 23 and October 10 and 16, 1985.

Brief description of amendment: Technical Specification changes relating to the maximum enrichment of fuel assemblies and the criticality requirements for storage of fuel in the fuel storage areas.

Date of publication of individual notice in "Federal Register": October 30, 1985.

Expiration date of individual notice: November 29, 1985.

Local Public Document Room location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has perpared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 28, 1985.

Brief description of amendments: The amendments change the Unit 1 and 2 Technical Specifications (TS) to: (1) Reflect a clarification of requirements associated with the containment purge isolation valves in TS 3.3–3, "Engineered Safety Features Actuation System Instrumentation," and TS Table 3.6–1, "Containment Isolation Valves," (2) modify TS 3.9.4, "Containment Penetration," to allow the use of an alternate closure for the emergency personnel escape lock, (3) delete TS 6.13, "Environmental Qualifications," and (4) correct identified spelling errors and change in terminology.

Date of issuance: December 4, 1985.

Effective date: December 4, 1985.

Amendment Nos.: 108 and 91.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37073).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: August 29 and August 30, 1985.

Brief description of amendment: The amendment changes the TS to reflect changes in the analysis to accommodate Unit 2 Cycle 7 operation. In addition, the analyses support changes in the TS for steam line safety valve setpoints.

Date of issuance: November 21, 1985.
Effective date: November 21, 1985.
Amendment No.: 90.
Facility Operating License No. DPR-69. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38909 at 39910).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1985.

No significant hazards consideration comments received: No.
Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: April 12, 1985, as supplemented September 17, 1985.
Brief description of amendment: The amendment changes the Technical Specifications by raising the K-effective limit of the spent furl storage pool from 0.90 to 0.95 and substituting a maximum K-infinity for the maximum enrichment and average U-235 loading of fuel assemblies in the pool.
Date of issuance: December 3, 1985.
Effective date: 30 days after the date of issuance.
Amendment No.: 91.
Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20971) No change in the substance of the amendment was proposed in the licensee's letter of September 17, 1985.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: Yes. A request for hearing and petition for leave to intervene, dated June 29, 1985, was received from Mr. John F. Doherty. The request was denied by an Atomic Safety and Licensing Board on July 19, 1985, and his appeal of that decision was denied by the Atomic Safety and Licensing Appeal Board on September 5, 1985.
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 11, 1985.
Brief Description of amendment: The amendment to Operating License NPF-11 revises the La Salle Unit 1 Technical Specifications to delete the air-operated-testable-bypass-check valves installed in each of the emergency-core-cooling systems (ECCS) and reactor core colling isolation (RCIC) system since they are no longer required. The purpose of the bypass valves was to enable the exercising of the testable check valves in the ECCS and RCIC system during reactor operation by equalizing the pressure-across the check valve disk. These testable-check valves are part of the Inservice Inspection Program and the La Salle Unit 1 Program calls for these testable-check valves to be exercised during cold shutdown. Therefore, the bypass check valves are not required.
Date of issuance: December 6, 1985.
Effective date: Upon startup following the first refueling.
Amendment No.: 31.
Facility Operating Licenses No. NPF-11 Amendment revised that Technical Specifications.
Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 48211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No signficant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: August 28, 1985.
Brief Description of amendments: The amendments to Operating License NPF-11 and Operating License NPF-18 revise the La Salle Units 1 and 2 Technical Specifications to allow time to correct calibrations before declaring the channels inoperable and requring the imposition of a half-scram. The change is an interpretation and clarification of the provision. When the power is above 90 percent thermal power and the Average Power Range Monitors (APRMs) read less than the thermal power (Gain Adjustment Factor (GAF) 1) as determined by heat balance, the Technical Specifications change allows 2 hours for adjustment if the difference is greater than 2 percent. For thermal power above 90 percent and the APRMs reading greater than the thermal power (GAF 1), the Technical Specifications allows 12 hours for adjustment if the difference is greater than 2 percent. Similary for power less than 90 percent and APRMs read less than thermal power (GAF 1), the Technical Specification allows 2 hours for adjustment if the difference is greater than 2 percent. For power less than 90 percent and APRMs reading greater than the thermal power (GAF 1), the Technical Specifications allows 12 hours for adjustment if the difference is greater than 10 percent. Also, it will be permissible to trip only the inoperable channel where trip systems have more than 2 channels per system.
Date of issuance: November 20, 1985.
Effective date: November 20, 1985.
Amendment Nos.: 30 and 17.
Facility Operating Licenses No. NPF-11 and NPF-18 Amendments revised that Technical Specifications.
Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38912). The Commission's related evaluaton of the amendment is contained in a Safety Evaluation dated November 20, 1985.

No signficant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 2, 1985.
Brief Description of amendment: The amendment revises the Technical Specification to delete the Boron Injection Tank (BIT) and its associated limiting conditions for operation and surveillance requirements.
Date of issuance: December 5, 1985.
Effective date: Immediately to be implemented within 30 days.
Amendment No.: 104.
Facilities Operating License No. DPR-26: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 12, 1985.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to revise the calibration schedule of the seismic instruments from "within 24 hours" to "within 30 days" after a seismic event. The increased flexibiilty would ensure that part of the instrumentation would remain available to record potential after-shock data.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment No. 98.

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37081)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application of amendments: May 15, 1984 and May 21, 1984 as amended by letters dated May 23, 1985 and August 26, 1985.

Brief description of amendments: These amendments consist of changes to the Technical Specifications to incorporate the provisions of 10 CFR 50.72 and 50.73 as defined in Generic Letter 83-43 and changes to the "Definition" and "Administrative Controls" sections to make the St. Lucie Plant, Unit Nos. 1 and 2 Technical Specifications similar and reflect current organization.

Date of Issuance: December 6, 1985

Effective Date: December 6, 1985.

Amendment Nos.: 69 and 13.

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 at 49 FR 25359 for St. Lucie 1 and July 24, 1984 at 10 FR 29909 for St. Lucie 2 and September 11, 1985 at 37081 for St. Lucie 1 and 2.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 11, 1985.

Brief description of amendments: The amendment approves changes to the Appendix A Technical Specifications (TSs) pertaining to Sections 3.13 and 4.13, Accident Monitoring Instrumentation. These changes add limiting conditions for operation and surveillance requirements to the TSs for the following post-accident monitoring instrumentation: torus water level monitors, drywell pressure monitors and drywell hydrogen monitors.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment No. 94.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16004). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: October 21, 1985.

Brief description of amendment: The amendment revises paragraph 2.C.(8) of the Shoreham license to allow an extension of time, until December 31, 1985, as authorized by the Commission, for the completion of the environmental qualification of certain electrical equipment.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No.: 1.

Facility Operating License No. NPF-36: Amendment revised the License Condition 2.c.(8).

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46214) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Northeast Nuclear Energy Company et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 26, 1985.

Brief description of amendments: This amendment corrects technical specification typographical errors, provides clarification and allows continued operation for cycle 11 operation.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No. 107.

Facility Operating License No. DPR-21. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41250). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 29, 1985, as revised June 14, and September 4, 1985.

Brief description of amendment: The amendment revises Technical Specifications Section 3.5 to change the oxygen concentration in the primary containment atmosphere from 5% by weight to 4% by volume and adds Sections 3.7(E) and 4.7(E). The new sections provide the Limiting Conditions for Operation and the surveillance requirements for the Combustible Gas Control System.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment No.: 35.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of Initial notice in **Federal Register:** October 9, 1985 (50 FR 41251)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: July 11, 1985.

Brief description of amendment: The amendment changed the titles of senior management officials and deleted environmental qualification of electrical equipment administrative requirements (deadline and records). The amendment also changed two Table of Contents pages to reflect current Technical Specification sections. The amendment also added an effluent radiation monitor to the footnotes to Table 3–3. The monitor was erroneously omitted by the staff in a previous licensing action. The amendment also added the title to Table 2–4 which was erroneously omitted by the staff in a previous licensing action. The remaining requests in the July 11, 1985 application will be the subject of a future amendment.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No.: 93.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37088).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazard consideration comment received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: September 6, 1985 as supplemented September 3, 1985.

Brief description of amendment: The amendment changed the technical specifications to support the operation of the unit at full rated power during Cycle 10.

Date of issuance: November 29, 1985.

Effective date: November 29, 1985.

Amendment No.: 92.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38909 at 38918).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket No. 50–275 Unit 1 and Docket No. 50.323 Unit 2, Diablo Canyon Nuclear Power Plant, San Luis Obispo, County California

Date of amendment request: September 6, 1985.

Brief description of amendment: The amendments change the combined Technical Specifications for Units 1 and 2 concerning the axial flux difference limits.

Date of Issuance: November 29, 1985.

Effective date: Unit 1 date for 8000 MWD/MTV burnup.

Amendment Nos.: 3 and 1.

Facility Operating License Nos. DPR–80 and DPR–82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43032). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: July 31, 1985, as supplemented on September 13, 1985.

Brief description of amendments: In January 1984 the licensee experienced ice formation on the spray nozzles of the spray pond. On August 31, 1984 the licensee provided to the staff a long-term solution to preclude freezing problems in the spray pond. The licensee's solution would add an automatic start capability to the recently installed self-priming pumping system. This amendment allows modification of the spary arrays to allow draindown without operator action. A new motor operated valve has been installed in each spray array drain line to isolate the spray arrays from the drain pumps. These new drain valves are interlocked with the drain pumps and riser level monitor instrumentation to allow automatic pumpdown of the spray risers.

This plant modification is reflected in Table 3.8.4.2–1 of the Technical Specification for both Units 1 and 2. The licensee has added these valves to Table 3.8.4.2.–1 (MOTOR OPERATED VALVES THERMAL OVRLOAD PROTECTION). These valves are safety related and the valves have thermal overload protection devices; however, this protection is continuously bypassed except during testing. By design all safety related valves have their thermal overload protection devices continuously bypassed except during testing so that the valves can perform their safety related function beyond that which the thermal overload protection would limit.

Date of issuance: December 3, 1985.

Effective date: Upon completion of the modification but no later than December 31, 1985.

Amendment Nos.: 52 and 20.

Facility Operating License Nos: NPF–14 and NPF–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43033). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No comments were received regarding the Commission's proposed no significant hazards consideration determined.

Local Public Document Room location: Osterhoust Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Dockets Nos. 50–387 and 50–388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 21, 1984 as supplemented on July 1, 1985, August 7, 1985, August 23, 1985 and September 4, 1985.

Description of amendment request: On December 21, 1984 the licensee requested a temporary change to Technical Specification 3.8.1.1 and 3.7.1.2 for both Units 1 and 2 to extend the Limiting Conditions of Operation (LCO) for these Technical Specifications in order to perform the necessary preparations for electrical, mechanical

and instrumentation tie-ins for the installation of the fifth diesel generator at Susquehanna. These tie-in preparations are being performed so that the fifth diesel can replace any of the four existing diesels, presently at Susquehanna, as a manual swing spare. The licensee will remove from service, one diesel at a time, the four diesel generators for an accumulated time of 60 days. The amendments allow the licensee to extend the allowable LCO of 3 days for an out of service diesel to an allowable LCO outage time of 60 days for all four diesels. (A related one time exemption from the single failure criteria for onsite electrical power supplies provided in General Design Criteria 17 of 10 CFR Part 50, Appendix A is being issued separately.

Date of issuance: December 3, 1985

Effective date: Upon commencement of the fifth diesel generator tie-in and is to expire upon completion of 60 cumulative days in the LCO.

Amendment Nos.: 51 and 19.

Facility Operating License Nos: NPF-14 and NPF-22: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41251). The Commissions related evaluation of these amendments is contained in a Safety Evaluation dated December 3, 1985.

No comments on the proposed determination were received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: November 26, 1984.

Brief description of amendment: In the November 26, 1984 submittal the licensees requested a change to License Conditions 2.A and 2.B.(2) of NPF-14 such that the specific amendment number of the Final Safety Analysis Report (FSAR) and Environmental Report (ER) not be included in the above license conditions. The staff has amended the license per the licensee's request and the license conditions now read as follows: 2.A. This license applies to the Susquehanna Steam Electric Station, Unit 1, a boiling water nuclear reactor and associated equipment (the facility), owned by the licensees. The facility is located in Luzerne County Pennsylvania, and is described in the licensees' Final Safety Analysis Report as supplemented and amended and the licensees' Environmental Report as supplemented and amended. 2.B.(2) PP&L, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended.

The license conditions as amended are now consistent with the as issued license conditions contained in the Unit 2 license. The basis for staff's approval is 10 CFR 50.71(e) which states: "The updated FSAR shall be revised to include the effects of: all changes made in the facility or procedures as described in the FSAR; all safety evaluations performed by the licensee either in support of requested license amendments or in support of conclusions that changes did not involve an unreviewed safety question; and all analyses of new safety issues performed by or on behalf of the licensee at Commission request." This regulation provides assurance that any FSAR change will be reviewed by the utility via the safety evaluation process and that any changes that result in a safety question not previously review and approved by the staff shall be submitted at that time to the staff for review and approval. In addition 10 CFR 50.99(b) requires the licensee to maintain records that shall include a written safety evaluation which provides the bases for the determination that the change, test or experiment does not involve an unreviewed safety question. Additionally, the staff finds the inclusion of the specific amendment number for the ER to be unnecessary as the licensee is not required to and does not update the ER subsequent to licensing but is accountable for and abides by the plant specific Environmental Protection Plan. In view of the present requirements the staff determined that incorporation of specific amendment numbers in License Conditions 2.A and 2.B(2) served no useful purpose.

Date of issuance: November 22, 1985.

Effective date: Upon issuance.

Amendment No.: 53.

Facility Operating License No. NPF-14: Amendment revised the License Conditions.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31070). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 22, 1985.

No comments on the proposed determination were received. No

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 23, 1980, as amended by letters dated August 1, 1980, June 2, 1981, April 4, 1983, May 29, 1984, and April 24, 1985.

Brief description of amendments: These amendments revise the Administrative Controls Section of the Appendices A and B Technical Specifications to reflect changes in the licensee's organization and personnel related to the operational and review responsibilities for the Peach Bottom facility.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment Nos.: 114 and 118.

Facility Operating Licenses Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38918).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received. No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania.

Date of application for amendments: October 9, 1984, which amended a previous application dated February 11, 1982. The February 11, 1982 submittal, as supplemented, was previously noticed in 48 FR 49591 (October 26, 1983). The licensee also supplemented its October 9, 1984, application by letter dated April 18, 1985. This letter involved correction of certain typographical errors and redistribution of material to accommodate recently approved Technical Specifications (TSs) changes. In addition, certain proposed TS

changes were temporarily withdrawn from NRC consideration, but will be reviewed at a later date. Finally, this letter resubmitted some proposed TS changes from the earlier February 11, 1982, application.

Brief description of amendments: These amendments add limiting conditions for operation, surveillance requirements, and administrative requirements for NUREG–0737 items as specified in Generic Letter 83–36.

Date of issuance: November 19, 1985.

Effective date: November 19, 1985.

Amendments Nos.: 113 and 117.

Facility Operating Licenses Nos. DPR–44 and DPR–56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7998).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publicatons Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 4, 1985, as revised August 26, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to make organizational changes and modifications to the membership of the Trojan Nuclear Operations Board.

Date of issuance: December 5, 1985.

Effective date: December 5, 1985.

Amendment No.: 108.

Facility Operating License No. NPF–1. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32787 at 32800) Subsequent to the initial notice, the licensee, by a letter dated August 26, 1985, clarified the wording of the Technical Specification change and made it clearly consistent with the description of the requested change as described in the April 4, 1985 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1985.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue , Portland, Oregon.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 15, 1985.

Brief description of amendment: The amendment revises Technical Specifications Section 3.5, "Instrumentation System", Section 3.6, "Containment Systems", and Section 4.13, "Containment Vent and Purge System." These changes limit the opening angle of the containment vent valves to 60° and verifiy that the containment purge supply and exhuast isolation valves are closed.

Date of issuance: November 21, 1985.

Effective date: November 21, 1985.

Amendment No.: 62.

Facilities Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20986) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Southern California Edison Company et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of applications of amendments: January 25, May 23 and August 7, 1974 and August 20, 1985.

Brief description of amendments: The amendments change the Technical Specifications to (1) delete a diesel generator surveillance requirement to test reloading of a diesel generator following its failure with offsite power not available and (2) include only those limiting conditions for operation and surveillance requirements which directly relate to the operability of the A.C. power source required under shutdown and refueling conditions.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985 and fully implemented within 30 days of issuance.

Amendment Nos.: 38 and 27.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43025).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California's Edison Company, et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application of amendments: August 23, October 10 and 16, 1985.

Brief description of amendments: The amendments revise the Technical Specifications concerning maximum enrichment of the fuel assemblies and the criticality requirements for storage of fuel in the fuel storage areas.

Date of issuance: December 2, 1985.

Effective date: December 2, 1985 and fully implemented within 30 days of issuance.

Amendments Nos.: 39 and 28.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1985 (50 FR 45178).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: October 8, 1982, and supplemented April 26, 1984, and August 2 and September 25, 1985.

Brief description of amendment: The amendment modifies the Technical Specification related to leakage rate testing of certain containment isolation valves.

Date of issuance: November 23, 1985.

Effective date: November 23, 1985.

Amendment No.: 47.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43034).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 18, 1983 (Item 1), as modified November 20, 1984.

Brief description of amendment: The amendment incorporates requirements for special leak testing of containment purge isolation valves. The purpose of the special testing will be to determine if excessive degradation of the valve seats has occurred.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No. 90.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16018).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 13, 1985.

Brief description of amendment: This amendment revises the minimum Reactor Coolant System flow requirement to take credit for the decrease in the core bypass flow resulting from the use of Lump Burnable Poison Rods in Cycle 5 design.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No. 91.

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16019).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry Country, Virginia

Date of application for amendments: July 12, 1985.

Brief description of amendments: These amendments will revise Technical Specification Table 4.1-1 to delete the surveillance requirements for the boron injection tank level instruments.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment Nos. 103 and 103.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34947).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: May 22, 1985.

Brief description of amendment request: This amendment revises the WNP-2 license by modifying the WNP-2 Technical Specifications to change the Surveillance Requirement 4.8.1.1.2 by modifying the minimum allowable voltage required for auto starting of diesel generators DG-1 and DG-2 making it consistent with the output breaker closure permissive setpoint.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment No.: 19.

Facility Operating License No. NFP-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: July 9, 1985.

Brief description of amendment request: This amendment revises the WNP-2 license by modifying the Administrative Controls Section 6.2.3 of the Technical Specifications to permit the Supply System to alter the composition of the Nuclear Safety Assurance Group (NSAG). In addition, this amendment corrects a typographical error in a previously granted amendment, Amendment No. 11.

Date of issuance: November 20, 1985.

Effective date: November 20, 1985.

Amendment No.: 18.

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: October 16, 1985.

Brief description of amendment: Modifies the required interval for degraded grid voltage (second level loss of voltage) surveillance testing in the technical specifications.

Date of issuance: November 30, 1985.

Effective date: November 30, 1985.

Amendment No.: 89

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1985 (50 FR 45181).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: August 30, 1985.

Brief description of amendment: The amendment would revise the Technical Specifications to: (1) correct typographical errors; (2) remove references to three loop operation; (3) revise the Linear Heat Generation Rate (LHGR) limit; (4) revise the control-rod-motion-related peaking multipliers that are applied to measured LHGR for comparison to the loss of coolant accident limit; (5) modify the method for combining the independent uncertainty factors applied to the measured LHGR; (6) modify the Safety Injection Acutation Signal setpoint; and (7) revise the maximum allowable core inlet temperature.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No.: 88.

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1985 (50 FR 43036).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 17, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interests may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)((i)–(v) and 2.714(d).

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 30, 1985, as revised by letters dated November 7 and 16, 1985, and superseded by letters dated November 4, 8 and 14, 1985.

Brief description of amendment: This amendment authorizes changes to Items 3. and 4. of Table 4.1.1, "Minimum Check, Calibration, and Test Frequency for Protective Instrumentation," for Section 4.1, Protective Instrumentation of the Appendix A Technical Specifications (TS) for Oyster Creek Nuclear Generating Station (Oyster Creek). Specifically, these changes (1) revise the channel check for the low reactor water level instrumentation channels from daily for all the channels to daily for only the channels which have indication in the control room and (2) deletes the channel check for the low-low reactor water level instrumentation channels. These are one-time-only changes to remain effective from November 8, 1985, to the restart from the Cycle 11 Refueling (Cycle 11R) outage.

Date of issuance: November 30, 1985.

Effective date: November 8, 1985 for the shutdown reactor mode, and November 16, 1985 for the remaining reactor modes of operation.

Amendment No. 95.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Public Comments requested as to proposed no significant hazards consideration: Yes. 50 FR 43027 dated October 23, 1985.

Comments received: None as of November 18, 1985.

The Commission's related evaluation of this amendment and final no significant hazards considerations are contained in a Safety Evaluation dated November 30, 1985.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland this 11th day of December 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director Division of PWR Licensing-A.

[FR Doc. 85–29955 Filed 12–17–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1001; 803–51]

David B. Solomon; Notice of Application for an Order of Exemption

December 10, 1985.

Notice is hereby given that David B. Solomon ("Applicant"), 79 Broadway, Suite 1201, New York, New York 10006, registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on June 12, 1985, and an amendment thereto on October 15, 1985, for an order of the Commission, pursuant to section 206A of the Act, exempting Applicant's proposed compensation arrangement with Cypress Partners L.P. ("Partnership"), a limited partnership which Applicant proposes to organize under Delaware law and to serve as investment adviser in the capacity of general partner. 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 text of the applicable statutory provisions.

Applicant is president and chief executive officer of Solomon Asset Management, Inc. ("SAM, Inc."), also a registered investment adviser. Applicant and a trust established for a member of Applicant's family own in the aggregate 80% of the issued and outstanding stock of SAM, Inc. SAM, Inc. currently serves as investment adviser to 18 individually-managed investment accounts, several of which are major pension plan accounts. The minimum investment for an account with SAM, Inc. is $10,000,000, and as of February 28, 1985, SAM, Inc. had under management a total of approximately $920,000,000 attributable to those 18 accounts.

According to the application, interests in the Partnership will be offered only as limited partnership interests, and only to sophisticated investors of sufficient financial capacity as will enable them to sustain any loss which may be incurred by the Partnership. No sales commission will be charged to the partners by the Partnership's selling agents. Partnership interests will be sold only in a manner so as to be exempt, in the opinion of the Partnership's counsel, from registration under the Securities Act of 1933 ("Securities Act") pursuant to Regulation D thereunder. The Partnership will be formed so that it will, in the opinion of the Partnership's counsel, be exempt from registration as an investment company pursuant to

section 3(c)(1) of the Investment Company Act of 1940.

It is further ordered that the Partnership will have a minimum total capital of $15,000,000, and a maximum total capital of $25,000,000, subject to waiver of such minimum or maximum by Applicant. Applicant expects that $20,000,000 will be contributed as the total capital of the Partnership, and that the total number of limited partners in the Partnership will not exceed 15. Applicant will, as general partner, contribute 5% of the Partnership's total capital. The remaining 95% of the Partnership's total capital will be contributed by the limited partners, as follows: 85% by the Class A Limited Partners, and 10% by the Class B Limited Partners. Each and every limited partner will be required to make a minimum capital contribution of $1,000,000, except, that, a limited partner's capital contribution to the Partnership, if agreed to by Applicant, may be reduced, but in any event shall not be less than $500,000. No limited partner will be permitted to make a contribution to capital which equals or exceeds 10% of the total capital contributed to the Partnership, unless such limited partner satisfies the general partner that such limited partner's interest in the Partnership, together with its interests in any other corporation, partnership, trust, or association excepted from registration by section 3(c)(1) of the Investment Company Act does not represent more than 10% of such limited partner's total assets.

It is anticipated that the term of the Partnership will be approximately four years ("Investment Period"). After the end of the Investment Period, Applicant will as soon as practicable distribute the assets of the Partnership, together with any cash on hand to the Partners ("Distribution Period").

Applicant proposes that the Partnership not be limited with respect to the types of investments it may make, or the financial transactions in which it may engage, as Applicant believes that complete investment flexibility is required to maximize potential returns. Accordingly, it is expected that the Partnership's investments will consist of purchases of publicly-traded and restricted debt and equity instruments, warrants and options (including puts and calls) in both established and emerging companies, and in special situations which in Applicant's judgment have the potential for high capital appreciation and increased income yield. The Partnership will make investments via private placements, initial public offerings, and open market and private transactions. The Partnership is not required to assume a "passive" investor's role, and when appropriate, will play a direct policymaking role in companies in which it invests. Applicant contemplates that the holding period of the Partnership's investments may vary widely depending upon, among other factors, the terms and nature of such investments and the Partnership's investment objective of maximizing potential returns.

It is further stated that during the term of the Partnership, the Partnership will pay SAM, Inc. a quarterly management fee not to exceed .325% of the net value of the Partnership's assets as of the end of each quarter. The Partnership will pay all of its organizational expenses, expenses relating to its securities portfolio (i.e., interest, taxes, brokerage fees, custodial expenses, registration expenses), costs of professional services rendered to the Partnership and other direct expenses of the Partnership (such as legal fees, accountant fees, and fees and expenses of any experts retained by the Partnership in connection with its organizational expenses, as well as fees and expenses relating to the provision of managerial, or other assistance to companies in which the Partnership has invested).

Each partner shall have a capital account, which shall be computed at the end of each Partnership fiscal year to reflect such partner's capital contributions, distributions to pay taxes, if any, certain "preferred allocations" (as hereinafter defined), and allocations of net cumulative profit, or net cumulative loss. Specifically, it is stated that the Class A Limited Partners will be entitled to a cumulative preferred allocation of 9% per annum ("Class A Preferred Allocation") on their capital contributions. Each partner will be entitled to a cumulative preferred allocation of 9% per annum on his allocation of undistributed net cumulative profits ("Preferred Allocation"). In this regard, "profits" is defined to include income from Partnership investments, plus realized and unrealized capital appreciation on marketable and non-marketable securities ("Profits"). "Losses", on the other hand, will by definition include realized losses and unrealized capital depreciation on marketable and non-marketable securities ("Losses"). Profits and Losses will be calculated at the end of each Partnership fiscal year, taking into account Profits and Losses in such fiscal year and Profits and Losses for all prior fiscal years, so that at the end of any Partnership fiscal year, the total Profits and Losses for such year and all prior fiscal years of the Partnership will be reflected in "Net Cumulative Profits", or "Net Cumulative Losses", as the case may be.

It is further stated that at the end of each Partnership fiscal year, if Profits exceed Losses for the period beginning of such fiscal year to the end thereof, Profits will be first allocated to the partners' capital accounts, in the following order of priority: (i) First, to the Class A Limited Partners on account of their Class A Preferred Allocation; (ii) second, to the Class A Limited Partners on account of each such partner's Preferred Allocation of any undistributed Net Cumulative Profits; (iii) third, to the Class B Limited Partners on account of each such partner's Preferred Allocation of any undistributed Net Cumulative Profits; and (iv) fourth, to Applicant, as general partner, on account of his Preferred Allocation of any undistributed Net Cumulative Profits.

After all preferred allocations have been made, Applicant states, the remaining Net Cumulative Profits of the Partnership at the end of each fiscal year will be allocated to the capital accounts of each partner as follows:

(1) 40% to each Class A Limited Partner, proportionately to the amount that his initial capital contribution bears to the contribution of all Class A Limited Partners;

(2) 40% to each Class B Limited Partner, in proportion to the amount which his initial capital contribution bears to the total contributions of all Class B Limited Partners; and

(3) 20% to Applicant, as general partner.

If at the end of any Partnership fiscal year, Losses exceed Profits for the period from the beginning of such year to the end of thereof, such Losses will also be allocated to the capital account of each partner in the manner described immediately hereinabove (i.e., as set out in subparagraphs (1), (2) and (3) above).

Except as stated in the paragraph following, other than distributions to pay personal income taxes, no partner will be paid any return until the Distribution Period. Therefore, it is noted, Applicant, as general partner, will not receive any actual payment on account of his compensation until the Distribution Period, and, consequently, the allocation of Net Cumulative Profits to Applicant will assure that Net Cumulative Losses are taken into consideration in computing Applicant's compensation. It is stated further that this allocation formula will assure that the compensation to be paid to

Applicant subsequent to the Investment Period will take into account the Profits and Losses of the Partnership for that fiscal year in which such compensation is paid, and for all prior fiscal years [and therefore will comport with the concepts embodied in Investment Advisers Act Release No. 961 (March 15, 1985)].

During the Investment Period, the Partnership will, as represented, not make any distributions of Partnership Profits to the limited partners or to Applicant, except that within 90 days after the end of any fiscal year during the Investment Period or the Distribution Period, Applicant will distribute to each limited and general partner 20% of any realized net long-term capital gain, and 50% of any other taxable income allocated in such year to such partner. The foregoing distributions will be made in order to permit the partners to pay their tax liabilities incurred as a result of their Partnership investment. Neither Applicant nor the limited partners will be obligated to refund all or any part of any amounts distributed to them pursuant to the foregoing arrangement, it is stated.

In addition to the above distributions, during the Distribution Period, Applicant, as general partner, will distribute the assets of the Partnership after payment of Partnership obligations, as well as expenses of liquidation, in the following order of priority:

(i) First, to the Class A Limited Partners in payment of their capital accounts. If the assets of the Partnership are insufficient to cover all such capital accounts, the assets which are available will be divided among and paid to the Class A Limited Partners in proportion to their capital accounts;

(ii) second, to the Class B Limited Partners in payment of their capital accounts. If the assets of the Partnership are insufficient to cover all such capital accounts, then such assets as are available will be divided among and paid to the Class B Limited Partners in proportion to their capital accounts; and,

(iii) third, to Applicant in payment of his capital account.

At the termination of the Partnership, the assets and cash on hand of the Partnership will be distributed in kind, pro rata, to the partners. If, however, Partnership assets cannot be distributed pro rata, Applicant, as general partner, will allocate such assets to the partners on a fair and equitable basis, after an independent appraisal of the value of said assets.

Applicant represents that the Partnership will provide each partner with unaudited quarterly financial reports, as well as audited annual reports. Applicant further notes that interests in the Partnership will be offered through a private placement exemption from registration under Regulation D of the Securities Act, only to sophisticated investors who understand the risks of their investment, can bear any and all losses from their investment, including their entire investment, and consequently are not in need of protection by governmental regulation. Partnership interests, moreover, will not be freely tradeable in the marketplace, nor will they be continuously offered to investors. Additionally, the venture to be fulfilled through the Partnershp is a one-time enterprise having a definitive life span, Applicant states. Applicant expects, moreover, to invest a substantial amount of his own funds in the Partnership, and Applicant is to be accorded the same Profit-and-Loss treatment as the Class B Limited Partners with respect to the rate of return on his investment, and Applicant will incur a much greater risk of loss since he is general partner. It is asserted that these factors will discourage speculation or manipulation by Applicant as general partner with regard to Partnership investments, assure conformity of interest of the investment adviser and the Partnership, and assure participation in both gains and losses by Applicant. Because the holding period of the Partnership's investment may vary widely, speculation by Applicant will be further deterred, and performance-related compensation would be appropriate.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 3, 1986, 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 servicer (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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-29911 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22701; File No. SR-MCC-85-6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on November 12, 1985, the Midwest Clearing Corporation 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 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

Attached to the filing as Exhibit A is an Administrative Bulletin describing changes to the Midwest Clearing Corporation trade recording fees based on trade size and the number of trades per day.

Fees will be as follows:

Trade size in shares	Price/trade side
1-499	$0.40
500-999	0.45
1000-1499	0.50
1500-1999	0.60
2000-2499	0.70
2500-2999	0.85
3000-3499	1.00
3500-3999	1.15
4000-4499	1.30
4500-4999	1.45
5000 and up	1.55

In addition, a discount will be applied to the total trade recording fee based on the average trades per day for the given month. The discount rate is as follows and applies to all participants:

Discount	
Average trades/day	Rate/trade side
100 + =	$0.05
150 + =	.06
300 + =	.08
500 + =	.10
750 + =	.15

The Settling Trade Volume Credit rates will continue and will also be changed effective October 1, 1985. The credit rates will be as follows:

Trades	Rate
3001-4500	$.05
4500 and up	.10

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

The Administrative Bulletin (attached to the filing as Exhibit A) describes a revision to MCC's trade recording fees. Previously the trade recording fee was set at a flat rate of $.57 per side. The proposed fees are based on trade size, and include a discount based on number of trades per day. Under the proposed change the trade recording fee will become a function of the trade size—the greater the trade size, the higher the fee. In addition, recording fees are offset by a discount, which increases as a participant's average number of trades per day increases. MCC anticipates that trade recording costs will be reduced for most Participants, and that cost increases to other Participants will be minimal. Moreover, this new fee schedule more realistically reflects the costs associated with providing these services. In addition, the existing Settling Trade Volume credit is amended as of October 1 as set out in the notice.

Any excess revenues from trade recording fees will be rebated to those Participants who use trade recording services, where management determines that there are sufficient excess revenues to warrant rebates. MCC anticipates that the level of revenues generated under the proposed fee schedule will be the same as, or slightly lower than, the revenues generated under the old schedule.

Consistent with the previous Commission approval in Exchange Act Release No. 34–18823, the Settling Trade volume credit will be applied to any firm whose settling trade volume reaches the specified levels, whether or not the firm is a One Account Settlement firm.

The pricing schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

(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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 & 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–29913, Filed 12–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22698; File No. SR–PSE–85–32]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Deletion of Rule XVII ("Wire Connections") of the PSE Rules of the Board of Governors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on November 15, 1985, The Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the self-regulatory organizations. 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

PSE Rule XVII is entitled "Wire Connections" and basically provides restrictions on the ability of PSE members to establish or maintain private wire connections between member offices and non-member offices without Exchange approval. This proposed rule filing is being submitted in accordance with the recent vote by the Board of Governors of the PSE to eliminate the provisions of Rule XVII as being outdated and unnecessary in the context of current market conditions.

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

Rule XVII relates to "wire connections", and basically provides for the restriction of private wire connections between member offices

and non-member offices (Section 1[a]). Section 1(b) describes the types of non-members eligible to apply for approval of connections between themselves and the Exchange Floor. The rule also requires that the Exchange give its permission before such connections can be made. It also requires that the member annually provide the Exchange a list of all non-members with whom private communication is maintained (Section 1[d]).

The basis of the decision of the Board of Governors to eliminate this rule was that it was felt to be no longer necessary in the context of current market conditions. The Board felt that the primary basis for the rule, i.e., the regulation of fixed commissions charged by the members of the Exchange, no longer exists. This is borne out by Rule XVII, Section 1(b), which specifically refers to PSE Rule IV. Rule IV, "Commissions", now specifically provides that "(N)othing contained in the rules of this Exchange . . . shall be construed to require or authorize its members . . . to agree or arrange . . . for the charging of fixed rates of commission for transactions effected on, or effected by the use of, the facilities of this Exchange."

Rule XVII seems to have been originally designed to prevent, without Exchange approval, a member from establishing a link to an outside "non-member" which might allow a member to circumvent the commission rates established by the Exchange. Without this rationale Rule XVII no longer seems to have a practical reason for remaining in

This proposed rule change is consistent with Sections 6 and 11A of the Securities Exchange Act of 1934 in that it will promote information access and communication abilities of PSE members, as well as promoting efficiency and competition. It will also act in accordance with requirements to maintain fair and orderly markets in the national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received or solicited concerning the decision to eliminate Rule XVII of the Rules of the Board of Governors of the PSE.

III. Date of Effectiveness of the Proposed Rule Change and Time Period 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 it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations 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 January 8, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-29912 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14843; 812-6249]

Lazard Freres & Co.; Filing of Application for a Permanent Order and Issuance of a Temporary Order Exempting Lazard Freres & Co.

Notice is hereby given that Lazard Freres & Co. ("Lazard") One Rockefeller Plaza, New York, New York 10020, has filed an application on November 15, 1985 pursuant to section 9(c) of the Investment Company Act of 1940 ("the Act") for an order exempting Lazard permanently from the provisions of section 9(c) of the Act in respect of the facts and circumstances described therein and for an order of temporary exemption from section 9(a) pending the determination of the Commission on its application for permanent exemption.

Lazard states that it is a New York limited partnership and is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 ("1934 Act") and as an investment adviser under the Investment Advisers Act of 1940. Lazard states that it engages in the investment banking business and buys and sells securities for its own account and the accounts of others. According to Lazard, it is not currently an investment adviser or principal underwriter to any investment company registered under the Act but proposes to act as investment adviser and principal underwriter to the investment companies described below, subject to the granting of the relief requested by its Application.

Lazard further states that on July 24, 1985, Lazard Special Equity Fund, Inc., a Maryland corporation (the "Equity Fund"), filed with the Commission a notification of registration on Form N-8A under the Act as an open-end, diversified management investment company and the Registration Statement on Form N-1 under the Act and the Securities Act of 1933 ("1933 Act"). Lazard states that upon effectiveness of the Registration Statement and commencement of operations of the Equity Fund, Lazard will act as investment adviser and as distributor to the Equity Fund. Lazard states that it seeks the relief requested by its Application in order that it my so act for the Equity Fund as soon as practicable.

Lazard further states that on November 6, 1985 the Boards of Directors of Lehman Cash Management Fund, Inc., Lehman Government Fund, Inc. and Lehman Tax-Free Money Market Fund (the sole investment portfolio of Lehman Tax-Free Reserves, Inc.) with aggregate net assets at November 6, 1985 of approximately $1,700,000,000 (collectively, the "Lehman Funds"), authorized the termination of their investment advisory and distributorship contracts with Lehman Management Co., Inc. and Lehman Brothers Distributor Inc., respectively, and appointed Lazard as investment adviser and distributor for the Lehman Funds. Lazard's services are to commence January 7, 1986, upon expiration of the 60-day notice period provided in the contracts. At that time,

Lazard would act as investment adviser under advisory contracts approved by the respective Boards of Directors of the Lehman Funds pursuant to Rule 15a–4 under the Act. Definitive advisory contracts would be voted on by the respective shareholders of the Lehman Funds within 120 days of the commencement of Lazard's services pursuant to the interim contracts. Lazard also states that it submits this Application in order that it may take up its appointment as investment adviser and distributor to the Lehman Funds on January 7, 1986.

Lazard further states that on June 20, 1972, the United States District Court for the Southern District of New York entered Final Judgments of Permanent Injunction against International Telephone and Telegraph Corp. ("ITT"), certain of its officers, Lazard and several other defendants. ITT was enjoined from violating section 10(b) of the Act and Rule 10b–5 thereunder, all in connection with the purchase and sale of securities of ITT.

According to Lazard, insofar as the Commission's complaint related to Lazard, it involved Lazard's activities in arranging for the sale by ITT to an Italian company of shares of Hartford Fire Insurance Co. ("HFI") common stock to facilitate ITT's obtaining of a tax ruling in connection with ITT's acquisition of HFI. ITT subsequently offered to exchange a series of ITT convertible preferred stock for HFI shares, and Lazard arranged for the resale of a portion of the ITT shares thus acquired by the Italian company in brokerage transactions in the United States in late 1970 and early 1971. The Commission's complaint alleged that, under all the circumstances of the arrangements and resale of ITT shares by the Italian company, Lazard has violated sections 5(a) and 5(c) of the 1933 Act.

Lazard states that it entered into a Consent to a Final Judgment, dated June 30, 1972 (the "1972 Final Judgment"), neither admitting nor denying any of the allegations in the Commission's complaint except as to jurisdiction. The 1972 Final Judgment enjoined Lazard from offering to sell securities of ITT unless a registration statement had been filed with the Commission and from selling or delivering such securities after sale unless a registration statement was in effect, in either case in the absence of an applicable exemption.

Section 9(a)(2) of the Act, in pertinent part, makes it unlawful for any person to act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company or principal underwriter for any registered open-end investment company, if such person, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with any activity as an underwriter, broker or dealer or in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe, or that the conduct of such person has been such as not to make it against the public interest to grant such application.

Lazard states that it was not engaged in any section 9(a) activities in 1972 and has not proposed to engage in such activities until it determined to sponsor the Equity Fund and until its appointment as investment adviser and distributor to the Lehman Funds. Accordingly, Lazard states that it has not previously filed an application seeking an exemption from the prohibitions of section 9(a). The Commission has heretofore granted temporary or permanent orders of exemption from section 9(a) to several affiliates of ITT to permit them to engage in various activities that otherwise would have been prohibited by reason of the injunction entered against ITT in 1972. (See Releases 7235, June 20, 1972; 8432, July 18, 1974; 9908, August 24, 1977; and 10408, November 16, 1978).

Lazard submits pursuant to section 9(c) that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the 1972 Final Judgment enjoining it from offering or selling securities of ITT in violation of section 5 of the 1933 Act, would be unduly and disproportionately severe as applied to Lazard and that the conduct of Lazard has been such as not to make it against the public interest or protection of investors to grant its Application.

Lazard states that it makes this submission for the following reasons:

1. The facts and circumstances to which the 1972 Final Judgment related in no way involve any activities of Lazard relating to the Equity Fund, the Lehman Funds or Lazard's acting as investment adviser or distributor for any registered investment company.

2. The Final Judgment relates to activities of Lazard more than 14 years ago, which were not alleged to, and in fact did not, involve any knowing or willful violation of the registration provisions of the 1933 Act. Unlike the allegations and related injunctions against ITT and certain of its officers, there were no allegations that Lazard had acted in violation of the antifraud provisions of the 1933 Act or the 1934 Act.

3. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Lazard under the circumstances if they were to prevent Lazard from acting as investment adviser and distributor for the Equity Fund, the Lehman Funds and for other registered investment companies in the future.

4. The events that gave rise to the 1972 Final Judgment are not such as to make it against the public interest or protection of investors to grant the order requested by Lazard's Application.

5. Lazard believes that its ability to serve as investment adviser and principal underwriter to the Equity Fund, the Lehman Funds and any other registered investment company and to comply with the requirements of the Act should not be deemed impaired by the existence of the 1972 Final Judgment.

6. In making its Application, Lazard acknowledges, understands and agrees that its Application and any temporary exemption issued herein shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of Lazard's instant application for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act or the revocation or removal of any temporary exemption granted herein.

The Commission has considered the matter and finds that:

1. The prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Lazard and that the conduct of Lazard has been such as not to make it against the public interest or protection of investors to grant the application of Lazard for a temporary exemption from section 9(a) pending determination of the application; and

2. In order not to delay the investment advisory and principal underwriter services to be rendered by Lazard to the Equity Fund and the Lehman Funds, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order be issued forthwith.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Lazard is hereby temporarily exempted from any

of the provisions of section 9(a) of the Act operative as a result of the entry of the Final Judgment against Lazard in *Securities and Exchange Commission* v. *International Telephone & Telegraph Corp., et al.*, pending final determination by the Commission of Lazard's application for an order exempting Lazard from any of the provisions of Section 9(a) operative as a result of the entry of such Final Judgment.

Notice is further given that any interested person may, not later than January 6, 1986, at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such comunication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Lazard at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-in-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–29909 Filed 10–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14841; File No. 812–5807]

Application and Opportunity for Hearing; Pruco Life Series Fund, Inc.

December 11, 1985.

Notice is hereby given that Pruco Life Series Fund, Inc. ("Applicant") at 3003 North Central Avenue, Phoenix, Arizona 85102, filed an application on March 30, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder, to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in certain of its portfolios. All interested parties 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 the complete text of those provisions that are relevant to the application.

The application states that Applicant is a corporation organized under the laws of Maryland and is registered under the Act as an open-end, diversified management investment company. The Prudential Insurance Company of America ("Prudential") is Applicant's investment manager. Applicant states that it has five portfolios, interests in each of which are represented by a separate class of capital stock. Applicant represents that it intends to offer its capital stock exclusively to separate accounts of Prudential subsidiaries established in connection with certain variable life insurance contracts. Such separate accounts are registered under the Act as unit investment trusts.

The application states that Applicant desires to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in its Conservatively Managed Flexible Portfolio, and its Aggressively Managed Flexible Portfolio (hereinafter referred to collectively as the "Flexible Portfolios"). According to the application, the two Flexible Portfolios seek to attain their respective investment objectives through investing in combinations of short-term debt obligations, intermediate and long-term bonds, and common stocks. Under the amortized cost method of valuation, securities are originally valued at the cost at which they were purchased, and their value is adjusted daily to account for amortization of any premium or for accretion of any discount.

According to Applicant, the primary concern that the Commission has expressed about use of the amortized cost valuation method has been that this method of valuation may, in times of sharp increases or decreases in interest rates, result in dilution of shareholders' interests in investment companies. Applicant states that in order to protect against such dilution, prior exemptions granted by the Commission and Rule 2a–7 under the Act to permit money market funds to use amortized cost valuation contain a series of conditions designed to assure that use of amortized cost valuation will not result in excessive dilution or other unfair results to shareholders. Applicant further states that, in connection with the valuation of short-term debt securities held by the Flexible Portfolios, it is willing to consent to the imposition of what are in substance the same conditions as those generally imposed by the Commission in prior exemptive orders and Rule 2a–7 under the Act, except for the condition requiring a stable net asset value per share.

According to Applicant, the Flexible Portfolios cannot maintain a stable price per share, one of the conditions contained in the prior exemptive orders and Rule 2a–7, since they invest in common stock and intermediate and long-term bonds, as well as short-term debt obligations. Applicant submits that there is no necessary relationship between use of the amortized cost valuation method and the maintenance of a stable price for each share of an investment company. Applicant asserts that inclusion of this condition in prior exemptive orders and Rule 2a–7 came about because money market funds that sought exemptions to permit them to use amortized cost valuation did so to facilitate their ability to maintain a stable price per share for the convenience of their shareholders. Applicant states that it seeks to use amortized cost valuation for short-term debt obligations held in the Flexible Portfolios in order to achieve significant savings in its administrative costs.

Applicant submits that use of amortized cost valuation in connection with the operations of the Flexible Portfolios is especially unlikely to result in any dilution or other unfair results to shareholders in those portfolios because they are not money market funds, but rather a particular type of investment vehicle for variable life insurance contracts. Applicant asserts that the contractholders who participate in any of the portfolios of Applicant will tend to have a longer range investment perspective than shareholders in money market funds, since the contracts are designed to provide whole life insurance protection over time, and withdrawals may involve payment of deferred sales charges. Applicant further states that such a long-range investment perspective is especially likely to be characteristic of those contractholders who allocate their net premiums to the Flexible Portfolios. According to the application, the Flexible Portfolios are designed to accommodate those contractholders who do not wish to allocate by themselves their net premiums among equity, bond, and money market investments, but who rather wish Prudential to do so by

varying the investments of the Flexible Portfolios among those types of securities as its appraisal of current economic and financial conditions dictates. Applicant states that even large fluctuations in interest rates are therefore unlikely to trigger large-scale investments in or redemption of shares of the Flexible Portfolios since participants or potential participants in those Portfolios are not likely to be the type of investors who wish to manage actively their investments.

Applicant therefore requests exemption from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing short-term debt obligations held in its Flexible Portfolios. Applicant states it is willing to consent to the entry of an order by the Commission conditioning the grant of its exemptive request upon the following conditions:

(1) In supervising the operations of Applicant and delegating special responsibilities involving portfolio management to its investment manager, the Board of Directors of Applicant undertakes (as a particular responsibility within the overall duty of care owed to shareholders of Applicant) to establish procedures reasonably designed, taking into account current market conditions and the portfolios' investment objectives, to minimize the deviation between the value of each Flexible Portfolio's short-term debt obligations as computed through use of the amortized cost valuation method and their value as determined through use of available market quotations.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, between the value of the Flexible Portfolios' short-term debt obligations as determined by using available market quotations, from their value as computed through use of the amortized cost method of valuation; and the maintenance of records of such review. To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may inlcude *inter alia*, (1) quotations or estimates of market value for individual portolio investments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the amortized cost value of the short-term debt obligations in the Flexible Portfolios exceeds ½ of 1 percent, a requirement that the Board of Directors promptly consider what action, if any, should be initiated.

(c) If the Board of Directors believes the extent of any deviation from the amortized cost value for the short-term debt obligations in either Flexible Portfolio may result in material dilution or other unfair results to contractholders, it will take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten such portfolio's average portfolio maturity; withholding the crediting of additional shares in lieu of dividends; redeeming shares in kind; or using a net asset value per share as determined by using available market quotations.

(3)(a)(i) The Flexible Portfolios will use the amortized cost valuation method only for their short-term debt obligations—*i.e.*, obligations with remaining maturities of one year or less (except that repurchase agreements having a term of one year or less from the date of delivery of the repurchase agreement may be valued through use of the amortized cost valuation method regardless of the maturity of the underlying securities held pursuant to the repurchase agreement). (ii) Each of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations appropriate to its objective of minimizing the deviation from its net asset value per share as determined through use of the amortized cost valuation method from its net asset value per share as determined through use of available market quotations, provided, however, that neither of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations which exceeds 120 days. If the dispositon of a portfolio instrument should result in a dollar-weighted average portfolio maturity for the short-term debt obligations of either Flexible Portfolio which exceeds 120 days, such Portfolio's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(b) The maturity of short-term debt obligations held by these Portfolios shall be calculated as set forth in Rule 2a-7 under the Act.

(4) Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in subparagraph (1) above, and the Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' consideration and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Driectors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(5) The short-term debt obligations held in the Flexible Portfolios, including repurchase agreements, will be limited to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality. For this purpose, "high quality" instruments shall mean those instruments that are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) If any action is taken pursuant to paragraph 2(c) above, Applicant will report such action on Form N–SAR covering the period in which the action was taken and, pursuant to Instruction 77 N of Form N–SAR, will attach a statement to the form describing with specificity the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 6, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his 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, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Manager, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-29910 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/913]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Stability, Load Lines, and on Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines, and on Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 14, 1986 at 10:00 AM in room 1103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to discuss U.S. actions and possible positions for the 31st Session of the Subcommittee, tentatively scheduled for June 1986.

- Intact Stability—form of Informtion to Master.
- Subdivision—Watertight Doors on all Cargo Ships.
- Residual Stability after Damage.
- Load Line Interpretation.
- Revision of Load Line Convention.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-5), 2100 Second Street SW., Washington, DC 20593, Tel: (202) 426-2187 or 2188.

Dated: December 5, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85-29864 Filed 12-17-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/914]

Study Group 6 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 17, 1986 in Room 3012 at the Department of Commerce, Boulder Laboratories Building, 325 Broadway, Boulder, Colorado. The meeting will begin at 9:00 a.m.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to develop the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 632-2592.

Dated: December 2, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-29863 Filed 12-17-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on January 14-15, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on October 1-2, 1985; (3) Consideration of Proposed Changes to the Eighth Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Working Groups WG-5 and WG-7A Activities; (5) Review the Third Draft of the Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review the Second Draft Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 11, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-29850 Filed 12-17-85; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 198

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

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, January 8, 1985.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December, 1985.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

Date of notice: December 12, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 85-29983 Filed 12-16-85; 10:23 am]

BILLING CODE 7550-01-M

2

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION:

TIME AND DATE: 10:00 a.m., Thursday, January 9, 1986.

PLACE: Suite 410, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: December 16, 1985.

Earl R. Ohman, Jr.,

General Counsel

[FR Doc. 85-30065 Filed 12-16-85; 3:31 pm]

BILLING CODE 7600-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 16, 1985.

A closed meeting will be held on Tuesday, December 17, 1985, at 2:30 p.m. An open meeting will be held on Thursday, December 19, 1985, at 10:00 a.m., in room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendar matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 17, 1985, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Rescission of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Order.

The subject matter of the open meeting scheduled for Thursday, December 19, 1985, at 10:00 a.m., will be:

1. Consideration of whether to issue a release approving a proposed rule change by the Philadelphia Stock Exchange, Inc. (SR-Phlx-85-23) which, among other things, would create a classified Board of Governors. The amendments would provide that of the 21 previously unclassified broker governors on the Philadelphia Board, nine (9) would be categorized as On-Floor Governors, nine (9) as Off-Floor Governors and three (3) as At-Large Governors. In addition, the Board would continue to include the Chairman, two (2) Vice Chairmen (one (1) from the floor and one (1) from off the floor), the President of the Corporation and three (3) public governors. For further information, please contact Pamela Konieczka at (202) 272-2855.

2. Consideration of whether to issue the following orders and opinions authorizing (1) Middle South Utilities, Inc. ("MSU"), a registered holding company, and its subsidiaries, Middle South Services, Inc. (Services"), Middle South Energy, Inc. ("MSE"), Arkansas Power & LIght Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), New Orleans Public Service, Inc. ("NOPSI"), and System Fuels, Inc. ("SFI") to continue a system money pool, including MSE therein, and to sell short-term notes to banks and commercial paper dealers from time to time through December 31, 1986; (2) authorizing SFI to finance its 1986 fuel supply programs for the benefit of AP&L, LP&L, MP&L, and NOPSI (collectively the "Operating Companies"), by making additional borrowings from the Operating Companies during 1986 of up to $56 million; (3) authorizing LP&L to issue and sell up to $75 million of its first mortgage bonds by negotiated private placement; (4) authorizing MSU, MSE, and the Operating Companies to make certain amendments to MSE's domestic bank loan agreement; and (5) authorizing MSU to amend its original Credit Agreement to extend the term of the Credit Agreement, and the period during which MSU may effect borrowings from the banks thereunder, to no later than December 31, 1986, and to reduce the maximum principal amount of borrowings permitted to be made by MSU thereunder to $25 million at any time outstanding. For further information, please contact Robert P. Wason at (202) 272-7684.

The subject matter of the closed meeting scheduled for Thursday, December 19, 1985, following the 10:00 a.m. open meeting, will be:

Formal orders of investigation.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

Dated: December 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30042 Filed 12-16-85; 12:38 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
December 18, 1985

Part II

Environmental Protection Agency

40 CFR Part 2

Public Information and Confidentiality Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[OGC-FRL-2917-3]

Public Information and Confidentiality Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule modifies and updates the Environmental Protection Agency's regulations governing the handling of requests for records under the Freedom of Information Act, including provisions on collection of fees, and the treatment of confidential business information. The rule adds new sections for handling business information obtained under the Comprehensive Environmental Response, Compensation and Liability Act and the Motor Vehcile Information and Cost Savings Act. It also updates the confidentiality rules to reflect amendments to the Clean Air Act and the Solid Waste Disposal Act.

EFFECTIVE DATE: This rule will become effective January 17, 1986.

ADDRESS: Contracts and Information Law Branch (LE-132G), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jane S. Roemer, Office of General Counsel, Telephone 202/382-5460.

SUPPLEMENTARY INFORMATION: On August 15, 1985, the Environmental Protection Agency (EPA) published in the **Federal Register** (50 FR 32952) proposed changes to its procedures for handling requests for information under the Freedom of Information Act (FOIA) (40 CFR Part 2, Subpart A) and for the treatment of confidential business information (40 CFR Part 2, Subpart B). On the same date, EPA published in the **Federal Register** (50 FR 32950) an interim final rule on provisions governing the collection of fees under the FOIA, which are part of 40 CFR Part 2, Subpart A. As discussed in the Preamble to the interim final rule, the rule reestablished procedures on fee collection which were in effect prior to March 17, 1983. Several comments were received on the proposed rule; no comments were received on the interim final rule.

As promulgated below, this final rule covers all of the current modifications to 40 CFR Part 2, Subparts A and B, and contains the changes made since the proposed and interim final rules. The modifications were found to be desirable to clarify some provisions of these regulations or better to reflect changes in internal Agency practices. Most of the changes were prompted by the Agency's own review of the proposed and interim final rules; some were based upon suggestions of commenters. None of the changes introduces significant variations from the matters presented in the August 15, 1985, proposal or interim final rule.

The Preambles to the August 15, 1985, proposed and interim final rules provide detailed discussions of the modifications to 40 CFR Part 2 which were presented in those rules. Changes made to the proposed and interim final rules and reflected in this final rule are discussed below. Also presented below are a summary of significant comments and EPA's responses to those comments.

Changes in Subpart A

Subpart A of 40 CFR Part 2 sets forth EPA's regulations implementing the FOIA. Several modifications have been made in this subpart:

Section 2.100(b) of the proposal has been modified in the final rule to no longer exclude from the definition of EPA records "personal notes of an individual not made available to other persons in the agency and not filed with agency records." As discussed under Comment 4, below, notes made by an individual may or may not be agency records. Therefore, as under the current § 2.100(b), EPA will determine on a case-by-case basis whether an individual's notes are agency records subject to the FOIA or whether they are personal notes.

Section 2.111(d) has been changed to instruct that an EPA office which is transferring responsibility for answering a FOIA request to another agency shall "promptly" transfer such responsibility.

Section 2.112(a) has been modified in the final rule to state that an EPA office shall inform a requestor if a record is not known to exist or is not in EPA's possession. It also has been modified to provide that an EPA office may inform a requestor that requested records published by the Federal government are available for inspection and where copies can be obtained. These responses formerly were listed as denials under § 2.113(a).

Section 2.112(d) of the current regulations states that EPA may suspend the statutory response time (ten days or an extension thereof) for a FOIA request until a requestor who has been notified that prepayment of charges is required either pays or makes arrangements to pay them. This section has been modified in the final rule to make clear that the response time also may be suspended until a requestor provides assurance of payment, if EPA has required assurance of payment. In this way, § 2.112(d) will conform with § 2.120(c), which states that EPA may require prepayment or assurance of payment in certain circumstances.

Sections 2.113(f) and 2.114(a) of the regulations were proposed to be amended in an attempt to make clear that initial determinations stating that a record either is not known to exist or is not in EPA's possession (section 2.113(a)(1) and (2)) cannot be appealed to the Agency. Upon review, it appeared that there was still confusion because under the proposed rule these two types of responses would have continued to be listed as initial denials (section 2.113(a)(1) and (2)). Therefore, to make clear that these two responses are not appealable to the Agency, those provisions (section 2.113(a)(1) and (2)) have been deleted from § 2.113 in the final rule. Instead, § 2.112(a) has been amended in the final rule to address responses which were formerly covered by § 2.113(a)(1) and (2). In addition, the proposed change to § 2.113(f) has been withdrawn, as it is no longer necessary because of the changes made to §§ 2.113(a) and 2.112(a).

In reviewing § 2.113(a) to make the changes discussed above, it became apparent that two other provisions of that section also should be deleted to make clear that certain responses should not be considered initial denials subject to appeals. Current § 2.113(a)(3) incorrectly lists as a denial a response which states that a record has been published in the **Federal Register** or is otherwise published and available for sale. Since Federally published materials in the Agency's possession, including records published in the **Federal Register**, should be made routinely available to requestors, responses to such requests are not denials. Section 2.112(a) has been amended to cover responses which inform a requestor that such records are available for inspection and where copies may be obtained. At the same time, § 2.100(b) of the regulations excludes from the definition of EPA records materials published by non-Federal organizations and readily available to the public. Therefore, responses which state that requested records fall into this category are not "denials" and should not be listed as such, as the records are not EPA records subject to the FOIA.

Current § 2.113(a)(7) lists as a denial a response which states that a record is believed to be in EPA's possession but has not yet been located. This provision

has been deleted in the final rule, as has § 2.113(h), which corresponds to that provision. An EPA office should be able to ascertain within the statutory time period that a record either is or is not locatable and to so inform the requestor. If the document is not locatable, the response would state that the record is not in EPA's possession, as stated in amended § 2.112(a).

Section 2.113(b) has been amended in the final rule to add the Deputy Administrators, Associate Administrator, the General Counsel, and the Inspector General to the list of officials delegated the authority to issue initial determinations in response to FOIA requests. This change is consistent with EPA Delegation 1–30.

In the final rule, the General Counsel has been added to the list of EPA officials in § 2.115(b) who may request the Administrator to review a determination by the Assistant Administrator for External Affairs that the public interest would be served by disclosure of a record.

Section 2.120(a)(5)(iii) of the proposed rule has been modified in the final rule to note that EPA may group requests by one requestor to determine the total fee chargeable. This change reflects long-standing EPA practice and covers situations where what is really a single request for related records has been broken into several requests. In such cases, for purposes of determining a fee, EPA may group these related requests.

Section 2.120(a)(5)(iv) of the proposed rule stated that there will be no charge to a FOIA requestor for one copy of his or her official personnel file. This provision has been amended to conform with the Agency's regulations implementing the Privacy Act at 40 CFR 16.11, which state that there will be no charge to an individual for one copy of any record pertaining to that individual in a Privacy Act system of records.

Section 2.120(b) of the proposed rule has been amended in the final rule to reflect that payments of fees for FOIA requests now should be sent to specific "lock box" addresses established by EPA's Financial Management Division. In addition, the section now states that under the Debt Collection Act of 1982 (Pub. L. 97–365), the Agency will assess handling charges, interest, and penalties for late payment of FOIA fees. The Debt Collection Act applies as a matter of law to payment of fees connected with FOIA requests, and reference to it is made in this section to note its applicability.

Section 2.120(e) of the interim final rule has been modified in the final rule to state that payment of fees related to FOIA requests should be sent to the appropriate EPA billing address. The section also has been updated to reflect that the EPA Financial Management Division, rather than the Freedom of Information Officer, maintains a record of FOIA charges and a delinquent payment list.

Changes to the General Rules of Subpart B

Sections 2.201 through 2.215 of 40 CFR Part 2, Subpart B, set forth EPA's basic policy on the treatment of confidential business information. Two changes have been made in the general rules of Subpart B:

Section 2.205(b)(4) has been changed in the final rule to remove the requirement that an EPA office ask a business whose substantiation of a confidentiality claim is overdue whether it has been granted an extension of time. Before contacting a business to find out whether its comments substantiating a confidentiality claim have been lost in the mail, an EPA office normally should already have learned from the EPA legal office whether an extension of the due date has been granted. Therefore, there usually is no need for the EPA office to ask the business whether an extension was granted.

Section 2.209(b), concerning disclosure of confidential business information to Congress (including the General Accounting Office), also has been modified in the final rule. The proposed rule would have removed the requirement that affected businesses receive ten days' advance notice when their confidential business information is to be disclosed to Congress. Instead, notice to affected businesses still would have been required, but when that notice took place would have been left to the discretion of the responding EPA office. As discussed under Comment 1, below, EPA received several comments on the proposed changes in this provision.

As explained in the Preamble to the August 15, 1985, proposed rule, EPA proposed to do away with the requirement of ten days' advance notice because in some cases meeting this requirement interfered with EPA's ability to respond on time to requests from Congress for information. After consideration of the comments received, EPA concluded that it can retain the necessary flexibility to respond to Congressional requests in a timely fashion while giving as much advance notices of such disclosures as possible. To this end, the final rule requires ten days' advance notice except where providing such notice would prevent EPA from meeting any date for responding that the Congress has set. If ten days' advance notice is not possible, then as much advance notice as possible must be given. If advance notice cannot be provided without delaying the response beyond the due date, notice must be given as soon after disclosure as possible.

Thus, the final rule emphasizes EPA's continuing commitment to provide notice in advance of disclosure whenever possible. However, the rule also recognizes that providing notice cannot delay Congress's access to information needed to conduct its business. In implementing this new provision, EPA intends to determine for each Congressional request, as promptly as possible, whether the requested information includes confidential business information. As soon as such a determination is made, EPA normally would provide the required notice. In most cases, EPA believes that such notice can be given in advance of disclosure, but not always ten days in advance.

In the Preamble to the August 15, 1985, proposed rule, EPA stated that it also had considered eliminating any notice requirement entirely and solicited comment on this alternative. EPA has concluded that there may be instances in which no notice to affected businesses should be provided, for example, where a committee's investigation could be adversely affected by EPA's notifying a business of disclosure of its information to the committee. Accordingly, the final rule provides that EPA will provide no notice when Congress so requests.

Changes to the Special Rules of Subpart B

Sections 2.301 through 2.311 (as proposed) of 40 CFR Part 2, Subpart B, set forth special rules for handling confidential business information obtained under specific statutes administered by EPA. The special rules modify, replace or incorporate the general procedures of Subpart B. This final rule adds new sections for handling business information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Motor Vehicle Information and Cost Savings Act. It also updates the special rules to reflect amendments to the Clean Air Act and the Solid Waste Disposal Act.

Several changes have been made in the special rules since the proposed rule:

Section 2.301 of the regulations governs certain information obtained under the Clean Air Act. Section 2.301(b)(4) of the proposed rule has been amended in the final rule to make clear

that it covers not only information that was but also information that could have been obtained under section 206(c) of the Act.

Section 2.305 of the regulations governs certain information obtained under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA). Section 2.305(h)(4) of the proposed rule has been amended to add state and local government agencies to the parties who must be informed that information furnished to them under section 2.305(h) may be entitled to confidential treatment and that they and their employees may be subject to the penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of RCRA for wrongful disclosure of such information.

Section 2.310 governs certain information obtained under CERCLA. Subsection (a) has been modified in the final rule to clarify the definition of "proceeding" to include any "administrative determination" made under section 104 of the Act, rather than any "action" taken under that section in response to the release or threat of release of a hazardous substance. As discussed further under Comment 2, below, this change more accurately reflects what EPA believes is meant by the term proceeding as used in section 104. Subsection (b) of § 2.310 of the proposal also has been revised in the final rule to make the section applicable to information obtained under any provision of section 104 of the statute, not just under section 104(e)(1). The disclosure provisions of section 104(e)(1) of CERCLA apply not only to information obtained under that subsection but to information obtained under any other part of section 104 as well. In addition, § 2.310(h)(4) has been added since the proposal. The section provides for notice to contractors, subcontractors, and state and local government agencies that information furnished them under § 2.310(h) may be entitled to confidential treatment and that they and their employees may be subject to the penalties in section 104(e)(2)(B) of CERCLA for wrongful disclosure of confidential business information.

Summary of Comments and Responses to Comments

1. Comments on § 2.209(b)

Five commenters addressed the proposal to modify § 2.209(b), which governs disclosure of confidential business information to Congress (including the General Accounting Office), to provide that notice in advance of such disclosure would be discretionary. Some of these commenters also addressed the alternative of eliminating the notice requirement entirely with respect to such disclosures.

Most of the commenters opposed the removal of the requirement of ten days' advance notice and recommended that such notice not be left to the discretion of EPA offices responding to Congressional requests. They expressed the view that advance notice is needed to allow affected businesses an opportunity to spot errors or work out procedures for handling the requested information. Our commenter expressed the view that disclosure without such notice would be unconstitutional.

A comment from a House subcommittee chairman recommended that notice be eliminated entirely because in some instances a Congressional investigation could be adversely affected by such notice or that notice be given only with permission of the requesting Congressional committee. The commenter expressed the view that notice should not be given prior to disclosure because this might interfere with the process of providing the information. The commenter also stated the view that in any event the final rule should be written so as not to delay disclosure of requested information.

Response

As discussed above, EPA has changed the final rule to provide for as much advance notice as possible of disclosure of confidential business information to Congress, to the extent that such notice does not delay responding to Congressional requests beyond any date by which a response is due.

EPA believes this change will meet most of the concerns expressed by commenters regarding the proposed rule, as advance notice is no longer left to the discretion of individual EPA offices. Instead, under the new provision, EPA expects that in most cases businesses will receive advance notice of disclosures of their confidential business information to Congress, though not ncessarily ten days' advance notice.

The rule provides flexibility which allows EPA to respond to a Congressional request on time and still provide notice of such disclosures. At the same time, the rule protects legitimate Congressional interests by providing that no notice of disclosure will be given if the Congress so requests in specific instances.

2. Comment on § 2.310(a)

One commenter questioned the definition of "proceeding" in § 2.310(a) of the special rules governing disclosure of business information under CERCLA. The commenter expressed the view that the definition is too broad because it includes "any action taken by EPA in response to the release or threat of a release of a hazardous substance" and because "proceeding" is not given this meaning in connection with any other statute.

Response

EPA has changed the definition of "proceeding" in this section of the special rules to include "any administrative determination made under section 104" of CERCLA, rather than "any action taken by EPA in response to the release or threat of release of a hazardous substance." EPA believes this description better reflects the administrative process under section 104 that Congress meant to be encompassed by the term "proceeding" as used in that section of the Act.

CERCLA gives EPA authority to respond to the release or threat of release into the environment of hazardous substances. This authority may be exercised under section 106 of CERCLA by issuing administrative orders or pursuing judicial relief. The definition of proceeding in the final rule would encompass actions under section 106 of CERCLA. EPA's authority may also be exercised under section 104 through response actions. There is no basis for distinguishing between such actions under sections 106 and 104 for purposes of defining what constitutes a proceeding in connection with which relevent confidential business information may be released. The changed language, however, describes more accurately than did the proposal language the administrative decision-making process that constitutes a proceeding under section 104.

EPA may need to disclose business information in a variety of circumstances under CERCLA. Most frequently the administrative determinations under section 104 that would fall within the definition of proceeding are lead agency determinations under the National Contingency Plan, 40 CFR Part 300, Subpart F.

While EPA has clarified its definition of the term proceeding, the Agency nonetheless holds the view that the term "proceeding" may vary from statute to statute, depending upon the types of actions that may be taken under each statute. To require the definition of proceeding to be the same for purposes of CERCLA as it is for every other statute would ignore the important

differences between CERCLA's statutory mandate and those of other environmental laws. If Congress has seen fit to fashion unique remedies under CERCLA, then those remedies should not be excluded from the definition of proceeding because of their very uniqueness. Further, in authorizing disclosure of such information under section 104(e) of CERCLA when relevant in proceedings under CERCLA, Congress did not place any limitations on the types of proceedings covered.

In any event, the disclosure of confidential business information when relevant in a proceeding under CERCLA is subject to the procedural safeguards of § 2.310(g).

3. Comment on Subpart B Procedures for Claiming Confidentiality

One commenter expressed the view that Subpart B of the regulations should have been amended to change the basic procedure by which claims of business confidentiality are made by businesses and evaluated by the Agency. The commenter was of the opinion that the current regulations encourage businesses to make sweeping claims which may not be valid.

Response

EPA is certainly in favor of doing everything it can to discourage submitters of business information from making overly broad and unsupportable claims of business confidentiality. EPA does not agree, however, that its fundamental procedures for making business confidentiality claims and evaluating those claims encourage the making of overly broad claims. Therefore, no change in the proposed regulations has been made in response to this comment.

4. Comment on § 2.100(b)

One commenter expressed the opinion that the definition of "agency record" in § 2.100(b) should not be changed to exclude from that definition "personal notes of an individual not made available to other persons in the agency and not filed with agency records." The commenter believed that to do so would encourage the improper shielding of agency records from release under the FOIA.

Response

EPA has changed the language of proposed § 2.100(b) in the final rule so that "personal notes of an individual not made available to other persons in the agency and not filed with agency records" are not excluded from the definition of agency records. Under relevant case law, notes written by an individual *may* be personal notes not subject to the FOIA. However, after considering the comment, EPA believes it appropriate for the agency to continue to determine on a case-by-case basis whether such notes are agency records or whether they are personal records not subject to the FOIA, rather than excluding them by category from the definition of agency records. At the same time, since handwritten notes are not necessarily always agency records, the final rule, like the proposed rule, deletes "handwritten notes" from the examples of informal writings which are necessarily agency records.

5. Comment on § 2.107(a)

A commenter stated that EPA should not amend § 2.107(a) to clarify that the time clock for responding to a misdirected FOIA request does not start until the request is received by a FOIA officer. The commenter believed that such a provision would remove the incentive of EPA employees to respond promptly to misdirected requests.

Response

EPA does not agree with the comment. This change in the regulations is intended to make clear what is already stated in § 2.107(a). The provision currently states that EPA cannot assure a timely or satisfactory response to requests which are not directed to a FOIA officer. The change in this provision recognizes that the time clock for responding to a FOIA request begins when the Agency is able to identify a record as a FOIA request. That happens when the request is received by a FOIA officer. The provision still includes the requirement that EPA employees who receive written requests for records must promptly forward those requests to the appropriate FOIA officer. There is therefore no basis for believing that misdirected requests will not continue to be handled as quickly as possible, as directed by the regulations.

6. Comment on § 2.111(c)

One commenter expressed the opinion that § 2.111(c) should not be amended to provide that the date of receipt of a FOIA request is the date for determining responsive records. The commenter was of the opinion that the cut-off date should be the date of the agency's response.

Response

EPA disagrees. Using the date of receipt as the date for determining responsive records gives responding EPA offices a clear cut-off date, so that a search for records can be performed and completed and not have to continue until a response letter is signed, which is administratively impractical for most offices. A responding EPA office may still, in its discretion, use a later cut-off date, informing the requestor of this. Amending § 2.111(c) provides clear notice of the cut-off date to FOIA requestors, who, of course, may file a new request for more recent information.

7. Comment on § 2.111(d)

One commenter objected to the amendment to § 2.111(d) allowing EPA to transfer responsibility for responding to a request for another agency's records to that agency. The commenter felt that this would allow an inappropriate extension of response time.

Response

EPA does not agree with the comment. It is practical and appropriate for the Agency, in its discretion, to be able to transfer responsibility for answering a FOIA request to another agency which is subject to the FOIA when the request is for records of that agency. This should not result in any significant delay in response time. To make clear that EPA is required to make any such transfer without undue delay, the provision has been modified to state that in such cases the responding EPA office shall "promptly" transfer responsibility for responding to the other agency.

8. Comment on §§ 2.113 and 2.114

One commenter objected to EPA's proposal to amend §§ 2.113 and 2.114 to make clear that initial determinations that a record is not known to exist cannot be appealed to the Agency. The commenter believed that such responses should be administratively appealable.

Response

EPA disagrees, and, as explained above under "Changes in Subpart A," is amending the final rule to further clarify that such responses are not "denials" subject to Agency appeal. The regulations previously were unclear on this point. If an initial response to a FOIA request informs the requestor that records are not known to exist, there is no basis on which the Office of General Counsel, the EPA office which decides FOIA appeals, can make a determination on whether records were properly or improperly withheld. Therefore, the final rule amends the regulations to make clear that a response which states that a record is not known to exist is not a "denial."

9. Comment on § 2.115(b)

One commenter was of the view that EPA should not amend § 2.115(b) to do away with review by the Assistant Administrator for External Affairs of initial determinations by the Office of Inspector General. The commenter felt that there should be some channel of review outside the Office of Inspector General for discretionary denials of FOIA requests made by that office.

Response

EPA disagrees with this comment. As stated in the Preamble to the August 15, 1985, proposed rule, exempting the Office of Inspector General from this review preserves the independent operation of that office and avoids the possible compromise of identities of confidential sources or premature disclosure of sensitive audit or investigative information.

10. Comment on § 2.120(a)

One commenter was of the opinion that EPA's charge of $.20 per page for copies of records is too high and that EPA should provide further justification for the amount of increase proposed in its search fees for FOIA records in § 2.120(a).

Response

EPA did not propose to increase its copying charge in the proposed rule. The $.20 per page charge has been in effect since 1976 and was based on an estimate of actual direct cost to EPA, including materials and labor. The increase in cost of search time in the proposed rule was based on increases in salary which have taken place since 1976. The new charges better reflect the per hour salary of government employees at lower and higher GS-levels. As the commenter noted, the proposed rule raises the amount of fees for which no charge will be made to $25.00 from the present $10.00. The final rule retains the changes in search fees which were made in § 2.120(a) of the proposed rule.

11. Comment on §2.111

One commenter was of the opinion that § 2.11, which sets out penalties for wrongful use or disclosure of business information, should state that wrongful disclosure is subject to tort action.

Response

EPA does not agree that the section should be so changed. The section states those actions which the government may take to discipline or prosecute employees who have wrongfully disclosed business information. The regulations do not state or take a position as to possible remedies a business may have against such employees or the government.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have an annual net effect on the economy of more than $100 million, will not cause a major increase in costs to consumers or others, and will not not have significant adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this final rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. These changes to EPA's procedures will not impose additional costs for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of Information, Confidential business information.

Dated: December 6, 1985.

Lee M. Thomas,

Administrator.

Therefore EPA amends 40 CFR Part 2 as follows:

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

Authority: 5 U.S.C. 301, 552, 553; secs. 114, 206, 208, 301, and 307 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7525, 7542, 7601, 7607; secs. 308, 501 and 509(a) of the Clean Water Act as amended, 33 U.S.C. 1318, 1361, 1369(a); sec. 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; secs. 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j–4, 300j–9; secs. 2002, 3007, and 9005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6927, 6995; secs. 8(c), 11, and 14 of Toxic Substances Control Act, 15 U.S.C. 2607(c), 2610, 2613; secs. 10, 12, and 25 of Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136j, 136v; sec. 408(f) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346(f); secs. 104(f) and 108 of the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C. 1414(f), 1418; sec. 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9604; sec. 505 of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 2005.

2. The Table of Sections for Part 2 is amended by revising the title for § 2.305 and adding titles for §§ 2.310 and 2.311 to read as follows:

PART 2—PUBLIC INFORMATION

* * * * *

Subpart B—Confidentiality of Business Information

* * * * *

Sec.

2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

* * * * *

2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

3. Section 2.100 is amended by revising paragraph (b) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by EPA. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an EPA officer or employee in his or her purely personal capacity. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference

libraries, even if such materials are in EPA's possession.

* * * * *

4. Section 2.106 is amended by revising paragraphs (b)(3), (b)(4), (b)(6), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 2.106 Where requests for agency records shall be filed.

* * * * *

(b) * * *

(3) Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia): U.S. Environmental Protection Agency, Freedom of Information Officer, 841 Chestnut Street, Philadelphia, PA 19107.

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): U.S. Environmental Protection Agency, Freedom of Information Officer, 345 Courtland Street, N.E., Atlanta, GA 30365.

* * * * *

(6) Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): U.S. Environmental Protection Agency, Freedom of Information Officer (6M-MC), 1201 Elm Street, Dallas, TX 75270.

(7) Region VII (Iowa, Kansas, Missouri, Nebraska): U.S. Environmental Protection Agency, Freedom of Information Officer, 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): U.S. Environmental Protection Agency, Freedom of Information Officer, One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202-2413.

(9) Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of Pacific Islands): U.S. Environmental Protection Agency, Freedom of Information Officer, 215 Fremont Street, San Francisco, CA 94105.

* * * * *

5. Section 2.107 is amended by revising paragraph (a) to read as follows:

§ 2.107 Misdirected written requests; oral requests.

(a) EPA cannot assure that a timely or satisfactory response under this subpart will be given to written requests that are addressed to EPA offices, officers, or employees other than the Freedom of Information Officers listed in § 2.106. Any EPA officer or employee who receives a written request for inspection or disclosure of EPA records shall promptly forward a copy of the request to the appropriate Freedom of Information Officer, by the fastest practicable means, and shall, if appropriate, commence action under § 2.111. For purposes of § 2.112, the time allowed with respect to initial determinations shall be computed from the day on which the appropriate Freedom of Information Officer receives the request.

* * * * *

6. Section 2.111 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 2.111 Action by office responsible for responding to request.

* * * * *

(c) In determining which records are responsive to a request, the EPA office responding shall ordinarily include those records within the Agency's possession as of the date of the Agency's receipt of the request.

(d) When a request for EPA records encompasses records of another Federal agency, the EPA office shall either: (1) Respond to the request after consulting with the originating agency when appropriate or (2) promptly transfer responsibility for responding to the request to the originating agency provided that the other agency is subject to the FOIA. Whenever the EPA office refers a request to another agency, it shall notify the requestor of the referral.

§ 2.112 [Amended]

7. Section 2.112 is amended by revising paragraphs (a) and (d) to read as follows:

* * * * *

(a) Except as otherwise provided in this section, not later than the tenth working day after the date of receipt by a Freedom of Information Office of a request for records, the EPA office responsible for responding to the request shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in EPA's possession, the EPA office shall so inform the requestor. To the extent requested records which are in EPA's possession are published by the Federal government, the response may inform the requestor that the records are available for inspection and where copies can be obtained.

* * * * *

(d) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by EPA under § 2.120 that prepayment or assurance of payment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) such charges.

* * * * *

§ 2.113 [Amended]

8. Section 2.113 is amended by removing paragraphs (a)(1), (a)(2), (a)(3), and (a)(7) and redesignating paragraphs (a)(4), (a)(5), and (a)(6) as (a)(1), (a)(2), and (a)(3), by revising paragraph (b), and by removing paragraph (h) as follows:

§ 2.113 Initial denials of requests.

* * * * *

(b) The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations This authority may be redelegated; *provided*, that the authority to issue initial denials of requests for existing, located records (other than denials based solely on § 2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent.

* * * * *

9. Section 2.114 is amended by revising paragraph (a) to read as follows:

§ 2.114 Appeals from initial denials; manner of making.

(a) Any person whose request for one or more existing, located EPA records has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 2.106(a).

* * * * *

10. Section 2.115 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 2.115 Appeal determinations, by whom made.

* * * * *

(b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed, and the record has not been disclosed by EPA under 5 U.S.C. 552, the matter shall be referred to the Assistant Administrator for External Affairs. If the Assistant Administant Administrator determines that the public interest would not be served by disclosure, a determination denying the appeal shall be issued by the General Counsel. If the Assistant Administrator determines that the public interest would be served by disclosure, the record shall be disclosed

unless the Administrator (upon a review of the matter requested by the appropriate Assistant Administrator, Associate Administrator, Regional Administrator, the General Counsel, or the head of a headquarters staff office) determines that the public interest would not be served by disclosure, in which case the General Counsel shall issue a determination denying the appeal. This review by the Assistant Administrator for External Affairs shall not apply to appeals from inital determinations by the Office of Inspector General to deny requests.

* * * * *

(d) The Assistant Administrator for External Affairs may delegate the authority under paragraph (b) of this section to the Deputy Assistant Administrator for External Affairs.

11. Section 2.120 is revised to read as follows:

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Fees will be charged requestors for searching for and producing requested records in accordance with the following schedule:

(1) Record search time (EPA employees):

(i) Personnel at GS–8 and below. For each ½ hour, or portion thereof, spent searching for a requested record, $3.50.

(ii) Personnel at GS–9 and above. For each ½ hour, or portion thereof, spent searching for a requested record, $7.00.

(2) Computer programming time (EPA employees), $8.50 per half hour.

(3) Reproduction of documents (EPA employees) (paper copy of paper original), $0.20 per page.

(4) Other costs of searching for or duplicating records (including such items as computer system time; contractor computer programming time; contractor search time; contractor reproduction costs; reproduction of photographs, microfilms, or magnetic tape; computer printouts; and transportation of records), will be the actual direct cost to EPA.

(5) No charge shall be made—

(i) For examination and evaluation of records which have been located and which are known to be among those requested;

(ii) For the cost of preparing or reviewing letters of response to a request or appeal;

(iii) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee (however, EPA may group requests by one requestor to determine the total fee);

(iv) For responding to a request by an individual for one copy of a record pertaining to the individual from a Privacy Act system of records;

(v) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(vi) For furnishing records requested by and for the official use of other Federal agencies; or

(vii) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fees payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Office lock box address listed below. Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days of date of billing, if payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days of the due date for payment.

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;
(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;
(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;
(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;
(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA 30384;
(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;
(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;
(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;
(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;
(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;
(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251.

(c) *Prepayment or assurance of payment.* If an EPA office determines or estimates that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed $25.00, that office need not search for, duplicate or disclose records in response to any request by the requestor until the requestor pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this section. In such a case, the EPA office shall promptly inform the requestor (by telephone, if practicable) of the need to make payment or arrangements to pay. See also § 2.112(d).

(d) *Reduction or waiver of fee.* The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees shall be considered (but need not necessarily be granted) in connection with each request from a representative of the press or other communications medium, or from a public interest group. A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer or the EPA office which is responding to the request for records. The latter office shall initially determine whether the fee shall be reduced or waived, and shall so inform the requestor. This initial determination may be appealed by letter addressed to the EPA Freedom of Information Officer. The Assistant Administrator for External Affairs or, if delegated the authority, the Deputy Assistant Administrator for External Affairs, shall decide such appeals.

(e) The EPA Financial Management Division shall maintain a record of all fees charged requestors for searching for and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requestor has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requestor's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requestor whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requestor that EPA will not process the request until the requestor submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which

payment was overdue did not make the request on behalf of the organization, the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requestor shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

12. Section 2.202 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2.202 Applicability of subpart; priority where provisions conflict; records containing more than one kind of information.

* * * * *

(b) Various statutes (other than 5 U.S.C. 552) under which EPA operates contain special provisions concerning the entitlement to confidential treatment of information gathered under such statutes. Sections 2.301 through 2.311 prescribe rules for treatment of certain categories of business information obtained under the various statutory provisions. Paragraph (b) of each of those sections should be consulted to determine whether any of those sections applies to the particular information in question.

(c) The basic rules of §§ 2.201 through 2.215 govern except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311. In the event of a conflict between the provisions of the basic rules and those of a special rule which is applicable to the particular information in question, the provision of the special rule shall govern.

* * * * *

§ 2.204 [Amended]

13. Section 2.204 is amended by revising paragraphs (d)(1)(iii), (e)(1), and (e)(2), redesignating paragraphs (f) (8) and (9) as (f) (9) and (10) respectively, and adding a new paragraph (f)(8) to read as follows: § 2.204 Initial action by EPA office.

* * * * *

(d) * * *

(1) * * *

(iii) Refer the matter to the appropriate EPA legal office, furnishing the information required by paragraph (f) of this section after the time has elapsed for receipt of comments from the affected business.

* * * * *

(e) * * *

(1) Whenever required by paragraph (d)(1) of this section, the EPA office shall promptly furnish each business a written notice stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the business an opportunity to comment. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. The notice shall state the address of the office to which the business's comments shall be addressed (the EPA office furnishing the notice, unless the General Counsel has directed otherwise), the time allowed for comments, and the method for requesting a time extension under § 2.205(b)(2). The notice shall further state that EPA will construe a business's failure to furnish timely comments as a waiver of the business's claim.

(2) If action under this section is occasioned by a request for the information under 5 U.S.C. 552, the period for comments shall be 15 working days after the date of the business's receipt of the written notice. In other cases, the EPA office shall establish a reasonable period for comments (not less than 15 working days after the business's receipt of the written notice). The time period for comments shall be considered met if the business's comments are postmarked or hand delivered to the office designated in the notice by the date specified. In all cases, the notice shall call the business's attention to the provisions of § 2.205(b).

* * * * *

(f) * * *

(8) A copy of the business's comments on whether the information is entitled to confidential treatment;

* * * * *

14. Section 2.205 is amended by revising paragraphs (b)(1), (b)(4) and (d)(1) to read as follows:

§ 2.205 Final confidentiality determination by EPA legal office.

* * * * *

(b) * * *

(1) Each business which has been furnished the notice and opportunity to comment prescribed by § 2.204(d)(1) and § 2.204(e) shall furnish its comments to the office specified in the notice in time to be postmarked or hand delivered to that office not later than the date specified in the notice (or the date established in lieu thereof under this section).

* * * * *

(4) If a business's comments have not been received by the specified EPA office by the date they are due (including any approved extension), that office shall promptly inquire whether the business has complied with paragraph (b)(1) of this section. If the business has complied with paragraph (b)(1) but the comments have been lost in transmission, duplicate comments shall be requested.

* * * * *

(d) * * *

(1) If the EPA legal office finds that a business has failed to furnish comments under paragraph (b) of this section by the specified due date, it shall determine that the business has waived its claim. If, after application of the preceding sentence, no claim applies to the information, the office shall determine that the information is not entitled to confidential treatment under this subpart and, subject to § 2.210, is available to the public.

* * * * *

15. Section 2.209 is amended by revising paragraph (b) to read as follows:

§ 2.209 Disclosure in special circumstances.

* * * * *

(b) Disclosure to Congress or the Comptroller General.

(1) Upon receipt of a written request by the Speaker of the House, President of the Senate, chairman of a committee or subcommittee, or the Comptroller General, as appropriate, EPA will disclose business information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure.

(2) If the request is for business information claimed as confidential or determined to be confidential, the EPA office processing the request shall provide notice to each affected business of the type of information disclosed and to whom it is disclosed. Notice shall be given at least ten days prior to disclosure, except where it is not possible to provide notice ten days in advance of any date established by the requesting body for responding to the request. Where ten days advance notice cannot be given, as much advance notice as possible shall be provided. Where notice cannot be given before the date established by the requesting body for responding to the request, notice shall be given as promptly after disclosure as possible. Such notice may be given by notice published in the **Federal Register** or by letter sent by certified mail, return receipt requested, or telegram. However, if the requesting body asks in writing that no notice under this subsection be given, EPA will give no notice.

(3) At the time EPA discloses the business information, EPA will inform the requesting body of any unresolved business confidentiality claim known to

cover the information and of any determination under this subpart that the information is entitled to confidential treatment.

* * * * *

16. Section 2.211 is amended by revising paragraph (d) to read as follows:

§ 2.211 Safeguarding of business information; penalty for wrongful disclosure.

* * * * *

(d) Each contractor or subcontractor with EPA, and each employee of such contractor or subcontractor, who is furnished business information by EPA under §§ 2.301(h), § 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.308(i), or 2.310(i) shall use or disclose that information only as permitted by the contract or subcontract under which the information was furnished. Contractors or subcontractors shall take steps to properly safeguard business information including following any security procedures for handling and safeguarding business information which are contained in any manuals, procedures, regulations, or guidelines provided by EPA. Any violation of this paragraph shall constitute grounds for suspension or debarment of the contractor or subcontractor in question. A willful violation of this paragraph may result in criminal prosecution.

17. Section 2.301 is amended by revising paragraphs (b)(1)(i)(C) and (b)(1)(ii), redesignating paragraphs (b)(4) and (b)(5) as (b)(5) and (b)(6), respectively, adding a new paragraph (b)(4), and revising paragraph (g)(2), the first sentence of paragraph (g)(3), and the first sentence of paragraph (g)(4) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(b) * * *

(1) * * *

(i) * * * (C) of carrying out any provision of the Act (except a provision of Part II of the Act with respect to a manufacturer of new motor vehicles or new motor vehicle engines);

(ii) Provided or obtained under section 208 of the Act, 42 U.S.C. 7542, for the purpose of enabling the Administrator to determine whether a manufacturer has acted or is acting in compliance with the Act and regulations under the Act, or provided or obtained under section 206(c) of the Act, 42 U.S.C. 7525(c); or

* * * * *

(4) Information will be considered to have been provided or obtained under section 206(c) of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 206(c), or if its submission could have been required under section 206(c) regardless of whether section 206(c) was cited as authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.

* * * * *

(g) * * *

(2) In connection with any proceeding other than a proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public under this paragraph (g)(2). No information shall be made available to the public under this paragraph (g)(2) until any affected business has been informed that EPA is considering making the information available to the public under this paragraph (g)(2) in connection with an identified proceeding, and has afforded the business a reasonable period for comment (such notice and opportunity to comment may be afforded in connection with the notice prescribed by § 2.204(d)(1) and § 2.204(e)). Information may be made available to the public under this paragraph (g)(2) only if, after consideration of any timely comments submitted by the business, the General Counsel determines that the information is relevant to the subject of the proceeding and the EPA office conducting the proceeding determines that the public interest would be served by making the information available to the public. Any affected business shall be given at least 5 days' notice by the General Counsel prior to making the information available to the public.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). * * *

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section appplies may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). * * *

* * * * *

18. Section 2.305 is amended by revising the section heading and paragraphs (a), (b), (g)(1), and (h)(1) and adding a new paragraph (h)(4) as follows:

§ 2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*

(2) "Person" has the meaning given it in section 1004(15) of the Act, 42 U.S.C. 6903(15).

(3) "Hazardous waste" has the meaning given it in section 1004(5) of the Act, 42 U.S.C. 6903(5).

(4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies to information provided to or obtained by EPA under section 3001(b)(3)(B), 3007, or 9005 of the Act, 42 U.S.C 6921(b)(3)(B), 6927, or 6995. Information will be considered to have been provided or obtained under sections 3001(b)(3)(B), 3007, or 9005 of the Act if it was provided in response to a request from EDA made for any of the purposes stated in the Act or if its submission could have been required under those provisions of the Act regardless of whether a specific section was cited as the authority for any request for the information or whether the information was provide directly to EPA or through some third person.

* * * * *

(g)— *Disclosure of information relevent in a proceeding.* (1) Under sections 3007(b) and 9005(b) of the Act (42 U.S.C. 6927(b) and 6995(b)), any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its

relevance in a proceeding shall be made only in accordance with this paragraph (g).

* * * * *

(h) *Disclosure to authorized representatives.* (1) Under sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

* * * * *

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph(h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), or 6995(b)).

19. By adding § 2.310 to read as follows:

§ 2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.

(2) "Person" has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).

(3) "Facility" has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).

(4) "Hazardous substance" has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).

(5) "Release" has the meaning given it in section 101 (22) of the Act, 42 U.S.C. 9601(22).

(6) "Proceeding" means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act), or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or othewise handles or has handled hazardous substances. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g)(1) Under section 104(e)(2)(A) of the Act (42 U.S.C. 9604(e)(2)(A) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, nothwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) The provisions of § 2.301(g)(3) are to be used as paragraph (g)(3) of this section.

(4) The provisions of § 2.301(g)(4) are to be used as paragraph (g)(3) of this section.

(h) *Disclosure to authorized representatives.* (1) Under section 104(e)(2) of the Act (42 U.S.C. 9604(e)(2)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2) The provisions of § 2.301(h)(2) are to be used as paragraph (h)(2) of this section.

(3) The provisions of § 2.301(h)(3) are to be used as paragraph (h)(3) of this section.

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 104(e)(2)(B) of the Act (42 U.S.C. § 9604(e)(2)(B)).

20. By adding § 2.311 to read as follows:

§ 2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 et seq.

(2) "Average fuel economy" has the meaning given it in section 501(4) of the Act, 15 U.S.C. 2001(4).

(3) "Fuel economy" has the meaning given it in section 501(6) of the Act, 15 U.S.C. 2001(6).

(4) "Fuel economy data" means any measurement or calculation of fuel economy for any model type and average fuel economy of a manufacturer under section 503(d) of the Act, 15 U.S.C. 2003(d).

(5) "Manufacturer" has the meaning given it in section 501(9) of the Act, 15 U.S.C. 2001(9).

(6) "Model type" has the meaning given it in section 501(11) of the Act, 15 U.S.C. 2001(11).

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under Title V, Part A of the Act, 15 U.S.C. 2001 through 2012. Information will be considered to have been provided or obtained under Title V, Part A of the Act if it was provided in

response to a request from EPA made for any purpose stated in Title V, Part A, or if its submission could have been required under Title V Part A, regardless of whether Title V Part A was cited as the authority for any request for information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies, except that information this is fuel economy data is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant to a proceeding.*

(1) Under section 505(d)(1) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding under Title V, Part A of the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) The provisions of § 2.301(g)(3) are to be used as paragraph (g)(3) of this section.

(4) The provisions of § 2.301(g)(4) are to be used as paragraph (g)(3) of this section.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3918/Pub. L. 99-181

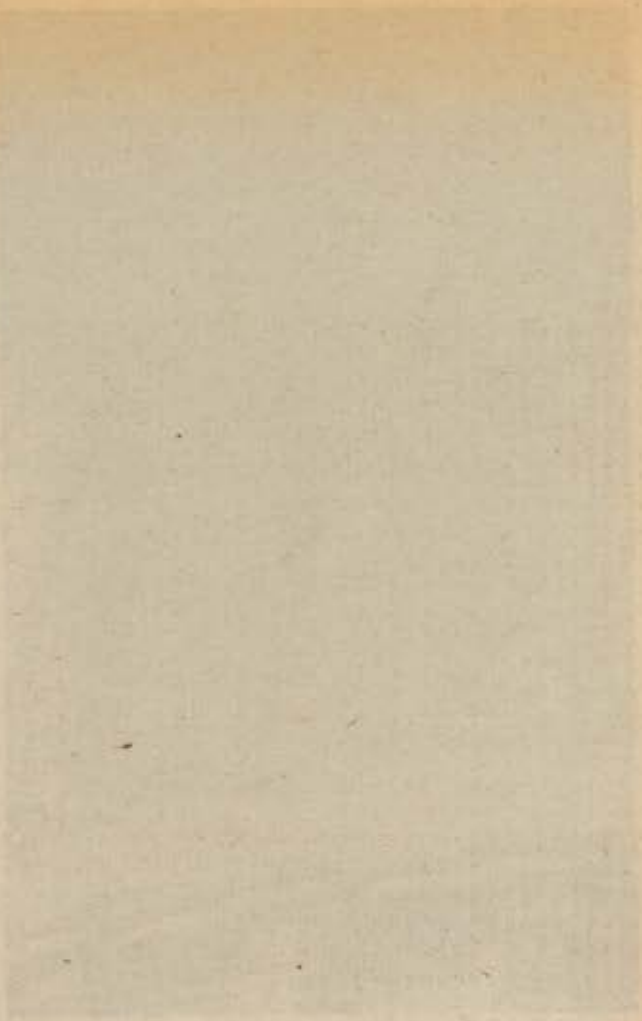
To extend until December 18, 1985, the application of certain tobacco excise taxes, trade adjustment assistance, certain medicare reimbursement provisions, and borrowing authority under the railroad unemployment insurance program. (Dec. 13, 1985; 1 page) Price: $1.00.

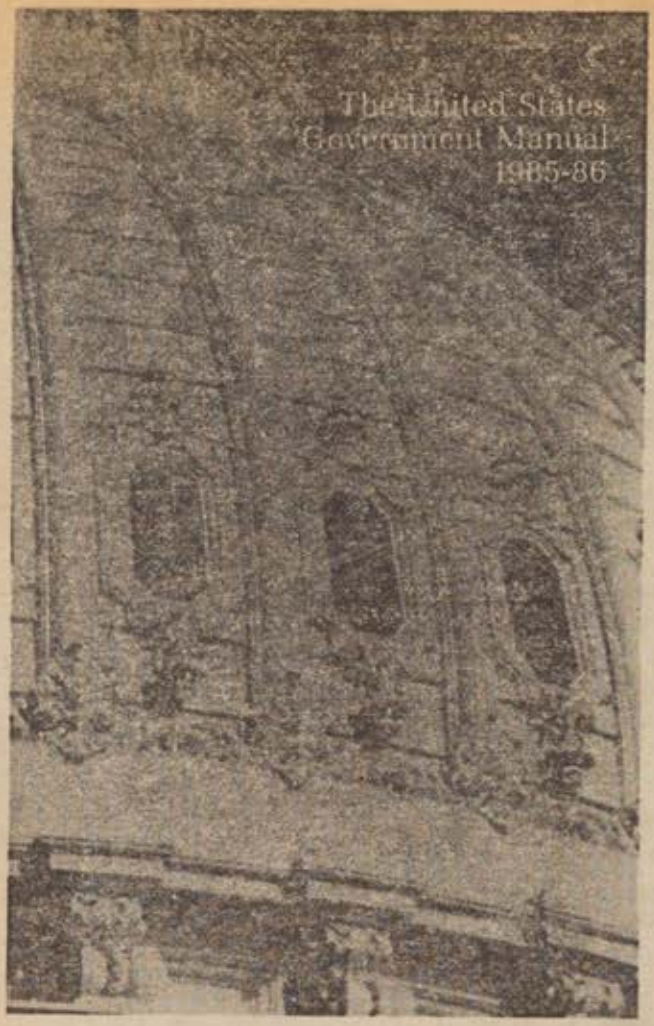
H.R. 3919/Pub. L. 99-182

To extend temporarily the dairy price support program and certain food stamp program provisions, and for other purposes. (Dec. 13, 1985; 1 page) Price: $1.00.

S.J. Res. 238/Pub. L. 99-183

Relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China. (Dec. 16, 1985; 2 pages) Price: $1.00.





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