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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 month.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 719

[Amdt. 1]

Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage

AGENCY: Agricultural Stabilization and Conservation Service USDA.

ACTION: Final rule.

SUMMARY: This action adopts as a final rule an interim rule which was published in the **Federal Register** (46 FR 48629) on October 2, 1981, which authorizes the reconstitution of a farm that is comprised of land located in two or more counties on which there is quota or allotment subject to lease and transfer restrictions across county lines if such farm was constituted as a single farming unit prior to April 28, 1978.

EFFECTIVE DATE: March 8, 1982.

FOR FURTHER INFORMATION CONTACT: Alex King, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-4542.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." It has been determined that this program provision will not result in (1) annual effect on the economy of $100 million or more; (2) major increases in costs or prices in consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by Office of Management and Budget (OBM) circular A-95 was not used to assure that units of local government are informed of this action.

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

On October 2, 1981, and interim rule was published in the **Federal Register** (46 FR 48629) amending the regulations set forth at 7 CFR Part 719 which govern the reconstitution of farms, allotments, normal crop acreage and preceding year planted acreage for any program administered by the Agricultural Stabilization and Conservation Service (ASCS). The interim rule permitted producers who own and operate land located in two or more counties and who were required to constitute their land as a single farming unit prior to 1978 to reconstitute their farm by dividing the tracts which are located in different counties. Comments were solicited for a period of 60 days after publication of the document. No comments were received during the comment period.

Final Rule

Accordingly, it has been determined that the interim rule published at (46 FR 48629) amending 7 CFR 719.3 is hereby adopted as a final rule without change.

Signed at Washington, D.C. on March 2, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82-6306 Filed 3-8-82; 8:45 am]
BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1475

Emergency Feed Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The purpose of this interim rule is to amend the Emergency Feed Program Regulations in order to provide that applications for assistance under the Emergency Feed Program will no longer be accepted after April 8, 1982. Cost share assistance with respect to applications filed after March 9, 1982, and not later than April 8, 1982, will be limited to cost-share assistance for livestock feed purchased not later than March 9, 1982. The effect of this interim rule is to terminate this discretionary program in order to reduce administrative costs.

DATES: This interim rule shall become effective March 9, 1982. Comments must be received on or before May 10, 1982, in order to be assured of consideration.

ADDRESS: Interested persons may send comments to the Director, Emergency Operations and Livestock Programs Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Clarence Domire, Emergency Operations and Livestock Programs Division, USDA, ASCS, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013, (202) 447-6833. A Final Regulatory Impact Statement describing the impact of terminating this program is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This interim rule has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this Final Rule applies to are: Title—Emergency Feed Program; Number—10.066 as found in the catalog of Federal Domestic Assistance Programs.

This action will not have a significant impact, specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

The Emergency Feed Program is authorized by section 1105 of the Food and Agriculture Act of 1977, as amended. The program is designed to assist in the preservation and maintenance of livestock in any area of the United States including Puerto Rico, Guam, and the Virgin Islands where because of flood, drought, fire, hurricane, earthquake, storm or other natural disaster, the Secretary determines that an emergency exists. In order to receive assistance under the program, a livestock owner must: (1) Have suffered a substantial loss in the livestock feed normally produced on the farm for such owner's livestock, (2) not have sufficient feed for such owner's livestock for the estimated period of the emergency, and (3) make feed purchases during the period of the emergency in quantities larger than such owner would normally make.

Under the provisions of this interim rule, the Agricultural Stabilization and Conservation Service (ASCS), the agency within the Department of Agriculture which administers the Emergency Feed Program, will not accept any new applications for assistance under the program later than 30 days after the effective date of this interim rule.

With the urgent need to reduce the Federal budget, it has been determined that the Emergency Feed Program should be terminated. The change made by this interim rule will result in a corresponding reduction in Federal expenditures. Since the program is discretionary, the Secretary may implement this program again should it be determined that an emergency situation exists with respect to a shortage of livestock feed which warrants such implementation.

Under the provisions of this interim rule, applications for assistance under the Emergency Feed Program filed by the close of business on March 9, 1982, will be processed according to regulations applicable to the program at that time. With respect to applications filed during the subsequent 30-day period, assistance under the program will be limited to livestock feed purchased by livestock owners not later than March 9, 1982.

Since the purpose of this interim rule is to terminate the Emergency Feed Program it has been determined that this rule shall become effective upon publication in the **Federal Register** (March 9, 1982) without prior opportunity for public comment. However, comments on this interim rule are requested. All comments must be received within 60 days after publication of this interim rule in order to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any necessary amendments can be published in the **Federal Register** as soon as possible.

Interim Rule

PART 1475—EMERGENCY FEED PROGRAM

Accordingly, the regulations at 7 CFR 1475.53 are revised to read as follows:

§ 1475.53 Availability

Benefits under the program shall be available to any owner of livestock which are maintained in the United States, including Puerto Rico, Guam, and the Virgin Islands, who: (a) Has suffered during the crop year, a substantial loss of livestock feed normally produced on land owned (or operated under a bona fide lease) by the livestock owner, and (b) has filed an application for assistance under the Emergency Feed Program not later than April 8, 1982, except that with respect to such applications which are filed after March 9, 1982, benefits will be provided under the program only for livestock feed which is purchased by the livestock owner not later than March 9, 1982.

(Sec. 1105 of the Food and Agriculture Act of 1977, 91 Stat. 955, as amended (7 U.S.C. 2267))

Signed at Washington, D.C., on March 2, 1982.

Richard E. Lyng,

Acting Secretary of Agriculture.

[FR Doc. 82-6344 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Big Sky Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Big Sky Airlines to the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States.

EFFECTIVE DATE: February 2, 1982.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions, Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.4 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization entered into agreement with Big Sky Transportation Company, d/b/a Big Sky Airlines, to guarantee the preinspection of their passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)).

Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier to the listing and is editorial in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

1. In § 238.4 *Preinspection outside the United States,* the listing of

transportation lines is amended by adding in alphabetical sequence, "Big Sky Airlines" under "AT CALGARY".

* * * * *

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: March 1, 1982.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 82-6320 Filed 3-8-82; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1 and 2

Implementation of Commission's Delegation of Authority To Determine Whether There Have Been Significant Changes in Operating License Applicant's Activities or Proposed Activities Since the Construction Permit Antitrust Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate final procedures implementing the Commission's delegation of authority to make the "significant changes" determination to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate. The "significant changes" determination, mandated by Section 105c(2) of the Atomic Energy Act of 1954, as amended, is whether there have been changes of antitrust significance in an operating license applicant's activities or proposed activities that have occurred subsequent to the antitrust review conducted in connection with the facility construction permit.

EFFECTIVE DATE: April 8, 1982.

FOR FURTHER INFORMATION CONTACT: Argil Toalston, Antitrust and Economic Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, Telephone: (301) 492-4891.

SUPPLEMENTARY INFORMATION:

A. Background

In connection with the prelicensing antitrust review of production and utilization facility applicants (primarily nuclear power reactor owners and operators), Section 105c(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2135c(2), requires the NRC to forward to the Attorney General, for his antitrust advice, a copy of the operating license ("OL") application if:

> * * * the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

On September 12, 1979, the Nuclear Regulatory Commission delegated its authority to make the "significant changes" determination under Section 105c(2) to the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate depending on the particular kind of production or utilization facility involved. In connection with that delegation, the Commission approved procedures to be used until such time as regulations implementing those procedures were adopted. Although never formally published, these procedures were and are available as attachments to SECY-79-353 (May 24, 1979) and SECY-81-43 (January 19, 1981) in the Commission's Public Document Room, at 1717 H Street, NW., Washington, D.C. On March 26, 1981, the Commission published for comment in the **Federal Register** a proposed rule to implement the approved procedures (46 FR 18747).

B. Comments

Three comment letters were received from two electric utilities, Carolina Power & Light Company (CP&L) and Arizona Public Service Company (APS), and from one law firm, LeBoeuf, Lamb, Leiby & MacRae (LeBoeuf Lamb), that represents several electric utilities. Copies of these comments and an NRC staff analysis of them are available in the Commission's Public Document Room.

1. *Carolina Power & Light Company ("CP&L").* Under the procedures as originally proposed, the NRC would publish a notice in the **Federal Register** of receipt of antitrust information submitted in connection with an OL application. The notice would direct that comments on the antitrust aspects of the application should be submitted within 60 days to the NRC for presentation to the Attorney General. The proposed procedures envisage receipt of comments and information back from the Attorney General prior to making a "significant changes" determination. CP&L suggested, first, that there should be a fixed time limit of 20 days after receipt of the Attorney General's comments in which the appropriate Director would be required to make the "significant changes" determination.

The Commission has not adopted CP&L's modification because it would establish a single, rigid time schedule without any flexibility. In some situations, full and fair consideration of potentially complex antitrust allegations and factual material may require longer then 20 days. CP&L's suggestion fails to make any accommodation for such case-by-case variations and is, therefore, undesirable.

The proposed rule permitted members of the public a 60-day period in which to submit their comments in response to the **Federal Register** notice of receipt of OL antitrust information, and also permitted another 60-day period in which to request reevaluation of a Director's finding of no significant changes. CP&L asserted that the two proposed 60-day periods should be shortened to be consistent with the Proposed Rule for Expediting the NRC Hearing Process (46 FR 17216, March 18, 1981). The final rule has been changed to provide a 30-day period for the submittal of comments in response to the notice of receipt of OL antitrust information submitted pursuant to Regulatory Guide 9.3. The Commission believes that 30 days is sufficient time to afford to the public a meaningful opportunity to submit relevant antitrust information to the NRC and to the Attorney General without undermining efforts to expedite the processing of OL applications. In addition, in response to CP&L's comment about the excessive length of time for submitting requests for reevaluation of a significant changes determination, this period has been decreased from 60 days to 30 days in the final rule.

2. *LeBoeuf, Lamb, Leiby & McRae ("LeBoeuf Lamb").* LeBoeuf Lamb pointed out that the phrase, "the antitrust portion of an application for a facility operating license," in the proposed revision to 10 CFR 2.101(c) is incorrect because antitrust information submitted at the OL stage is not a formal part of the OL application. To better indicate the correct relationship between the antitrust information submitted at the OL stage and the OL application itself, the Commission has, in the final rule, replaced that phrase with the phrase "information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility operating license."

LeBoeuf Lamb, as well as Arizona Public Service Company, also maintained that NRC consultation with the Attorney General prior to making the significant changes determination is contrary to Section 105c(2) of the Act and should be eliminated. Section

105c(2) addresses the Commission's obligation to make the significant changes determination, upon which a full-scale antitrust review and formal rendering of advice by the Attorney General necessarily depends. It is true that Section 105c(2) itself is silent on whether the Commission can or should consult with the Attorney General prior to making the significant changes determination.

The legislative history of Section 105c(2), however, is not silent on this point and explicitly states Congress' intention that this pre-determination consultation should occur. The Joint Committee on Atomic Energy, in connection with the 1970 amendments that added the Section 105c provisions for prelicensing antitrust review, stated that, as to OL applications: "The committee expects that the Commission will consult with the Attorney General in regard to its determination respecting significant changes." H. Rep. No. 91-1470, 91st Cong., 2d Sess., *reprinted in* 3 U.S. Code, Cong. and Adm. News, 91st Cong., 2d Sess., 4981, 5009 (1970). In light of this express Congressional direction and in light of the obvious benefits gained from the sharing of information and ideas with the Attorney General, the final rule retains the pre-determination consultation provisions.

LeBoeuf Lamb also objected to two "public comment" periods provided under § 2.101 in the proposed rule, ostensibly referring to the comment period provided in the **Federal Register** notice of receipt of OL antitrust information and to the period in which reevaluation of a no significant changes finding can be requested. LeBoeuf Lamb asserted that the second was not likely to be useful. The final rule does not include LeBoeuf Lamb's suggestion to eliminate one of the two so-called "comment" periods. The first notice announces receipt of Regulatory Guide 9.3 antitrust information submitted in connection with the OL application. At this time, the antitrust inquiry by the Commission and the Attorney General is not specifically focused on any particular information, and public comments may provide a useful background for the NRC and Attorney General review. The second time period in which members of the public can request reevaluation of a no significant changes finding is initiated by publication of a **Federal Register** notice. That notice contains the Director's initial finding and underlying rationale, and also indicates the availability of any other staff analysis, thus permitting the public to base any request for reevaluation upon specific facts or conclusions directly related to the initial significant changes finding. This second stage for public involvement is a more focused one, which is expected to bring to light any relevant information that might have otherwise not been available to the Director in making the finding. Taken together, these two periods for public input, with their differing emphases, should provide sufficient and current information, supplemented where necessary by independent NRC follow-up activities, upon which a fair and reasoned final significant changes determination can ultimately be made.

3. *Arizona Public Service Company ("APS").* APS also opposed providing the public with any expanded opportunity to submit pertinent antitrust information and comments to the NRC in connection with making the significant changes determination. APS raised concerns about the receipt of comments leading to possible delay in making the significant changes determination, as well as about an increased potential for formal review by the Attorney General and for NRC antitrust hearings, which could cause more licensing delays.

The Commission believes that the reduced 30-day period for submitting public comments, as well as the comments themselves, will not lead to unwarranted or significant delays in the NRC licensing process. The 30-day period accommodates the need for expedition in licensing with the idea that public comments will contribute to a more informed and less speculative significant changes determinatioin. To fulfill its statutory obligations under Section 105c, the NRC must have the most current and complete information possible. It would be short-sighted to eliminate one potentially valuable mechanism by which to obtain such information—comments from the public itself, including other utilities in and around the applicant utility.[1]

C. Other Minor Changes in Final Rule

Several minor editorial changes have been made in the final rule to eliminate certain ambiguities, to correct inaccurate terminology, and to ensure consistency in the Commission's regulations. Among these are the following principal changes:

(1) Sections 1.42, 1.61(e), and 2.101(c)(3): changes have been made to indicate the most current NRC internal organizational structure and division of responsibilities;

(2) Section 2.101(c): clarification that § 2.101(c) applies only to construction permit applications, as reflective of current staff practice;

(3) Section 2.101(e) and Appendix A: changes have been made concerning the timing and nature of the notice of receipt of construction permit application antitrust information and the Regulatory Guide 9.3 OL antitrust information. The changes also include clarification that public comments submitted will be considered by the NRC and will also be forwarded to the Attorney General; and

(4) Section 2.104(d)(3): clarification of the NRC procedures concerned with notices of hearing, to make it clear that the invitation for the public to submit comments on antitrust matters in the notice of receipt of the OL antitrust information has no effect whatsoever on whether an OL hearing will or should be held on health, safety, environmental, or other matters under the provisions of § 2.104(d). In that regard, prelicensing antitrust reviews and hearings are governed by the provisions of section 105c of the Atomic Energy Act of 1954, as amended, *Houston Lighting and Power Co.* (South Texas Project, Unit Nos. 1 and 2), CLI-77-13, 5 NRC 1303 (1977), and are subject to separate licensing proceedings from those concerned with health, safety, and environmental matters, *Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167 (1976).

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a determination that these amendments do not impose new recordkeeping, information collection, or reporting requirements.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that the promulgation of this rule will not have a significant economic impact on a substantial number of small entities. The rule implements current NRC internal procedures related to the licensing of production and utilization facilities under Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133.

[1] APS asserted the NRC can and should issue operating licenses irrespective of whether the significant changes determination or the completion of an antitrust review have occurred, citing Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559 (1975), and H. Rep. No. 91-1470, 91st Cong., 2d Sess. 31 (1970). These authorities and the issue raised by APS do not address the subject of this rule—the procedures for making a significant changes determination—nor do they provide, without any explanation by APS, an acceptable legal basis for the Commission to agree or disagree with the assertion made.

In addition, the companies (primarily electric utilities) owning and operating these facilities are dominant in their service areas and/or do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121. Accordingly, there is no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter 1, Parts 1 and 2, Code of Federal Regulations, are published as a document subject to codification.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Sec. 161, 68 Stat. 948 (42 U.S.C. 2201); secs. 201, as amended, 203, 204, 205, and 209, Pub. L. 93–438, 88 Stat. 1242, 1244, 1245, 1246 and 1248, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841, 5843, 5844, 5845, and 5849); 5 U.S.C. 552 and 553.

2. In § 1.42, paragraph (e) is revised to read as follows:

§ 1.42 Office of the Executive Legal Director.

* * * * *

(e) The Hearing Division also acts as counsel for the NRC staff in public administrative proceedings before the Commission, Atomic Safety and Licensing Appeal Boards, Atomic Safety and Licensing Boards, and administrative law judges in matters relating to antitrust aspects of applications for nuclear facility licenses; provides legal advice regarding NRC antitrust responsibilities; and, for operating license antitrust reviews, together with the Antitrust and Economic Analysis Branch of the Office of Nuclear Reactor Regulation, recommends to the appropriate Office Director (NRR or NMSS) whether or not a finding of significant changes should be made.

3. In § 1.61, paragraph (e) is revised to read as follows:

§ 1.61 Office of Nuclear Reactor Regulation.

* * * * *

(e) The Antitrust and Economic Analysis Branch conducts prelicensing reviews of applications for nuclear facilities to assure that issuance of a license will not create or maintain a situation inconsistent with the antitrust laws; for operating license antitrust reviews, together with the Hearing Division of the Office of the Executive Legal Director, recommends to the appropriate Office Director (NRR or NMSS) whether or not a finding of significant changes should be made; is responsible for ascertaining compliance with license conditions pertaining to antitrust matters; analyzes broad engineering and economic issues in formulating antitrust policy and guidance; and provides specialized technical capabilities in the area of the benefits and costs of power plants and nuclear facilities and need-for-power assessments.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

4. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended by Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.

(Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800–2.807 also issued under 5 U.S.C. 553. Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended by Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039). Appendix A is also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1472 (42 U.S.C. 2135))

5. Remove the authority citations following: §§ 2.1, 2.101, 2.102, 2.104, 2.105, 2.202, 2.206, 2.402, Subparts E and F, §§ 2.700a, 2.706, 2.710, 2.713, 2.714, 2.714a, 2.715, 2.716, 2.719, 2.721, 2.730, 2.740a, 2.743, 2.749, 2.751a, 2.754, 2.760, 2.760a, 2.762, 2.770, 2.771, 2.772, 2.785, 2.786, 2.787, 2.788, 2.790, 2.802, 2.808, Subpart I, and Appendices A and B.

6. In § 2.101, the introductory text of paragraph (c) and paragraphs (c)(3) and (e) are revised to read as follows:

§ 2.101 Filing of application.

* * * * *

(c) The notice published in the **Federal Register** announcing docketing of the antitrust information portion of an application for a facility construction permit under section 103 of the Act, except for those applications described in § 2.101(e) and §2.102(d)(2), shall state that:

* * * * *

(3) Any person who wishes to have his views on the antitrust matters of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within sixty (60) days after publication of the notice announcing receipt and docketing of the antitrust information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Economic Analysis Branch.

* * * * *

(e)(1) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a "Notice of Receipt of Operating License Antitrust Information." The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning the antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since the completion of the previous antitrust review in connection with the construction permit. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Economic Analysis Branch.

(2) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been

no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination may be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

(3) If, as a result of a reevaluation of the finding described in paragraph (e)(2) of this section, it is determined that there have been no significant changes, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall deny the request and shall publish a notice of finding of no significant changes in the **Federal Register**. The notice and finding become the final NRC decision thirty (30) days after being made and only in the event that the Commission has not exercised sua sponte review.

(4) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, concludes that significant changes have occurred since the completion of the antitrust review in connection with the construction permit, then the provisions of § 2.102(d) apply.

* * * * *

7. In § 2.102, paragraphs (d) (1) and (2) are revised to read as follows:

§ 2.102 Administrative review of application.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will refer and transmit a copy of each docketed application for a construction permit or an operating license for a utilization or production facility under section 103 of the Act to the Attorney General as required by section 105c of the Act.

(2) The requirements of paragraph (d)(1) of this section do not apply to an application for an operating license for a production or utilization facility under section 103 of the Act for which the construction permit was also issued under section 103, unless the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, determines, after consultation with the Attorney General and in accordance with § 2.101(e), that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review of the Attorney General and the Commission under section 105c of the Act in connection with the construction permit.

* * * * *

8. In § 2.104, paragraph (d)(3) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(d) * * *

(3) That matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, will be considered at another hearing if otherwise required or ordered to be held, for which a notice will be published pursuant to paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

* * * * *

9. In Appendix A to Part 2, paragraph X.(a) is revised, paragraph X.(b) is redesignated as paragraph X.(b)(1) and is revised, new paragraphs X.(b)(2)–X.(b)(5) are added, and paragraph X.(c) is revised to read as follows:

Appendix A.—Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing Is Required Under Section 189 of the Atomic Energy Act of 1954, as Amended

* * * * *

X. Proceedings for the Consideration of Antitrust Aspects of Facility License Applications

(a) Under the Atomic Energy Act of 1954, as amended, the Commission is required, with respect to applications for construction permits or operating licenses for production and utilization facilities for industrial or commercial purposes licensed under section 103, which include power reactors subject to the mandatory hearing requirements of section 189a of the Act, to follow procedures for antitrust review in section 105c of the Act. This section outlines the procedures used by the Commission to implement that section.

(b)(1) When the antitrust information portion of an application is received and docketed for a facility construction permit under section 103 of the Act which is subject to antitrust review under section 105c, the notice of receipt of the antitrust information published in the **Federal Register** shall state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after publication of the notice.

(2) Upon receipt of the antitrust information responsive to Regulatory Guide 9.3 submitted in connection with an application for a facility operating license under section 103 of the Act, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall publish in the **Federal Register** and in appropriate trade journals a "Notice of Receipt of Operating License Antitrust Information." The notice shall invite persons to submit, within thirty (30) days after publication of the notice, comments or information concerning antitrust aspects of the application to assist the Director in determining, pursuant to section 105c of the Act, whether significant changes in the licensee's activities or proposed activities have occurred since completion of the previous antitrust review in connection with the construction permit application. The notice shall also state that persons who wish to have their views on the antitrust aspects of the application considered by the NRC and presented to the Attorney General for consideration should submit such views within thirty (30) days after publication of the notice to: U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Antitrust and Economic Analysis Branch.

(3) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, after reviewing any comments or information received in response to the published notice and any comments or information regarding the applicant received from the Attorney General, concludes that there have been no significant changes since the completion of the previous antitrust review in connection with the construction permit, a finding of no significant changes shall be published in the **Federal Register**, together with a notice stating that any request for reevaluation of such finding should be submitted within thirty (30) days of publication of the notice. If no requests for reevaluation are received within that time, the finding shall become the NRC's final determination. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

(4) If, as a result of the reevaluation of the finding described above, it is determined that there have been no significant changes, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, shall deny the request and shall publish a notice of finding of no significant changes in the **Federal Register**. The notice and finding become the

final NRC decision thirty (30) days after being made and only in the event that the Commission has not exercised sua sponte review.

(5) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, concludes that significant changes have occurred since the completion of the previous antitrust review in connection with the construction permit, then the provisions of § 2.102(d) shall apply.

(c)(1) Except as provided in paragraph (c)(2) below, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, shall refer and transmit a copy of each application for a construction permit or an operating license for a utilization or production facility under section 103 of the Act, to the Attorney General as required by section 105c of the Act. Under that section, the Attorney General will, within a reasonable time, but in no event to exceed 180 days after receipt, render such advice to the Commission as is determined to be appropriate in regard to the finding to be made by the Commission as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws specified in subsection 105a of the Act.

(2) The review by the Attorney General described in paragraph (c)(1) above is not required for applications for operating licenses for production or utilization facilities under section 103 of the Act for which the construction permit was also issued under section 103, unless the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, determines, after consultation with the Attorney General and in accordance with § 2.101(e), that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and by the Commission under section 105c of the Act in connection with the construction permit.

* * * * *

Dated at Washington, DC this 3d day of March, 1982.

For the Nuclear Regulatory Commission.

Samuel Chilk,

Secretary of the Commission.

[FR Doc. 82-6340 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 2

General Statement of Policy and Procedure for Enforcement Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised general statement of policy.

SUMMARY: The NRC is revising its enforcement policy based on: (1) experience gained in the implementation of the proposed general guidance to the staff since that guidance was published in October 1980; and (2) comments received during and following public meetings on the policy. The policy statement is intended to inform licensees and the public of the bases for taking various enforcement actions. The policy, which provides guidance, is being codified as Appendix C to Part 2 of Title 10 of the Code of Federal Regulations.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Acting Director, Enforcement Staff, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-492-4909).

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is revising its enforcement policy to respond to comments provided on an earlier version published in October 1980 and to reflect experience gained in use of the interim policy. The revised policy describes the general bases on which various enforcement sanctions are to be used as part of the NRC's regulatory program. The statement of general policy set forth below (as Appendix C to Part 2) is intended to serve as Commission guidance, rather than as rigid requirements.

Background

The criteria used by the Commission's staff to determine categories of noncompliance and enforcement actions arising therefrom (referred to hereafter as "Criteria") were first published on October 17, 1972 (37 FR 21962). These Criteria were subsequently modified on January 3, 1975 (40 FR 820) and on December 3, 1979 (44 FR 77135). In late 1979, the Commission directed the staff to prepare a comprehensive statement of enforcement policy. This staff effort received added urgency with the enactment of Pub. L. 96-295 (signed June 30, 1980), that, among other things, amended Section 234 of the Atomic Energy Act to raise the maximum civil penalty the NRC can impose from $5,000 to $100,000 per violation and eliminated the provision limiting the total civil penalties for any 30-day period to $25,000.

On September 4, 1980, the Commission approved a proposed general statement of policy on enforcement, and directed the staff: (1) To implement the proposed policy as interim guidance; (2) to publish the proposed policy for public comment; and (3) to conduct a series of public meetings to obtain and consider public comments on the proposed policy.

The proposed policy was published in the **Federal Register** on October 7, 1980 (45 FR 66754). A series of five public meetings was announced on October 17, 1980 (45 FR 69077) and copies of both those **Federal Register** items were mailed to all NRC licensees and to identified public interest and intervenor groups, soliciting their participation in the meetings.

Results of Meetings

Public meetings were held in early December 1980, as scheduled, in Philadelphia, PA, Atlanta, GA, Chicago, IL, Dallas, TX, and Oakland, CA. Attendance at the meetings varied from about 35 (at the Dallas and Oakland meetings) to a little over 100 (at the Philadelphia and Chicago meetings). All meetings were transcribed, and transcripts are available in the NRC's Public Document Room at 1717 H Street NW, Washington, DC 20555.

In addition to comments received at the public meetings, written comments were submitted by 162 individuals and/or groups. All comments were carefully considered by the staff in its revision of the policy, and where appropriate, the policy was revised to accommodate them. The nature of both verbal and written comments ranged from highly critical to enthusiastically supportive. In general, however, the thrust of the comments was unfavorable, with criticism most often directed at: (1) The generally perceived adversarial tone of the policy; (2) the lack of more explicit consideration of extenuating conditions as they might apply to individual cases, thus arguing for more flexibility for the staff to apply judgment and discretion in enforcement decisions; (3) inadequate recognition of effective licensee audit programs designed to identify and correct problems internally; (4) inconsistency among the severity levels assigned to violations in the various activity areas; (5) lack of clarity in the examples of violations in the supplements; and (6) inadequate distinctions between severity levels, particularly for the less serious violations.

Representative concerns (as paraphrased by the staff) frequently expressed in both the public meetings and the writtern comments, and the NRC staff responses to them are set forth below. In addition, a compilation of all written comments, and staff responses to them, has been prepared and will be made available soon in the NRC Public Document Room and through the National Technical Information Service (NTIS), Springfield, VA, as an NRC report (NUREG-0736). Many of the oral presentations at the public meetings were reiterated in the

written comments, and the general thrust of all the oral presentations closely paralled the written comments.

Comment: The Commission should be involved in any decisions deviating from the stated enforcement policy, whether that deviation results in a greater or lesser civil penalty.

Response: The Commission is notified before proposing each civil penalty. However, requiring the Commission to rule on each deviation would create an undue burden on the Commission. Currently the policy calls for Commission review when:

a. The proposed action may in itself involve public health and safety risks;

b. The Commission feels it is desirable;

c. The Director feels it is appropriate; or

d. A civil penalty for a single violation exceeds 3.75 times the base amount of a severity level I violation.

Comment: In implementing this policy NRC should follow the requirements of the Regulatory Flexibility Act of 1980.

Response: This policy is not subject to the Regulatory Flexibility Act.

Comment: The size of a fine should be based on hazard, not the ability to pay.

Response: The legislative history of section 234 indicates that ability to pay is a factor to be considered in assessing civil penalties. The structure of Table 1 does reflect generally the nature of hazard involved in licensed activities. A civil penalty is not designed to put a licensee out of business. Where it is appropriate to terminate licensed activities, an order, rather than a civil penalty, is used.

Comment: It should not be NRC policy to fine individual operators licensed under 10 CFR Part 55.

Response: Enforcement actions for licensed opeators will be determined on a case-by-case basis, as specified in Section IV.A. of the Policy Statement.

Comment: Inadvertent errors must be accepted as a distinct possibility and severe penalties should be reserved for willful violations only.

Response: NRC expects, and has required, a high standard of licensee compliance; this policy is designed to ensure that this high standard is maintained. Clearly, willful violations should be treated more harshly. A willful violation may be a criminal violation under the Atomic Energy Act and may be referred to the Department of Justice for appropriate action.

Comment: Insufficient time was allowed to prepare for pubic meetings.

Response: The meetings were announced on October 17, 1980 and were held in early December, 1980; a period of at least six weeks to prepare for the meetings.

Comment: Insufficient time has been allowed for written comments.

Response: All comments received before June 1981 were considered in the policy modification, although the formal closing date for receipt of comments was December 31, 1980, which provided almost three months from date of publication in the **Federal Register** for preparation of written comments.

Comment: The policy should be withdrawn until an assessment can be made as to the necessity of new regulations.

Response: This policy does not add any new requirements. Rather, it announces how the NRC will enforce existing requirements.

Comment: The Office Directors should have more discretion.

Response: The Office Directors have broad discretion. The policy allows for discretion while ensuring that sufficient guidance is present for its even application.

Comment: Any civil penalties imposed on nonprofit hospitals or other nonprofit institutions would have to be paid by increasing charges to the public.

Response: Table 1 has been modified to address this concern. The Commission does not desire to increase consumer costs. Nevertheless, the Commission believes that civil penalties provide both profit-making and nonprofit institutions incentives for safety through compliance with its requirements.

Comment: What criteria were used to place particular violations in their corresponding severity levels?

Response: The actual or potential impact on the health and safety of the public is the fundamental basis for this determination within each activity area. It is inappropriate, however, to compare severity levels between activity areas.

Comment: Are the supplements for guidance only or are they mandatory?

Response: The supplements are for guidance, as is the entire policy statement.

Comment: The aggressive use of monetary civil penalties will not ensure compliance with NRC regulations.

Response: While not ensuring compliance, civil penalties are strong incentives to comply. Enforcement actions are almost exclusively retrospective in nature, of course, and thus address past noncompliance rather than guaranteeing compliance. Nevertheless, the deterrent effect of enforcement, including civil penalties, is considered to be substantial. In addition, it is Commission policy that noncompliance should be more expensive than compliance.

Comment: The language used in the introduction and purpose invites a counterproductive adversarial relationship.

Response: The language in the introduction and purpose has been changed to address this concern.

Comment: The requirement to submit responses to Notices of Violation under oath or affirmation is unnecessary and contributes to an adversarial tone. It should not be required for all responses.

Response: The across-the-board requirement has been eliminated for other than escalated enforcement actions, but the decision to require such sworn responses remains an NRC option under Section 182 of the Atomic Energy Act. The Commission continues to expect accurate, complete and timely information from licensees. The elimination of the oath requirement will not prevent the Commission from taking enforcement action for responses that do not meet that expectation.

Comment: Civil penalties should not be imposed for the same violation which is the basis for a license revocation or suspension.

Response: The Atomic Energy Act expressly provides for civil penalties to be assessed for any violation which would warrant license revocation. The decision as to whether both revocation (or suspension) and civil penalties should be applied for the same violation is made on a case-by-case basis.

Comment: The matching of severity levels to civil penalties may make it easier for the NRC to determine a civil penalty and/or any other sanction, but it takes away from the licensee any chance of proving the existence of mitigating circumstances.

Response: Prior to imposing civil penalties, licensees are given the opportunity to raise any mitigating circumstances unique to the case. These circumstances are taken into consideration when the decision is made whether or not to order the imposition of civil penalties. Mitigation or remission of civil penalties based on such licensee responses is not uncommon when compelling arguments are presented.

Comment: Provisions for escalated action set forth in Table 2 are not appropriate.

Response: Table 2 is advisory, not mandatory.

Comment: Severity levels need to be revised to more clearly reflect health and safety concerns.

Response: The number of severity levels has been reduced to five, with

additional guidance in expanded supplements.

Comment: Immediate Action Letters should be called Confirmatory Action Letters.

Response: Adopted.

Comment: Is the Enforcement Policy a General Statement of Policy or a regulation?

Response: An underlying basis of this policy that is reflected throughout it is that the determination of the appropriate sanction requires the exercise of discretion such that each enforcement action is tailored to the particular factual situation. In view of the discretion provided, the enforcement policy is being adopted as a statement of general policy rather than as a regulation, notwithstanding that the statement has been promulgated with notice and comment procedures. A general statement of policy will permit the Commission maximum flexibility in revising the policy statement and it is expected that the statement, especially the supplements, will be revised as necessary to reflect changes in policy and direction of the Commission.

In drafting the statement it was expected that the specific enforcement criteria should provide adequate guidance and be applied in the majority of circumstances requiring enforcement actions. The policy, as indicated above, does provide discretion to take appropriate action if, after considering the policy statement, the Director determines that application of the criteria is inappropriate. For example, there may be cases where more than a 25% increase in civil penalty is appropriate based on prior enforcement history.

Principal Changes

The fundamental basis of the revised policy remains the same as that articulated in the interim policy. That is, violations are categorized by severity level in accordance with guidance incorporated in the policy statement. Based on that severity level, the enforcement sanction to be applied is then determined. Depending on the nature of the licensed activity involved, the size of any base civil penalty that may be called for is then determined and adjusted upward or downward based on the circumstances of the specific case.

In spite of these basic similarities, substantial changes have been made in how the steps are accomplished and in clarifying the language used to present the policy. The most significant of these changes include: (1) Reduction in the number of severity levels from six to five; (2) provision that severity level III violations be considered for civil penalties, rather than normally assessing civil penalties for them; (3) elimination of civil penalties for violations identified, corrected and reported by licensees under certain conditions; (4) elimination of specific criteria for enforcement actions against licensed operators; (5) modification of the tone of presentation to avoid an unnecessarily adversarial character; (6) changes in the base civil penalty values to better differentiate among different types of licensees; (7) clarification of a number of passages and of several terms used in the policy; (8) addition of a new supplement containing guidance on miscellaneous matters, including violations involving material false statements, willful violations and reporting failures; and (9) combination of the supplements applicable to fuel cycle operation and materials activities into one supplement.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 552 of Title 5 of the United States Code, the following statement of policy is published as Appendix C to 10 CFR Part 2 as a document subject to codification to be effective March 9, 1982.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606, 2.730, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553. Section 2.808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended by Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039). Appendix A is also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1472 (42 U.S.C. 2135).

2. Part 2 is amended by adding a new Appendix C to read as follows:

Appendix C—General Policy and Procedure for NRC Enforcement Actions

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.[1]

I. Introduction and Purpose

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- Ensuring compliance with NRC regulations and license conditions;
- Obtaining prompt correction of noncompliance;
- Deterring future noncompliance; and
- Encouraging improvement of licensee performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects of its licensees. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

operate a facility in accordance with the terms of the permit or license, and for violation of a NRC regulation). Section 234 authorizes NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. Section 232 authorizes NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the act and regulations or orders issued under Sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

10 CFR Part 2, Subpart B, of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procudure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of Violations

Regulatory requirements [2] have varying degrees of safety, safeguards, or environmental significance. Therefore, it is essential that the relative importance of each violation be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five levels of severity to show their relative importance within each of the following seven activity areas:

Reactor Operations;
Facility Construction;
Safeguards;
Health Physics;
Transportation;
Fuel Cycle and Materials Operations; and
Miscellaneous Matters.

Within each activity area Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Level I had II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern; *i.e.*, if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

The relative seriousness of violations at the several severity levels applies within each activity area, but comparisons between activity areas are inappropriate. For example, while the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is greater than that associated with Severity Level I violations in Reactor Construction, both areas have violations which cover the full range of severity levels. This disparity in relative seriousness of violations in different activity areas is due to the diversity of licensed activities regulated by NRC and the need for continuing improvement in licensee performance of certain activities.

While examples are provided in Supplements I through VII for determining the appropriate severity level for violations in each of the seven activity areas, the examples are neither exhaustive nor controlling. These examples do not create new requirements. They reflect the seriousness of violations of requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. Licensed activities not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not comprehend acts which do not rise to the level of careless disregard. In determining the specific severity level of a violation involving willfulness consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained by the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The NRC expects licensees to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement Actions

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

With very limited exceptions, whenever noncompliance with NRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the licensee describing its corrective actions. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have signficant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

A. Notice of Violation

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the licensee to provide a

[2] The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

written statement describing (1) corrective steps which have been taken by the licensee and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections IV.B and IV.C respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC will not generally issue a notice of violation for a violation that meets all of the following tests:

(1) It was identified by the licensee;

(2) It fits in Severity Level IV or V;

(3) It was reported, if required;

(4) It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

(5) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

Licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors. Enforcement actions involving individuals, including licensed operators, will be determined on a case-by-case basis.[3]

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (a) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Generally, civil penalties are imposed for Severity Level I and II violations, are considered and usually imposed for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar[4] to violations discussed in a previous enforcement conference, and for which the enforcement conference was ineffective in achieving the required corrective action.

In applying this guidance for Severity Level IV violations, NRC normally considers civil penalties only for similar violations that occur after the date of the last inspection or within two years, whichever period is greater. Enforcement conferences are normally conducted for all Severity Level I, II, and III violations and for Severity Level IV violations that are considered symptomatic of program deficiencies, rather than isolated concerns. Licensees will be put on notice when a meeting is an enforcement conference.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation, including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee, provided that such violations were not disclosed as a result of overexposures or unplanned releases of radioactivity or other specific, self-disclosing incidents.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. *Prompt Identification and Reporting.* Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, and the promptness and completeness of any required report. This factor will not be applied to violations which constitute or are identified as a result of overexposures, unplanned releases of radioactivity or other specific, self-disclosing incidents. In addition, no consideration will be given to this factor if the licensee does not take immediate action to correct the problem upon discovery.

2. *Corrective Action to Prevent Recurrence.* Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed. Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 25% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. *Enforcement History.* The base civil penalty may be increased as much as 25% depending on the enforcement history in the general area of concern. Specifically, failure to implement previous corrective action for prior similar problems may increase the civil penalty value.

4. *Prior Notice of Similar Events.* The base civil penalty may be increased as much as 25% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry

[3] Section 234 of the Atomic Energy Act gives the Commission authority to impose civil penalties for violations on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

[4] The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

notification, and had failed to take effective preventive steps.

5. *Multiple Occurrences.* The base civil penalty may be increased as much as 25% where multiple examples of a particular violation are identified during the inspection period. This factor is applicable only where NRC identifies the violation, or for violations associated with self-disclosing incidents.

The above factors are additive so that the civil penalty for any severity level may range from plus or minus 100% of the base value. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. Generally, if a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

Generally, for situations where a licensee is unaware of a condition resulting in a continuing violation, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so. Civil penalties in excess of 3.75 times the maximum civil penalty for a single Severity Level I violation for each type of licensee require specific Commission approval in accordance with guidance set forth in Section VI below.

NRC statutory authority permits the assessment of the maximum civil penalty for each violation. The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to emphasize the focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem will generally be based on the amount shown in the table, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In this regard, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty.

TABLE 1A.—BASE CIVIL PENALTIES

[For Severity I Violations]

	Plant openings, construction and health physics	Safeguards		Transportation	
		Category 1 [1]	Noncategory 1	High level waste, spent fuel [2]	Low specific activity [3]
a. Power Reactors	$80,000	$80,000	$40,000	$80,000	$5,000
b. Test Reactors	10,000	10,000	5,000	10,000	2,000
c. Research Reactors and Critical Facilities	5,000	5,000	2,500	5,000	1,000
d. Fuel Facilities	40,000	80,000	40,000	40,000	5,000
e. Industrial Users of Material [4]	8,000			5,000	2,000
f. Waste Disposal Licensees	6,000			6,000	3,000
g. Academic or Medical Institutions [5]	4,000			2,500	1,000
h. Other Material Licensees	1,000			2,500	1,000

[1] Category 1 licensees are those authorized to possess formula quantities of strategic special nuclear material (10 CFR 73.2(bb)).
[2] Type B packages.
[3] Type A limited quantity packages.
[4] Includes industrial radiographers, nuclear pharmacies, industrial processors and firms engaged in manufacturing or distribution of byproduct or source materials.
[5] This applies to nonprofit institutions not otherwise categorized under a through f in this table.

TABLE 1B.—BASE CIVIL PENALTIES

Severity level	Base civil penalty amount [1]
I	100
II	80
III	50
IV	15
V	5

[1] Percent of amount listed in table 1A.

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (*see* 10 CFR 2.202 and 2.204). Orders may be issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, or management controls is necessary.

(2) Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when (i) further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements,

(b) When a licensee refuses to correct a violation,

(c) When a licensee does not respond to a notice of violation where a response was required,

(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, or

(e) For any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

(4) Cease and Desist Orders are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of Enforcement Sanctions

NRC considers violations of Severity Levels I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections IV.B and IV.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

Normally the progression of enforcement actions for similar violations will be based on violations under a single license. When more than one facility is covered by a single license, the normal progression will be based on similar violations at an individual facility and not on similar violations under the same license. However, it should be noted that under some circumstances, e.g., where there is common control over some facet of facility

operations, similar violations may be charged even though the second violation occurred at a different facility or under a different license. For example, a physical security violation at Unit 2 of a dual unit plant that repeats an earlier violation at Unit 1 might be considered similar.

TABLE 2.—EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of violation	Number of similar violations from the date of the last inspection or within the previous 2 years (whichever period is greater)		
	1st	2d	3d
I	a+b	a+b+c	d.
II	a	a+b	a+b+c.
III	a [1]	a	a+b.

a. Civil penalty.
b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.
c. Show cause for modification or revocation of the license, as appropriate.
d. Further action, as appropriate.
[1] Consideration of.

E. Related Administrative Actions

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as enforcement conferences, bulletins, circulars, information notices, generic letters, notices of deviation, and confirmatory action letters to supplement its enforcement program. NRC expects licensees to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to make sure that such commitments are met.

(1) Enforcement Conferences are meetings held by NRC with licensee management to discuss safety, safeguards or environmental problems, licensee's compliance with regulatory requirements, a licensee's proposed corrective measures (including schedules for implementation) and enforcement options available to the NRC.

(2) Bulletins, Circulars, Information Notices and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

(3) Notices of Deviation are written notices describing a licensee's or a vendor's failure to satisfy a commitment. The commitment involved has not been made a legally binding requirement. The notice of deviation requests the licensee or vendor to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

(4) Confirmatory Action Letters are letters confirming a licensee's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

F. Referrals To Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justic for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

V. Public Disclosure of Enforcement Actions

In accordance with 10 CFR 2.790, all enforcement actions, inspection reports, and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Levels I, II, or III press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VI. Responsibilities

The Director, Office of Inspection and Enforcement, as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders.[5] In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the Director must exercise judgement and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will be consulted prior to taking enforcement action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose civil penalties in amounts greater than 3.75 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action on which the Commission asks to be consulted; or

(4) Any action the Office Director believes warrants Commission involvement.

Supplement I—Severity Categories

Reactor Operations

A. Severity I—Very significant violations involving:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded;

2. A system [6] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [7] when actually called upon to work;

3. An accidental criticality; or

4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit.[8]

B. Severity II—Very significant violations involving:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function; or

2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III—Significant violations involving:

1. A Technical Specification Limiting Condition for Operation being exceeded where the appropriate Action Statement was not satisfied that resulted in:

(a) Loss of a safety function; or

(b) A degraded condition, and sufficient information existed which should have alerted the licensee that he was in an Action Statement condition;

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified);

3. Serious dereliction of duty on the part of personnel involved in licensed activities;

4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;

5. Release of radioactivity offsite greater than the Technical Specifications limit; or

6. 10 CFR 50.59 such that a required license amendment was not sought.

D. Severity IV—Violations involving:

1. 10 CFR 50.59 that do not result in a Severity Level I, II, or III violation;

2. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or

3. Failure to make a required Licensee Event Report when the reported matter does not constitute a violation.

E. Severity Level V—Violations that have minor safety or environmental significance.

Supplement II—Severity Categories

Part 50 Facility Construction

A. Severity I—Very significant violations involving a structure or system that is

[5] The Directors of the Offices of Nucler Reactor Regulation and Nuclear Material Safety and Safeguards have also been delegated similar authority, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees. It is planned to consider redelegation of some or all of these authorities to the Administrators of the NRC Regional Offices over the next several years.

[6] "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[7] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[8] The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

completed [9] in such a manner that it would not have satisfied its intended safety related purpose.

B. Severity I—Very significant violations involving:

1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). Such deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity III—Significant violations involving:

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. Failure to make a required 10 CFR 50.55(e) report.

D. Severity IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criteria not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement III—Severity Categories

Safeguards

A. Severity I—Very significant violations involving:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of strategic special nuclear material [10] (SSNM);

2. Actual entry of an unauthorized individual into a vital area or material access area from outside the protected area (i.e., penetration of both barriers) that was not detected at the time of entry; or

3. Failure to promptly report knowledge of an actual or attempted theft or diversion of SSNM or an act of radiological sabotage.

B. Severity II—Very significant violations involving:

1. Actual theft, loss or diversion of special nuclear material (SNM) of moderate strategic significance. [11]

2. Failure to use established security systems (including compensatory measures) designed or used to prevent any unauthorized individual from entering a vital area or material access area from outside the protected area (i.e., entry through two barriers) so that access could have been gained without detection;

3. Failure to implement approved compensatory measures when the central (or secondary) alarm station is inoperable;

4. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of a formula quantity of SSNM from areas of authorized use or storage; or

5. Failure to use established transportation security systems designed or used to prevent the theft, loss, or diversion of a formula quantity of SSNM or acts of radiological sabotage.

C. Severity III—Significant violations involving:

1. Failure to control access to a vital area or material access area from inside the protected area or failure to control access to a protected area from outside the protected area; (i.e., such that only a single security element remained);

2. Failure to control access to a transport vehicle or the SNM being transported that does not constitute a Severity I or II violation;

3. Failure to establish or maintain safeguards systems designed or used to detect the unauthorized removal of SNM of moderate strategic significance from areas of authorized use or storage; or

4. Failure to properly secure or protect classified or other sensitive safeguards information.

D. Severity IV—Violations involving:

1. Failure to establish or maintain safeguards systems designed or used to detect the unauthorized removal of SNM of low strategic significance [12] from areas of authorized use or storage;

2. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts; or

3. Other violations, such as failure to follow an approved security plan, that have more than minor safeguards significance.

E. Severity V—Violations that have minor safeguards significance.

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 [13]

A. Severity I—Very significant violations involving:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;

4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or

5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II—Very significant violations involving:

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);

5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303, or

6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III—Significant violations involving:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area that exceeds 100 millirem/hour for a one hour period;

3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);

4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;

6. Improper disposal of licensed material not covered in Severity Levels I or II;

7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;

8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;

10. Conduct of licensee activities by a technically unqualified person; or

11. Significant failure to control licensed material.

D. Severity IV—Violations involving:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one hour period or 100 millirem in any seven consecutive days;

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[9] "Completed" means completion of construction including review and acceptance by the construction QA organization.

[10] See 10 CFR 73.2(bb).

[11] See 10 CFR 73.2(x).

[12] See 10 CFR 73.2(y).

[13] Personnel overexposures and associated violations, incurred during a life saving effort, will be treated on a case-by-case basis.

3. Failure to make a 30-day notification required by 10 CFR 20.405;

4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or

5. Any other matter that has more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement V—Severity Categories

Transportation [14]

A. Severity I—Very significant violations of NRC transportation requirements involving:

1. Annual whole body radiation exposure of a member of the public in excess of 0.5 rems of radiation; or

2. Breach of package integrity resulting in surface contamination or external radiation levels in excess of ten times the NRC limits.

B. Severity II—Very significant violations of NRC transportation requirements involving:

1. Breach of package integrity resulting in surface contamination or external radiation levels in excess of NRC requirements;

2. Surface contamination or external radiation levels in excess of three times NRC limits that did not result from a breach of package integrity; or

3. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III—Significant violations of NRC transportation requirements involving:

1. Breach of package integrity;

2. Surface contamination or external radiation levels in excess of, but less than a factor of three above NRC requirements, that did not result from a breach of package integrity;

3. Any noncompliance with labelling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

a. Improper identification of the type, quantity, or form of material; or

b. Failure of the carrier or recipient to exercise adequate controls; and

c. Substantial potential for personnel exposure or contamination, or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV—Violations of NRC transportation requirements involving:

1. Package selection or preparation requirements which do not result in a breach of package integrity or surface contamination or external radiation levels in excess of NRC requirements; or

2. Other violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

[14] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper (10 CFR 73.20) and a carrier (10 CFR 70.20a). When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which under the circumstances of the case may be one or more of the licensees involved.

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. Severity I—Very significant violations involving:

1. Radiation levels, contamination levels, or releases that exceed ten times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function; or

3. A nuclear criticality accident.

B. Severity II—Very significant violations involving:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or

2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III—Significant violations involving:

1. Failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license; or

6. Medical therapeutic misadministrations.

D. Severity IV—Violations involving:

1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance; or

3. Medical diagnostic misadministrations.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VII—Severity Categories

Miscellaneous Matters [15]

A. Severity I—Very significant violations involving:

1. A Material False Statement (MFS) [16] in which the statement made was deliberately false;

2. A failure to provide the notice required by Part 21 under circumstances for which a civil penalty may be imposed under section 206(b) of the Energy Reorganization Act (ERA); or

[15] As noted in Section III, in determining the specific severity level of a violation, consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained by the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

[16] In essence, a Material False Statement is a statement that is false by omission or commission and is relevant to the regulatory process.

3. Deliberate action by management to discriminate (in violation of Section 210 of the ERA) against an employee for attempting to communicate or actually communicating with NRC.

B. Severity II—Very significant violations involving:

1. A MFS or a reporting failure, involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would have resulted in regulatory action or would likely have resulted in NRC seeking further information;

2. A MFS in which the false statement was made with careless disregard;

3. Discrimination (in violation of Section 210 of the ERA) by management at any level above first-line supervision, against an employee for attempting to communicate or actually communicating with NRC; or

4. A failure to provide the notice required by Part 21.

C. Severity III—Significant violations involving:

1. A MFS not amounting to a severity level I or II violation;

2. Discrimination (in violation of Section 210 of the ERA) against an employee for attempting to communicate or actually communicating with the NRC; or

3. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV—Violations involving:

1. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance; or

2. A false statement caused by an inadvertent clerical or similar error involving information which, had it been available to NRC and accurate at the time the information should have been submitted, would probably not have resulted in regulatory action or NRC seeking additional information.

E. Severity V—Violations of minor procedural requirements of Part 21.

Dated at Washington, D.C., this 3d day of March 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-6341 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 1004

Freedom of Information; Schedule of Fees

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting final regulations to revise the schedule of fees for processing requests submitted under the Freedom of Information Act (FOIA) (5

U.S.C. 552 *et seq.*). DOE published proposed regulations on December 24, 1981, 43 FR 62464, inviting interested persons to submit comments related to the proposed regulations. No comments were received, and the proposed rule is adopted with no significant revisions. The revision will merely elaborate the types of costs incurred and allow the agency to recover costs that it is permitted to recover when providing documents.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT:

Milton Jordan, Director, Division of Freedom of Information and Privacy Acts Activities, Room 1G-051, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5955

Abel Lopez, (Office of General Counsel), Department of Energy, Room 6A-211, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-8618

SUPPLEMENTARY INFORMATION:

I. Background.
II. Procedural Requirements.
A. Section 501 of the DOE Organization Act.
B. Executive Order No. 12291.
C. Regulatory Flexibility Act.

I. Background

The FOIA permits the DOE to promulgate regulations, after notice and comment, specifying a uniform fee schedule for document search and duplication services performed by the DOE in response to requests submitted under the FOIA (5 U.S.C. 552(a)(4)). Fees must be limited to reasonable standard charges, and must provide for recovery of only costs directly incurred. Fees are to be waived or reduced, if DOE determines that such waiver or reduction is in the public interest because the public would primarily benefit from furnishing the information to the requester.

The current fee schedule for search and duplication at 10 CFR 1004.9 was published in the **Federal Register** on January 8, 1979 (44 FR 1908). Under the current DOE Regulation the requester is charged all search and duplication costs associated with processing the FOIA request when the total fee exceeds $25. This Regulation lowers the threshold amount for requests made pursuant to § 1004.4 to $15. The Regulation also further defines the type of costs to be charged and extends the reproduction provisions of the fee schedule to requests for documents available in a DOE Public Reading Room. Where the costs of reproduction for requests made pursuant to § 1004.3 would exceed $10, the full amount of such fees will be charged. These revisions are intended to recover more of the costs associated with these search and duplication requests.

II. Procedural Requirements

A. *Section 501 of the DOE Organization Act.* Under section 501(c) of the Department of Energy Organization Act, the Department is not bound by the prior hearing requirements of subsections (b), (c) and (d) with respect to the Regulation upon our determination that no substantial issue of fact or law exists and that the Regulation is unlikely to have substantial impact on the Nation's economy or large numbers of individuals and businesses. Where it is determined that no substantial issue or impact exists, the Regulation may be promulgated in accordance with section 553 of Title 5 U.S.C.

The revision of the fee schedule at 10 CFR 1004.9 raises no substantial issues of fact or law because it will merely elaborate the types of costs incurred and allow the agency to recover the costs that it is permitted to recover when providing documents. The amount of costs that the revision permits DOE to recover will not have a substantial impact on the Nation's economy or large numbers of individuals and businesses.

B. *Executive Order No. 12291.* It has been determined that this Regulation is not a major rule subject to the requirements of the Executive Order No. 12291 (46 FR 13193, February 19, 1981), because it is not likely to result in: an annual effect on the economy of more than $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. *Regulatory Flexibility Act.* Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601-612, DOE finds that sections 603 and 604 of the Act do not apply to the Regulation because promulgation of the rule will not have a significant economic impact on a substantial number of small entities.

While DOE expects that the number of FOIA requesters, including small entities charged a fee will increase, it does not anticipate that such fee increases will have a significant economic impact on the operations of small entities or that the actual number of small entities affected will be "substantial."

(5 U.S.C. 552.)

For the reasons set out in the preamble Part 1004, the DOE is amending Chapter X of 10 CFR as set forth below.

Issued in Washington, DC, March 2, 1982.

William S. Heffelfinger,

Assistant Secretary, Management and Administration.

Title 10 CFR, Chapter X is amended as follows:

PART 1004—FREEDOM OF INFORMATION

1. In § 1004.7, paragraph (a) is revised to read as follows:

§ 1004.7 Response by authorizing officials: Form and content.

(a) *Form of grant.*—Records requested pursuant to § 1004.4 shall be made available promptly, when they are identified and determined to be nonexempt under this Regulation and where the applicable fees are $15 or less or where it has been determined that the payment of applicable fees should be waived. Where the applicable fees exceed $15, the records may be made available before all charges are paid in full.

* * * * *

2. In § 1004.9, paragraph (a)(2) is revised to read as follows:

§ 1004.9 Fees for provisions of records.

(a) * * *

(2) Fees shall not be charged for a request or series of related requests made pursuant to § 1004.4 where they would amount, in the aggregate, to $15 or less. Only reproduction costs will be charged for requests made pursuant to § 1004.3, and such fees will not be charged if, for a request or series of related requests, they would amount to $10 or less. Where fees for requests made pursuant to § 1004.4 and § 1004.3 exceed $15 or $10, respectively, the full amount of such costs will be assessed.

* * * * *

3. Section 1004.9 is amended by revising paragraphs (b)(6), (b)(7) and (c), and adding (d) to read as follows:

(b) * * *

(6) *Computerized records.*—Fees for services in processing requests maintained in whole or in part in computerized form shall be in accordance with this section so far as practicable. Services of personnel in the nature of a search will be charged at rates prescribed in paragraph (b)(4) of this section unless the level of personnel

involved permits rates in accordance with paragraph (b)(3) of this section. Charges for computer time involved is as follows:

Programming (per hour)—$17.00
Key punching/per 1,000 card usage—$183.00
Duplication per hour—$45.00
Computer time per quarter hour—$219.00

(7) *Other nonpaper records.*—Fees for services in processing requests where the records are maintained on microfiche, microfilm, recording tape shall be as follows:

105mm fiche (duplicate)—$1.00
100 ft. roll of 35mm microfilm—$7.00
100 ft. roll of 16mm microfilm—$6.00

* * * * *

(c) *Notice of anticipated fees in excess of $15.*—Unless the requester specifically states that he is willing to pay whatever fees are assessed by DOE for meeting the request, or, alternatively, specifies an amount in excess of $15 which he is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is expected to involve assessed fees in excess of $15 will not be deemed to have been received until the requester is advised of the cost, agrees to bear it, and makes any advance deposit required. Such notification shall be made by the Freedom of Information Officer consistent with § 1004.4(e).

(d) *Public Reading Room fees.*—Where the cost of reproduction for requests made pursuant to § 1004.3 exceed $10, copies of the documents requested will only be made available after the requester has agreed to pay such costs.

[FR Doc. 82-6241 Filed 3-8-82; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 78P-0429]

Canned Pineapple; Amendment of Standards of Identity and Quality; Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is staying the effective date of the November 24, 1981 (46 FR 57474) amendment of the U.S. standards of identity and quality for canned pineapple to redesignate as "small cubes" or "dice" the style currently referred to as "cubes" or "dice" and to provide for an optional style designated as "large cubes." The purpose of the stay is to allow FDA to consider issues raised by objections and to decide whether a public hearing is justified.

EFFECTIVE DATE: The stay is effective March 9, 1982.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 1981 (46 FR 57474), FDA published a final regulation amending the U.S. standards of identity and quality for canned pineapple (21 CFR 145.180 (a) and (b)). The amendment redesignated as "small cubes" or "dice" the style of pineapple now designated as "cubes" or "dice" and provided for an optional style of canned pineapple designated as "large cubes". The final regulation was based on a petition by the Malaysian Pineapple Industry Board, Ministry of Primary Industries of Malaysia, submitted through the Embassy of Malaysia, 2401 Massachusetts Ave. NW., Washington, DC 20008. The final regulation provided that any person who would be adversely affected could at any time, on or before December 24, 1981, file written objections to the final regulation and request a hearing on specific provisions to which there were objections. Two objections and requests for a hearing were received from the Pineapple Growers Association of Hawaii (PGAH). A senator and two congressmen from Hawaii filed letters in support of the PGAH position. In addition, one objection which did not request a hearing stated that the amendment will create economic hardship for the U.S. industry.

Objections and Requests for a Hearing

1. An objection and request for a hearing was filed relative to the optional style "small cubes" or "dice" in § 145.180(a)(2)(viii) on the basis that replacing the current "cubes" or "dice" style of canned pineapple with the style "small cubes" or "dice" will create consumer confusion because 40 years of consistent industry practice have established a consumer expectation that the "cubes" or "dice" style of canned pineapple contains very small fruit units.

2. An objection and request for a hearing was filed relative to the optional style "large cubes" in § 145.180(a)(2)(xi) on the basis that the provision for an optional canned pineapple style, "large cubes," is contrary to the interest of consumers because (1) a "large cubes" canned pineapple style has never been sold in the United States, consumers are not familiar with this style, and they would not discern the distinction between "large cubes" and "chunks," or between "large cubes" and "small cubes;" (2) the U.S. standard, § 145.180(a)(2)(vii), provides that "chunks," may be cut from either thick slices or whole fruit and therefore under the amended standard the identical product could be labeled either "chunks" or "large cubes;" (3) the Malaysian product does not consist of reasonably uniform cube-shaped units of canned pineapple; (4) the term "cubes" was rejected as a meaningful term for larger size pineapple units, such as those encompassed within the current "chunks" category, by industry in the 1940's and by FDA in the 1951 hearing leading to the promulgation of the U.S. standard of identity; (5) "large cubes" is not a meaningful style internationally; (6) the addition of an optional style, "large cubes," will contribute to a proliferation of permissible styles of canned pineapple which will tend to confuse consumers; and (7) the inclusion of a "large cubes" style will enlarge the number of optional canned pineapple styles, and increase the cost of distribution, inventory control, and supermarket shelving, thereby raising the price of canned pineapple products to the detriment of the consumer.

Stay of Aspects of Identity and Quality Standards

Under section 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) and § 12.23 (21 CFR 12.23), FDA is announcing a stay of the effective date of § 145.180(a)(2) (viii) and (xi) of the standard to which objections and requests for a hearing were received under § 12.22 (21 CFR 12.22). The purpose of the stay is to allow FDA to consider issues raised by the objections and to decide whether a public hearing is justified.

FDA is also staying § 145.180(b)(1)(ii)(*g*) as it pertains to the styles "small cubes" and "large cubes." If it is determined that a hearing has been justified, an announcement scheduling the hearing and specifying the issues will be published at a later date.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), notice is given that in § 145.180 paragraphs (a)(2) (viii) and (xi)

and (b)(1)(ii)(*g*) are stayed pending consideration of the issues raised by the objections to decide whether a public hearing is justified. If it is decided that a hearing has been justified, an announcement scheduling the hearing and specifying the issues therefore will be published at a later date.

Effective date: This stay is effective March 9, 1982.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: March 3, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6294 Filed 3-4-82; 1:44 pm]

BILLING CODE 4160-01-M

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21 CFR Part 176

[Docket No. 81F-0252]

Indirect Food Additives: Paper and Paperboard Components; Components of Paper and Paperboard in Contact With Aqueous and Fatty Foods

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for the nitrogen and chlorine specifications for "Polyamine-epichlorohydrin resin produced by the reaction of bis(hexamethylene)triamine and higher homologues with epichlorohydrin". This action is in response to a petition filed by Diamond Shamrock Corp.

DATES: Effective March 9, 1982; objections by April 8, 1982.

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

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 8, 1981 (46 FR 44886), FDA announced that a food additive petition (FAP 1B3578) had been filed by Diamond Shamrock Corp., P.O. Box 2386R, Morristown, NJ 07960, proposing to amend § 176.170(a)(5) (21 CFR 176.170(a)(5)) "Polyamine-epichlorohydrin resin produced by the reaction of bis-(hexamethylene)triamine and higher homologues with epichlorohydrin", to increase the permitted range of nitrogen and chlorine specifications.

FDA has evaluated data in the petition and other relevant material and concludes that increasing the permitted range of specifications for nitrogen and chlorine in the additive is safe and § 176.170 should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency, has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding, contained in an environmental impact analysis report (pursuant to 21 CFR 25.1(j)) may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 21 CFR 5.1; see 46 FR 26052; May 11, 1981)), Part 176 is amended in § 176.170(a)(5) by revising the entry for "Polyamine-epichlorohydrin resin produced by the reaction of bis(hexamethylene)triamine and higher homologues with epichlorohydrin" under the list of substances column, to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Polyamine-epichlorohydrin resin produced by the reaction of bis(hexamethylene)triamine and higher homologues with epichlorohydrin such that the finished resin has a nitrogen content of 6.3-8.9 percent and chlorine content of 18.0-26.3 percent on a dry basis, and a minimum viscosity in 20 percent by weight aqueous solution of 30 centipoises at 25° C, as determined by Brookfield HAT model viscometer using a No. 1H spindle at 50 r.p.m. (or equivalent method).	* * *
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before April 8, 1982 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularly the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective March 9, 1982.

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

Dated: March 1, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6175 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 80F-0200]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Dimethyl Succinate Polymer With 4-Hydroxy-2,2,6,6-Tetramethyl-1-Piperidineethanol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol as an antioxidant and/or stabilizer for olefin polymers. Ciba-Geigy Corp. petitioned for this use.

DATES: Effective March 9, 1982. Objections by April 8, 1982.

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

FOR FURTHER INFORMATION CONTACT: Garnett R. Higginbotham, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 13, 1980 (45 FR 40238), FDA announced that a petition (FAP 0B3507) had been filed by the Ciba-Geigy Corp., Ardsley, NY 10502, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol as an antioxidant and/or stabilizer for olefin polymers.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency previously considered the potential environmental effects of this rule as announced in the notice of filing published in the **Federal Register**. No new information or comment has been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

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

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 178 is amended in § 178.2010(b) by alphabetically adding a new item in the list of substances to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
Dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-1-piperidineethanol (CAS Reg. No. 65447-77-0).	For use only: 1. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter: items 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, or 4 when such finished polymers are used in repeat use articles: *Provided*, That the finished polymers contact food only under conditions of use D, E, F, and G described in table 2 of § 176.170(c) of this chapter: *And further provided*, That such repeated use articles have a volume of at least 25 liters. 2. At levels not to exceed 0.25 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter: items 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, or 4 when such finished polymers are used in single use articles: *Provided*, That the finished polymers contact food only under conditions of use D, E, F, and G described in table 2 of § 176.170(c) of this chapter.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before April 8, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective March 9, 1982.

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

Dated: March 1, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6324 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 22

[Departmental Reg. 108.817]

Schedule of Fees for Consular Services

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department amends Item No. 20 and 21 in its Schedule of Fees for Consular Services, Part 22, to increase the fees charged for the processing and issuance of immigrant visas.

EFFECTIVE DATE: April 1, 1982.

FOR FURTHER INFORMATION CONTACT: Philip B. Taylor, (202) 632-3118.

SUPPLEMENTARY INFORMATION: In a proposed rulemaking notice published in the **Federal Register** on December 16, 1981 (46 FR 61298) the Department proposed increases in consular fees for furnishing and verification of application for an immigrant visa from $5 to $25 and for issuance of each immigrant visa from $20 to $75. Interested parties were invited to send comments to Mr. Ronald K. Somerville, Executive Director, Bureau of Consular Affairs, Department of State.

Four comments were received and reviewed. They are summarized and analyzed as follows:

(1) Writers conceded that some increase in the fees is warranted in view of the fact that they have not been increased since 1952 but they think the proposed increases were excessive. The Department arrived at the proposed fee levels following a study which revealed that the actual costs involved in processing immigrant visa applications and issuing visas averaged $100 per case. It is determined that a lower total fee would not satisfy a government-wide policy of recouping, whenever possible, the costs of providing services;

(2) Two writers urged that the increased fees should be charged only in the case of a principal immigrant and that accompanying family members deriving immigrant status through that principal should pay a lesser fee to avoid an unfair burden on immigrants with a large number of accompanying family members in spite of a diminishing ratio processing time factor with respect to each additional member. It was determined that if a lesser fee were to be charged for accompanying family members, fees much higher than those proposed ($25 for application, $75 for issuance) would have to be charged in the case of a principal immigrant in order to recoup the costs of providing immigrant visa services. The creation of different levels of fees for essentially the same service would also make the administration of fee collections more complex and time-consuming;

(3) Two writers stated that the increase in the fees is not justified because the additional revenues gained will not be allocated specifically to the improvement of the quality of services being provided by consular establishments in connection with immigrant visa processing. The Department agrees that although the additional revenues will not be earmarked for the use of consular operations and therefore will not directly relate to improving the quality of consular services, the Office of Management and Budget considers the increased accruals to the Treasury when deciding budget levels for the Department; and

(4) One writer urged that the lower fees should continue to apply to those immigrant visa applicants who have been waiting for years to obtain visas because of the heavy oversubscription of the numerical limits within their immigrant preference categories. The Department agrees that many applicants have been waiting for years to process their immigrant visa application but has found that it is not feasible to establish a fee structure which is determined by a qualifying date rather than by a date on which the service is delivered. The addition of such a system would add another layer to the schedule of fees which would make it more cumbersome and difficult to administer.

The Department has determined that the proposed fee levels are appropriate and they are adopted. Accordingly, Items 20 and 21 of Part 22 are amended as set forth below.

Dated: February 18, 1982.

Richard T. Kennedy,

Under Secretary for Management.

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for 22 CFR Part 22 reads as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended (22 U.S.C. 811a; 2658; 22 U.S.C. 2651; 5 U.S.C. 483a; 22 U.S.C. 1201); E.O. 10718, 22 FR 4632; 3 CFR, 1954–1958 Comp. page 382.

2. Section 22.1 is amended in the table, by revising Items 20 and 21 to read:

§ 22.1 Schedule of fees.

Item No.	Visa services for aliens	Fee
*	* * * *	
20	Furnishing and verification of application for immigrant visa, including duplicate copy [112–IVAPPL].	$25.00
21	Issuance of each immigrant visa [113–IV ISSUANCE], [114–R IV ISS], [115–211 WAIV/ISS].	75.00
*	* * * *	

[FR Doc. 82–6313 Filed 3–8–82; 8:45 am]

BILLING CODE 4710–06–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Rules Implementing the Equal Access to Justice Act

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Adoption of interim rules; request for comments.

SUMMARY: The Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325 (1980) authorizes agencies that conduct adversary adjudications to award attorneys fees and other litigation expenses to certain parties that prevail in those adjudications. The Equal Access to Justice Act requires these agencies to establish procedures for the submission and consideration of applications for the award of fees and other expenses. The Federal Mine Safety and Health Review Commission hereby adopts, on an interim basis, rules establishing such procedures. The Commission also invites public comments on these interim rules.

DATES: Notice and public participation are not required under 5 U.S.C. 553 for procedural rulemaking. Accordingly, the interim rules take effect March 9, 1982. Comments on the rules are invited, however, and will be accepted in writing on or before May 15, 1982.

ADDRESS: Submit written comments to Dan R. De Lacy, Federal Mine Safety and Health Review Commission, Suite 600, 1730 K Street, NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Dan R. De Lacy, 202–653–5658.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act charges the Administrative Conference of the United States with coordination of the procedural rules adopted by the various agencies to implement the Act. To meet this responsibility the Administrative Conference of the U.S. has issued model rules for implementing the Equal Access to Justice Act (46 FR 32900, June 25, 1981). The Commission's interim rules for implementing the Equal Access to Justice Act are based on those Model Rules, with certain minor changes and clarifications to reflect the nature of our adjudicatory proceedings. Those modifications include the following:

A "definitions" section has been added to the Model Rules to emphasize the independent roles of the Commission and the Secretary of Labor, and to distinguish between the Equal Access to Justice Act and the Federal Mine Safety and Health Act of 1977. The term "adjudication officer" is also defined so as to reflect the definition in the Equal Access to Justice Act.

The general term "agency" used throughout the Model Rules has been changed to "Department of Labor" and "Commission" as appropriate. This change is necessary to reflect the relationship of the two agencies under the Federal Mine Safety and Health Act of 1977, which establishes the Commission as the agency with the power to conduct adversary adjudications and the Department of Labor as the separate agency charged with bringing enforcement actions before the Commission.

The general term "proceedings" used throughout the Model Rules has been clarified to distinguish between proceedings requesting reimbursement under the Equal Access to Justice Act and the proceedings on the merits of the case under the Federal Mine Safety and Health Act of 1977. The latter are referred to in the interim rules as

"adversary adjudications" or simply "the underlying proceedings".

Model Rule 0.108 as presently written is directed to payment of awards by two or more separate agencies—a situation which cannot arise in an enforcement proceeding under the Federal Mine Safety and Health Act of 1977 since the Commission has jurisdiction only over the prosecutory actions of the Secretary of Labor. The Model Rule has been rewritten and used as a vehicle to address the unique relationship between the Commission and the Department of Labor and to emphasize that awards to qualified applicants under the Equal Access to Justice Act will be made by the Commission and paid by the Department of Labor.

Model Rule 0.204(c) has been changed slightly to ensure that the date that an underlying decision on the merits becomes final for purposes of the Equal Access to Justice Act reflects the provision for finality of those decisions for purposes of the Federal Mine Safety and Health Act of 1977.

Model Rule 0.307 has been changed to indicate that the initial decision by an administrative law judge under the Equal Access to Justice Act will become final 40 days after its issuance unless review by the Commission is ordered under section 0.038 of the interim rules, thus paralleling the time frame in which the underlying decision on the merits becomes final under the Federal Mine Safety and Health Act of 1977. Although the decisions result from different statutory authorities, using the similar time frames will avoid needless inconsistency of dates.

Model Rule 0.038 providing for agency review of an initial decision of an administrative law judge under the Equal Access to Justice Act has been rewritten to mirror the provisions for discretionary review by the Commission of a judge's decision on the merits under the Federal Mine Safety and Health Act of 1977. Again, although the procedures for review clearly are discrete, the similarity provided by this change will avoid needless inconsistencies.

Model Rule 0.310 addressing payment of awards has been changed to reflect that the Department of Labor, not the Commission, is the payor and is responsible for payment of all awards under the Equal Access to Justice Act.

Accordingly, under authority granted by 5 U.S.C. 504(c)(1), the Federal Mine Safety and Health Review Commission hereby adopts interim rules implementing the Equal Access to Justice Act. Public comment, although not required, is invited in order to assist the Commission in its deliberations regarding the adoption of permanent rules. The Commission will accept public comment received in writing on or before May 15, 1982.

Title 29 of the Code of Federal Regulations is amended by adding a new Part 2704 which reads as follows:

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

Subpart A—General Provisions

Sec.
2704.100 Purpose of these rules.
2704.101 Definitions.
2704.102 When the Act applies.
2704.103 Proceedings covered.
2704.104 Eligibility of applicants.
2704.105 Standards for awards.
2704.106 Allowable fees and expenses.
2704.107 Rulemaking on maximum rates for attorney fees.
2704.108 Awards.
2704.109 Delegations of authority.

Subpart B—Information Required From Applicants

2704.201 Contents of application.
2704.202 Net worth exhibit.
2704.203 Documentation of fees and expenses.
2704.204 When an application may be filed.

Subpart C—Procedures for Considering Applications

2704.301 Filing and service of documents.
2704.302 Answer to application.
2704.303 Reply.
2704.304 Comments by other parties.
2704.305 Settlement.
2704.306 Further proceedings on the application.
2704.307 Decision of administrative law judge.
2704.308 Commission review.
2704.309 Judicial review.
2704.310 Payment of award.

Authority: Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Subpart A—General Provisions

§ 2704.100 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act"), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. These rules describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make them.

§ 2704.101 Definitions.

The following terms shall have the following meaning when used in these rules:

—"The Act" means the Equal Access to Justice Act 5 U.S.C. 504;

—"The Mine Act" means the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq*;

—"The Commission" means the Federal Mine Safety and Health Review Commission, created as an independent agency under 30 U.S.C. 823;

—"The Secretary" means the Secretary of Labor or his designee;

—"Adjudication Officer", as defined in 5 U.S.C. 504(b)(1)(D), means the Commission's administrative law judge who presided at the underlying adversary adjudication between the applicant and the Secretary of Labor. For the sake of clarity, references hereafter shall be to "administrative law judge".

§ 2704.102 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 2704.103 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by this Commission. These are adjudications before the Commission arising under the Mine Act in which the position of the Secretary of Labor is represented by an attorney or other representative who enters an appearance and participates in the proceeding. For this Commission, the types of proceedings generally covered include:

(1) Contests of citations or orders issued under section 104 or 107 of the Mine Act (30 U.S.C. 814, 817);

(2) Contests of penalties proposed under section 105 (a) and (b) of the Mine Act (30 U.S.C. 815(a), (b));

(3) Challenges to claims of discrimination under section 105(c) of the Mine Act (30 U.S.C. 815(c)) where the Secretary of Labor represents the miner;

(b) The Commission may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The

Commission's failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 2704.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it satisfies the conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the underlying proceeding was initiated under the Mine Act.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of these rules, unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an underlying proceeding on the merits, or in a significant and discrete substantive portion of that proceeding, unless the position of the Secretary of Labor over whom the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Secretary of Labor, who may avoid an award by showing that his position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the underlying proceeding or if special circumstances make the award sought unjust.

§ 2704.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Secretary of Labor pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the underlying proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case in the underlying proceeding.

§ 2704.107 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by these rules.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Commission should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Commission will respond to the petition within 60 days after it is filed, by initiating an informal rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 2704.108 Awards.

If an applicant is entitled to an award because it prevails over the Secretary of Labor in an adjudicative proceeding on the merits before the Commission and the Secretary of Labor takes a position that is not substantially justified, the award shall be made by the Commission against the Department of Labor.

§ 2704.109 Delegations of authority.

The Commission retains authority to take final action on matters pertaining to the Equal Access to Justice Act in actions arising under the Mine Act. The Commission may, however, by order

delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials or bodies.

Subpart B—Information Required From Applicants

§ 2704.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall be made to the Chairman of the Commission at Suite 600, 1730 K Street NW., Washington, D.C. 20006. The application shall identify the applicant and the underlying proceeding for which an award is sought. The application shall show that the applicant has prevailed in a significant and discrete substantive portion of the underlying proceeding and identify the position of the Department of Labor in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates, as described in § 2704.104(f) of this part). However, an applicant may omit this statement if it attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(f) Upon receipt of an application, the Chairman shall immediately transfer it to the administrative law judge for disposition.

§ 2704.202 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as described in § 2704.104(f) of this part) when the underlying proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in these rules. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act (29 CFR Part 2702).

§ 2704.203 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the underlying proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2704.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding, but in no case later than 30 days after the Commission's final disposition of the underlying proceeding.

(b) If review or reconsideration is sought or taken of a decision on the merits as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the date on which a decision in the underlying proceeding becomes final under sections 105(a)(d) and 113(d) of the Mine Act (30 U.S.C. 815(d), 823(d)) and §§ 2704.307 and 2704.308 of this part.

Subpart C—Procedures for Considering Applications

§ 2704.301 Filing and service of documents.

Any application for an award or other pleading or other document related to an application, including a petition for discretionary review, shall be filed and served on all parties in the same manner as pleadings in the underlying proceeding, except as provided in § 2704.202(b) for confidential financial information.

§ 2704.302 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Secretary of Labor may file an answer to the application. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for the Secretary and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to

negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the administrative law judge upon request by counsel for the Secretary and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of the Secretary of Labor. If the answer is based on any alleged facts not already in the record of the underlying proceeding, counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 2704.306 of this part.

§ 2704.303 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 2704.306 of this part.

§ 2704.304 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for the Secretary of Labor may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 2704.305 Settlement.

The applicant and counsel for the Secretary of Labor may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding on the merits, or after the underlying proceeding has been concluded. If a prevailing party and counsel for the Secretary agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 2704.306 Further proceedings on the application.

(a) Ordinarily, the determination of an award will be made on the basis of the written record in the underlying proceeding under the Mine Act. However, on request of either the applicant or counsel for the Secretary of Labor, or on his or her own initiative, the administrative law judge may order further proceedings on the application, such as discovery, an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 2704.307 Decision of administrative law judge.

The administrative law judge shall issue an initial decision on the application within 75 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Secretary of Labor's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The initial decision by the adjudication officer shall become final 40 days after its issuance unless review by the Commission is ordered under § 2704.308 of these rules.

§ 2704.308 Commission review.

(a) Either the applicant or the Secretary of Labor may seek review by the Commission of the initial decision by the administrative law judge, but review shall be discretionary with the Commission.

(b) The party seeking review shall file a petition for discretionary review so as to be received by the Commission at 1730 K Street NW., Washington, D.C. 20006 within 30 days of the issuance of the initial decision by the administrative law judge. Each issue in dispute shall be plainly and concisely stated, with supporting reasons set forth. Except for good cause shown, no issue not raised before the administrative law judge shall be set forth in the petition for discretionary review. Review by the Commission shall be granted only by affirmative vote of two of the Commissioners within 40 days of the issuance of the initial opinion, except that within 30 days after the issuance of the initial decision by the administrative law judge, two or more Commissioners may in their discretion order the case for review without the filing of a petition. The latter procedure shall be reserved for novel questions of law or policy, however.

(c) If review of the initial decision of the administrative law judge is granted by the Commission, the Commission shall, after allowing opportunity for presentation of views by opposing parties, review the case and issue its own order affirming, modifying or vacating in whole or in part the initial decision or directing other appropriate relief. The order of the Commission will then be the final order for purposes of section 504(c)(2) of the Act and § 2704.307 of these rules. In the event review is not granted, the initial decision of the administrative law judge shall become final 40 days after its issuance.

§ 2704.309 Judicial review.

Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 2704.310 Payment of award.

Payment of awards made under the Equal Access to Justice Act by final orders of the Commission or its administrative law judge shall be in accordance with the applicable rules of the Department of Labor.

Dated: March 4, 1982.

Rosemary M. Collyer,

Chairman.

[FR Doc. 82-6312 Filed 3-8-82; 8:45 am]

BILLING CODE 6820-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-6-FRL-2057-3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; New Mexico Plan for Controlling Sulfuric Acid Mist From Existing Sulfuric Acid Production Facilities; New Mexico Negative Declarations—Fluoride Emissions From Primary Aluminum Plants and Total Reduced Sulfur Emissions From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA approves the New Mexico plan for controlling sulfuric acid mist emissions from existing contact process sulfuric acid

production plants. The plan was submitted to fulfill the requirements of Section 111(d) of the Clean Air Act, as amended in 1977 (the Act), and regulations promulgated thereunder. The plan was submitted as a part of the State's Air Quality Control Regulation 651, entitled, "SULFURIC ACID PRODUCTION UNITS—SULFUR DIOXIDE, ACID MIST AND VISIBLE EMISSIONS". Also included in this final rulemaking are New Mexico's negative declarations certifying that the State of New Mexico does not contain any primary aluminum plants or kraft pulp mills. This action will be effective on May 10, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: May 10, 1982.

ADDRESSES: Copies of the State's submittal and incorporation by reference materials are available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street, NW, Washington, D.C. Rm. 8401.

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street. NW, Washington, D.C. Rm. 2922.

FOR FURTHER INFORMATION CONTACT: Estela S. Wackerbarth, Chief, Implementation Plan Section, Air Program Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas, 75206, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

A. Acid Mist from Sulfuric Acid Plants

On May 15, 1981 the State of New Mexico, pursuant to Section 111(d) of the Act, submitted a plan for controlling sulfuric acid mist from existing sulfuric acid production facilities. The plan was adopted on March 13, 1981, and was submitted in accordance with regulations in 40 CFR Part 60, Subpart B. This plan supercedes a previous version which was submitted to EPA on March 3, 1980, following a public hearing on November 15, 1979 and State adoption on January 11, 1980. However, only those portions of State Air Quality Control Regulation 651 pertaining to the control of sulfur dioxide emissions were affected by the March 13, 1981 revision. EPA takes no action on those portions of State Air Quality Regulation 651 pertaining to the control of sulfur dioxide in this notice. EPA has reviewed the State's plan and found that it satisfies the criteria of 40 CFR Part 60, Subpart B. EPA, therefore, approves the plan in this notice. A detailed analysis of the State's plan is contained in EPA's evaluation report.[1]

B. Negative Declarations

Section 62.06 of 40 CFR provides that a State need not submit a plan for designated facilities if the State certifies that there are no such facilities in the State. EPA accepts the declarations submitted on behalf of the State of New Mexico on the date listed below.

Primary Aluminum Plants

New Mexico Environmental Improvement Division—July 8, 1980.

Air Pollution Control Division, City of Albuquerque—September 23, 1980.

Kraft Pulp Mills

New Mexico Environmental Improvement Division—November 5, 1979.

Air Pollution Control Division, City of Albuquerque—July 8, 1980.

The public should be advised that this action will be effective 60 days from the date of this notice (May 10, 1982). However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of March 9, 1982. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

(Sec. 111(d) of the Clean Air Act, as amended)

[1] Evaluation Report for New Mexico's 111(d) Plan for Control of Sulfuric Acid Mist Emissions from Sulfuric Acid Plants; available for public inspection at times and places listed above.

Dated: March 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

§ 62.7850 [Redesignated as § 62.7854]

1. In Subpart GG—New Mexico, § 62.7850 in its entirely is redesignated to be § 62.7854.

2. In Subpart GG—New Mexico, new §§ 62.7850, 62.7851, 62.7852 and 62.7853 are added to read as follows:

§ 62.7850 Identification of plan.

(a) Title of plan: "State of New Mexico Designated Facility Plan" (§ 111(d)).

(b) The plan was officially submitted as follows:

(1) Sulfuric acid plants on May 15, 1981.

(c) Affected facilities: The plan includes the following facilities:

(1) Sulfuric acid plants.

Sulfuric Acid Mist Emissions From Sulfuric Acid Plants

§ 62.7851 Identification of sources.

(a) The plan includes the following sources:

(1) Kerr-McGee Nuclear Corporation in McKinley County.

(2) Climax Chemical Corporation in Lea County.

Fluoride Emissions From Primary Aluminum Plants

§ 62.7852 Identification of plan—Negative declaration.

The New Mexico Environmental Improvement Division and the Albuquerque Air Pollution Control Division submitted letters of July 8, 1980 and September 23, 1980, respectively, certifying that there are no existing primary aluminum plants in the State subject to Part 60, Subpart B of this chapter.

Total Reduced Sulfur Emissions From Kraft Pulp Mills

§ 62.7853 Identification of plan—Negative declaration.

The New Mexico Environmental Improvement Division and the Albuquerque Air Pollution Control Division submitted letters of November 5, 1979 and July 8, 1980, respectively,

certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

Fluoride Emissions From Phosphate Fertilizer Plants

§ 62.7854 [Redesignated from § 62.7850]

[FR Doc. 82-6330 Filed 3-8-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Parts 122, 264, and 265

[SW-FRL 1999-3a]

Hazardous Waste Management System Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and EPA Administered Permit Programs; Hazardous Waste Permit Program

Correction

In FR Doc. 82-4899 appearing on page 8304 in the issue of Thursday, February 25, 1982; on page 8306, first column, eleventh line from the bottom, insert the word "not" after "will".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6256]

Communities With Minimal Flood Hazard Areas for the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency, after consultation with local officials of the communities listed below, has determined, based upon analysis of existing conditions in the communities, that these communities' Special Flood Hazard Areas are small in size, with minimal flooding problems. Because existing conditions indicate the area is unlikely to be developed in the forseeable future, there is no immediate need to use the existing detailed study methodology to determine the base flood elevations for the Special Flood Hazard Areas.

Therefore, the Agency is converting the communities listed below to the Regular Program of the National Flood Insurance Program (NFIP) without determining base flood elevations.

EFFECTIVE DATE: Date listed in fourth column of list of Communities with Minimal Flood Hazards Areas.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief Engineering Divison, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: In these communities, the full limits of flood insurance coverage are available at actuarial, non-subsidized rates. The rate will vary according to the zone designation of the particular area of the community.

Flood insurance for contents, as well as structures, is available. The maximum coverage available under the Regular Program is significantly greater than that available under the Emergency Program.

Flood insurance coverage for property located in the communities listed can be purchased from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program. The effective date of conversion to the Regular Program will not appear in the Code of Federal Regulations except for the page number of this entry in the **Federal Register.**

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have significant economic impact on a substantial number of small entities. This rule provides routine legal notice regarding the completed stage of engineering tasks in delineating the special flood hazards areas of the specified community and imposes no new requirements or regulations on participating communities.

The entry reads as follows:

§ 65.7 List of communities with minimal flood hazard areas.

State	County	Community	Date of conversion to regular program
Idaho	Cassia and Minidoka.	City of Burley	Mar. 9, 1982.
California	San Mateo.	City of Belmont	Do.
Oklahoma.	Logan	City of Crescent	Mar. 16, 1982.
Do.	LeFlore	City of Heavener	Do.
Louisiana	St. Tammany.	Village of Folsom	Do.
Do.	Tensas	Town of Newellton.	Do.
Oklahoma.	Ellis	City of Shattuck	Mar. 23, 1982.
Do.	Kiowa	Town of Roosevelt.	Do.
Louisiana	Union	Town of Farmerville.	Do.
Do.	DeSoto	Village of Grand Cane.	Do.
Do.	Claiborne	Town of Haynesville.	Mar. 30, 1982.
Do.	St. Landry.	Town of Sunset	Do.
Do.	Lafayette	Village of Youngsville.	Do.

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

Issued: February 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6273 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6015]

National Flood Insurance Program; Final Flood Elevation Determinations; Florida

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Notice Final Determinations of base (100-year) flood elevations for selected locations in the City of Inverness, Citrus County, Florida, previously published at 47 FR 25 on January 4, 1982.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Final Determinations of base (100-year) flood elevations for selected locations in the City of Inverness, Citrus County, Florida, previously published at 47 FR 25 on January 4, 1982, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

For the White Lake source of flooding, the elevation for the entire shoreline was shown incorrectly as 36 feet NGVD. The correct elevation for White Lake is

38 feet NGVD. For the Grant Lake source of flooding, the elevation for the entire shoreline was shown incorrectly as 38 feet NGVD. The correct elevation for Grant Lake is 36 feet NGVD.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Florida	City of Inverness, Citrus County	White Lake	*Entire Shoreline	*38
		Grant Lake	Entire Shoreline	*36

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968) as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority of Federal Insurance Administrator 44 FR 20963)

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6283 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Scottsdale, Ariz., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Scottsdale, Arizona. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Scottsdale, Arizona, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 045012A Panels 19 and 20, published on October 6, 1980, in 45 FR 66116, indicates that Lots 1 through 24, 44 through 108, 113, and 122 through 128, Hayden Estates, Scottsdale, Arizona, recorded as Instrument No. 364854 in Book 204, Page 46, in the Office of the Recorder, Maricopa County, Arizona, are within the Special Flood Hazard Area.

Map No. H & I 045012A Panels 19 and 20 are hereby corrected to reflect that the above mentioned lots are not within the Special Flood Hazard Area identified on January 9, 1976. These lots are in Zone B.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director State and Local Programs and Support.

[FR Doc. 82-6268 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Novato, Calif., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas

have been published. This list included the City of Novato, California. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Novato, California, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H&I 060178 Panel 0002A, published on October 6, 1980, in 45 FR 66118, indicates that the existing structures Nos. 1 through 10, Walnut Grove Apartments, being a portion of Lot 54, Map Divisions A and B of the Novato Ranch, Novato, California, recorded as Instrument Number 22274 in Book 2913, Pages 70 and 71, in the Office of the Recorder, Marin County, California are within the Special Flood Hazard Area.

Map No. H&I 060178 Panel 0002A is hereby corrected to reflect that the above-mentioned structures are not within the Special Flood Hazard Area identified on January 19, 1978. These structures are in Zone B.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6267 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Town of Bloomfield, Conn., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Town of Bloomfield, Connecticut. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Bloomfield, Connecticut, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Office of State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP), P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b): Map Number H & I 090122, Panel 0010A published on October 6, 1980 in 45 FR 66017 indicates that portions of the Park Avenue Christian Church property, also known as 495 Park Avenue, Bloomfield, Connecticut, as recorded in Land Record Volume 280 at Pages 82 and 83 in the Town Clerk's Office, are within the Special Flood Hazard Area.

Map Number H & I 090122, Panel 0010A is hereby corrected to reflect that those portions of the property which are presently at or above 87 feet National Geodetic Vertical Datum (NGVD) are not within the Special Flood Hazard Area identified on August 15, 1977. Those portions which are between 87 feet (NGVD) and 90 feet (NGVD) are located in Zone B. Those portions at or above 90 feet (NGVD) arae in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6266 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Hillsborough County, Fla., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Hillsborough County, Florida. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Hillsborough County, Florida, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 120112 Panel 0205B published on October 6, 1980 in 45 FR 66059 indicates that portions of Units 1, 2, and 3 of Avila Subdivision, recorded in Plat Book 50, Page 21, Plat Book 50, Page 22, and Plat Book 51, Page 38, respectively, all of which are recorded in the Public Records of Hillsborough County, Florida are within the Special Flood Hazard Area.

Map Number H & I 120112 Panel 0205B is corrected to reflect that Lot 6 of Block 2 and Lot 3 of Block 3 in Unit 1, Lot 63 of Block 5 in Unit 2, and Lot 2 of Block 2 in Unit 3 are not within the Special Flood Hazard Area identified on June 18, 1980. The above-mentioned lots are in Zone C.

The existing structures on Lot 82 of Block 5, 923, 925, 927, and 931 Guisando Avenue of Block 8 in Unit 1, Lots 48 and 65 of Block 5 in Unit 2, and Lots 12 and 13 of Block 1, and Lots 29 and 33 of Block 5 in Unit 3 are not within the Special Flood Hazard Area. The structures are in Zone C. However, portions of these lots would be partially inundated by a flood having a one-percent chance of occurrence in any given year (base flood); therefore, any new construction or substantial improvement on the property remains subject to Federal, state, and local regulations for flood plain management.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 5, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6265 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Carbondale, Ill., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Carbondale, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Carbondale, Illinois, that a certain structure is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject structure is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that structure as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170298, Panel No. 0020B, published on October 6, 1980, in 45 FR 66073, indicates that the residential structure located on a parcel of land,

being that part of the Northeast Quarter of the Northwest Quarter of Section 35, Township 9 South, Range 1 West of the Third Principal Meridan, lying South and West of State Aid Route 12 as located June 13, 1967; North and West of Drury Creek as located on March 9, 1967; and South of relocated Pleasant Hill Road, located within the extraterritorial limits of the City of Carbondale, Jackson County, Illinois, as recorded in Book 438, Pages 367 and 368, in the Office of the Recorder of Jackson County, Illinois, is located within the Special Flood Hazard Area.

Map No. 170298, Panel No. 0020B, is hereby corrected to reflect that the residential structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on November 1, 1979. The residential structure is in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 12, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6264 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Document No. FEMA-6002]

Letter of Map Amendment for the Village of Orland Park, Ill., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Village of Orland Park, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Village of Orland Park, Illinois, that certain property is and certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject properties are or are not within the Special Flood Hazard Area, removes or reinforces the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170140, Panel No. 0002C, published on March 5, 1981, in 46 FR 15269, indicates that Lots Nos. 49, 58, and 95, Park View Estates Subdivision, Village of Orland Park, Cook County, Illinois, recorded as Document No. 2506648, in the Office of the Recorder of Cook County, Illinois, are located within the Special Flood Hazard Area.

In addition, the above-mentioned Map and Panel Number indicates that Lots Nos. 76, 85 and 86 are located in Zone C.

Map No. 170140, Panel No. 0002C, is hereby corrected to reflect that Lots Nos. 49, 58, and 95 are not within the Special Flood Hazard Area identified on February 4, 1981. The lots are in Zone C.

Furthermore, the above-mentioned Map and Panel Number is hereby corrected to reflect that portions of Lots Nos. 76, 85 and 86 are in Zone A.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6263 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Rockford, Ill., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of Rockford, Illinois. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Rockford, Illinois, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 170723, Panel No. 0012A, published on October 6, 1980, in 45 FR 66075, indicates that the Southerly Twenty-four feet in width of Lot Six and the Northerly Twelve feet in width of Lot Seven in Block Five, as designated upon the Plat of Giffen's Subdivision of a part of Block Five of W. T. Robertson's Addition to Rockford, known as 610 13th Street, City of Rockford, Winnebago County, Illinois, recorded as Document No. 1531908, in the Office of the Recorder of Deeds of Winnebago County, Illinois, are located within the Special Flood Hazard Area.

Map No. 170723, Panel No. 0012A, is hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on December 4, 1979. The property is in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6272 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5923]

Letter of Map Amendment for the City of Lafayette, La., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Lafayette, Louisiana. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Lafayette, Louisiana, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 220105 Panel 0010C, published on October 21, 1980, in 45 FR 69450, indicates that the Final Map of South Hill, a residential Townhouse Development located in Section 42, Township 10 South, Range 4 East, Lafayette, Louisiana, recorded as File Number 81-021709, in the Office of the Clerk of Court, Lafayette Parish, Louisiana, is within the Special Flood Hazard Area.

Map No. H & I 220105 Panel 0010C is hereby corrected to reflect that the existing structures located on the above mentioned property are not within the Special Flood Hazard Area identified on September 30, 1980. These structures are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6262 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-6022]

Letter of Map Amendment for the Unincorporated Area of Baltimore County, Md., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Unincorporated Area of Baltimore County, Maryland. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Unincorporated Area of Baltimore County, Maryland, that a certain structure is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject structure is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that structure as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agreed to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. 240010, Panel No. 0410B, published on March 31, 1981, in 46 FR 19476, indicates that the residential structure located on Lot No. 2, Block C, Section Nine, Camelot, Unincorporated Area of Baltimore County, Maryland, as recorded in Plat Book O.T.G. 31, Folio 96, in the Office of the Clerk of the Circuit Court of Baltimore County, Maryland, is located within the Special Flood Hazard Area.

Map No. 240010, Panel No. 0410B, is hereby corrected to reflect that the existing residential structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on March 2, 1981. The structure is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 12, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82–6261 Filed 3–8–82; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 70

[Docket No. FEMA–5712]

Letter of Map Amendment for the Town of Ocean City, Md., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the Town of Ocean City, Maryland. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Town of Ocean City, Maryland, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. H&I 245207D, Panel No. 04, published on October 23, 1979, in 44 FR 61010, indicates that Lot No. 10, Block No. 22, Fenwick, Maryland, Plat No. 4, Town of Ocean City, Worcester County, Maryland, as recorded in Liber E.W.R. 1, Folio 40, in the Office of the Clerk of the Circuit Court of Worcester County, Maryland, is located within the Special Flood Hazard Area.

Map No. H&I 245207D, Panel No. 04, is hereby corrected to reflect that the above-mentioned property is not within the Special Flood Hazard Area identified on February 6, 1976. The property is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act

of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Associate Director, State and Local Programs and Support)

Issued: February 12, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6260 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of St. Louis Park, Minn. Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Managemnt Agency published a list of communities for which maps were published identifying Special Flood Hazard Areas. This list included the City of St. Louis Park, Minnesota. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of St. Louis Park, Minnesota, that certain structures are not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject structures are not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for the structures as a condition of Federal or federally related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620 toll free.

The Map amendments listed below are in accordance with § 70.7(b):

Map No. H&I 270184A, Panel No. 04, published on October 6, 1980, in 45 FR 66084, indicates that Buildings Nos. 29 through 32, Shamrock 2nd Addition, City of St. Louis Park, Hennepin County, Minnesota, recorded as Certificate No. 619079 in Plat Book 2054, in the Office of the Registrar of Titles of Hennepin County, Minnesota, are located within the Special Flood Hazard Area.

Map No. H&I 270184A, Panel No. 04, is hereby corrected to reflect that Buildings Nos. 29 through 32, located on the above-mentioned property are not within the Special Flood Hazard Area identified on June 1, 1977. The buildings are in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated Special Flood Hazard Areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6259 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Waveland, Miss., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Waveland, Mississippi. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Waveland, Mississippi, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 285262 A, Panel 04 published on October 6, 1980 in 45 FR 66066 indicates that the parcel of land, known as Pinecrest Manor, City of Waveland, recorded in Book AA–29, Page 824, Deed Records of Hancock County, Mississippi is within the Special Flood Hazard Area.

Map Number H & I 285262 A, Panel 04 is hereby corrected to reflect that the above-mentioned property is not located within the Special Flood Hazard Area as identified on April 16, 1976. The property is located in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and

Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 16, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6284 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5923]

Letter of Map Amendment for the City of Las Vegas, Nev., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Las Vegas, Nevada. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Las Vegas, Nevada, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P. E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a fill refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 325276 Panel 0025B, published on October 21, 1980, in 45 FR 69451, indicates that Lots 1 through 9 and 13 through 130, Desert Sands Villas, Las Vegas, Nevada recorded as Document No. 1399800 in Book 27, Page 32 of Plats, Book No. 1440 of Offical Records, in the Office of the Recorder, Clark County, Nevada are within the Special Flood Hazard Area.

Map No. H & I 325276 Panel 0025B is hereby corrected to reflect that the above mentioned properties are not within the Special Flood Hazard Area identified on September 30, 1980. These lots are in Zone B.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6285 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Borough of Florham Park, N.J., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Borough of Florham Park, New Jersey. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Florham Park, New Jersey, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program

(NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 340342, Panel 0005 B published on October 6, 1980 in 45 FR 66028 indicates that Lot 19, Block 16, Florham Park, New Jersey and recorded in Book 2236, Page 94 of the Morris County Land Records is within the Special Flood Hazard Area.

Map Number H & I 340342, Panel 0005 B is hereby corrected to reflect that the exisiting structure located on the above-mentioned property is not within the Special Flood Hazard Area identified on September 14, 1979. The structure is in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6271 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the Borough of Florham Park, N.J., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Borough of Florham Park, New Jersey. It has been determined by the Associate Director, State and Local Programs and Support after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Florham Park, New Jersey, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for the property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 340342, Panel 0005 B published on October 6, 1980 in 45 FR 66028 indicates that Lots 243, 244, and 245 of Block 65 in Section 2, Lot 240 of Block 65 and Lot 27 of 65-C, both in Section 3, Lots 229, 233, 235, and 236 of Block 65, all in Section 4 of the subdivision known as Paragon at Lakeside, Florham Park, New Jersey, as recorded on Maps 3800, 3866, and 3914, respectively, in the Office of the Clerk of Morris County, New Jersey, are located within the Special Flood Hazard Area.

Map Number H & I 340342, Panel 0005 B is hereby corrected to reflect that Lots 243, 244, and 245 of Block 65 in Section 2, Lot 240 of Block 65 and Lot 27 of Block 65-C in Section 3 and Lot 233 of Block 65 in Section 4 are not within the Special Flood Hazard Area identified on September 14, 1979. The existing structure on Lots 27, 240, 243, 244, and 245 are located in Zone B and the structure on Lot 233 is in Zone C.

The structures on Lots 229, 235, and 236 of Block 65 in Section 4 are in Zone B. However, the lots would still be inundated by a flood having a one-percent chance of occurrence in any given year.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6286 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-6237]

Letter of Map Amendment for Borough of Hillsdale, N.J., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the Borough of Hillsdale, New Jersey. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the Borough of Hillsdale, New Jersey, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a

condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 340043 Panel 0002 B published on December 15, 1981 in 47 FR 3356 indicates that the existing structure on the property located at 6 Oak Street, also known as Lot 7, Block 715 on the Assessment Map of the Borough of Hillsdale, New Jersey, as recorded in Deed Book 6405, Pages 15 and 16 in the Bergen County Clerk's Office is within the Special Flood Hazard Area.

Map Number H & I 340043 Panel 0002 B is hereby corrected to reflect that the existing structure located on the above-mentioned property is not within the Special Flood Hazard Area as identified on December 15, 1981. The structure is located in Zone C.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6287 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Tulsa, Okla., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Tulsa, Oklahoma. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Tulsa, Oklahoma, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638–6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 405381D Panel 95, published on October 6, 1980, in 45 FR 66095, indicates that Lot 4, Block 1, Tracy Terrace 2nd Addition, Tulsa, Oklahoma, recorded as Instrument Number 902045 in Book 4497, Page 2489, in the Office of the Clerk, Tulsa County, Oklahoma, is within the Special Flood Hazard Area.

Map No. H & I 405381D Panel 95, is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on August 14, 1979. This lot is in Zone B.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6288 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-6237]

Letter of Map Amendment for City of Florence, S.C., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency published a list of

communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Florence, South Carolina. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Florence, South Carolina, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Chief, Engineering Branch, State and Local Programs and Support, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map Number H & I 450078, Panel 0005 C published on December 1, 1981 in 47 FR 3356 indicates that the lot in the City of Florence, designated as being a portion of Lots 90, 91, and 92 as shown on a map by Ervin Engineering Company, dated July 30, 1953, recorded in Plat Book N at Page 33 in the Office of the Clerk of Court for Florence County is within the Special Flood Hazard Area.

Map Number H & I 450078, Panel 0005 C is hereby corrected to reflect that the existing structure on the above-mentioned property is not located within the Special Flood Hazard Area identified on December 1, 1981. The structure is located in Zone B.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6289 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for Brazoria County, Tex., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included Brazoria County, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for Brazoria County, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 485458C Panel 32, published on October 6, 1980, in 45 FR 66097, indicates that a 46.22162 acre tract of land out of a 56.184 acre tract of land of the William Prater Survey, Abstract 120, Brazoria County, Texas, recorded as Document Number 26630, Volume 1531, Pages 338 through 340, in the Office of the Clerk, Brazoria County, Texas is within the Special Flood Hazard Area.

Map No. H & I 485458C Panel 32 is hereby corrected to reflect that the above mentioned property is not within the Special Flood Hazard Area identified on October 27, 1978. This property is in Zone B.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: January 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6290 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 70

[Docket No. FEMA-5909]

Letter of Map Amendment for the City of Plano, Tex., Under National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) published a list of communities for which maps identifying Special Flood Hazard Areas have been published. This list included the City of Plano, Texas. It has been determined by the Associate Director, State and Local Programs and Support, after acquiring additional flood information and after further technical review of the Flood Insurance Rate Map for the City of Plano, Texas, that certain property is not within the Special Flood Hazard Area.

This map amendment, by establishing that the subject property is not within the Special Flood Hazard Area, removes the requirement to purchase flood insurance for that property as a condition of Federal or federally-related financial assistance for construction or acquisition purposes

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: If a property owner was required to purchase flood insurance as a condition of Federal or federally-related financial assistance for construction or acquisition purposes, and the lender now agrees to waive the property owner from maintaining flood insurance coverage on the basis of this map amendment, the property owner may obtain a full refund of the premium paid for the current policy year, provided that no claim is pending or has been paid on the policy in question during the same policy year. The premium refund may be obtained through the insurance agent or broker who sold the policy, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Telephone: (800) 638-6620.

The map amendments listed below are in accordance with § 70.7(b):

Map No. H & I 480140 Panel 0020A, published on October 6, 1980, in 45 FR 66099, indicates that the two existing buildings located in the southeast corner of the Collin Greene Condominiums, being a 9.505 acre tract of land in the William Fitzhugh Survey, Abstract No. 308, Plano, Texas, recorded as Document No. 29964 in Volume 1306, Pages 749 through 751, in the Office of the County Clerk, Collin County, Texas, are within the Special Flood Hazard Area.

Map No. H & I 480140 Panel 0020A is hereby corrected to reflect that the two existing structures located in the southeast corner of the above mentioned property are not within the Special Flood Hazard Area identified on January 2, 1980. These structures are in Zone C.

Pursuant to provisions of 5 U.S.C. 605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

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

Issued: February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6291 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 79-318; FCC 82-99]

Public Mobile Radio Services; Cellular Communications Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC hereby amends Part 22 of the Commission's rules on domestic public mobile radio service governing the use of the bands 825-845 MHz and 870-890 MHz for cellular mobile radio communications systems. The Rules, as amended, will serve the public interest by providing improved mobile telephone service to the public at the earliest possible time while assuring an important measure of competition in this service.

EFFECTIVE DATE: April 8, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas Gutierrez, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order On Reconsideration

Adopted: February 25, 1982.

Released: March 3, 1982.

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I. Preliminary Statement

1. We have before us numerous petitions for reconsideration or clarification [1] of our Report and Order [2] (Order) in the captioned proceeding. Individually the petitions focus on selected aspects of the Order; collectively they challenge virtually all of its major policy determinations. We have carefully reexamined our decision

[1] Appendix A lists the parties filing petitions for reconsideration or clarification and responsive pleadings. Appendix A also lists the abbreviations by which various petitioners are identified in this Order.

[2] *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318*, 86 FCC 2d 469, 46 FR 27655 (1981).

in light of the arguments presented in the petitions and have affirmed our previous decision in most major respects. However, after careful reflection, we have eliminated the separate subsidiary requirement for wireline carriers, except for the American Telephone and Telegraph Company (AT&T), and have further streamlined the comparative hearing process. The issues raised in the petitions are discussed below, generally in the order that they were presented in our previous decision. Although all arguments raised are not specifically discussed in this document, all arguments have been considered in reaching our decision.

II. Discussion

A. Spectrum Allocation and Competitive Systems Within a Market

1. Joint Venture and Sharing Proposals

2. In our Order, we determined that the 40 MHz (825–845 MHz amd 870–890 MHz) frequency block previously allocated for cellular services should be made available immediately for two competing systems per area, with 20 MHz available for each carrier. Order at 482. An additional MHz, comprised of four discrete frequency blocks, would be held in a land mobile reserve. We concluded that such a reserve would preserve our flexibility to respond to a variety of future demands. We further provided that if in a future allocation proceeding we determine, based on actual experience with operational commercial cellular systems, that additional spectrum is required for efficient operation in certain markets, we could make spectrum available from the 20 MHz reserve as appropriate.

3. LIN and Millicom request reconsideration of our decision to initially license two carriers per market. They argue that our market structure plan erroneously rejected alternative licensing proposals that could achieve all of the Commission's cellular goals without having the anticompetitive implications associated with the plan adopted. In this regard, LIN renews its proposal that the Commission select two licensees per market who would construct and operate one 40 MHz system on a joint venture basis until the market can demonstrably support two competitors. At that time, the joint venture phase would cease and each licensee would separately and competitively market its services.

4. Millicom renews its argument that a system of nonexclusive frequency assignments permitting unlimited free entry should be adopted.[3] Millicom contends that the resulting competitively structured cellular industry would ensure rapid development of efficient high quality cellular service and allow consumer choice, rather than regulatory fiat, to determine what cellular services will be offered to the public. According to Millicom, wireline carriers will not vigorously pursue the portable market because it would compete with their landline services, and radio common carriers will not pursue it because of their orientation to vehicular units. Millicom also contends that its open-entry proposal is technically feasible, and objects to our conclusion that Millicom has failed to explain adequately how its proposal would actually work. Millicom has provided the Commission with additional technical information which, it contends, adequately explains its proposal.[4]

5. Three parties, Maximum Telecasters, Inc., Telocator and AT&T, filed opposition pleadings focusing on this issue. They argue that Millicom has not demonstrated the technical, procedural and economic viability of its proposal, and that it has neither designed, developed nor tested its proposal, even in prototype form. In addition, AT&T states that the dynamic channel assignment approach contained in Millicom's proposal would, contrary to Millicom's assertions, introduce even more inefficiencies than would fixed allocations. AT&T also opposes the LIN plan because it does not permit any competition between facilities-based cellular operators for an indefinite time and because it provides little incentive for one company to cooperate with another in providing service where it knows that, sometime in the future, the two will provide that same service in competition with each other.

6. After carefully considering these arguments, we reaffirm that the public interest would best be served through the licensing plan set forth in our Order, namely, the licensing of up to two 20 MHz systems in each market area. As we stated in the Order, this approach affords the public the benefits of some facilities-based competition in cellular service, while also taking into account the convincing record evidence before us that, from a technical standpoint, cellular systems should be allocated no less than 20 MHz each in order to preserve the spectrum efficiency afforded by the cellular concept.[5]

7. We reject the LIN proposal for the reasons stated in our previous order. As we stated there, Order at 478, para. 19, the LIN proposal affords no opportunity for facilities-based competition within a given market area in the near term. In addition, it poses the complication of relying on two licensees, whose individual proposals may differ radically, to agree on a single mode of joint construction and operation. Moreover, it may necessitate the future intervention of the Commission to decide when to dissolve the joint venture, and quite possibly to resolve disputes concerning when and how to expand jointly held facilities, at a time when the Commission is seeking to remove itself from overseeing licensee operations on an ongoing basis in order to conserve our decreasing resources.

8. With respect to the Millicom proposal, while we support its goal of unlimited entry, we are unable to find that the proposal will provide efficient use of spectrum and facilities-based competition, especially without the need for further development. In this regard, one of our major concerns is that the unlimited entry and dynamic frequency assignment proposed by Millicom would limit, if not prevent, frequency reuse unless all systems have approximately co-located transceivers with substantially identical cell patterns. Millicom concedes as much when, in its

[3] In this regard, Millicom states that we mischaracterized its proposal in our Order by describing it as a single 40 MHz system to be shared among several users. Instead, Millicom says that it proposed that any number of licensees in a market be allowed to share, on a non-exclusive basis, the entire 40 MHz frequency allocation with each licensee responsible for providing its own facilities, and that this could result in facilities-based competition. A review of the Order, however, clearly reveals that we recognized the Millicom proposal as theoretically offering facilities-based competition, and that we rejected it for other, unrelated reasons, as discussed in the Order and clarified here.

[4] Authorized *ex parte* presentations were made on behalf of Millicom to staff and various Commissioners' offices. Copies of materials provided to Commission staff in the course of Millicom's presentation have been entered into the record of this proceeding.

[5] As discussed in our Order, each commenter who addressed the spectrum requirements of cellular design agreed that a cellular system based on either the AT&T or the Motorola design could not be efficiently operated in a mature cellular configuration in a major market with any allocation substantially less than 20 MHz. This minimum spectrum requirement is based on the fact that a mature cellular system in a high density market requires multiple frequencies at each cell site to achieve the efficiencies of trunking necessary to accommodate the demand for service. In addition, because the number of frequencies available at each site is limited, several sets of frequencies are required to provide adequate co-channel separation for frequency reuse. Order at 476, para. 15. Moreover, the less spectrum available to a licensee the sooner cell-splitting must begin. This increases the licensee's costs that will have to be passed on to the consumers because each time a cell is split, additional cell sites and base station equipment are required. *See* Order at 475.

petition for reconsideration, it states that cell sites would have to be approximately co-located, and that substantial divergence in cell patterns between systems can reduce the efficiency of the cellular concept by limiting frequency reuse.[6]

9. Moreover, Millicom has not adequately addressed the problems involved with having approximately co-located cell sites. Although it may be theoretically possible for multiple entrants to share a single 40 MHz allocation, including a common set of 21 control channels, we believe the required coordination would be enormously difficult to implement. For example, one important question involves how licensees would coordinate cell splitting and consequent changes in cell patterns when different systems have different expansion needs. As a result, there remain a number of specific concerns regarding the extent of technical coordination required among participating carriers under the Millicom proposal. For example, carriers would either have to share a common central computer, or at the very least, arrange to link together their individual system computers. Frequency assignment algorithms, which are already complicated by dynamic channel assignment, would have to be agreed upon and stored in each system. Site locations would have to be coordinated, and perhaps arrangements made to share antenna sites.

10. Millicom suggests that if licensees in a particular market cannot agree on how to coordinate with respect to the above issues, their individual proposals should be submitted to a technical coordination procedure conducted by the Commission, similar to the one established in the Commission's Reconsidertion Order in Docket No. 21039.[7] As with the LIN proposal, however, we are disinclined to inject the Commission into such coordination procedures, and we are unwilling to transfer the kinds of problems and prolonged delays the Commission has experienced in Docket No. 21039 to this proceeding.[8] Finally, we note that even assuming that it is possible to reach agreement on all the technical and practical considerations involved with having approximately co-located cell sites, the resulting closely coordinated group of systems with identical, or nearly identical, cell patterns could well result in less meaningful facilities-based competition than would be possible with two independently designed systems.

11. Despite Millicom's submission of additional technical information,[9] we are still troubled by its proposal. In fact, Millicom's most recent presentations raise additional serious questions. In these presentations, Millicom suggests that cell-splitting and frequency reuse may not prove to be the most economically efficient means of accommodating increased service demands, and that system operators should be permitted to choose other ways of increasing capacity, such as conversion to digital or other technologies. This approach represents a significant departure from the concept of cellular service as adopted by the Commission. When the Commission allocated 40 MHz of spectrum for cellular systems, it envisioned high capacity systems capable of accommodating anticipated common carrier mobile service needs to the end of the century. We also envisioned frequency reuse as the key to cellular systems' high capacity and spectrum efficiency. Since Millicom has offered no firm evidence that would warrant a change in our prior determinations with respect to the cellular frequency reuse concept, one of the fundamental underpinnings of the 1974 *Second Report and Order in Docket N. 18262*, 46 FCC 2d 752, we decline to adopt Millicom's proposal, with its limited frequency reuse, based on speculation that some other form of expansion might occur instead.

12. Finally, we reject Millicom's argument that its proposal must be adopted in order to develop the portable telephone market. We see no reason why the portable market would not develop absent Millicom's unlimited entry plan. To the extent that development of this market depends on cellular licensees making service available for portables, we would expect cellular operators to expand into this area as soon as price and marketing considerations indicate a favorable expected return. Likewise, wireline carriers can be expected to follow suit in the face of this competition. *See* para. 19 below. With respect to the availability of portable units, this equipment will be classified as "terminal equipment" consistent with our decision in the *Second Computer Inquiry (Computer II)*.[10] As such, it would not be regulated, but would have to meet our type-acceptance requirements. Millicom's mobile unit, if type-accepted, woud be compatible with all cellular systems. Thus our decision will in no way restrict Millicom from selling this terminal equipment to all cellular system customers. In addition, cellular subscribers would in no way be deprived of the opportunity to utilize any relatively inexpensive Millicom mobile unit unless Millicom or its manufacturer restricts its competitive distribution.[11] The marketplace therefore will decide the ultimate fate of the Millicom mobile unit and its attractiveness to consumers relative to local exchange service is unaffected by our action. For these reasons, and those discussed above, we conclude that the public interest would not be served by revising our allocation scheme to accommodate untested and unproven licensing concepts to the detriment of the spectral efficiency of other, more proven proposals.[12]

2. Mobile Satellite System

13. The National Aeronautics and Space Administration (NASA) has proposed that we consolidate the 20 MHz reserve portion of the spectrum into two bands of 10 MHz each in order to accommodate a possible satellite-based extension of terrestrial based cellular and non-cellular mobile services. We rejected this idea, finding that the need for satellite augmentation of terrestrial cellular systems had not been established and that the uncertain benefit of adjusting the present allocation of the 800 MHz frequencies

[6] See Millicom petition for reconsideration at 1–2 and 1–9.

[7] In *Docket No. 21039*, the Commission allocated 12 or 24 UHF channel pairs to the Domestic Public Land Mobile Radio Service for use on a shared basis by all applicants within a 50 mile radius of 13 major market areas. *See* 77 FCC 2d 201 (1980).

[8] To date, after 21 months, many meetings and considerable Commission staff time, agreements have been reached and systems authorized in only five of the 10 markets for which applications have been filed.

[9] *See* para. 4 and n. 4, *supra*.

[10] *Computer II (Final Decision)*, 77 FCC 2d 384 (1980); *Reconsideration*, 82 FCC 2d 50 (1980); *Further Reconsideration*, FCC 81–481 released October 30, 1981; *appeal pending sub nom. CCIA* v. *FCC*, No. 80–1471 (D.C. Cir.).

[11] Millicom estimates the cost of a handheld portable mobile unit, the development of which it is sponsoring, to be about $600, with further cost decreases anticipated as microchip technology advances.

[12] In a letter dated November 9, 1981 to the Chief, Common Carrier Bureau, Millicom has suggested a compromise proposal under which the Commission would award two five-year licenses, each for exclusive use of up to 50% of the cellular radio channels, in up to the 20 largest markets where the public need is greatest with no preference for wireline or non-wireline applicants. In all other markets, it proposes that we adopt an unlimited entry licensing approach for systems meeting the technical requirements which Millicom proposes. The reasons set forth in the text above for rejecting Millicom's initial proposal, *i.e.*, inefficient spectrum re-use and technical coordination concerns, apply to any market regardless of size. While the magnitude of the potential problems may vary, these concerns still exist. Therefore, we do not believe the public interest would be served by adopting Millicom's compromise approach for any market.

did not outweigh the cost of further delaying the implementation of commercial cellular service.[13] In addition, we determined that by leaving the reserve bands intact, we were not precluding the possible future development and implementation of a mobile satellite system. Finally, we concluded that consolidation of the reserve bands and a shifting of the cellular allocation would raise considerations requiring time-consuming renegotiations of pending international agreements.

14. NASA requests reconsideration of our Order insofar as it rejected its proposal. In doing so, NASA essentially reargues the position it presented in its comments in this proceeding. NASA also argues that the reserve band described in the Order effectively precludes 12 MHz of the current 20 MHz reserve band from ever being allocated for a mobile satellite service because of specific allocations for mobile satellite services made during the 1979 World Administrative Radio Conference (WARC).[14] According to NASA, this limitation in turn makes such service economically unviable, and therefore effectively precludes the possibility of having a mobile satellite service in the future. Without a satellite system, NASA submits that there will be no nationwide service because terrestrial systems are unlikely to serve thinly populated areas. NASA also finds "startling" the Commission's statement that no need for satellite augmentation of terrestrial services has been shown, in view of the market study submitted with NASA's Supplemental Comments which projects from 400,000 to 900,000 users of a satellite-based mobile telephone service in non-metropolitan areas. NASA further challenges the Commission's suggestion that satellite and terrestrial systems can share spectrum, arguing that the non-directional nature of the mobile unit antennas would virtually assure that destructive interference would result from simultaneous co-channel satellite and terrestrial transmissions. Finally, NASA asserts that the Commission's claims that a consolidation of the reserve spectrum would require time-consuming renegotiation of pending international agreements are based on a distorted reading of a communication from the Canadian Government. In opposition, AT&T argues that NASA has not adequately demonstrated a public need for satellite mobile service and that, despite NASA's statements to the contrary, the Canadian Government is clearly opposed to NASA's proposal.

15. Having carefully reviewed NASA's arguments, we remain convinced that the allocation plan included in the Order is the one most appropriate for the prompt provision of cellular service, while providing sufficient flexibility to accommodate the possibility of supporting satellite systems at some later date. Adoption of the NASA proposal would necessitate an unwarranted delay in the provision of cellular service because shifting the upper portion of the cellular band from 890 to 896 MHz would require additional time-consuming international negotiations. In particular, we note that a recent discussion paper on cellular radio service issued by the Canadian Government states that "there would be a potential immediate, but localized conflict between cellular and fixed assignments in the band 890–896 MHz, which could not be resolved except for reassignment of the affected fixed systems." [15] In addition, we note that our agreements with Mexico for use of the 806–890 MHz band do not extend to the 890–896 MHz band and, thus, that band could not be used for cellular service near either border in the near future. Although only licensing of border systems would be directly affected by shift in the cellular band, we believe it would be unwise to go forward with licensing of any systems until we could be assured that all systems would be utilizing the same frequency bands. Thus, NASA's proposal would delay implementation of cellular in general for an indeterminable length of time. We are particularly disinclined to incur such a delay in view of the other issues involving mobile satellite service which remain unresolved. In particular, it is far from clear that the need for mobile satellite service alleged in the Supplemental Comments in this proceeding cannot be satisfied through terrestrial service,[16] either cellular or not be accommodated by the 8 MHz of spectrum which NASA agrees would be available for future allocation to mobile satellite service. In this regard, we note that the Canadian Government is now preparing for a mobile satellite system that would operate with only 8 MHz of spectrum.

B. The Role of Wireline Carriers

1. Wireline Eligibility to Operate Cellular Systems and Market Definition.

16. In the Order, at 484–485, we recognized that cellular service will be substitutable to a large degree for present common carrier mobile service and private or common carrier dispatch service.[17] We also concluded that cellular services would not be substitutable for local wireline telephone service in the near future. We further found that wireline carriers should not be precluded from participating in the provision of cellular service. In addition, we determined not to impose any restriction on the number of markets any given entity may enter because such a restriction could prove to be a disincentive to investment in the technological development of cellular, while possibly diminishing the number of potential entrants in some geographic markets or limiting the areas in which cellular is offered.

17. Our conclusion that local wireline telephone service is not within the relevant market in this proceeding is challenged. Telocator, Industrial, and Millicom contend that the Order unduly focuses on whether cellular and local landline service are competitive now, as opposed to in the near future. In addition, they state that arguments regarding cellular systems' lack of capacity to capture an entire wireline market are relevant only in a small number of very large markets. They further argue that in light of the telephone companies' investment and incentives, it is inconceivable that wireline cellular operators will truly compete with wireline telephone service. Some petitioners also challenge our decision not to limit the number of markets any given entity may enter. They contend that there is no support for the Commission's conclusion that entities that might otherwise invest heavily in the technological development of cellular would hesitate to do so if they are permitted to operate only in a limited number of markets.

[13] The Order provides for four discrete reserve bands: 821–825 MHz; 845–851 MHz; 866–870 MHz; and 890–896 MHz. NASA would have us consolidate the reserve portion of the spectrum into two bands at 821–831 MHz and 866–876 MHz.

[14] The 890–896 MHz reserve band is outside the 806–890 band allocated by the 1979 WARC to the Mobile Satellite Services, thereby, NASA argues, eliminating as well the reciprocal 845–851 MHz reserve band from mobile satellite usage. As a result, only the 821–825 MHz and 866–870 MHz bands would be available for such use.

[15] Discussion Paper-Radio Licensing Policy for Cellular Mobile Radio Systems and Preliminary Mobile-Statellite Planning in the Band 806–890 MHz, Department of Communications, Ottawa, Canada, released September 1981.

[16] We note that in its petition for reconsideration, at page 8, NASA discusses additional need studies "currently underway." However, NASA has not provided us with copies of the studies or with any analysis of the results of such studies. Accordingly, any such studies, if they exist, are not part of the record in this proceeding.

[17] Dispatch service is a type of mobile service characterized by the exchange of brief messages between a land based dispatcher and a mobile station without using the public switched telephone network.

18. We affirm the eligibility of wireline carriers to be cellular system licensees. The arguments raised by petitioners do not support a contrary conclusion. We have allocated spectrum for cellular service because of the flexibility it offers consumers in meeting their unique communications needs that cannot adequately or conveniently be met by use of the landline network irrespective of any potential substitutability it might also have with wireline local exchange service. In general, there is a pressing need to meet public demand for traditional mobile radio services, and we anticipate that new service applications will be forthcoming to meet user needs. We envision that cellular systems will be heavily dependent on the presence of the landline network to provide new service applications where the mobility of a party makes use of the landline network alone unattractive. In this regard, we envision use of cellular systems in conjunction with the landline network and, to the extent cellular systems are used to provide traditional and new mobile radio services, there is correspondingly less system capacity to provide meaningful competition with the landline network.

19. Assuming, *arguendo*, that we are wrong in this assessment, we still find that eligibility restrictions on wireline carriers are not warranted. Under the two licensees per market structure we have established, the wireline licensee has an incentive to compete with a non-wireline licensee. In the event that cellular should provide a competitive alternative to the landline network sometime in the future, it is unrealistic to assume that a wireline carrier would stand idly by and lose business to a competing licensee.

20. In addition, we are unpersuaded on reconsideration that a limitation on the number of markets a given entity may enter will serve the public interest. No evidence has been presented that was not considered in making our prior determination. The record before us does not demonstrate that such a limit is warranted to either encourage diversity of ownership or to enhance technical diversity. Accordingly, we affirm our prior determination in this regard.

21. Finally, the United States Court of Appeals for the District of Columbia has requested that we address how the 1956 Consent Decree [18] affects AT&T's eligibility to provide cellular service.[19] Subsequent to that request, AT&T and the United States Department of Justice jointly proposed modifications which if accepted by the court would vacate and replace the 1956 Consent Decree. The Court has established comprehensive procedures in order to compile a sufficient record to determine whether the modifications are in the public interest. [20] Consequently, the status of the Consent Decree is unsettled.

22. We feel that until the United States District Court for the District of Columbia rules upon the proposed Consent Decree modifications, it is premature to comment upon how the new settlement might affect the Bell Operating Companies' offering of cellular services. Suffice it to say at this point, that the modifications in their present form do not appear designed to preclude the Bell Operating Companies from providing cellular services. Should any problems develop in this area, we would expect AT&T to advise us forthwith so that we can take them into account. This is not to imply that such agreements can govern federal communications policy. To the contrary, they cannot "be regarded as in any way confining or limiting or restricting the mandate or discretion of the FCC, or the manner of its exercise." [21]

23. As for the 1956 Decree, AT&T's provision of cellular service is clearly allowed pursuant to Sections II(i) and V, which make clear the company's entitlement to furnish "common carrier communications services." The manufacture and marketing of cellular equipment for use with AT&T's cellular common carrier offerings is allowed for under Sections IV(A), IV(B), and V(g) of that Decree. Thus, the 1956 Decree does not foreclose AT&T from offering cellular services or from the manufacture and provision of equipment to be used in connecton with cellular service. [22]

2. Separate Allocation for Wireline Carriers

24. In Order, we allocated one block of frequencies for wireline carriers and another for non-wireline carriers. We limited this separate allocation to a five-year duration, after which any party could apply for either block of frequencies. Order at 488. Moreover, we provided that a wireline carrier could apply only in those general areas where it is certificated as a wireline carrier, in order to limit the number of applicants in a particular area for the wireline block of frequencies. Order at 490, n. 56. We explained that a separate allocation plan is the most practical way to make cellular service available to the public in substantial number of the most populated and congested cities across the nation in the next three to five years. Our position was based on several important considerations set forth in the Order. First, we noted that there was a pressing need for cellular service in order to relieve the severe congestion that exists on conventional two-way mobile systems around the country. We also noted that given AT&T's distinctive technical capabilities, and its landline operation in most major markets, only AT&T could place cellular systems in operation around the country in the near future. Thus, our decision to limit eligibility for the wireline block of frequencies to wireline carriers, which are easily identifiable since they are already certificated in the same general area, was based primarily upon both wireline carrier expertise and a strong concern that service to as many areas as possible not be delayed by comparative hearings.

25. Many petitioners, including most non-wireline parties, object to the Order's separate five-year frequency allocation on the basis that it provides wireline carriers with an unwarranted advantage over other parties. They dispute the factual premises for the allocation set forth in the Order, *i.e.*, that there is an immediate need for cellular service and that only wireline carriers can meet it quickly. Some petitioners also argue that even assuming the existence of the premises for the separate allocation, the plan is

[18] *U.S.* v. *Western Electric Co.*, 1956 Trade Cases 68, 246 (D.N.J. 1956).

[19] *Millicom Inc.* v. *FCC*, No. 81-1404, *Order*, dated August 31, 1981.

[20] *United States of America* v. *AT&T* No. 74-1698 (D.D.C.), *Order* dated January 21, 1982.

[21] *United States* v. *Western Electric Co.*, Cir. No. 17-490, slip. op. at 11 (D.N.J. September 3, 1981) (Biunno, J.), appeal pending (3rd Cir.). We would note, however, that under the proposed reorganization of AT&T, the local Bell Operating Companies would continue to be involved in the provision of "exchange telecommunications" and would have access to the "research, development, manufacturing, and support services" of AT&T, Western Electric, and Bell Labs, until September 1, 1987. There would therefore not appear to be any reason to believe that the proposed modification would significantly affect the ability of AT&T's operating companies to provide cellular service. Accordingly, the February 5, 1982 Motion to Reopen Proceeding filed by Industrial Communications Systems, Inc., asking that we delay cellular to examine the effect of the recent settlement activities, will be denied.

[22] This is not a situation like that present in *Connecticut Water Co.*, 25 FCC 1367 (1958), where we refused to license *private* radio systems which were supplied with AT&T equipment under a lease-maintenance contract, the charges for which were not subject to public regulation. Here, there is no provision for lease-maintenance of private systems, and all systems will be subject to public regulation. Nor can we accept Motorola's argument that dispatch service is not "incidential to" a common carrier communications service under Section V(g) of the decree, since such service has traditionally been viewed as a form of common carriage when offered by carriers licensed in the Public Mobile Radio Services.

still not appropriate because the time saved by avoiding required comparative hearings is not a consideration sufficient to outweigh the competitive problems raised by it. Finally, petitioners argue that the separate allocation plan violates *Ashbacker Radio Corp.* v. *FCC, (Ashbacker)* 326 U.S. 327 (1945), and that it ignores the warnings of the Court in *NARUC* v. *FCC, (NARUC)* 525 F. 2d 630 (D.C. Cir. 1976), *cert. denied* 425 U.S. 992 (1976).

26. After reviewing the arguments presented in the petitions for reconsideration, we affirm the concept of a separate allocation for wireline carriers. We remain convinced that a separate allocation constitutes the most practical, and quite possibly the only, way to achieve the Commission's twin goals' of making quality mobile telephone service available to the public as rapidly as possible while promoting competition whenever feasible. In this area we view such an approach as critical to the timely accomplishment of our Section 1 mandate to: "make available, as far as possible, to all the people of the United States a rapid, efficient Nationwide . . . wire and radio communications service with adequate facilities at reasonable charges. . . ." 47 U.S.C. 151. The pressing need to relieve congestion on two-way communication facilities noted in our earlier Order, at 489–90, persists today.[23] We continue to believe that wireline carriers, and particularly AT&T, offer the greatest hope for rapid relief of this congestion through the provision of cellular service, especially under the approach set forth in the Order which limits resort to time consuming evidentiary hearings.

27. While we affirm the separate allocation, we are also further limiting its duration. As such, the separate allocation will expire two years from the date of publication of this Order in the **Federal Register.**[24] We feel that two years is suffficient time for any wireline carrier to put together a good cellular proposal. A primary goal of the separate allocation is the expeditious initiation of cellular service. If in any instance a wireline carrier is unable to initiate service rapidly, perhaps some other party can. By so limiting the duration of the separate allocation we induce wireline carriers to act quickly, and at the same time ensure that no cellular frequency will lie fallow for long.[25]

28. We disagree with those petitioners who argue that our reliance on the expertise of wireline carriers, and especially the independent telephone companies, is misplaced. As we noted in the Order, at 488–489, the primary proponent and developer of cellular technology in this country has been AT&T. Indeed, at the time of the Order, AT&T alone had implemented a limited cellular offering to the public through the developmental cellular system operated in the Chicago area by Illinois Bell Telephone Co.[26] In affirming the separate allocation, this Commission again places weight on the fact that today only AT&T has commercial operational expertise in cellular radio.[27] The benefits of such experience, which include a first hand knowledge of the day-to-day workings of a fully integrated cellular system as well as the development of expertise regarding cellular propagation characteristics, cannot be overemphasized. While other entities may eventually obtain this experience, they do not have it today. At the same time, we continue to recognize the expertise of the independent telephone companies in traffic engineering and the establishment of high capacity local switching networks. This expertise is particularly advantageous in cellular systems, because of the need to tie together various transmitters in a cellular system and to distribute and revise frequency arrangements among the various cells in a system. In addition, we consider cellular to be an extension of local exchange service, and expect that wireline carriers will be able to rely on their expertise and knowledge about their individual service areas to more quickly make quality cellular service available to their communities. We recognize that wireline companies not affiliated with AT&T do not have the same specific cellular operational expertise as Bell. Nevertheless, their expertise, as described above, coupled with a strong public interest in expeditiously providing service, left us with no viable alternative to the separate allocation.

29. *Legal Authority.* We believe our split frequency allocation stands on a firm legal basis. The Commission recognizes that there is no perfect solution when faced with the type of problems before us in this proceeding. However, after more than a decade of consideration, we have determined that the separate allocation offers the most practical way of making this needed service available to the public in an expedited manner while providing for competition to the fullest extent possible. In this regard, it bears emphasizing here that while "competition" is an integral part of the public interest standard, it is not the whole of our statutory mandate. *FCC* v. *FCA Communications Inc.*, 346 U.S. 86, 93 (1952); *Hawaiian Telephone Co.* v. *FCC*, 498 F.2d 771, 777 (D.C. Cir. 1974). Indeed, as the Court of Appeals for the Second Circuit has stated: "(W)ere the Commission to base its action solely upon the ground that competition in the industry would be favored thereby and nothing more, we would have some doubt as to whether it had fulfilled its responsibility to consider other important criteria before determining whether its proposed rule is in the 'public interest.' " *Radio Relay Corp.* v. *FCC, (Radio Relay)* 409 F. 2d 322, 326 (2nd Cir. 1969). The Commission, in making its decision, carefully considered the value of competition in the provision of cellular service. However, we further recognized that our statutory responsibilities require us to weigh the balance competing objectives relating to the public interest, including, for example, optimal allocation of scarce spectrum resources and the timely and efficient delivery of cellular services of proven high quality and coverage. As such, our position on the separate frequency allocation is rationally predicated on a balanceing of policy determinations uniquely entrusted to this Commission.

30. In addition, we have prescribed a number of safeguards to minimize any potentially anticompetitive effects stemming from the separate allocation. We have specifically committed ourselves to *ad hoc* consideration of requests for a moratorium on wireline carrier cellular service upon a demonstration of harm to the public interest resulting from a wireline carrier's "head start." Order at 491, n.

[23] In the Order, at 489, we noted that this pressing need is documented by estimates of over 25,000 customers on waiting lists of AT&T nationwide and by long waiting periods to obtain service.

[24] Under our separate allocation, as modified today, for a period of two years following publication of this *Memorandum Opinion and Order* in the **Federal Register** only non-wireline carriers will be eligible to apply for Block A of frequencies and only wireline carriers will be eligible to apply for Block B of frequencies. After the two year period, any party can apply for either frequency block in any market, except where the block has been applied for during the term of the separate allocation.

[25] Parties may still request waivers of the separate allocation pursuant to the Order, at 488, n. 41, where there is no dispute that other eligible parties will not apply for the frequency during the two year period.

[26] In our *Second Report and Order* in Docket No. 18262, 46 FCC 2d 752 (1974), as amended on reconsideration, 51 FCC 2d 945, 953 (1975), we permitted any party to apply for a cellular developmental authority. However, only a handful of parties applied and only Illinois Bell Telephone Co. has successfully initiated a public offering at the time we adopted our Order.

[27] Although the American Radio Telephone System began a market trial on December 9, 1981, this developmental licensee has not yet developed commerical operational expertise comparable to that of AT&T.

57. We have instituted an interconnection policy requiring telephone companies to furnish the appropriate and necessary interconnection to cellular systems upon reasonable demand and upon terms no less favorable than those provided to their own cellular systems. We have sought to promote a second tier of cellular service competition, at the retail level, by barring any prohibition on the resale and shared use of cellular services. We have conditioned AT&T's participation in cellular systems and services on the formation of a separate subsidiary which must maintain its own books of account, separate officers and personnel, and separate computer and switching facilities.[28] Finally, we have today reduced the duration of the separate allocation from five years to two years.

31. The argument made by some petitioners that the separate allocation does not meet the concerns expressed by the court in *NARUC, supra,* overlooks the fundamental distinction between this allocation plan and the one before the court in *NARUC.*[29] The *NARUC* Court reviewed a Commission plan providing for only one cellular system per market, which the court anticipated would result in AT&T being authorized to operate most, if not all, cellular systems. 525 F.2d at 636. Under that plan non-wireline carriers might well have been entirely excluded from many major markets. However, we have insured against this possibility not only by splitting the frequency into two allocations, but also by reserving one frequency block in every market for non-wireline carriers for the duration of the separate allocation. This increases rather than decreases the competitive nature of the cellular industry. In addition this plan furthers the agency's longstanding and judicially validated policy favoring separate allocations for wireline and non-wireline mobile systems in order to foster "the development of competing systems, techniques and equipments." *General Mobile Radio,* 13 FCC 1190, 1218 (1949); see also *ITT Mobile Telephone, Inc.,* 1 RR 2d 957 (1963).

32. We believe that this dual allocation, limited in time as it is, constitutes the best way of accommodating two separate aspects of the public interest standard: the antitrust component, with which the *NARUC* Court was primarily concerned, and the need for rapid implementation of cellular service. The determination as to where the public interest lies involves balancing a great number of factors, no one of which necessarily predominates.[30] And as the Court has observed more recently, "agencies [must] consider antitrust policy as an important part of their public interest calculus. But the agencies are not strictly bound by the dictates of [the antitrust] laws . . . ; rather, they are entrusted with the responsibility to determine when and to what extent the public interest would be served by competition in the industry." *United States* v. *FCC* (SBS), 652 F. 2d 72, 88 (D.C. Cir. 1980) (en banc) (citation omitted). Thus, the Court continued, "The agency's determination about the proper role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the 'special considerations' of the particular industry." *Id.* (footnote omitted). In the case of cellular communications, we have attempted to encourage both the development of a competitive market structure and the implementation of cellular service as soon as possible. We have retained, for the initial period, a separate frequency allocation policy for the wireline and non-wireline carriers, consistent with the traditional presence of both types of carriers in this industry. We believe that such a policy will best serve the public interest, and fully addresses the concerns expressed by the court in *NARUC.*

33. Finally, it is clear, contrary to the arguments of those petitioners which charge that the separate allocation violates *Ashbacker,* that this Commission has the rulemaking authority to codify its public interest policy determinations with regard to radio licensing classes and eligibility, so long as those determinations are based on consideration of permissible factors and are otherwise reasonable. As discussed above, our allocation is based on a balancing of policy determinations uniquely entrusted to this Commission, including spectrum efficiency, competition and the timely availability of service. Thus, the Commission's split frequency decision and its underlying policy rationales represent a wholly proper and reasonable exercise of this Commission's well-established rulemaking authority.

34. *Headstart Doctrine.* A number of petitioners argue that, if the separate allocation scheme remains in effect, the Commission should at least revise its postition and apply the headstart doctrine considered in *Radio Relay, supra,* to cellular services. They argue that in permitting a headstart, the Order virtually ignores the warning in *NARUC, supra,* against possible domination of the cellular industry by AT&T, particularly since AT&T operates in, and thus will have a headstart in, most major markets. These petitioners contend that the alleged safeguards in the Order are not sufficient to counterbalance the competitive advantages stemming from this headstart. To correct this problem, petitioners request that the Commission adopt a nationwide policy to ameliorate problems stemming from this headstart, with waivers being required to request that the doctrine not be applied in unique situations.

35. We disagree with the arguments of those petitioners who would, in essence, have this Commission institute an across-the-board policy to ameliorate problems stemming from a headstart in cellular service. In our Order, at 491, n. 57, the Commission found that the immediate need for cellular service outweighed the possible anticompetitive effects of allowing wireline carriers to enter a market before non-wireline carriers. We concluded that the unsatisfied demand for two-way service is so great that most markets would be able to support two cellular systems and that any advantages stemming from early entry into the market would not be sufficiently serious to outweigh the nation's critical need for additional two-way service, particularly in view of the fact that our Order prohibited restrictions on the resale of cellular service.[31] At the same time, we also expressly provided that, where a non-wireline applicant can demonstrate that early entry by a wireline would not be in the public interest, we would consider

[28] The Commission's previous Order imposed this requirement on all wireline carriers. However, for the reasons discussed in paras. 44–46, *infra,* we have modified the requirement so that it applies only to AT&T.

[29] There are also a number of other distinctions between this present allocation and the one before the *NARUC* court, so that the concerns expressed by that court no longer seem present. See our previous order, at 486–487, n. 40, for a discussion of these.

[30] Thus, while the *NARUC* Court observed that "competitive factors may be properly considered by the Commission under the public interest, convenience, and necessity standard," it recognized that the "F.C.C. may not 'automatically equate the public interest with additional competition.' " 525 F. 2d at 626 n. 25 *(quoting Hawaiian Telephone Co.* v. *FCC,* 498 F. 2d 771, 777 (D.C. Cir. 1974)).

[31] This prohibition is significant with respect to the headstart issue because it permits non-wireline entities to enter the cellular market, in a limited role, even before they obtain any license to provide cellular service. Thus, any carrier can establish a presence in the market through resale as soon as the wireline carrier begins opeations, reducing the potential anticompetitive effects of early wireline entry.

a request for a "brief moratorium on wireline service." Order at 491, n. 57.

36. We believe our handling of the headstart issue in our Order to be correct. Accordingly, we affirm it today.[32] Petitioners' reliance on *Radio Relay, supra,* to support their proposal for a generic headstart rule is misplaced. In discussing the headstart question, the Court in *Radio Relay* expressly stated that "[b]efore making any such determination the Commission will weigh the likely competitive effects in the context of the specific and concrete market situation presented in each instance." 409 F. 2d at 327. Our Order takes this very approach. In addition, the *Radio Relay* court relied on the steps we had taken then to alleviate any possible competitive imbalance stemming from early entry. In particular, the court noted that the Commission had imposed certain conditions upon the ultimate granting of licenses to wireline carriers which were designed to obviate any advantages that may accrue from early entry and to equalize competition, including the requirement to make available to non-wireline carriers the same interconnection arrangements that they use themselves, and had warned that it would exercise its continuing regulatory authority to inquire into practices that might develop which appear to be unlawful, anticompetitive, or inimical to the public interest. 409 F. 2d at 327. In our Order we have taken similar steps. Thus, we believe that the headstart provisions in our Order serve the public interest and are in full accord with the approach set forth by the *Radio Relay* court.

37. *Bonduel Issue.* Various petitioners have also criticized the Commission's conclusion, set forth in n. 56 of the Order, not to apply the rule of *Bonduel Telephone Co. (Bonduel)* [33] to cellular carriers. Independent telephone companies complain that this provision, when combined with the separate allocation, effectively eliminates them from most major markets. At the same time, non-wirelines complain that it exacerbates headstart problems by insulating AT&T from any competition for wireline frequencies in most markets. Independent wireline companies suggest that we revise our rules to permit them to be eligible to apply for non-wireline frequencies in markets where they do not provide wireline service. Non-wireline petitioners oppose this position arguing that it would give wirelines "the best of both worlds" regarding the allocation. They suggest instead that the traditional *Bonduel* rule be applied, thus permitting any wireline company to apply for wireline frequencies in any market.

38. We continue to believe that the approach set forth in our previous Order, *i.e.,* limiting wireline companies to the wireline frequencies in the general area in which they operate as a landline carrier, is the best way to attain our goals of making cellular service available to the public as rapidly as feasible while still promoting competition to the extent possible.[34] We take this opportunity, however, to elaborate on our position on this issue. Where more than one wireline company is certificated in a Standard Metropolitan Statistical Area (SMSA), and those carriers desire to provide cellular service, we strongly urge them to reach mutually acceptable arrangements in order to avoid electrically mutually exclusive applications which require comparative hearings. For example, they might agree upon joint operation of one large system or coordinated operation of adjacent systems which cover the entire metropolitan area. Adoption of the approach proposed by non-wireline petitioners, whereby wireline carriers would be eligible to apply for a wireline frequency in any market regardless of where they provide local exchange service, would frustrate our goal of making cellular service rapidly available to the public because every frequency would be subject to multiple filings and attendant comparative hearing delays. As we noted above, we expect that wireline carriers will be able to more quickly make quality cellular service available to their communities. While some carriers may be interested in serving the more lucrative areas outside their general service areas, the benefits of introducing a new wireline carrier into a market do not appear so great as to outweigh the delay it would cause in bringing service to the public. A wireline carrier's first obligation is to its own general service area, and we encourage every carrier to concentrate on its own area. Moreover, every wireline carrier has been provided with an allocation in at least its own service area and the equitable arguments for allowing it to challenge other carriers are not substantial.

39. We also reject the suggestion of the wireline petitioners that they be permitted to apply for non-wireline frequencies in areas where they provide no local exchange service. Such a policy would run counter to the competitive objectives traditionally associated with a separate allocation, *i.e.,* to foster "the development of competing systems, techniques, and equipments." *General Mobile Radio,* 13 FCC at 1218. It would also offend fundamental notions of equity and fairness in that it would provide wireline carriers with the "best of both worlds", since they would have exclusive access to one frequency block in certain areas and would still be able to compete with non-wireline carriers for access to the other frequency block in all other areas. Finally, adoption of this approach would represent a substantial deviation from the Commission's long and consistently held policy strictly enforcing the rule of separate frequency allocation.

3. Structural Separation for Wireline Carriers

40. In the Order we required that all wireline carriers that provide cellular mobile service do so only through a separate corporate entity. Petitioners, including rural and other independent telephone companies, seek reconsideration of this separate subsidiary requirement.[35] Various arguments are advanced. First, petitioners contend that there is no rational basis for subjecting independent telephone companies to the separate subsidiary requirement. They contend that such a requirement is based on the unsupported hypothesis that all wireline carriers have the opportunity and inclination to engage in anticompetitive conduct. Specific note is made of the lack of an adequate cost/benefit analysis, particularly with respect to rural telephone companies,

[32] We do take this opportunity, however, to clarify the language contained in n. 57 regarding a possible "brief moratorium" on wireline service. First, any party requesting such a moratorium bears a heavy burden of demonstrating that such action would be in the public interest. In addition, should the public interest case be made to hold back initiation of any wireline cellular service, the moratorium imposed would be of limited duration, in no instance to exceed six months, in order to insure that the initiation of cellular service would not be unduly delayed.

[33] In *Bonduel Telephone Co.,* 68 FCC 2d 497 (1978), we permitted wireline companies to apply for wireline frequencies in any market, without regard to where they are doing business as a wireline. In our Order, at n. 56, we determined that in order to achieve our objective of rapid implementation of service, we would not apply the rule of *Bonduel* during the separate allocation period. Thus we stated that a wireline carrier would be eligible to apply only in "those general areas" in which it or an affiliate company is certified as a wireline carrier.

[34] We note that this limitation applies only for the duration of the separate allocation, *see* n. 24, *supra.* After the two year period, any party can apply for either frequency block in any market, except where the frequency block has been applied for during the term of the separate allocation. Also this limitation should be read in conjuction with our eligibility requirement for all carriers, wireline as well as non-wireline, included in paras. 62–63, *infra.*

[35] *See* petitions filed by REA, RTC, GTE, UTS, Centel, IT&T, Continental and USITA.

and the general failure to consider other, less burdensome, safeguards capable of providing adequate protection against perceived potential abuses.

41. Second, petitioners argue that the potential for anticompetitive conduct through either improper pricing or inadequate interconnection does not support imposition of a separate subsidiary requirement on wireline carriers. They argue that FCC concerns over improper pricing of cellular service do not constitute a legitimate basis for such action because cellular is a local exchange service and neither the service nor the price a carrier charges for it is subject to federal regulation. With respect to interconnection, petitioners argue that post-*Guardband* [36] interconnection experience has demonstrated that legitimate disputes over interconnection arrangements can be resolved without undue Commission intervention dictating separate subsidiaries.

42. Third, some petitioners state that imposing a separate subsidiary requirement on all wireline carriers is inconsistent with prior Commission precedent establishing wireline-nonwireline competition for mobile common carrier service without imposing a separate subsidiary requirement. In addition, it is argued that subjecting all wireline carriers to this requirement is inconsistent with the logic and thrust of the Commission's determinations in *Computer II, supra.* Finally, the waiver provisions included in the Order, at 495, are subject to criticism as being too vague to be meaningful.

43. Various non-wireline petitioners support the Order's requirement. Telocator, for example, contends that the potential dangers stemming from wireline participation are structural and unrelated to size and that post-*Guardband* experience does not dictate elimination of the separate subsidiary requirement. Metro Mobile submits that the separate subsidiary requirement is the minimum safeguard which the Commission should impose on independent telephone companies. Some petitioners complain that the separate subsidiary requirement does not extend far enough. In arguing for more stringent structural separation requirements, the contention is made that the separate rules should prohibit joint advertising and promotional efforts by a wireline carrier and its cellular affiliate, and should require that the parent and cellular subsidiary segregate real property holdings and antenna sites.

44. Based on our review of the petitions for reconsideration, we have determined, for the reasons discussed below, that § 22.901 (b) and (c) of the Commission's rules which impose separate subsidiary requirements on wireline carriers should be revised to apply only to AT&T. We are not persuaded as a general matter that the benefits stemming from this requirement outweigh the costs to the independent telephone companies associated with the separate subsidiary requirement, including the cost of additional personnel and the possible dis-economies resulting from separate transmission facilities Moreover, such costs may be prohibitive for some companies, thus reducing the number of potential competitors for cellular especially in rural areas.

45. The two areas of concern which the separate subsidiary requirement was designed to protect against are possible improper cross-subsidization and possible interconnection abuses. We will rely upon our formal complaint procedures to resolve any charges of cross-subsidization, and in particular predatory pricing, which may be forthcoming, and we have laid down strict requirements to assure fair and reasonable interconnection arrangements (see paras. 49–51, *infra*). If experience shows that these arrangements are insufficient we will consider more stringent measures, including imposition of a separate subsidiary requirement. Our action today eliminating the separate subsidiary requirement from wireline carriers other than AT&T is consistent with previous Commission action in the common carrier mobile radio service. As far back as 1949 this Commission has pursued separate wireline and non-wireline allocations for the purpose of stimulating competition between radio commom carriers and wireline carriers, including those carriers providing local exchange landline service in the same area where they propose mobile service, without any requirement that wireline carriers provide mobile service through a separate subsidiary.[37]

[36] In *Allocation of Frequencies (Guardband)*, 12 FCC 2d 431 (1968), *recon. denied*, 14 FCC 2d 269 (1968), *aff'd sub nom. Radio Relay Corp.* v. *FCC*, 409 F. 2d 322 (2nd Cir. 1969), the Commission imposed a requirement of equal interconnection.

[37] *General Mobile Radio Service*, 13 FCC 1190, *recon. denied*, 13 FCC 1242 (1949). The Commission reviewed this policy in 1963 and found that it has served the public interest well. *ITT Mobile Telephone, Inc.*, 1 RR2d 957 (1963). In 1968, the Commission also established a separate wireline, nonwireline allocation of frequencies, this time for one-way paging services. *Guardband, supra.* Again, the Commission did not require that wireline carriers establish any separate subsidiary to provide these services.

46. We recognize that our decision to retain the separate subsidiary requirement insofar as it applies to AT&T is, to a limited extent, a deviation from our policy on separate subsidiaries discussed above. However, we believe that in formulating a position on such an important issue it is more appropriate to examine how a given position will affect individual entities, particularly those parties which can be expected to play a major role in the service being considered, rather than to make a decision based only on a view of the industry as a whole.[38] In determining whether a particular carrier should be required to operate through a separate subsidiary, the decision must be based, to the extent possible, on how such a requirement will affect the likelihood that the carrier would otherwise engage in the practices that the requirement is designed to guard against and the ability of the carrier to withstand the costs associated with the requirement. Taking this focused approach, the Commission is left with little doubt that, because of its great size and historically dominant position in the American telecommunications industry, AT&T is in a unique position relative to other potential cellular carriers and that a structural separation for the provision of cellular service is an appropriate safeguard to protect the American public. In reaching this conclusion, considerable reliance has been placed on the vast resources available to AT&T. Those resources impact on our decision in two ways. First, they increase the need for a structural separation to detect, and deter, improper activities because more resources (including monopoly-based revenue) are available to subsidize cellular and because the sheer size and configuration of the resources make it more difficult to detect improper cross subsidization absent a structural separation. In addition, they demonstrate the ability of AT&T to more easily incur the costs of such a requirement without any appreciable negative effects. In this regard, not only does AT&T have the resources to meet any costs of separation, in absolute terms, but the costs of the requirement, measured in terms of economic inefficiency, decrease as the size of the firm increases.[39] Thus, we believe that in the case of AT&T the benefits of a separate subsidiary requirement outweigh the associated costs.[40] Accordingly, we are deleting the requirement that wireline carriers can provide cellular service only through a separate subsidiary except to the extent that it applies to AT&T.

4. Interconnection

47. LIN argues that the interconnection requirements adopted by the Commission leave virtually unlimited discretion in the hands of wireline carriers as to how, when and on what terms to make interconnection available. A number of petitioners argue that the Order's provisions regarding interconnection of cellular systems with local wireline systems are impermissably vague and are erroneously tied to the arrangements being provided to a wireline celluar subsidiary rather than the absolute needs of a celluar licensee. It is argued that the rules should require local wireline companies to provide interconnection on a basis no less favorable than that offered to a Class Five Office, but permit the cellular licensee to accept a less comprehensive arrangement if it so desires. In addition, some petitioners argue that a wireline carrier's post-construction system license should be delayed until all interconnection disputes between that carrier and a nonwireline cellular licensee are resolved. In opposition, AT&T states that the Order's interconnection provisions are appropriate because they provide needed flexibility in view of the uncertainty which exists as to how the different types of cellular systems may

[38] We took this same approach in *Computer II*. Upon reconsideration of our Final Decision in that proceeding a separate subsidiary requirement was imposed upon AT&T alone.

[39] This is because, as we noted in *Computer II*, *supra*, at 446, as a firm increases in size there is a corresponding increase in the flexibility necessary to effect the separation. A rigorous statement of the measure of inefficiency and of this result may be found in K. J. Arrow and F. H. Hahn, General Competitive Analysis, at 385ff., especially Theorum 10 at p. 399, citing R. Starr, "Quasi-Equilibria in Markets with Nonconvex Preferences," Econometrica (1969), and references therein.

[40] If, however, AT&T or any affiliated entity can demonstrate that in a particular situation unique factors exist which cause the benefits of a separate subsidiary to be outweighed by associated costs, we will entertain requests for a waiver of this provision. In this regard, the necessity for a separate subsidiary may be affected by whatever changes to the 1956 Consent Decree are ultimately accepted by the courts.

affect the desirability of a particular interconnection arrangement in a given situation.

48. In discussing interconnection in our Order we stated that we expect all telephone companies to furnish interconnection "upon terms no less favorable than those offered to cellular system of affiliated entities or independent telephone companies." Order at 496. Undue confusion may exist, however, as to the possible dilution of this objective because of our statement that "the particular arrangements involved in interconnection of a given cellular system should be negotiated among the carriers involved and be made subject to an intercarrier agreement." *Id.* Accordingly, we take this opportunity to state more precisely our position on interconnection.

49. Interconnection issues must be viewed within the context of the competitive environment we are attempting to foster for cellular services. After careful consideration we have adopted a two system per market spectrum allocation plan premised on facilities-based competition. In order to provide mobile services it is necessary to obtain interconnection to the local exchange facilities. In addition, effectuation of the public interest benefits flowing from competitive cellular systems requires that competing carriers be afforded equivalent access to the local exchange. It is imperative, therefore, that we establish parameters for reasonable cellular interconnection of cellular carriers. This is not to say, however, that it is necessary that we prescribe a particular form of interconnection. The reason for this is simply that in a dynamic technological environment such a prescription may impose arbitrary limits on cellular system design. Accordingly, our interconnection requirements, set forth below, are intended to provide competing carriers with equal access to the local exchange network while permitting the carriers involved to negotiate specific interconnection arrangements to accommodate differences in cellular system design.

50. First, we wish to emphasize that every wireline carrier has an obligation to provide reasonable interconnection to cellular systems, regardless of whether the wireline carrier seeks to provide cellular service itself. In addition, every non-wireline cellular licensee has the right to interconnect with the landline network in the identical manner as a wireline cellular system with comparable switching serving the same area.[41] To give practical effect to this right, and to insure that no unfair interconnection advantage is conferred on a wireline carrier in its provision of cellular radio services, we are modifying our application process to require that any wireline carrier applying for a cellular system in the area where it is also providing landline service set forth in its application exactly how its system will interconnect with the landline network. Moreover, the interconnection information contained in the application must be of sufficient specificity to enable a potential competitor to design its system to connect with the landline network in exactly the same fashion if the competitor so chooses. Failure to provide such information will constitute cause for denying the application. If a license is granted to a wireline carrier for a cellular system serving the same area as its landline system, the license will be conditioned on the carrier providing a competing cellular operator the option of obtaining interconnection in the manner set forth in its application. In addition, if a wireline carrier's application for a cellular system is not granted, a competing applicant is entitled to obtain interconnection in the same fashion as set forth in the wireline carrier's application.

51. In addition, where a non-wireline carrier seeks interconnection arrangements different from those specified in the application of a wireline carrier, the non-wireline applicant may negotiate other interconnection arrangements with the wireline carrier. This will assure that non-wireline carriers will not necessarily be locked into the specific interconnection arrangements requested by a wireline carrier. Thus, it provides the flexibility necessary in a dynamic technological environment such as cellular. At the same time, the right to identical interconnection arrangements discussed in the preceding paragraph provides non-wireline carriers with the assurance that they can obtain equal interconnection arrangements should the negotiations for different arrangements prove unfruitful.

5. Technology Sharing

52. In our Order we determined not to impose a special requirement upon AT&T to share cellular technology. LIN seeks reconsideration on this issue. It argues that refusal to require AT&T to share will only exacerbate the headstart problem already resulting from the separate allocation scheme and that required sharing of technology is justified because it has been financed by the telephone ratepayer. It is argued that such technology should be regarded as in the public domain and be available to the public with no further charges for a reasonable period of time. In addition, petitioners claim there are serious questions regarding whether any competitive service can ever be initiated so long as AT&T maintains control over the technology derived from its Chicago developmental program. In opposition, AT&T argues that it already shares a sufficient amount of its technology. In particular, AT&T notes that the 1956 Consent Decree requires AT&T to license its U.S. patents and certain other technical data to others. Finally, AT&T argues that imposition of a sharing requirement would have a chilling effect on cellular innovation because a company which is required to make available research and development findings to its competitors would have no incentive to expend further efforts in that direction.

53. Petitioners raise no new arguments to justify reconsideration of our previous determination not to require AT&T to share its cellular related technology. There is every indication that other suppliers will be marketing cellular systems. Although these parties are not now as knowledgeable as AT&T regarding cellular, particularly in terms of operational expertise, the marketplace is currently demonstrating that various domestic and foreign companies are actively pursuing the development of cellular systems. Thus, we attribute little merit to the concern that competition will not develop because of AT&T's alleged control over cellular technology. The general matter of technology sharing has been of concern to us. We are presently compiling a record on this matter in our *License Contract* proceeding, 84 FCC 2d 259 (1981). Moreover the recent settlement development between AT&T and the Department of Justice may have significant impact upon those deliberations. Such complex and far reaching issues should not and cannot be decided on the basis of the record we have compiled here. Accordingly, we affirm our prior determination.

6. Equipment

54. In our Order we determined that wireline subsidiary licensees should be permitted to supply and maintain subscriber equipment and to manufacture mobile as well as base station equipment. Order at 497–98. In

[41] Where the local landline telephone company doesn't apply for cellular service, we expect the landline company to provide nonwireline licensees with reasonable and appropriate interconnection, as negotiated between the parties.

addition, analogous to our action in *Computer II, supra,* we determined that mobile units used by the subscriber in conjunction with cellular mobile service may only be offered by a cellular licensee on a detariffed basis separate and apart from the provision of any common carrier service. Moreover, AT&T would be permitted to offer this terminal equipment only through a subsidiary separate from the subsidiary offering basic cellular transmission service.

55. These provisions were challenged on a number of bases. In arguing for a prohibition on the manufacture of subscriber units by wireline cellular carriers and their affiliates, petitioners contend that permitting such manufacture would allow AT&T to extend its dominance in the manufacturing area. In this regard, petitioners state that if wireline carriers are permitted to manufacture mobile units and base station equipment, dominant firms could inhibit competition in the equipment manufacturing marketplace by becoming cellular licensees in major urban areas and awarding equipment supply contracts exclusively or principally to their own manufacturing divisions. In opposition, AT&T argues that precluding licensees from manufacturing would deprive the public of the benefits of competition and provide unwarranted protection to non-licensee manufacturers. AT&T further argues that petitioners ignore the fact that it may offer mobile equipment only through a separate unregulated equipment subsidiary.

56. Two petitioners also express concern that the Order must be revised to assure the availability of subscriber equipment in various situations. Specifically, Mobilfone argues that it will be some time before the industry is capable of meeting the large demand for cellular mobile units on a truly competitive basis and that such a situation would limit any true cellular service competition. As a solution, Mobilfone recommends that a provision be added to the rule whereby, if any non-AT&T licensee or resale entity is unable to obtain sufficient subscriber units, and such a situation is due to large scale purchasing by AT&T, then all other entities will be allowed to participate on an equal basis in any volume purchasing arrangement negotiated by AT&T. NARUC also disagrees with the statement in our Order that "there is no reason to believe that consumers will have difficulty in obtaining mobile units." NARUC states that as cellular service becomes available in non-urban areas, there is a significant possibility that the only source for the necessary equipment may be the carrier offering service, and that in such circumstances tariffing the equipment may be necessary to protect consumers from unreasonable equipment charges. To alleviate this problem, NARUC requests that the Commission eliminate the provision in the Order that requires mobile equipment to be unbundled and detariffed and to leave the decision to tariff such equipment to the states, which have clear authority in the area under section 2(b) and 221(b) of the Act, 47 U.S.C. 152(b) and 221(b).

57. We affirm the provisions in the Order permitting cellular carriers and their affiliates to manufacture cellular equipment. As we stated in the Order, most of the arguments advocating a prohibition on the manufacture of cellular equipment focus on unsupported fears of either anticompetitive procurement practices by licensees or the ability of Western Electric to dominate the market. There is no reason to believe that there will not be significant competition and adequate availability of cellular mobile and base equipment.[42] A new market exists for this type of equipment and the regulatory structure we have established will result in a highly competitive market for this type of equipment. Various manufacturers have already demonstrated their eagerness in this regard. Motorola, E. F. Johnson, and Oki, for example, have already developed units that are being used in conjunction with AT&T's developmental system in Chicago. Even if AT&T should decide to compete in the provision of mobile units, a substantial period of time would elapse before AT&T would be in a position to market its own equipment. This is because AT&T has traditionally relied on other vendors to supply mobile units, and a significant amount of lead time is required to develop and gear up for manufacturing of mobile units. Moreover, whether AT&T markets its own mobile equipment or that of another vendor, we have made it clear that such equipment may not be provided through the telephone operating companies or any other AT&T entity that may ultimately be authorized to provide cellular service. Thus, AT&T must compete on the same terms as any other equipment vendor. Moreover, because the mobile unit has been separated from the common carrier offering, consumers will always have a choice of obtaining a mobile unit from another vendor in the competitive marketplace if any wireline carrier charges excessive prices.

58. On a more fundamental level, the overall public interest would be disserved by unduly restricting any domestic manufacturer from participating, on a competitive basis, in the manufacturing and marketing of cellular equipment. There are two major reasons for this. First, limiting entry in this area would provide unwarranted protection for other manufacturers and deprive the public of the benefits of competition in this area. Second, limiting participation by any domestic manufacturer merely increases the likelihood that foreign manufacturers will fill any voids that results in this sector of the economy. We fail to see how the public would be served by foreclosing any domestic entity from participating in the competitive provision of cellular equipment.

59. In addition, contrary to NARUC's assertions, this Commission has the authority to prohibit the tariffing of cellular mobile equipment as part of a common carrier communication service. Under our authority to allocate spectrum for common carrier services, we have delineated the parameters of the common carrier services to be provided by a cellular licensee, and have specifically determined that the provision of mobile units is not part of the common carrier service. Type-accepted mobile units can be provided in a competitive environment, and cellular licensees should not be hindered in their ability to compete in the provision of mobile units due to constraints imposed by state or federal regulation. Competition in the provision of mobile units is essential for the growth and development of cellular systems and the effectuation of our federal determination to encourage competition in this area. Preemption and preclusion of state regulation of mobile units is therefore warranted as a legitimate exercise of our authority. See *Telerent Leasing Corp.*, 45 FCC 2d 204 (1971), *aff'd sub nom., North Carolina Utilities Commission* v. *FCC*, 537 F. 2d 787 (4th Cir.), *cert. denied*, 434 U.S. 1010 (1978). See also 47 U.S.C. § 301. Moreover, our action in this regard is consistent with our determinations in *Computer II* to divorce terminal

[42] We note that applicants must indicate, with their application, the type of base station (but not mobile) equipment they propose to use. We also recognize that at the time applications are first acceptable for filing, much of the base station equipment proposed may not yet be type-accepted. We will, therefore, permit applicants to propose the use of base station equipment not yet type-accepted at the time applications are filed. We note, however, that all equipment, both base station and mobile, must be type-accepted prior to being put into service.

equipment from the provision of common carrier communications services.

C. General Policies and Standards

1. Acceptance, Processing and Evaluation of Applications

60. In our Order we devoted considerable attention to procedures for processing cellular applications in recognition that the adoption of appropriate procedures was critical to achieving our goal of making cellular service available to the public as rapidly as possible. We continue to believe that it is extremely important for us to ensure that our procedures are as efficient as possible without sacrificing due process for any potential applicant or superior service to the public. To this end, we have revised our filing procedures and further streamlined the selection process established in the Order. Processing alterations include changes of application filing procedures to eliminate "one-upsmanship" opportunities and to reduce the number of electrically mutually exclusive applications, changes in initial processing requirments to reduce delay, and the adoption of hearing procedures which rely heavily on written submissions and which provide for strict discovery limits. To the extent that we have not explicitly made changes here, or in our previous Order, the Commission intends that the Administrative Law Judge (ALJ) and parties continue to follow our ordinary hearing procedures, set forth in Sections 1.201 *et seq.* of the rules. Lastly, we affirm the basic and comparative selection criteria set forth in our previous Order.[43]

61. *Service Areas and Filing Procedures.* In the Order, at 509–10, under the heading "Regulatory Structure", we denominated the "cellular geographic service area (CGSA)" as the area which each applicant proposes to serve. We stipulated that an applicant could define its own CGSA but that it must, from the date of initiation of service onward, serve at least 75 percent of its CGSA.[44] We then discussed elective changes within the CGSA, mutual exclusivity, procedural dates and format of applications. Upon reconsideration, we have decided to make several significant changes in this portion of the Order to facilitate the orderly and expeditious processing of cellular applications.

62. First, we have decided to describe the maximum CGSA an applicant may propose by reference to Standard Metropolitan Statistical Areas (SMSAs) (and combinations as set forth in para. 64, below), thereby limiting somewhat the unfettered discretion of applicants to define their own CGSAs. While we are reluctant to interfere in any way with an applicant's discretion to frame its proposal in response to its perception of the market, there are compelling reasons for doing so here. An SMSA-based service area relieves us of having to compare applications representing different territorial configurations covering different major urban areas. There may be competing applications for the non-wireline allocation within an SMSA, but there will be no significant overlap between adjacent service areas to engender additional cases of electrical mutual exclusivity. It is not farfetched that, absent such a provision, a series of applications in the Northeast Corridor could overlap to such a degree as to dictate a large comparative hearing with thirty or forty applicants arguing over the scope of their CGSAs. We do not want that to occur.

63. That is not to say that a CGSA may not extend beyond the boundaries of an SMSA:[45] It may, but the extensions must be *de minimis* and must not include area within another "central" SMSA (or SMSA combination).[46] If a carrier wishes to operate more than minimally beyond the boundaries of an SMSA, it must file separate applications according to the procedures established below. Our purpose here is to avoid the case in which a carrier would apply in an SMSA and the adjacent area outside the SMSA only to precipitate a mutually exclusive filing from a second carrier which had an interest in the non-SMSA area in issue but not in the SMSA area. Where there are boundary disagreements among carriers proposing service in neighboring SMSAs, we strongly encourage voluntary resolutions between the concerned carriers. Since we view service beyond the SMSA as ancillary and not material to the resolution of the critical licensing questions, we do not consider such service to be of decisional significance in awarding a license. In that vein, any boundary disputes not resolved by the carriers will be resolved by our staff based on written pleadings and technical information.

64. Second, in our Order we said that cellular applicants should follow the public notice and cut-off periods generally applicable to mobile services under Part 22 of our Rules. 86 FCC 2d at 510. However, after further reflection, we have decided to make special provision for cellular applications in the top 30 SMSAs in order to avoid unnecessary processing delays that might result from inundating the agency with a large number of applications filed at the same time. We have scheduled the receipt of applications on the basis of SMSA size because of evidence that the largest SMSAs are those that now suffer the most from mobile service congestion.[47] Accordingly, we will accept applications for the 30 largest SMSAs (and combinations), listed below, on the 90th day after publication of this Order in the **Federal Register.** After an interval of 90 days (*i.e.,* on the 180th day after **Federal Register** publication), we will begin accepting applications for all other SMSAs and non-SMSA communities. In some cases,

[43] These criteria are discussed in our previous Order at 501–503. We believe it appropriate, however, to further clarify our position regarding financial qualifications. As we noted in the Order, at 501–02, applicants must demonstrate that they are financially qualified to construct their proposed facilities and to operate them for a reasonable period of time. One year is a reasonable period of time for purposes of demonstrating financial qualifications because cellular operations may generate a negative cash flow for at least the first year. We also believe it appropriate to note that, where an applicant has applied for cellular facilities in more than one market, each application must contain a demonstration that the applicant has funds avail[illegible] to construct and operate for a reasonabl[illegible]od of time the facilities proposed therein, fu[illegible]ich are not committed for a different [illegible] system or any other project.

[44] We will clarify this requirement somewhat: an operator may phase in service once its initial facility is in place, but it must serve 75 percent of its CGSA within three years of the effective date of its construction permit.

[45] Boundaries are central cities and counties except in New England where cities and towns, rather than counties, provide the boundaries.

[46] The OGSA may extend into a non-SMSA area or into a "secondary" SMSA, as defined by the Bureau of Economic Analysis of the U.S. Department of Commerce.

[47] While the record in this proceeding portrays a critical shortage of mobile frequencies in the larger metropolitan areas, it is difficult to ascertain which cities have the most dire needs and should therefore receive earlier processing. This is particularly true because cellular is a new form of mobile service offering significantly higher quality service than that now available. However, we note that, in general, demand for mobile communication service is a function of several geographic and demographic factors, not to mention the business practices and efficiency of the carriers providing service. For example, New York, the most populous SMSA, has the third greatest number of mobile units but rankstwenty-ninth in ratio of mobile units to population. On the other hand, Los Angeles, the second-ranking SMSA, has the most mobile units and ranks ninth in ratio of units to population. Thus, the shortage seems far less critical in Los Angeles than in New York. The difference may be attributable to the number of automobiles, population density, population characteristics (including life-style), or simply the much greater area of the Los Angeles SMSA. The record does not reveal the answer. But the record does reveal a negative correlation between SMSA population and mobile units per unit of population (see e.g., Comments of Telocator, filed May 2, 1980). On that basis, we will consider the top thirty SMSAs first.

we have applied judgment to group two or more SMSAS together or to add portions of secondary SMSAs to central SMSAs. This, we believe will result in service areas more closely aligned with actual mobile service marketing areas. The following is a list of the 30 largest SMSAs as modified for purposes of cellular processing:

"Modified SMSAs" [48]

1. New York, NY/Nassau-Suffork, NY/Newark, Jersey City and Paterson-Clifton-Passaic, NJ
2. Los Angeles-Long Beach/Anaheim-Santa Ana-Garden Grove/Riverside-San Bernardino-Ontario, CA
3. Chicago, IL
4. Philadelphia, PA
5. Detroit/Ann Arbor, MI
6. Boston-Lowell-Brockton-Lawrence-Haverhill, MA–NH
7. San Francisco-Oakland, CA
8. Washington, DC–MD–VA
9. Dallas-Fort Worth, TX
10. Houston, TX
11. St. Louis, MO–IL
12. Miami/Fort Lauderdale-Hollywood, FL
13. Pittsburgh, PA
14. Baltimore, MD
15. Minneapolis-St. Paul, MN–WI
16. Cleveland, OH
17. Atlanta, GA
18. San Diego, CA
19. Denver-Boulder, CO
20. Seattle-Everett, WA
21. Milwaukee, WI
22. Tampa-St. Petersburg, FL
23. Cincinnati, OH–KY–IN
24. Kansas City, MO–KS
25. Buffalo, NY
26. Phoenix, AZ
27. San Jose, CA
28. Indianapolis, IN
29. New Orleans, LA
30. Portland, OR–WA

65. All applications, both wireline and non-wireline, for the 30 largest modified SMSAs will fall due on a date certain as specified above. Applications will be accepted for these markets after the date certain only if one, or both, frequency blocks is not applied for on that date. In the unlikely event that this occurs, we will accept applications for the frequency blocks not previously requested any time thereafter, but they will be subject to the notice and cut-off procedures applicable to market areas other than the top 30 modified SMSAs. There will be no bar to the number of SMSAs for which an applicant may seek a license, but an applicant must submit a separate application for each modified SMSA it desires to serve. While some applicants may wish to propose regional systems covering two or more modified SMSAs, we cannot make provision for such proposals and still maintain our program for orderly, expeditious processing.[49] We want all participants to file applications which represent their best view of a service plan for the named SMSA. To do so, we do not find it necessary for participants to consult the plans of their potential competitors. Setting up a plan which would allow applicants to revise their filings after viewing the applications of others would encourage applicants to engage in "one-upsmanship," which has harmful consequences.[50] This would undermine our ability to compare proposals with some measure of confidence that the applicant had participated in its development. Plans based on another proposal would no longer represent the applicants' best idea of how to serve a given area but would, instead, represent applicants' use of the administrative process to obtain an advantage over competitors. Furthermore, allowing opportunity for one-upsmanship would needlessly encumber an administrative process which we must streamline to its essentials if the American public is to receive cellular service without unnecessary delay.

66. We will follow this procedure for acceptance of applications for only the top thirty modified SMSAs. We find a particular need for prompt service to these population centers and, therefore, a resulting need for special processing measures. Beginning ninety days after the date for receipt of all applications for the top thirty modified SMSAs, we will accept applications for any other service area following ordinarily applicable mobile services notice and cut-off procedures.[51] Staggering of the schedule for receipt of applications should reduce the time between receipt of applications and actual processing by Commission staff. Thus, it should provide for applications being more "fresh" at the time of processing and reduce the need for amendments. It should also permit the more orderly processing of all applications and avoid unnecessary processing delays that might result from inundating the agency with a large number of applications filed at the same time.

67. The Commission's establishment of a firm filing date for applications here, though a concededly different procedure from cut-off rules followed by the Commission in the past, is well within its prerogatives as an administrative agency. The Court in *Ashbacker, supra,* recognized that this Commission could establish dates for the filing of conflicting applications. 326 U.S. 327, 333 n.9 (1945). This Commission can be flexible in establishing these "housekeeping" rules. *Century Broadcasting Corp.* v. *FCC,* 310 F. 2d 864, 867 (D.C. Cir. 1962). The rule treats all prospective applicants equally and fairly by giving them substantial advance notice of due dates for their applications. Therefore, it accords with judicial precedent requiring that the Commission establish cut-off dates so as to "fairly advise prospective applicants of what is being cut-off by the notice." *Ridge Radio Corp.* v. *FCC,* 292 F. 2d 770, 773 (D.C. Cir. 1961).

68. *Accelerated Processing.* It is most important that we avoid undue delay in awarding cellular licenses without sacrificing fairness and procedural due process in our comparative consideration. We are well aware that in most cities there will be more applicants than there are frequency blocks available and it is important to identify the best applicants rapidly so that service may be initiated as soon as possible. Accordingly, we are adopting special procedures for processing cellular applications which apply to the top 30 and all other communities, respectively, as detailed below. To the extent that any situations arise which are *not* covered by these procedures, the administrative law judge and the parties will be guided by our rules of practice. Any existing rule which conflicts with those set out below is hereby waived.

69. First, and perhaps most important, during the term of the separate allocation all applicants for the non-wireline allocation in the top 30 modified SMSAs must submit their affirmative direct cases *with* their applications.[52] Minor or technical amendments and amendments required by § 1.65 of the rules, but no major

[48] SMSA information is derived from Office of Management and Budget, Standard Metropolitan Statistical Areas (revised edition 1975) (population based on estimates of July 1, 1978).

[49] Applicants are free to argue the public benefits of regional systems in the hearings, but we do not anticipate giving any particular weight to regional proposals based on our provisions for nationwide compatibility and universal interconnection with the MTS network.

[50] *See* Zip-Call and Telocator Petitions for Reconsideration which both decry the practice of applicants attempting to gain competitive advantages by "out-doing" earlier applicants.

[51] We note, however, that where an applicant files for a particular market during the term of our separate allocation, other applicants not then eligible for a particular frequency block will not become eligible for it merely because the day cut-off period (where applicable) extends beyond the terms of the allocation. *See* n. 24, *supra.*

[52] In most instances the wireline allocation, and the non-wireline allocation in areas other than the top 30 modified SMSAs, will not be contested. Therefore, it is not necessary to require parties applying for these allocations to submit direct cases with their applications. In the event that mutually exclusive applications are filed for these allocations, all competing applicants must file their affirmative direct cases within 30 days of the date of the Public Notice announcing the mutually exclusive filings.

amendments, may be proffered for good cause until the designation order is published. After that, all amendments, corrections and other changes can be made only by leave of the presiding judge. The affirmative direct case provided with the application shall include all the documentary evidence upon which the applicant intends to rely in a comparative hearing. Each exhibit should be numbered and should include the sponsoring witness affidavit. *Five* copies of exhibits must be filed with each application: two to accompany the original and duplicate applications, two for the Office of Administrative Law Judges, and one for the Common Carrier Bureau's Separated Trial Staff. The burden will be on each applicant to obtain copies of its mutually exclusive opponent's exhibits in a timely manner, either from the opponent or by duplicating the Commission's copies. We expect all parties to cooperate in making available materials to each other upon request. We recognize that in a few cases only one carrier may apply and the exhibit material will be more extensive than necessary. However, we believe that, on balance, this cost is more than justified by the speed this provision will add to our comparative hearing procedure.

70. As soon as possible after filing, acceptable applications for both the wireline and non-wireline allocations will be placed on Public Notice.[53] Interested persons will then have thirty days to submit petitions to deny.[54] Applicants will have fifteen days to file replies; no further pleadings will be accepted. If there is only one application, it comports with the public interest and there are no unresolved, substantial and material questions of fact, the Common Carrier Bureau will grant the application and issue a construction permit.[55] If there are two or more acceptable applications in an SMSA, the Bureau will designate them for hearing to ascertain relative merit. In addition, if there *are* unresolved, substantial and material questions of fact,[56] the Bureau will designate the application(s) for a hearing only on the specific question(s) which remain unresolved. To the extent possible, the Bureau will resolve issues raised in petitions to deny in its hearing designation order.

71. The hearing designation order will specify that the following procedures be applied. *Ten* days after **Federal Register** publication, all notices of appearance must be filed with the Commission. *Thirty* days after **Federal Register** publication (April 8, 1982) all written rebuttal cases must be filed with five copies to the Commission and a copy to each other party to the hearing. The presiding officer will schedule a first hearing session as soon as practicable after the date for filing rebuttal evidence. This first session will be an evidentiary admission session at which each applicant will identify and offer its previously circulated direct and rebuttal exhibits, and each opponent and the Separated Trial Staff will have a chance to lodge any objections.[57] After accepting the exhibits into evidence, the judge will entertain any motions to cross-examine and will rule whether any sponsoring witness needs to be produced for cross-examination. Determination of what, if any, cross-examination is necessary is within the sound judicial discretion of the judge,[58] the prevailing standard being whether the person requesting cross-examination has persuasively demonstrated that written evidence is ineffectual to develop proof.[59] If cross-examination is necessary, the presiding judge will specify a date for the appearance of all witnesses. In addition, if the designation order points out an area where additional underlying data is needed, the judge will have the authority to permit the limited use of discovery procedures. Finally, the presiding officer may find that certain additional testimony or cross-examination is needed to provide a complete record for the Commission. If so, the judge may schedule a further session; but we urge the judge to do so as expeditiously and efficiently as possible.

72. After the hearing record is closed, the judge may request Proposed Findings of Fact and Conclusions of Law to be filed within *thirty* days of the final hearing session. Replies should not be permitted except in unusual cases and then only with respect to the specific issues named by the judge. The judge will then issue an Initial Decision, preferably within sixty days of receipt of the last pleadings. If mutually exclusive applications, as opposed to petitioned applications, are before the judge, the judge will determine which applicant is most qualified for the SMSA at issue. The judge may also rank the applicants in order of merit if there are more than two. Parties will have thirty days in which to file exceptions to the Initial Decision. As in our Previous Order, at 513, we delegate to the Common Carrier Bureau authority to determine, at the time of designation for hearing, that such exceptions will be taken directly to the Commission, rather than to the Review Board.[60]

73. These procedures will work essentially the same way for markets below the top 30 SMSAs. The first application will establish the cut-off date for the service area proposed (as provided for under § 22.31 of our rules). All competing applicants must file their affirmative direct cases within 30 days of the date of the Public Notice announcing the mutually exclusive filings. The procedures for hearing designation, rebuttal submissions, and other matters, will be the same as described above.[61]

74. Our decision to adopt these new streamlined hearing procedures for cellular applicants is based on our weighing of difficult issues of public policy, administrative efficiency and due

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[53] Any applications that are not acceptable for filing under § 22.31 of our Rules at the time of filing will be returned and will not be entitled to further consideration. The Commission also reserves the right to return any application listed on public notice if, upon further examination, it is found to be defective and not in conformance with the Commission's rules. *Cf. Ranger* v. *FCC*, 294 F.2d 240 (D.C. Cir. 1961).

[54] We caution interested persons against filing spurious petitions to deny solely to delay entry by wireline carriers. Such pleadings constitute abuse of the Commission's process and will be dealt with as such.

[55] Construction permits will be issued in duration of three years. To the extent that other provisions of our Rules are inconsistent, particularly § 22.43, we waive those other provisions.

[56] *See* 47 U.S.C. 309(d)(2); and *United States* v. *FCC*, No. 77-1249 slip op. at 34 (March 7, 1980). The Commission, of course, also has the option of requesting additional information rather than designating an issue for hearing under Section 308 of the Act. *See* 47 U.S.C. 308 (1970); *Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*, 595 F.2d 621 (D.C. Cir. 1978).

[57] This is merely a formal presentation of materials previously submitted with the application or in response to the designation order.

[58] *NLRB* v. *Miami Coca-Cola Bottling Co.*, 360 F.2d 569, 577 (5th Cir. 1966); *See* also *Ashworth Transfer, Inc.* v. *United States*, 315 F. Supp. 199, 203 (D.C. Utah 1970).

[59] *American Public Gas Ass'n.* v. *FCC*, 498 F.2d 718, 723 (D.C. Cir. 1974). Petitioners seeking oral proceedings must provide specific reasons for the necessity of an oral hearing, any necessity for cross-examination, any importance of witness credibility, or any evidence that could only be presented orally. *RCA Global Communications, Inc.* v. *FCC*, 559 F.2d 881, *rehearing in part*, 563 F.2d 1 (2nd Cir. 1977).

[60] Any interlocutory appeals as of right must be taken to the Review Board under our Rules.

[61] We do, however, provide one exception to our policy against major amendments. Any mutually exclusive applicant applying for a non-SMSA market area may enlarge its proposed CGSA to approximate or coincide with the CGSA proposed by any other mutually exclusive applicant without such modification being treated as a major amendment. We make this exception in order to discourage the "one upmanship" discussed in para. 69, *supra*, by taking away any incentive that mutually exclusive applicants would otherwise have to propose a CGSA slightly larger than proposed by earlier filed applicants only to gain a comparative preference. It is not necessary that we make this exception applicable to applications filed for SMSA markets discussed above. Because the SMSA boundary provides an outer limit for comparison of CGSA size.

process. We expect cellular to become an important communications tool, the extensive use of which can be of significant benefit to the American economy and to the more general public interest, and we are accordingly anxious to have it implemented as quickly as possible. We have not been able to devote this kind of attention and equivalent resources to rigidly structure the comparative hearing process for other mobile services, and as a result they have experienced unavoidable delays. Regardless of how efficiently we try to conduct our proceedings, it is predictable, given the high stakes involved here, that parties will be extremely active in protecting their perceived interests and that issues, both procedural and substantive, will arise which might lead to delay unless resources and attention are devoted to resolving them quickly. We believe that cellular is important enough to the public interest to warrant special attention to avoid delays.

75. We have broad authority to structure our hearing process in the fashion best designed to resolve the issue at hand. There is little question that "the nature of the 'full hearing' required by Section 309(e) [of the Communications Act] turns on the type of factual questions raised." *United States of America* v. *FCC*, No. 77–1249, slip op. at 38 (D.C. Cir. 1980) (quoting brief submitted by United States Department of Justice). Thus, streamlined proceedings are fully acceptable under Section 309 of the Act if they are properly designed to elicit all evidence necessary to resolve the issues at hand.

76. Provision has been made for such oral proceedings as may be required for a full and true disclosure of the facts. Therefore, the hearing procedures adopted here are in full compliance with Section 309 of the Communications Act and the Administrative Procedure Act. See J. K. Davis, III ADMINISTRATIVE LAW TREATISE § 144 at p. 23 (2d ed. 1980)

2. Federal-State Jurisdiction

77. In our Order we addressed the question of possible conflicts between state regulation and our policy of introducing cellular service in a competitive environment without significant delay. We concluded that in certain areas, specifically technical standards and competitive market structure, assertion of federal primacy was necessary to achieve our desired goals. Order at 504–505. Federal primacy over technical standards was considered necessary to ensure that the 40 MHz of radio spectrum allocated for cellular service is used effectively and efficiently. Similarly, state franchising regulations requiring demonstration of public need for cellular service were deemed inappropriate because they could adversely affect our frequency allocation scheme or delay the nationwide implementation and utility of cellular service. Beyond this, however, we recognized the states' interest in continuing their complementary role in the regulation of cellular service. However, we did not require cellular applicants to secure state certification prior to applying for a construction permit with this Commission.[62]

78. We have received a number of petitions requesting that we reconsider our position on federal-state jurisdiction. Several petitioners argue that the Order is impermissably vague on this issue. Others argue that we should totally preempt state certification, while still others argue that the role of the states should be strengthened by requiring cellular applicants to obtain state certification prior to the time of applying. Those advocating a prior state certification requirement argue that, in effect, the Order's allocation of spectrum to carriers already operating landline facilities amounts to imposing a prior state certification requirement on wireline carriers, and that equity demands that a similar requirement be placed on non-wireline carriers. They also contend that requiring prior state certification would negate the possibility of a conflict between the selection of candidates at the federal and state levels. In those states with exclusive franchising arrangements, it is further argued that prior state certification would eliminate the need for any comparative hearing at the federal level.

79. Those parties that urge a total preemption of state certification, on the other hand, argue that state certification of cellular applicants would create a chilling effect on potential entrants by erecting a barrier to entry and would delay the offering of cellular service by non-wireline carriers due to the time involved in obtaining state certification. In addition, they argue that state certification would not significantly assist the federal selection process because, except where states franchise on an exclusive basis, comparative hearings at the federal level would still be needed. Moreover it is argued that a state certification requirement is undesirable because it would result in an automatic limitation on entry in those states with exclusive franchising arrangements.

80. The concerns raised on reconsideration warrant that we state with greater specificity the extent to which we are preempting state regulation of cellular systems. We address below three separate aspects of the preemption issue: technical standards, market structure, and state certification.

81. We affirm our preemption over the technical standards for cellular systems. We continue to regard this as being essential to the "assurance of compatible operation of equipment on both local and national levels." Order at 505. We have carefully developed the technical requirements essential for efficient spectrum reuse and nationwide compatibility, while providing sufficient flexibility to accommodate new technological innovations. It is imperative that no additional requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service.

82. We are also preempting the states with respect to the market structure we have established for cellular services. Based on voluminous pleadings, we have made a finding that there is an immediate need for cellular service, that cellular systems require 20 MHz to ensure efficient frequency reuse, and that the public will best be served by providing for up to two cellular systems per market. This is a new service which we desire to make available in all localities, irrespective of what other mobile services are currently offered or able to be offered, in order to achieve nationwide compatibility. More specifically, we have already determined "need" on a nationwide basis and have preempted the states from denying state certification based on the number of existing carriers in the market or the capacity of existing carriers to handle the demand for mobile services. We are making available a substantial amount of scarce frequency for cellular service, and intend that this frequency be used effectively and efficiently. Any state franchising regulations requiring demonstration of general public need could adversely affect our frequency allocation scheme by allowing a frequency block to go unused or unduly

[62] As provided in the Order, cellular facilities shall be constructed and ready for operation within 36 months of the date of a construction permit. Applicants must request a covering license during this period. A licensee must have all requisite State authority, and be in operation, within 240 days of the date of the grant of the covering license or the license will automatically expire and must be submitted for cancellation. *See* 47 CFR 22.13(f)(2).

delaying the implementation of cellular service. Order at 505.

83. Finally, where states wish to examine the qualifications of individual applicants to serve as common carriers, we see no overriding public interest in requiring this certification process to occur prior to an applicant filing with us. Because state certification proceedings can extend well beyond the time in which an applicant must file with us, the practical result of a prior state certification requirement would be to exclude arbitrarily many potential applicants, notwithstanding that they would have qualified for state certification had they had sufficient time. While we recognize that this approach would avoid or limit the filing of mutually exclusive applications in many instances, we are unwilling to exclude newcomers for this reason alone. This is particularly so given our revised procedures for processing mutually exclusive applications which we view as adequately meeting our concerns of implementing cellular service on a timely basis.

84. As we stated in our previous Order, at 503–505, Title III of the Communications Act of 1934, as amended, provides us with adequate authority to assert federal primacy to the extent set forth above. In addition, the federal plan for the provision of cellular service set forth in our Order, principally the goal of introducing nationwide compatible cellular service without undue delay, and the fact that cellular systems are to be interconnected with the public landline telephone network and capable of providing interstate as well as intrastate communications, provides a further basis for this Commission asserting federal primacy over licensing of cellular facilities.[63] Our assertion of federal primacy focuses on entry qualifications and in accordance with sections 2(b) and 221(b) of the Act, reserves to the states jurisdiction with respect to charges, classifications, practices, services, facilities or regulations for service by licensed carriers.[64]

3. Services

85. In discussing the types of services which could be provided over cellular systems, the Order holds that there will be no prohibition on the provision of dispatch service by cellular carriers.[65] Our position is consistent with Docket No. 18262 where we concluded that if cellular could, through natural economies, provide lower-priced dispatch services the public should not be denied such a benefit. *Second Report and Order, supra*, at 761. In addition, we noted that although it is speculative whether cellular systems would be cost competitive with private systems, especially for large users, it is likely that for some users a cellular system might provide dispatch services at comparable quality and price, and that a cellular system would be able to provide dispatch users with the benefit of interconnected service over the public telephone network.

86. Motorola, in its comments in this proceeding and in its petition for reconsideration, is the chief advocate of a prohibition on the offering of dispatch service over cellular systems. Motorola argues that a combined mobile telephone/dispatch service system is less efficient than separate systems. Motorola also contends that the Commission's Order permitting dispatch service failed adequately to consider the anticompetitive impact of allowing AT&T to offer dispatch service and ignored the fact that AT&T is prohibited from offering such service by the terms of the 1956 Western Electric Consent Decree. In opposition, AT&T states that the consent decree does not foreclose the offering of dispatch service as part of AT&T's cellular service. It contends that Motorola's arguments reflect its interest in retaining its historically dominant position in the private dispatch market and that Motorola is wrong in its assertion that separate dispatch systems would be more efficient than combined ones.

87. We are not foreclosing the provision of dispatch service over cellular systems. No information has been provided to cause us to change either the conclusion or the rationale set forth in our Order with respect to this issue. As we concluded in the Order, if cellular systems can provide lower priced dispatch services, we see no reason to deny the public that benefit. In addition, despite Motorola's claims to the contrary, we remain unconvinced that a combined dispatch/mobile telephone system is necessarily less efficient than separate systems. Further, as we understand it, general dispatch operations on a cellular system are no less efficient in frequency utilization than other cellular calls. Even assuming a minor difference in efficiency exists, it has not been demonstrated that any such difference warrants us banning dispatch offerings over cellular systems and denying the public access to the advantages of combined dispatch/mobile telephone service. Moreover, as indicated above, the consent decree permits AT&T to engage in the provision of common carrier communications services the charges for which are subject to public regulation.[66] Thus, we do not view the consent decree as foreclosing AT&T from providing dispatch service over a cellular system that it is licensed to operate.

III. Conclusion

88. Careful consideration has been given to the petitions for reconsideration. We have affirmed our overall allocation plan and associated technical standards and our separate allocation for wireline carriers. We have also affirmed our competitive market structure which allows for competition among cellular systems. However, we have eliminated the separate subsidiary requirement for wireline carriers, except in the case of AT&T. An attempt has also been made to facilitate expedition of the comparative hearing process and to focus attention initially on those geographic areas where public demand is greatest.[67]

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[63] *See Telerent Leasing Corp.*, 45 FCC 2d 204 (1971), *aff'd sub nom. North Carolina Utilities Commission* v. *FCC*, 537 F. 2d 787 (4 Cir. cert. den. 429 U.S. 1027 (1976). *See* also *California* v. *FCC*, 567 F. 2d 84 (D.C. Cir.), cert. denied, 434 U.S. 1010 (1978).

[64] In this regard, we note that, consistent with our decision in *Computer II, supra*, states have authority to require cellular operators to provide this service only through a separate subsidiary, subject to whatever reasonable restrictions the states deem appropriate, in order to effectively perform their duties regarding the economic regulation of cellular operators.

[65] Order at *512. See* n. 17, *supra*, for a definition of dispatch service. The Order further provides, at 512–513, that fleet-call dispatch service, which is a variety of dispatch service in which a dispatcher is able to establish simultaneous communications with multiple mobile units, is to be addressed in a *Further Notice of Proposed Rulemaking*. We also note that neither the Order nor the Notice initiating this proceeding specifically addressed the question of whether paging service could be offered over cellular systems. As a result, we have not yet received the benefit of public comment on the issue and, because a primary objective throughout this proceeding has been to relieve the great and pressing need for two-way mobile communications, we believe it would be inappropriate to permit this spectrum to also be used to provide paging service, even on an interim basis, until the effect of that service on the capability of spectrum allocated for cellular service to meet its primary objective has been adequately assessed. Accordingly, we will seek public comment on this issue by including it in the *Further Notice of Proposed Rulemaking* regarding fleetcall dispatch service and, pending resolution of that proceeding, we will prohibit cellular systems from offering paging service.

[66] *See* paras. *22–23, supra* for a discussion of the affect of the 1956 Consent Decree, and the recently proposed modification of it, on AT&T's ability to offer cellular service, including dispatch.

[67] We have amended the rules, in Appendix B, to incorporate these changes. We have also made some minor editorial changes to the Rules. In particular, § 22.903(a) is revised to require applicants to draw proposed CGSA's on one or

Continued

89. This proceeding has focused on the pressing need to bring the benefits of cellular service to the public as expeditiously as possible while still providing for some degree of competition. We believe that, on balance, the approach we have set forth represents the best means of accomplishing these competing, and indeed sometimes conflicting, public interest goals. Having made this decision, it is now incumbent upon us to ensure that the regulatory process itself does not unduly delay the public from receiving the benefits of cellular mobile radio service.

IV. Ordering Clauses

90. Accordingly, it is ordered, that the petitions for reconsideration and clarification are granted to the extent set forth herein, and are otherwise denied.

91. It is further ordered, that the Motion to Reopen Proceedings filed by Industrial Communications Systems, Inc., is denied.

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

93. It is further ordered, pursuant to 47 U.S.C. 154(i), 301 and 303(r), that Title 47 of the Code of Federal Regulations is amended as set forth in Appendix B. These amendments shall become effective April 8, 1982.

94. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Parties Filing in Response to Our Report and Order

Petitions for Reconsideration

Central Telephone and Utilities Corporation (Central)
Communications Industries, Inc. (CI)
Continental Telephone Corporation (Continental)
GTE Service Corporation (GTE)
Industrial Communications Systems, Inc. (Industrial)
LIN Broadcasting Corporation (LIN)
Lincoln Telephone and Telegraph Company (Lincoln)
Metro Mobile Communications, Inc. (Metro Mobile)
Millicom, Incorporated (Millicom)
Mobilfone Service, Inc. (Mobilfone)
Motorola, Inc. (Motorola)
National Aeronautics and Space Administration (NASA)
Radiofone, Inc. (Radiofone)
Rogers Radio Communications Services, Inc. (Rogers)
Rural Electrification Administration (REA)
Rural Telephone Coalition (RTC)
Southern Pacific Communications Company (Southern Pacific)
Telocator Network of America (Telocator)
United Communications Systems, Inc. (UCS)
United States Department of Justice (Justice)
United States Independent Telephone Association (USITA)
United Telephone System, Inc. (UTS)
Zip-Call, Inc. (Zip-Call)

Petitions for Clarification

Gencom Incorporated (Gencom)
National Association of Regulatory Utility Commissions (NARUC)

Opposition Pleadings

American Telephone and Telegraph Company (AT&T)
Communications Industries, Inc.
GTE Service Corporation
Industrial Communications Systems, Inc.
Kokusai Electric Company of America (Kokusai)
LIN Broadcasting Corporation
Lincoln Telephone and Telegraph Company
Maximum Service Telecasters, Inc.
Metro Mobile Communications, Inc.
Millicom, Incorporated
National Association of Regulatory Utility Commissions
Telocator Network of America
United States Independent Telephone Association

Reply Pleadings

American Telephone and Telegraph Company
Communications Industries, Inc.
Industrial Communications Systems, Inc.
LIN Broadcasting Corporation
Metro Mobile Communications, Inc.
Millicom, Incorporated
Motorola, Inc.
National Aeronautics and Space Administration
National Association of Regulatory Utility Commissions
Southern Pacific Communications Corporation
Telocator Network of America
United Communications Systems, Inc.
United States Independent Telephone Association

Appendix B

PART 22—PUBLIC MOBILE RADIO SERVICES

Title 47, Part 22 of the Code of Federal Regulations is amended as follows:

1. In § 22.31, paragraph (a)(1) is revised to read as follows:

§ 22.31 Mutually exclusive applications.

(a) * * *

(1) In the Domestic Public Cellular Radio Telecommunications Service, applications shall be considered mutually exclusive if their proposed Cellular Geographic Service Areas overlap.

* * * * *

2. Section 22.901 is revised to read as follows:

§ 22.901 Eligibility.

(a) Authorizations for Cellular Systems to be operated in the Domestic Public Cellular Radio Telecommunications Service will be issued to existing and proposed communications common carriers. Applications will be granted only in cases where it is shown that the applicant is legally, financially, technically and otherwise qualified to render the proposed service, there are frequencies available to enable the applicant to render a satisfactory service, and the public interest, convenience and necessity would be served by a grant thereof.

(b) Neither the American Telephone and Telegraph Company, nor any affiliated entity, may engage in the provision of cellular service except as provided for in paragraphs (c) and (d) of this section, or as otherwise authorized by the Commission.

(c) A carrier subject to the restriction in paragraph (b) of this section, may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with a separate corporate entity that furnishes cellular service provided the following conditions are met:

(1) Each such separate corporation shall obtain access to landline exchange and transmission facilities necessary for the provision of cellular service on the same basis as those facilities are available to other entities, and may not own any facilities for the provision of landline telephone service;

(2) Each such separate corporation shall operate independently in the furnishing of cellular service. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer and transmission facilities in the provision of cellular services. Each such separate corporation which provides cellular services shall deal with any affiliated manufacturing entity only on an arms length basis. Any research or development performed on a joint or separate basis for the subsidiary must be done on a compensatory basis; and

(3) All transactions between the separate corporation and the carrier or its affiliates which involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or any thing of value, shall be reduced to writing. A copy of any contract, agreement or other

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more U.S. Geological Survey map(s) with a scale of 1: 250,000, rather than on one or more U.S. Geological Survey 7½ minute maps as provided in our earlier Order.

arrangement entered into between such entities shall be filed with the Commission within 30 days after the contract, agreement, or other arrangement is made. The provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

(d) A carrier subject to the restriction in paragraph (b) of this section:

(1) Shall not engage in the sale or promotion of cellular services on behalf of the separate corporation or sell, lease or otherwise make available to the separate corporation any transmission facilities which are used in any way for the provision of its landline telephone services, except on a compensatory, arms-length basis; this section shall not prohibit joint advertising or promotional efforts by the landline carrier and its cellular affiliate;

(2) May not provide to any such separate corporation any customer proprietary information unless such information is available to any member of the public on the same terms and conditions; and

(3) Must obtain Commission approval as to the manner in which the separate corporation is to be capitalized, prior to obtaining any interest in the separate corporation or transferring any assets, and must obtain Commission approval of any modification to a Commission-approved capitalization plan.

3. Section 22.902(b) is revised to read as follows:

§ 22.902 Frequencies.

* * * * *

(b) For cellular systems the assignment of frequencies will be divided into two Blocks. Assignments will be made from the frequencies listed for Cellular Systems A and B. For a period of two years from the effective date of these rules, systems for common carriers not also engaged in the business of affording public landline message telephone service will be assigned frequencies from Cellular System A, and systems for common carriers also engaged directly or indirectly, in the business of affording public landline message telephone service will be assigned frequencies from Cellular System B in those general areas in which it provides such landline service.

* * * * *

4. Section 22.903 (a), (c) and (d) are revised and (e) is added to read as follows:

§22.903 Cellular system service areas.

(a) The Cellular Geographic Service Area (CGSA) of a cellular system shall be defined by the applicant as the area intended to be served. No CGSA which includes area within a Standard Metropolitan Statistical Area (SMSA), as modified in subsection (e), below, may extend beyond the boundaries of the SMSA except where any such extensions are *de minimus* and do not include area within another central SMSA. The CGSA must be drawn on one or more U.S. Geolgical survey map(s) with a scale of 1: 250,000. Within the CGSA the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must demonstrate that the combined 39 dbu contours of all base stations will cover at least 75% of the total CGSA.

(b) * * *

(c) For the purpose of establishing the reliable service area of a station and performing interference studies, an applicant must use procedures consistent with § 22.504 and F.C.C. Report No. R-6406, "Technical Factors Affecting The Assignment of Facilities In The Domestic Public Land Mobile Radio Service," by Roger B. Carey. Standards and procedures presently applied to stations in the 450-460 MHz band should be used. Any other interference studies utilizing other procedures, which the applicant believes the Commission should consider, in addition to the above required study, may also be submitted and will be considered in accordance with Public Notice, May 2, 1980, Mimeo 30893, 45 FR 30202 (47 FR 2d 666 (1980)). Furthermore, in cases where the applicant believes that Report No. R-6406 does not accurately depict the realistic 39 dBu service contour(s) of the base station(s) proposed, the applicant may submit for the Commission's consideration alternative propagation studies in addition to the above required studies. All supporting data and calculations must be included with the results of the studies.

(d) An applicant whose proposal would extend any 39 dBu contour, as calculated by F.C.C. Report No. R-6406, outside of its presently authorized CGSA will be deemed to be applying for a change in its CGSA.

(e) Listed below are the top 30 SMSAs, as modified for purposes of this proceeding in order to have service areas more closely aligned with actual mobile service marketing areas. All other SMSAs are in accordance with those listed by the Office of Management and Budget, Standard Metropolitan Statistical Areas.

"Modified SMSAs"

1. New York, NY/ Nassau-Suffolk, NY/ Newark, Jersey City and Paterson-Clifton-Passaic, NJ
2. Los Angeles-Long Beach/Anaheim-Santa Ana-Garden Grove/ Riverside Santa Bernardino-Ontario, CA
3. Chicago, IL
4. Philadelphia, PA
5. Detroit/Ann Arbor, MI
6. Boston-Lowell-Brockton-Lawrence Haverhill, MA
7. San Francisco-Oakland, CA
8. Washington, DC-MD-VA
9. Dallas-Fort Worth, TX
10. Houston, TX
11. St. Louis, MO-IL
12. Miami/Fort Lauderdale-Hollywood, FL
13. Pittsburgh, PA
14. Baltimore, MD
15. Minneapolis-St. Paul, MN-WI
16. Cleveland, OH
17. Atlanta, GA
18. San Diego, CA
19. Denver-Boulder, CO
20. Seattle-Everett, WA
21. Milwaukee, WI
22. Tampa-St. Petersburg, FL
23. Cincinnati, OH-KY-IN
24. Kansas City, MO-KS
25. Buffalo, NY
26. Phoenix, AZ
27. San Jose, CA
28. Indianapolis, IN
29. New Orleans, LA
30. Portland, OR-WA

5. Section 22.913 (a)(9) is revised to read as follows:

§22.913 [Amended]

(a)* * *

(9) Where the applicant is a wireline carrier, an exhibit indicating exactly how its proposed system would interconnect with the landline network. This information must be of sufficient specificity to enable a potential competitor to design its system to connect with the landline system in exactly the same manner if the competitor so chooses.

* * * * *

6. Section 22.916 is revised to read as follows:

§22.916 Evaluation of cellular applications.

(a) All mutually exclusive applications that are acceptable for filing and meet our basic qualifying criteria shall be designated for a comparative hearing. Applications involving basic qualifying issues shall also be designated for hearing on those particular issues, on an expedited basis, as described in paragraph (b) of this section. The comparative hearing shall be conducted by an Administrative Law Judge named in the designation order or a subsequent order.

(b) Expedited hearings procedures. The following procedures shall apply to all hearings in the Domestic Public Cellular Radio Telecommunications Service.

(1) The affirmative direct case, including all documentary evidence upon which an applicant intends to rely in a comparative context, must be submitted within 30 days of the date of the Public Notice announcing the mutually exclusive filings, except that applicants filing for a top 30 modified SMSA on the first possible filing date following adoption of these rules, shall

file their direct case with their applications. Five copies of exhibits must be filed with an applicant's comparative case: two to accompany the original and duplicate applications, two for the Office of Administrative Law Judges, and one of the Common Carrier Bureau's Separated Trial Staff. The burden will be on each applicant to obtain copies of its mutually exclusive opponent's exhibits in a timely manner, either from the opponents or by duplicating the Commission's copies. We expect all parties to cooperate in making available materials to each other upon request.

(2) Interested parties have thirty days from the date that an application is placed on Public Notice as accepted for filing to submit petitions to deny. Applicants have 15 days to file replies; no further pleadings will be accepted.

(3) Parties have ten days from publication in the **Federal Register** of the hearing designation order to file notices or appearance.

(4) Thirty days after **Federal Register** publication all written rebuttal cases must be filed with five copies to the Commission and a copy to each other party to the hearing.

(5) The judge will schedule a first hearing session as soon as practicable after the date for filing rebuttal evidence. This first session will be an evidentiary admission session at which each applicant will identify and offer its prviously circulated direct and rebuttal exhibits, and each opponent and the Separated Trial Staff will have a chance to lodge any objections.

(6) After accepting the exhibits into evidence, the judge will entertain any motions to cross-examine and will rule whether any sponsoring witness needs to be produced for cross-examination. Determination of what, if any cross-examination is necessary is within the sound judicial discretion of the judge, the prevailing standard being whether the person requesting cross-examination has persuasively demonstrated that written evidence is ineffectual to develop proof. If cross-examination is necessary, the presiding judge will specify a date for the appearance of all witnesses. In addition, if the designation order points out an area where additional underlying data is needed, the judge will have the authority to permit the limited use of discovery procedures. Finally, the presiding officer may find that certain additional testimony or cross-examination is needed to provide a complete record for the Commission. If so, the judge may schedule a further session.

(7) After the hearing record is closed, the judge may request Proposed Findings of Fact and Conclusions of Law to be filed within thirty days of the final hearing session. Replies are not permitted except in unusual cases and then only with respect to the specific issues named by the judge.

(8) The judge will then issue an Initial Decision, preferably within sixty days of receipt of the last pleadings. If mutually exclusive applications are before the judge, the judge will determine which is most qualified for the SMSA at issue. The judge may also rank the applicants in order of merit if there are more than two.

(9) Parties will have thirty days in which to file exceptions to the Initial Decision. The Common Carrier Bureau has authority to determine, at the time of designation for hearing, that such exceptions will be taken directly to the Commission rather than to the Review Board.

7. Section 22.917 is revised as follows:

§ 22.917 Demonstration of financial qualifications.

(a) Applications for new stations or modified facilities shall demonstrate the applicant's financial ability to meet the realistic and prudent:

(1) Estimated costs of proposed construction and other intial expenses; and

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

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

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

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

(2) Whenever the submissions of paragraph (c)(1) of this section do not satisfy paragraph (a) of this section, the applicant shall submit additional information (e.g. a current income statement, and, for the period of proposed construction plus one year 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.

(d) 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.

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

(1) The details of any loan or other form of credit arrangment 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 (f) of this section is complied with; and

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

(f) In addition to the disclosures required by paragraph (d) 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.

Dissenting Statement of Chairman Mark S. Fowler

In Re *Memorandum Opinion and Order on Reconsideration, Cellular Communications Systems—CC Docket No. 79-318*

I regretfully dissent from the majority's decision to continue the automatic "set aside" for wireline carriers of half the spectrum available for establishment of cellular radio services. I agree that it is important to act swiftly to implement cellular services in those areas now experiencing severe mobile radio congestion. However, it does not appear to me that a broad, "nationwide" set aside is necessary or proper to solve that problem, especially in light of the anticompetitive difficulties it creates. In addition to its tenuous justification, the majority's reasoning is enfeebled by inherent contradictions which cannot be reconciled. Consequently, I fear that the court will return the decision as "arbitrary and capricious," and instead of hastening service to the public, we will have unforgivably delayed it.

In fact, we are running a serious risk that the decision will be stayed by the court pending review. In addition to the legal deficiencies of the order, non-wireline

carriers will have strong arguments that, absent a stay, they will be irreparably injured because: (1) The wireline carriers will have a "headstart" that will enable them to capture most of the interested cellular customers before a non-wireline carrier can be certified; and (2) this headstart may destroy the businesses of existing radio common carriers (RCCs) since their present customers will be lured away to the superior cellular service long before any RCC is certified to operate the competing cellular frequency.

The primary justification for the set aside is that it is the only practical way to expeditiously relieve existing congestion on two-way mobile telephone frequencies. The record reveals that there is a critical shortage of mobile frequencies in the largest metropolitan areas. However, a shortage in the ten, or even thirty, largest metropolitan areas cannot justify a wireline set aside for the entire country in the face of the anticompetitive problems it creates. We have been warned by the Department of Justice (DOJ) that "this licensing scheme assures the dominance of AT&T in what might otherwise be a highly competitive industry." DOJ Petition for Reconsideration, at 4 (June 22, 1981). Such dominance "would be undesirable both because it would weaken incentives for development of improved mobile radio systems, and because it would enhance the already enormous overall economic power of the Bell System." [1]

Such a constriction of competition might be justified if it were essential to relieve serious congestion. However, it is not essential here. There are other ways to rapidly relieve the congestion now present. For example, we could identify the cities experiencing more severe congestion and devote extra staff resources to resolving mutually exclusive applications for those areas. We could reduce the complexity of comparative proceedings by standardizing higher entry qualifications for these areas which would winnow out all but the strongest applicants. Our Office of Administrative Law Judges has advised that by focusing special attention upon those applications, in conjunction with the expedited hearing procedures adopted here at paragraphs 68–76, cases will move quite rapidly and many of them may be completed within one year. This effort to identify and select the best applicants for each city seems a small price to pay in view of the fact that the successful applicants will in all likelihood remain the providers of cellular service for decades into the future.[2]

Accordingly, I see no reason to create a set aside for wireline carriers. Even if one were to accept the majority's rationale that severe congestion in some major cities requires that service be made available immediately, this rationale evaporates when applied to the rest of the country where such congestion does not exist. Surely, at least outside the major cities, we could make the effort to select the best applicants in each area. The competitive benefits could be enormous, and our streamlined procedures insure that the selection procedure will not be unduly extended.

Similarly, there is little reason to extend the set aside to wireline carriers other than AT&T. While AT&T has developed expertise in cellular, the other wireline carriers have not. They do have expertise in traffic engineering and high-capacity switching networks, but this by itself does not establish the qualifications of any independent to implement and operate a cellular system which involves entirely new techniques that have taken companies like AT&T and Motorola years to develop. Both independent and non-wireline applicants would have to purchase expertise from companies such as AT&T or Motorola. Thus, there is no reason to summarily conclude that independent wireline carriers will be able to outperform non-wireline carriers. In fact there are undoubtedly some non-wireline carriers that are far better qualified to provide cellular service than a small telephone company without any experience in the field.

Finally, it appears that in many instances the "set aside" frequency would be embroiled in the very kinds of hearings the majority is seeking to avoid. There are many major areas that are served by more than one wireline carrier. GTE, for example, has advised us that it is preparing many applications for areas served by more than one carrier (such as Los Angeles, the second largest market in the country, served by both an AT&T and GTE company). The majority urges such competing wireline carriers to avoid hearings through compromise. However, compromise appears to be an exceedingly weak reed to rely upon when the stakes are as large as they are in this case.

In sum, I cannot agree that the avoidance of delay caused by even expedited hearings is so critical that it outweighs the competitive disadvantages of the wireline set aside. This is not to suggest that I am opposed to awarding cellular licenses to AT&T or any other wireline carrier. To the contrary, I expect that wireline carriers would win a great number of cellular licenses in a comparative process. If an applicant possesses suspension qualifications or greater technical expertice, it has no need of the automatic grants contemplated in the majority's decision because in a competitive environment its superiority will be adjudged and rewarded by a license. That is the process that Congress has established, and the case has not been made to abandon it here.

Statement of Commissioner James H. Quello

In re *Reconsideration of the Commission's Report and Order in Docket No. 79–318, Cellular Communications System*

The Commission has, I believe, acted wisely, if belatedly, in this very important matter and the public should soon benefit from this decision. I believe that this action directly responds to our mandate under section I, Title I of the Communications Act of 1934 as amended to "* * * make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *" The provision of service is, after all, at the heart of our mandate and I believe that the public has been denied this important new service far too long.

Much of the comment relating to the *Report and Order* the Commission released last April has centered upon competition and the extent to which competition was accommodated by our action. Our *Order* does address the competitive aspects of cellular radio service very thoroughly, even exhaustively. It is clear that the Commission has chosen to satisfy the need for competition in this important area through the allocation of two 20 MHz blocks of frequencies even though it can be argued that the allocation of only one 40 MHz block, operated by a single entity, would be more technically efficient. Thus, arguments that we have failed to adequately consider the competitive aspects of cellular radio are clearly without merit.

Through resale of cellular services, a requirement of this *Report and Order*, all qualified entities who wish to participate in this market are clearly able to do so from the outset. Resellers have a clear opportunity to seek whatever share of this new market their business acumen and marketing ability will permit. Resellers may enter this market with only a tiny fraction of the capital requirement borne by the providers of the basic service.

Providers of the non-wireline basic service will have opportunities to technically innovate and to market their service on a basis comparable to the wireline provider. Thus, the opportunity for true competition is being presented in all potential markets.

Competition, *per se*, should not be our primary emphasis. As the Court has pointed out in another common carrier matter:

Competition as a factor might have some relevance to the FCC decision, if competition had been shown to be of benefit to the public on the communication routes in question. Yet it is all too embarrassingly apparent that the Commission has been thinking about competition, not in terms primarily as to its benefit to the public, but specifically with the objective of equalizing competition among *competitors*. (Original emphasis) *Hawaiian Telephone v. FCC, 498 F. 2d 775 (1974)*

It is clear that the public interest is served by rapid establishment of reasonably-priced, widely-available, technically superior and compatible mobile telephone service. We have wrestled with the mechanism to provide such service for too long. The record is long and the hour is late.

Separate Statement of Commissioner Abbott Washburn

Re *Cellular Order on Reconsideration*

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[1] *NARUC* v. *FCC*, 525 F. 2d 630, 637 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976). The separate subsidiary requirement may make it easier to detect any predatory pricing practice, but it does little to alleviate the "dominance problem." Indeed, the court has already discounted the significance of a separate subsidiary requirement as "largely cosmetic." *Id.* at 637.

[2] The fact that wireline carriers will have to file their applications within two years or lose the separate allocation does little to lessen the anticompetitive impact of the set aside. Wireline carriers will not fail to take advantage of the set aside to acquire most of the very interested customers. The late arrival would face a difficult task to lure customers from the wireline carrier or to stimulate interest from those customers who were not excited enough about the service to take it when it first burst upon the scene.

February 25, 1982.

The underlying thrust and rationale of our Order is to bring this new and vastly improved mobile telephone service to the public at the earliest possible time. At the same time our action assures an important measure of competition. Wireline carriers are in the best position to provide early cellular service in their communities. Their ability to do so is facilitated by the allocation of 20 MHz of spectrum specifically to wireline companies. Potential competition in each market is guaranteed by the allocation of another 20 MHz specifically to non-wireline carriers. The authorization of resale likewise promotes competition.

After carefully considering a host of possible options, the Commission, in my judgment, has reached a sound and fair balance. The regulatory mechanism here adopted is equitable and workable. It is the one with the greatest potential for bringing cellular service to the public promptly.

Following publication of today's Order in the **Federal Register**, applicants for systems in the 30 top markets will have 90 days in which to file. This will expedite the establishment of service in those metropolitan areas where congestion and unmet demand are currently the greatest.

Careful attention has been given in the Order to streamlining the comparative hearing process. Chief Administrative Law Judge Lenore Ehrig has helped create a set of procedures that will significantly shorten the process and avoid unnecessary regulatory delay. The Commission has authorized the assignment of two attorneys and two engineers to work with the Administrative Law Judges as soon as applications begin to be filed.

As supervising Commissioner on the Reconsideration Order, I deeply appreciate the hard and effective work of the Common Carrier Bureau and of the other Commissioners' offices. The result is a tightly and clearly written Order that, hopefully, will bring this new service to the American public expeditiously.

Separate Statement of Commissioner Joseph R. Fogarty

In Re *Celluar Communications Systems (CC Docket No. 79-318)— Memorandum Opinion and Order on Reconsideration*

I am please that the Commission has reaffirmed the essential elements of its original decision in this proceeding. The FCC has been attempting to provide the requisite regulatory structure for the development and deployment of cellular radio for the last 13 years, and during this extended period of agency indecision, congestion and unsatisfied demand in the mobile radio telephone service have reached epidemic proportions. This Commission's first duty, as mandated by Section 1 of the Communications Act, is "* * * to make available, so far as possible, to all the people of the United States a rapid, efficient Nation-wide * * * wire and radio communications service with adequate facilities at reasonable charges * * *" Service delayed is service denied the American people, and time is now more than ever of the essence.

I firmly believe that the cornerstone of this decision—the split frequency allocation and regulatory structure—represents an eminently reasonable and informed exercise of agency discretion. It embodies a rational and fair balancing of competing policy values within a framework which recognizes the Commission's paramount obligation to the overall public interest. In this regard, "competition" and "pro-competitive" values are but one element in our decisional mix and must be balanced with other compelling considerations, namely, the critical need for expedition of service and the limited spectrum available for allocation and system licensing. This decision has taken pains to recognize and implement the important values of competition, but we have also recognized, as the courts have emphasized, that "equalizing competition between *competitors* * * * is *not* the objective or role assigned by law to the Federal Communications Commission." *Hawaiian Telephone Co.* v. *FCC*, 498 F. 2d 771, 776 (D.C. Cir. 1974) (Original emphasis). Our statutory objective and role is to advance the *public* interest in the timely, efficient, and cost-effective provision of telecommunications facilities and service. We have been faithful to this mandate in our decision.

Given the possibility of mutually exclusive wireline—as well as nonwireline—competing cellular applications where a particular metropolitan area is served by more than one wireline carrier, it is imperative that competing applicants be encouraged in the strongest terms to settle their differences by joint venture or other agreement so as to avoid the delay of comparative hearings—delay which can only work to the detriment of the public interest in the expeditious provision of cellular service. Here, I believe that the element of interindustry competition inherent in the split frequency allocation and licensing structure will provide a powerful incentive for desirable settlements on both sides of the allocation.

We are now well into the second decade of "planning" for cellular communications systems. The American public has waited along enough for this inovative service.

Statement of Commissioner Anne P. Jones

Dissenting in Part

February 25, 1982.

In Re *Memorandum Opinion and Order on Reconsideration of Cellular Communications Systems—CC Docket No. 79-318*

The Commission established the basic regulatory structure for the cellular mobile radio communications system in its April, 1981 Report and Order in this proceeding. On Reconsideration, in December, 1981, the Commission reaffirmed the basic outline of its previous decision. Today, the Commission approves the text of the Reconsideration Order.

Although I dissented in part to the April, 1981 Report and Order, I was generally in agreement with many of the Commission's approaches and findings. I find myself in much the same position today. Although I generally view the Reconsideration Order as an improvement over the Order of last April, I again believe that further improvements could have been made. For this reason, I must again dissent in part.

As I noted last April, I feel very strongly that the services which the cellular mobile radio technology can provide should be made available to the public at the earliest possible date. Since AT&T appears to be in the best position to get cellular systems under way quickly, I do not oppose the basic principle of a set-aside of one of the two 20 MHz allocations for the wireline carriers. However, I felt last April, and I still feel today, that the Commission has gone too far in establishing a set-aside in every market in the country. I believe it would have been much better to limit the set-aside to markets in which it can be demonstrated that there is a present, pressing need for cellular mobile service. The Order on Reconsideration does reduce the length of time during which the wireline set-aside will be maintained, and to the extent that this addresses my concern, albeit indirectly, I view it as an improvement over the Order of last April.

The Order of last April accomplished something rather remarkable—the introduction of two fundamentally different problems with one footnote. Neither of these problems has been resolved on Reconsideration. In its entirety, footnote 56 of the April Order reads:

"In the past, we have permitted wireline companies to apply for wireline frequencies in any market, without regard to where they are doing business as a wireline. *Bonduel Telephone Co.*, 68 FCC 2d 497 (1978). In order to achieve our objective of rapid implementation of service during the separate five year allocation period, we will not adopt the *Bonduel* approach to wireline cellular applicants, but will consider a wireline applicant to be eligible to apply only in those general areas in which it or an affiliate company is certified as a wireline carrier. This will eliminate comparative hearings for wireline frequencies except in those *rare circumstances* where a particular metropolitan area is served by more than one wireline and each wishes to serve the entire metropolitan area." (emphasis added).

The Commission cannot adopt the *Bonduel* doctrine if it wishes to expedite the assignment of the wireline allocations. However, suspension of *Bonduel* has been coupled with a prohibition on wireline carriers applying for the *non*-wireline allocations outside of their service areas.[1] The combined effect of these two policies is that a wireline carrier cannot apply for *any* cellular allocation outside of its service area.

Thus an Independent telephone company, which might not have any desirable cellular service areas within its operating areas, but which might have the expertise, financing and desire to apply for cellular licenses elsewhere, would be precluded from doing so. I can find no policy justification for this bar in either the April Order or the current Order on Reconsideration. Further, it is difficult to see how such a justification could be developed in the light of the Commission's policies of increased competition and decreased regulation.

Traditionally the Commission has had two concerns which might dictate the imposition

[1] 86 FCC 2d 565 (1981). See 22. 902(b).

of such a bar: the incentive of a wireline carrier to provide inferior interconnection to other carriers who compete in supplying a service such as cellular, and the potential for a wireline carrier to cross-subsidize such a competitive service from its monopoly-based services.

The first concern, that of interconnection, may be dismissed quickly, since we are concerned here with wireline carriers operating *outside* of their service areas.

As to the second concern, although local telephone service is presently a monopoly service, the notion that it is a powerful engine for cross-subsidization is becoming increasingly suspect. If this were the case, why would the Joint Board convened in Docket CC 80-286, of which I am a member, find that its central concern is the maintenance of universal, affordable local service in the face of proposed changes to the jurisdictional separation process? These changes have been characterized as decreasing the subsidy from toll to local service. If, as is often asserted, local service in many locations requires a subsidy in order to be viable, how can it at the same time be a powerful source of subsidy for other services?

There is a second problem which involves footnote 56. While the April, 1981 Order left the definition of a cellular service area somewhat unclear, I was concerned that in many such areas two or more wireline carriers would be qualified to apply for the wireline allocation. Such applications would cause comparative hearings and hence frustrate the whole purpose of the wireline set-aside, which is to provide expedited service to the public.

In the current Order on Reconsideration this problem is probably made worse. A cellular service area has now been defined as an SMSA, which is probably a larger geographic area than was contemplated by the original definition.

Thus, for example, one study indicates that in 20 of the top 30 SMSAs the "rare circumstance" referred to in footnote 56 may occur, since more than one wireline carrier serves these areas.[2] Rare indeed.

In paragraph 38 of the current Order on Reconsideration, the Commission addresses this problem as follows:

"* * * Where more than one wireline company is certified in the Standard Metropolitan Statistical Area (SMSA), and these carriers desire to provide cellular service, we strongly urge them to reach mutually acceptable arrangements in order to avoid electrically mutually exclusive applications which require comparative hearings."

Indeed, the Commission cannot urge the parties strongly enough, since on the hope of this cooperation rests the entire efficacy of the wireline set-aside and its promise of expedited service to the public.

A far better plan, in my view, would have distinguished between significant and peripheral involvement by wireline carriers in cellular service areas. Where two or more carriers have significant involvement, some Commission-approved plan for a joint owned and operated cellular system would have to be adopted. Where a carrier had only peripheral involvement, it would have no claim to the cellular allocation in the area.

I realize that this would involve the Commission in the difficult task of drawing lines between significant and peripheral involvement, but I believe this task could have been performed, and I fear that not doing so may result in a situation which we will all regret.

We have all heralded the era of increasing competition in the supply of telecommunication services. But it brings with it an increasing number of competitors who comes before this Commission with increasingly diverse ideas about the allocation of scarce resources such as spectrum. I believe this is why the Cellular Rulemaking has been such a painfully difficult task for this Commission. But while the Commission has experienced difficulty, consumers have experienced the unavailability of a valuable new service. I hope that other new services which involve regulation can be introduced without repeating this experience. I hope so, but I fear otherwise.

[2] These SMSAs are: New York, N.Y., Los Angeles, Chicago, Philadelphia, Detroit, Washington, D.C., Dallas-Ft. Worth, Houston, St. Louis, Pittsburg, Minneapolis-St. Paul, Cleveland, Seattle-Everett, Milwaukee, Cincinnati, Kansas City, Buffalo, San Jose, Indianapolis and Portland (compiled from 1972 data on Bell Operating Companies and the top 25 Independents).

Separate Statement of Commissioner Mimi Weyforth Dawson

Re *Cellular Communications Systems*

With this decision we have at last removed the regulatory roadblocks to the provision of cellular communications service. In 1968 the Commission found that there was serious congestion problems in land mobile communications in some of the major metropolitan areas.[1] Cellular technology should efficiently utilize our limited spectrum resources in these areas as well as provide an important new telecommunications tool. Enabling such a service to go forward is the essence of this agency's mandate "to make available, as far as possible, to all the people of the United States a rapid, efficient, Nationwide * * * wire and radio communications service with adequate facilities at reasonable charges * * *" 47 U.S.C. 151. Moreover, because of cellular radio's potential to contribute to the nation's economic well-being by increasing productivity as well as generating a significant new equipment and service market, it is especially important that we have authorized this service at last.

While there has been substantial controversy and debate about our approach, I think our overall goal necessitates that we move forward with essentially the same structure found to be in the public interest in April 1981. Thus, because the primary rationale for establishing a cellular service is public need, it is imperative that we provide a framework in which that need can be met as expeditiously as possible. Establishing a wireline allocation is critical to this goal. Our decision here will permit those carriers, and AT&T in particular, to provide this service without the delay of torturous, costly hearings. At the same time, our decision ensures that competitive non-wireline carriers will gain a strong foothold in the marketplace. These non-wireline carriers have been allocated 20 MHz of spectrum in each market and the right of equal access to the local exchange network. In addition, our limitation of the wireline set-aside to two years will increase opportunities for competitive suppliers in all but the markets with most critical need.

In reaching this decision to reaffirm our basic guidelines for cellular service we gave serious consideration to the issues raised by the parties. Because this Commission is keenly interested in maximizing entry potential, we are devoting substantial resources and initiating streamlined hearing procedures so that the non-wireline carriers will not be unduly delayed. To impose an artificial delay factor on wireline carriers, as requested by many parties, would be an alternate prescription for regulatory paralysis. The substantial benefits of getting cellular service to the public quickly counsels against taking such an approach. However, we recognize that there are market situations justifying a wireline moratorium of limited duration and will entertain applications for such relief.

Second, we carefully reviewed whether a "set-aside" for wireline carriers runs afoul of the Court's ruling in *NARUC* v. *FCC*, 525 F. 2d 630, *cert. denied* 425 U.S. 992 (1976). In that decision, faced with the prospect of only one licensee per market, the Court expressed its concern of the anticompetitive effects that might result in the form of AT&T monopolization of cellular communications. Those concerns have, we believe, been ameliorated by our requirement of two competitive systems per market and our restriction on wireline carriers to the markets they now serve. For all practical purposes, this has the effect of limiting AT&T to providing less than fifty percent of all cellular service over the long term. Additionally, AT&T must provide cellular service only through a fully separated subsidiary and its operating companies must provide reasonable interconnection upon demand, including the same interconnecting arrangements that its cellular affiliates are provided. These restrictions should ensure that this market will develop and function in a competitive manner to the benefit of the public.

Our action here, in my mind, has the greatest potential for achieving our public interest objectives of rapid implementation of a much needed service. I have high hopes that we have set the stage for that result.

[1] See Land Mobile Use of 806-960 MHz Band, Docket 18262, 14 FCC 2d 311 (1968).

Concurring Statement of Commissioner Henry M. Rivera in CC Docket No. 79-318

I concur in the majority's reaffirmances of its earlier decision in the Cellular Radio docket. I do not do so, however, out of the conviction that the prior decision constitutes the best public policy which could have been formulated. Rather, my concurrence is based upon the belief that any further delay in the delivery of cellular radio mobile service to the American public is intolerable and that the policy which I would have preferred to

have seen adopted would have required additional procedural steps that would cause such delay. There is a critical and immediate need to alleviate congestion in two-way mobile radio. Under such circumstances, I could not advocate additional changes that would have caused further procrastination in the provision of this service. After thirteen years of withholding the important benefits of cellular mobile radio service from the public, this proceeding begs for a final decision. In short, I am forced to conclude that the public is better served by a decision now, albeit an imperfect one, than the additional debate which my proposal would have encouraged.

What follows is an outline of the overall policy I would have preferred if time were not at a premium, as well as my interpretation of the *NARUC* and *Radio Relay* cases.[2]

Preferred Policy

If the Commission had not released a final decision in this docket over seven months ago and had not been deliberating this matter for 13 years, I would have recommended that the Commission adopt a decision which would have been shaped in a different manner.[2a] More specifically, I would have recommended that: (1) the Commission not split the 40 MHz cellular allocation into two mutually exclusive 20 MHz allocations in *every* geographic market; and (2) the exclusive 20 MHz allocations be granted only in geographic areas which will imminently face acute congestion in the provision of cellular radio common carrier communication services. In addition, I would have proposed: (1) Conditions to facilitate the competitive provision of cellular services/equipment; (2) that each cellular license be nonassignable; and (3) that each license be for a term not to exceed five years, and be nonrenewable if the licensee did not have a *bona fide* cellular system in operation by the end of the initial five year term.

Mutually Exclusive Allocation is Justified only for Congested Areas

Exclusive 20 MHz allocations are only required because of the inefficiencies in spectrum utilization which are expected to occur in *mature* (i.e. congested) cellular systems. *Report and Order in CC Docket No. 79-318*, 86 F.C.C. 2d 469, 476. That is to say, the split allocation of mutually exclusive 20 MHz assignments is only *required* for geographic areas where saturation of cellular systems is imminent. Accordingly, no reason exists for an exclusive 20 MHz allocation for any geographic area until such a determination has been made. As for non-congested areas, I would have proposed the full 40 MHz be available to qualified applicants on a non-exclusive basis so that comparative hearings would not have been required for those licensees.[3] If such areas were subsequently to become congested and consensual dynamic channel assignment were not technologically feasible, I would have proposed that an aggrieved licensee be permitted to petition this Commission for an exclusive allocation in that area pursuant to § 1.401 of the rules of the Federal Communications Commission, 47 CFR 1.401 (1980). Such an approach, in addition to eliminating the delays inherent in the comparative hearing process, would have fostered economic efficiency and would not have imposed an unnecessary and artificial constraint upon technological development in the cellular radio market.

Technological advances in the area of dynamic sharing of channels may subsequently alleviate the need for mutually exclusive 20 MHz allocations. I would have proposed to recognize the possibility of technological change by providing that mutually exclusive 20 MHz allocations in congested areas would be subject to dissolution (prior to the time specified in the order) upon a convincing showing that shared frequency use by more than two entities in the same congested area was feasible and desirable.

Promotion of Competition

To promote competition in the provision of cellular services and the cellular equipment markets, I would have proposed that the following be imposed by rule: (1) A prohibition against exclusive retail or resale franchise agreements; (2) a prohibition against the ownership or control by any entity or affiliate of more than one cellular or mobile radio common carrier system in any geographic area; and (3) a prohibition against any requirement by any cellular service provider that a customer acquire customer premises equipment from a particular source as a condition of acquiring or maintaining cellular service from that provider.[4] Finally, I would have proposed that mandatory "trunk side" or "line side" interconnection by wireline carriers at the Class V exchange level be required at rates which are fully cost justified, and, if those interconnection rates were not fully cost justified, such interconnections would then have been set at the ordinary "B-1" (business) rate.

The Cases: NARUC and Radio Relay

Some have concluded, after reading *NARUC* and *Radio Relay*, that the exclusive 20 MHz allocation is unlikely to be affirmed upon appeal and that the provision of cellular service to the public will be delayed by a judicial remand which will ultimately require this Commission to adopt a comparative hearing mechanism for each mutually exclusive cellular license. I do not agree with this interpretation of *NARUC* and *Radio Relay*.

In *NARUC*, the D.C. Circuit expressed concern over the anticompetitive consequences of permitting AT&T to occupy the cellular communications market. *NARUC* at 636-39, 647. In *Radio Relay*, the Second Circuit noted the *potential* for anti-competitive harm which was occasioned by a *de facto* "head start" for wireline carriers in an analagous allocation of paging frequencies. *Radio Relay* at 328-29.

The *NARUC* Court, however, in affirming the Commission's earlier cellular radio decision, also stated that its decision was grounded, in part, upon "the view that there will be ample opportunity to challenge anti-competitive effects as the time approaches when they will be felt, and the extent of the impact on competition becomes more readily assessible." *NARUC* at 639. The Commission's two year reservation of 20 MHz for wireline carriers does not itself impose any anti-competitive injury. The direct anticompetitive effects of such a reserved allocation, if present, are too remote in time and speculative in effect to be reached by the *Radio Relay* and *NARUC* prohibitions. Moreover, an application for a radio license to serve a particular cellular market is an affirmative act which, if it results in a violation of the antitrust laws, can be remedied under the U.S. Code.[5] In addition, the Commission must take into account anticompetitive effects when it considers cellular applications.[6] Thus, incipient anticompetitive effects in each geographic area would be addressed more appropriately during each license proceeding.

[FR Doc. 82-6319 Filed 3-8-82; 8:45 am]

BILLING CODE 6712-01-M

[2] *National Association of Regulatory Commissioners* v. *FCC*, 525 F. 2d 630 (D.C. Cir. 1976) [herein cited as *NARUC*], and *Radio Relay Corporation* v. *FCC*, 409 F. 2d 322 (2d Cir. 1969) [herein cited as *Radio Relay*].

[2a] In many respects I also share the views which Commissioner Jones expressed in her dissenting statement.

[3] *Ashbacker Radio Corporation* v. *Federal Communications Commission*, 326 U.S. 327, 333 (1945). Moreover, access to the full 40 MHz would permit licensees to utilize less expensive equipment which would permit those licensees to provide service to the public at lower costs.

[4] Such a prohibition should not engender inefficiency since all CPE must be compatible with all cellular service systems. *Report and Order in CC Docket No. 79-318, supra* at 508, 573. However, if the Commission were to impose a bar against renewal if a licensee were not operating a *bona fide* cellular system within the initial five year grant, it would have been desirable to have imposed a bar to output requirements contracts (or their equivalent) between any licensee (including affiliates) and any supplier or manufacturer.

[5] See 15 U.S.C. 2, 4.

[6] See 47 U.S.C 307(a)(b), 309(a), 309(d), 313; 15 U.S.C. 21(a).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[No. 38590]

Revision to Railroad Annual Report Form R-1

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is revising the Annual Report for Class I Railroads (R-1). This includes the elimination of certain schedules; the incorporation of selected operating statistics from previously deleted quarterly report forms OS-A, OS-B and OS-C; and the inclusion of debtholding information from a deleted corporate disclosure supplement. These

changes align the Commission's reporting requirements for Class I Railroads with current information needs of its bureaus and offices.

DATES: Effective for the reporting year ending December 31, 1981.

ADDRESS: Copies of this rule may be obtained by writing to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or by calling toll-free, 800-424-5403.

FOR FURTHER INFORMATION CONTACT: Wayne D. Howard (202) 275-7448.

SUPPLEMENTARY INFORMATION: On September 16, 1981, the Commission served a Notice of Proposed Rulemaking on Revision to Railroad Annual Report Form R-1 (46 FR 45966). This notice proposed eliminating twenty-one schedules no longer needed by the Commission on a periodic reporting basis. The notice introduced new schedules containing selected operating statistics formerly reported on quarterly reports OS-A, OS-B and OS-C, and certain debtholding information from Annual Report Supplement—Corporate Disclosure. The notice proposed eliminating the other schedules in the corporate disclosure supplement.

Further, the Commission requested that interested parties submit suggested improvements to the R-1, including additional disclosure needs. We solicited opinions on the reinstatement of reporting average cost of ties and average cost of rail and expansion of traffic density categories in schedules 720 to 728.

Review of Responses

The Office of the Secretary received 14 responses to the Notice of Proposed Rulemaking (Appendix C). All railroad respondents endorsed elimination of the 21 schedules. Many respondents opposed elimination of Schedule 900, Compensation of Officers, Directors, Etc. Respondents also suggested additional changes to the R-1 Report.

The objections to eliminating the twenty-one schedules center on the usefulness of the information to outside parties. The New York State Department of Transportation (NY DOT) opposes the deletion of schedules 310, 413, 430, 440, 445 and 900, maintaining that the cost savings do not outweigh the benefits of retaining current reporting requirements. Since NY DOT does not share the Commission's right to obtain information not in the R-1, it maintains the deletion of the schedules would frustrate its regulatory function.

The Railway Labor Executives Association (RLEA) believes all schedules should be retained since they contain relevant information. The Dayton Power and Light Company requests the retention of schedules 310, 310A, 319 and 900.

Many respondents are interested in salaries of railroad officials. Charles M. Rice, Publisher; the United Transportation Union; Patrick W. Simmons, Illinois Legislative Director for United Transportation Union; and RLEA request schedule 900 be retained. The reasons include potential destruction of a particular business and unequal access of railroad employees to salary information.

Railroad respondents submitted numerous suggested changes to other R-1 schedules. The Bureau of Accounts has categorized the suggestions and will consider them for the 1982 Annual Report. Insufficient time remains to initiate further changes to the R-1 for 1981.

Discussion and Conclusions

The Commission's Policy Statement on Financial and Statistical Reporting (44 FR 27537), served May 7, 1979, limits reporting requirements to items essential to Commission needs. Specifically, periodical reports shall be required only for information needed by the Commission on a regular and frequent basis. Further, the Staggers Rail Act of 1980 (49 U.S.C. 11166) generally limits Commission reports to information considered necessary for cost accounting objectives or compliance with generally accepted accounting principles.

This rule eliminates the 20 schedules detailed in Appendix A; these schedules are not needed routinely for Commission purposes. The Commission reserves the right to request specific information when needed for a particular regulatory function, however.

We recognize that state regulatory agencies, consultants and unions may desire certain information contained in these schedules. However, the Commission must weigh outside party desires for information against Commission needs. Whenever it is clearly evident that periodically filed carrier information is not used by the Commission regularly and frequently, the Commission shall adjust the reporting requirements accordingly.

Two schedules proposed for elimination in the Notice of Proposed Rulemaking have been retained. Schedules 310 and 310A relate to investments and advances in carrier affiliated companies. For 1981, this information is essential for certain studies being conducted by the Bureau of Accounts.

This rule adopts Schedule 755, Railroad Operating Statistics, which is essentially former Quarterly Report Form OS-A. We recognize that this schedule retains requests for quarterly information. Carriers will, however, file this report on an annual basis. We will revise the language for the 1982 R-1 report; administrative procedures for new forms issuance do not give sufficient time to revise the former OS-A report.

We have eliminated the corporate disclosure supplement except for Schedule 120, Debtholdings. This schedule is renumbered 510 and is included in the 1981 R-1. We will make necessary adjustments to this schedule in 1982 if information requirements permit.

Schedule 450, Analysis of Federal Income Taxes, has been modified to include essential information from eliminated Schedule 451, Railway Tax Accruals. Further changes suggested by certain respondents will be considered for 1982 R-1 revisions.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission has certified that this final rule will not have a significant economic impact on a substantial number of small entities. This rule directly affects Class I railroads which have annual operating revenues of $50 million or more. No substantial number of small entities shall suffer from this action.

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

(5 U.S.C. 553 and 49 U.S.C. 10321)

We adopt the reporting changes in Appendix A and Appendix B to the annual report described in 49 CFR Part 1241.11 for the reporting year ending December 31, 1981.

Decided: February 25, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Clapp, and Sterrett.

Agatha L. Mergenovich,

Secretary.

Appendix A

In Annual Report Form R-1 (Class I railroads), the following schedules are eliminated for the reporting year ending December 31, 1981.

Title and Schedule No.

1. Items in Selected Current Asset Accounts—300

2. Special Funds and Other Investments—315
3. Securities, Advances, and Other Intangibles Owned or Controlled Through Non-reporting Subsidiaries—319
4. Property Used in Other Than Carrier Operations—325
5. Other Assets and Deferred Debits—329
6. Other Elements of Investment—355
7. Non-Capitalized Capital Leases—362
8. Items in Selected Current Liability Accounts—370
9. Other Long Term Liabilities and Other Deferred Credits—379
10. Rent for Leased Roads and Equipment—413
11. Miscellaneous Rent Income—430
12. Miscellaneous Rents (Expense)—440
13. Separately Operated Properties—Profits or Loss—445
14. Railway Tax Accruals—[1] 451
15. Miles of Tracks at Close of Year by States and Territories (for Switching and Terminal Companies)—703
16. Grade Crossings—A Railroad With Railroad—760A
17. Grade Crossings—B Railroad With Highway—760B
18. Grade Separations—761
19. Compensation of Officers, Directors, etc.—900
20. Annual Report Supplement—Corporate Disclosure [2]

Appendix B

The following schedules shall be added to the Railroad Annual Report Form R-1 for the year ending December 31, 1981:

Schedule and Title

450 Analysis of Federal Income Taxes
510 Debtholdings
755 Railroad Operating Statistics

Appendix C. Repondents to Docket No. 38590

1. Chicago, Milwaukee, St. Paul and Pacfic Railroad Company (the Milwaukee Road)
2. American Bus Association (ABA)
3. Burlington Northern (BN)
4. Southern Railway System (Southern)
5. Union Pacific Railroad Company (UP)
6. New York State Department of Transportation (NY DOT)
7. Association of American Railroads (AAR)
8. The Family Lines Rail System (SCL/L&N)
9. The Dayton Power and Light Company (Dayton Power)
10. Conrail
11. Charles M. Rice, Publisher
12. United Transportation Union (UTU)
13. Railway Labor Executives' Association (RLEA)
14. Patrick W. Simmons

[FR Doc. 82-6316 Filed 3-8-82; 8:45 am]

BILLING CODE 7035-01-M

[1] Information on railroad tax accruals has been transferred to Schedule 450, Analysis of Federal Income Taxes. (See Appendix B.)

[2] Schedule 120, Debtholdings, is retained as R-1 Schedule 510. (See Appendix B.)

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

Tanner Crab Off Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, has determined that the desired harvest level of Tanner crab for the Chignik District in Registration Area J will be achieved on March 4, 1982, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce, therefore, issues this notice of closure of the Chignik District to fishing for Tanner crab by vessels of the United States on March 4, 1982, thereby adjusting the previous closing date of May 15, 1982, in order to prevent overfishing of Tanner crab stocks in the Chignik District.

DATE: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 4, 1982, until 12:00 noon, Alaska Daylight Time (ADT), May 15, 1982. Public comments on the closure are invited until March 19, 1982.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, 907-586-7221.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP), governing this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, Provides for inseason adjustments, by field order, to season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under the criteria set out in that section.

50 CFR 671.26(f) establishes five districts within Registration Area J 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. One of these districts is the Chignik District for which an optimum yield for all Tanner crab of 5.0 million pounds has been approved by the Secretary of Commerce and is pending publication of a final implementing rule in the Federal Register. In 1981, the Alaska Department of Fish and Game (ADF&G) instituted a trawl survey in the Chignik District. This survey indicated that the acceptable harvest during the 1981-82 season should be only 3 million pounds. The season opened on December 15 (opening date delayed from November 1 to December 15 at 46 FR 58699 on December 3, 1981); by February 21, 2.5 million pounds of Tanner crab had been landed by a fleet of 34 vessels. The 1981 catch was 3.6 million pounds with a CPUE of 35 crabs per pot. The 1982 CPUE began at 24 crabs per pot but subsequently has declined to 20 crabs per pot. The declining CPUE substantiates the results of the trawl survey and indicates that the optimum yield cannot be achieved without the risk of harm to the resource. It is estimated that the desired harvest of 3 million pounds of Tanner crab from the Chignik District will be achieved on March 4, 1982.

In light of this information, the Regional Director, National Marine Fisheries Service, in accordance with 50 CFR 671.27(b), has determined that:

1. The actual condition of Tanner crab stocks in the Chignik District is substantially different from the condition that was previously anticipated; and

2. This difference reasonably supports the need to protect those Tanner crab stocks by closing the Chignik District to further fishing for Tanner crab during the current fishing year after 12:00 noon, Alaska Standard Time (AST), on March 4, 1982.

For these reasons, the Chignik District of Registration Area J, as defined in 50 CFR 671.26(f)(1)(iii), is closed to all fishing for Tanner crab from 12:00 noon, AST, March 4, 1982, until 12:00 noon, ADT, May 15, 1982, at which time the closure of this district prescribed in 50 CFR 671.26(f)(2)(iii) will begin. The description of this district is corrected elsewhere in today's issue.

This closure will not be effective prior to filing this notice with the Office of the Federal Register and publication of the closure for 48 hours through Alaska Department of Fish and Game procedures, under 50 CFR 671.27(a)(2). Under 50 CFR 671.27(b)(4), public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days following the effective date. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m.) (1) at the NMFS Kodiak Field Office,

ADF&G Building, at Kashevaroff and Mission Roads, Kodiak, Alaska 99615, and (2) at the NMFS Alaska Regional Office, Federal Building, Room 483, 709 West 9th Street, Juneau, Alaska 99802. If comments are received, this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

The Chignik Tanner crab stock will be subject to damage by overfishing unless this order takes effect promptly. I therefore find for good cause that advance notice and public comment on this order is contrary to the public interest, and that there should be no delay between its publication and its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and is taken in compliance with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. In addition, it does not contain any collection of information request, as defined in the Paperwork Reduction Act of 1980.

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

Dated: March 4, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-6337 Filed 3-4-82; 4:45 pm]

BILLING CODE 3510-22-M

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50 CFR Part 671

Tanner Crab Off Alaska; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a description contained in final regulations, published November 23, 1981 (46 FR 57302), implementing Amendment 6 to the fishery management plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska. The correction interchanges "east" and "west" in the description of the Chignik District of Registration Area J, to agree with the intended description of that district as specified in the proposed rules (45 FR 80847).

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. McVey (Director, Alaska Region, National Marine Fisheries Service), 907-586-7221.

Dated: March 4, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 671—TANNER CRAB OFF ALASKA

Accordingly, on page 57305, NOAA is correcting the introductory text of 50 CFR 671.26(f)(1)(iii) to read as follows:

§ 671.26 Season and gear restrictions.

* * * * *

(f) * * *

(1) * * *

(iii) *Chignik District.* All waters west of the longitude of Cape Kumlik (157°35' W. longitude) to east of a line connecting the following points:

* * * * *

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

[FR Doc. 82-6338 Filed 3-4-82; 4:51 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 46
Tuesday, March 9, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1982 Crop of Peanuts

Note.—This document originally appeared in the **Federal Register** for March 8, 1982. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Agricultural Stabilization and Conservation Service.

AGENCY: Agricultural Stabilization and Conservation Service, USDA

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth the rules for establishing State and farm poundage quotas, farm yields, transfers of quota, determination of undermarketings, and issuance of farm quota notices to implement the Agriculture and Food Act of 1981 for the 1982 crop of peanuts. The rules for identification of marketings, assessment of marketing penalties, and processing of violations, will be issued in a later publication in the **Federal Register**. The most significant provisions of this regulation are the determination of farm poundage quota reductions, determination of under marketings, and transfers of farm poundage quotas. The promulgation of this rule is necessary in order that State and farm poundage quotas may be established for the 1982 crop of peanuts.

DATE: Comments must be received on or before March 23, 1982 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building USDA, between the hours of 8:15 and 4:45, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce D. Starnes (ASCS), 202-382-0150. An impact analysis is currently being prepared and will be available for review prior to publication in the Final Rule.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." It has been determined that this rule will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this final rule applies to are: Commodity Loans and Purchases; 10.051; as found in the Catalog of Federal Domestic Assistance. This proposed rule will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Department of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The planting season for peanuts will begin in late March and farmers need to know the details of the peanut program authorizing price support and poundage quotas for the 1982 through 1985 crops of peanuts. Poundage quotas establish eligibility for the $550 per ton quota price support and are an important part of a farmer's financial arrangements to cover production costs such as land preparation, fertilizer, seed, and other similar costs. Therefore, it has been determined that the comment period with respect to this rule shall be limited to a period of 15 days after the publication of this document in the **Federal Register** in order that comments received can be reviewed and a Final Rule can be published at the earliest possible date.

Statutory Requirements

The Agriculture and Food Act of 1981 (the Act), Which was enacted on December 22, 1981, amended the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949 to make significant changes in the administration of the peanut production and price support program. The Act abolishes acreage allotments for peanuts, thus permitting anyone to produce and market peanuts, under certain conditions, without penalty. The Act provides that the national poundage quota for peanuts will be reduced from 1,440,000 tons in 1981 to 1,200,000 tons for the 1982 crop. The poundage quota is the amount of peanuts entitled to be marketed from a farm directly for domestic edible use. Any peanuts produced on a farm without a farm poundage quota or in excess of the farm poundage quota are classified as additional peanuts and must be contracted for export or crushing by April 15, or placed at harvest in the price support loan pool for additional peanuts. Quota peanuts are eligible for price support at a rate of $550 per ton. The support level for additional peanuts is $200 per ton.

The Act requires that a farm poundage quota be established for each individual farm based on the farm poundage quota established for such farm for the 1981 crop, subject to a reduction which will result in the total of all farm poundage quotas being. 1,200,000 tons, the 1982 national poundage quota. The Act specifies that the reduction in poundage quota allocated to States:

". . ., shall insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe, be accomplished by reducing the farm poundage quota for each farm in the State to the extent that the farm poundage quota has not been produced on such farm. For purposes of the foregoing sentence, the farm poundage quota shall be considered as not having been produced on a farm to the extent that (i) during any crop year immediately preceding the crop year for which the adjustment is being made, such quota was not actually produced on the farm because there was inadequate tillable cropland available

on the farm to produce such quota; or (ii) during any two of the three crop years immediately preceding the crop year for which the adjustment is made: (I) such quota was not actually produced for any other reason (other than natural diasters or such other reasons as the Secretary may prescribe), or (II) such quota was produced but by another operator on a farm to which the poundage quota (or the acreage allotment upon which such poundage quota was based) was transferred by lease. To Achieve the reduction in the State poundage quota in any marketing year, the reductions in farm poundage quotas shall be made first under clause (i) of the preceding sentence and, if necessary, under clause (ii)(I) and then clause (ii)(II) thereof."

This proposed regulation sets forth the procedures for the establishment of farm poundage quotas and other terms and conditions of the program affecting the production of peanuts, such as transfers of quotas and the determination of yields. These regulations are based on previous regulations applicable to 1978–81 crops with respect to farm yields and the establishment of the farm poundage quotas, with modifications designed to reflect changes made by the 1981 Act. The primary impact of these regulations is to establish the manner in which the individual farm poundage quotas will be determined.

Reduction in Individual Farm Poundage Quotas

Basically, the Act sets forth farm poundage quota reduction categories for the purpose of establishing priorities in determining individual farm poundage quota reductions. The first category is for farms which did not actually produce peanuts on the farm because there was inadequate tillable cropland available on the farm to produce the quota quantity in the preceding crop year. The second category consists of those farms where peanuts were not acutally produced in two out of the three preceding years except in those situations where peanuts were not produced because of a natural disaster or other such reason as prescribed by the Secreatary. The third category consists of those farms for which the quota quantity was produced but by another operator on a farm to which the quota (allotment) had been transferred by lease two out of the three preceding years. The fourth category consists of all farms which were not reduced to a zero poundage quota under the first three categories or were not affected by reductions in the first three categories.

The Act requires the Secretary, insofar as practicable, to make reductions in this order and in accordance with such regulations as the Secretary determines to be fair and equitable.

During the development of this proposed rule, however, it has become apparent that there are a large number of farms falling into the third category. It has also become apparent that the application of the poundage quota reduction to farms in the third category might, in some instances, cause significant individual hardships and the disruption of normal production practices in a number of peanut growing areas. In particular, because of the late date on which the Act became law, the Department has had inadequate time to gather sufficient information upon which to evaluate the impact of reductions of farm poundage quotas in the third category. Moreover, producers have had to prepare for planting the 1982 crop of peanuts without knowing the specific manner in which the Department intended to implement the poundage quota reductions mandated by the Act.

In view of this situation, the Secretary proposes that in order to implement the Act in a fair and equitable manner, no individual farm poundage quota reductions should be made in the third category for the 1982 crop. Instead, a uniform State factor would be applied to all farms in the State if the poundage quota reductions in the first category and second category are insufficient to meet the required overall reduction in the State poundage quota.

This proposed rule would apply to the 1982 crop of peanuts only. It is anticipated that proposed regulations will subsequently be issued for the 1983 through 1985 crops of peanuts which will set forth procedures for reducing farm poundage quotas for farms in the third category. They will also afford the Department adequate time to analyze thoroughly the impact of reducing farm poundage quotas for farms in the third category.

Therefore, for purposes of the 1982 crop only, the proposed rule defines the categories of farms in which poundage quota reductions will be made as follows:

A. *Category 1. Inadequate Tillable Cropland.* Adequate tillable cropland is land determined by the county committee for the preceding crop year to be: (1) suitable for the production of peanuts; and (2) land on which a seedbed could have been prepared and a normal crop produced using practices and equipment normally used in the county for planting peanuts. Land not considered suitable for the production of peanuts includes, but is not limited to, established orchards, vineyards, one-row shelter belts, land seeded to trees, and land being prepared for housing developments, shopping centers, or other noncrop uses as determined by the county committee.

B. *Category 2. Non-production of the quota during two out of the three preceding years.* In this category, the farm poundage quota shall be reduced for the current year to the extent that the county committee determines that peanuts were not actually produced during two out of the three years of the base period, except when the county committee determines that the quota quantity was not produced because of natural disasters or other reasons beyond the control of the producer. Such reasons include:

(1) The farm or poundage quota was purchased after the latest normal 1980 planting date but was produced on the farm in 1981. This condition will apply only to establishing the farm poundage quota for such farm for the 1982 crop.

(2) The farm allotment (poundage quota) was in the Eminent Domain pool.

(3) The farm poundage quota was apportioned to the farm from the new farm reserve and produced in 1981. The considered produced credit for 1980 shall not exceed the produced and considered produced poundage quota for such farm for 1981 and shall apply only to establishing the farm poundage quota for the 1982 crop.

C. *Category 3. Farms not reduced to zero in categories 1 or 2.* A uniform State factor will be determined and applied against the preliminary farm poundage quotas on all farms not reduced to zero in the first two reduction categories. Because each State's reduction will be made independent of other States, the application and size of the factor may vary with respect to categories between States. Included in this group will be farms that received a partial reduction in categories 1 or 2 and still retained farm poundage quota. Also, some farms may be reduced in one or two categories prior to a factor being applied because of a combination of circumstances. For example, a farm may take a partial reduction in category 1 because of inadequate tillable cropland and also a reduction for not producing in category 2.

D. *Calculation of the farm poundage quota reduction in categories 1 or 2.* Calculations of farm poundage quota reductions will be done by individual categories in order of priority. In category 1, the reduction will equal the amount of nonproduction of the farm poundage quota that is attributable to inadequate tillable cropland during the

previous crop year. In category 2, the reduction will be based on the average of the two highest percentages of nonproduction of the farm poundage quota during the three base period years. The amount of the reduction would equal: (1) the product of the average percentage *times* the preliminary farm poundage quota, *minus* (2) the amount of any reduction made under category 1, but may not be less than zero. The amount of reduction under category 1 is subtracted in order to prevent a duplication of reductions between the two categories. Otherwise, the cumulative effect of reductions in categories 1 and 2 could cause the farm poundage quota to be reduced below the amount of actual marketings of quota peanuts on the farm during the base period years.

The following is an example of how the calculations described above would be made. The example assumes that the farm poundage quota for each of the base period years (1979, 1980, and 1981) was 50,000 pounds, and that the preliminary farm poundage quota for 1982 is also 50,000 pounds.

EXAMPLE OF QUOTA REDUCTION CALCULATIONS

[All numbers in pounds]

	Year		
	1979	1980	1981
Inadequate tillable cropland			10,000
Nonproduction of quota	5,000	15,000	10,000
Actual production of quota	45,000	35,000	40,000

Category 1

Amount of nonproduction due to inadequate tillable cropland = 10,000
Potential reduction = 10,000

Category 2

Two highest percentages of nonproduction = 15,000 divided by 50,000 = .3 (1980)
Average of two highest percentages = .25
Potential reduction (average percentages × preliminary farm poundage quota) − Category 1 reduction = .25 (50,000) minus 10,000 = 2,500
Total Potential Reduction (Category 1 plus 2) = 12,500
1982 Adjusted Preliminary Farm Poundage Quota = 50,000 minus 12,500 = 38,500*

Reserve for Correction of Errors

The Act requires the Secretary to reduce the farm poundage quota on farms in the States on such fair and equitable basis as is practicable. To accomplish this objective, the proposed rule would require the State committee to establish a State reserve for the correction of errors. The reserve would not exceed 2 percent of the State poundage quota and would be allocated to counties upon request. The reserve will be used to the extent available to correct errors including, but not limited to, missed farms and errors in establishing preliminary farm poundage quotas. Requests for reconsideration and appeal may be made under the provisions of 7 CFR Part 780.

Other Significant Considerations

The Act also modified or affected the terms and conditions for transfers of quota, carryover of undermarketings, farm yields, and quota in the Eminent Domain pool.

(a) *Farm poundage quota transfers.* The Act now allows transfers by lease or sale across county lines within a State in those States which had a State poundage quota of 10,000 tons or less for the 1981 crop. Those States are: Arizona, Arkansas, California, Louisiana, Missouri, Mississippi, New Mexico, and Tennessee. In addition, the owner or the operator of a farm may transfer all or any part of a farm's poundage quota to another farm in the same county or a contiguous county within the State that is owned or controlled by the owner or operator of the transferring farm. If the owner or operator transfer is across county lines, the receiving farm must have had a farm poundage quota for the 1981 crop.

(b) *Carryover of undermarketings.* The Act provides for undermarketings to be cumulative beginning with unused undermarketings from the 1980 crop. Each farm's unused undermarketings will be pooled for each farm under this proposed regulation and carried forward until used or until the authority to carry out this program expires. The total of all farm pooled undermarketings for all States will continue to be subject to the 10 percent maximum carryover for any given crop year. Consistent with previous practice, transfers of actual and effective undermarketings will not be permitted.

(c) *Farm yields.* The Act continues the same base period (i.e. 1973 through 1977) for determining farm yields as was applicable under previous legislation. Farm yields will not, therefore, change significantly.

(d) *Quota in the Eminent Domain pool.* Producers who had farm poundage quota displace and pooled through the right of eminent domain prior to December 22, 1981 will have a preliminary farm poundage quota established for the 1982 crop. Such quota must then be permanently transferred to an eligible farm prior to the establishment of the 1983 preliminary farm poundage quote or be subject to reduction due to inadequate tillable cropland.

Accordingly, it is proposed to amend the regulations at 7 CFR Part 729 by adding a new subpart to read as follows:

PART 729—PEANUTS

Subpart—Poundage Quota Regulations for the 1982 Crop of Peanuts

General

Sec.
729.111 Basis and purpose.
729.112 Extent of calculations and rule of fractions.
729.113 Definitions.
729.114 Types of peanuts.
729.115 Supervisory authority of State committee.
729.116–729.119 [Reserved].

State Poundage Quota, Farm Poundage Quota, Notice to Farm Operator and Appeals

729.120 Instructions and forms.
729.121 Determination of State poundage quota.
729.122 Reserves for corrections, and quota reduction exemptions.
729.123 Determination of preliminary farm poundage quota.
729.124 Determination of farm poundage quota.
729.125 Determination of undermarketings.
729.126 Determination of effective farm poundage quota.
729.127 Determination of farm yield.
729.128 Determination of farm yield for reconstituted farm.
729.129 Approval of farm poundage quota and notice to farm operator.
729.130 Erroneous notice of effective farm poundage quota.
729.131 Request for reconsideration or appeal.
729.132 Farm with one acre or less of peanuts.
729.133–729.139 [Reserved].

Transfer of Farm Poundage Quota

729.140 Transfer by sale or lease.
729.141 Transfer by owner or operator.
729.142 Transfer within a State.
729.143 Witness of signatures.
729.144 Filing transfer agreement and time for filing.
729.145 Maximum period of transfer.
729.146 Transfer not to be approved.
729.147 Transfer of farm poundage quota in eminent domain pool.
729.148 Consent of lienholder.
729.149 Transfer to and from farm (subleasing).
729.150 Effect of permanent transfer on determination of farm poundage quota.
729.151 County committee action.
729.152 Withdrawal or minor revision.
729.153 Recomputation of previously approved multiple year transfer.
729.154 Amendment of multiple year transfer filed on or before December 22, 1981.

*Prior to the application of any uniform State factor should further reductions in category 3 be necessary.

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 65, as amended, 66, as amended, 91 Stat. 944, as amended, 95 Stat. 1248 (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375 as amended); Sec. 108A, 95 Stat. 1254 (7 U.S.C. 1445c–1)

Subpart—Poundage Quota Regulations for 1982 Crop of Peanuts

General

§ 729.111 Basis and purpose.

(a) The regulations contained in this subpart are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and are applicable to the 1982 crop of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of records, and the making of reports incident thereto.

(b) The acreage allotment, marketing quota, and poundage quota regulations for peanuts for the 1978 and subsequent crops (43 FR 28987 and 44 FR 25404, 28294, as amended) are hereby superseded but remain effective with respect to the 1978 through the 1981 crops of peanuts.

§ 729.112 Extent of calculations and rule of fractions.

Computations shall be rounded according to Part 793 of this chapter. The terms set forth below shall be expressed as follows:

(a) Acreage in acres and tenths of acres.

(b) Penalty or damages in dollars and cents.

(c) The quantity of peanuts produced, considered produced and marketed; a preliminary farm poundage quota; a farm poundage quota; an effective farm poundage quota; a farm yield; and an actual yield per acre, in whole pounds.

(d) Factors as a four place decimal except where a different place decimal factor is established by the Deputy Administrator.

§ 729.113 Definitions.

The definitions in and provisions of Parts 718, 719, and 720 of this chapter are hereby incorporated by reference in these regulations unless the context or subject matter or the provisions of these regulations require otherwise. References to other parts of this chapter or title include any amendments to the referenced parts. Unless the context or subject matter require otherwise, the following words and phrases, as used in this subpart and in all related instructions and forms shall mean:

(a) *Additional peanuts.* Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

(b) *Areas.* (1) The southeastern area consisting of the States of Alabama, Georgia, Mississippi, Florida, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(2) The southwestern area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(3) The Virginia-Carolina area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

(c) *Base period.* The 3 calendar years immediately preceding the year for which a farm poundage quota is being established.

(d) *Buyer.* A person who:

(1) Buys or otherwise acquires peanuts in any form;

(2) Markets, as a commission merchant, broker, or cooperative, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(3) Receives peanuts as collateral for or in settlement of a price support loan.

(e) *Considered produced.* The number of pounds of peanuts to be considered produced for the current year or for a base period year for use in computing a future farm poundage quota. Considered produced pounds for a farm will be the sum of the pounds (limited to the farm poundage quota less the pounds of peanuts marketed) which:

(1) Were not produced because of a natural disaster as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, Agricultural Stablization and Conservation Service (hereinafter referred to as the "Deputy Administrator").

(2) Were in an eminent domain pool.

(3) Are equal to the farm poundage quota on a farm where the farm was either purchased or a transfer by sale was approved, after the latest normal planting date for peanuts for the county for the 1980 crop year, and only to the extent that such farm poundage quota was produced or considered produced on the farm to which allocated during the 1981 crop year.

(4) Are equal to the total pounds produced or considered produced on a farm to which was allocated for the 1981 crop year a new farm allotment and quota in accordance with § 729.17 of this chapter.

(f) *Cropland.* Land on a farm which is determined by the county committee to be suitable for the production of peanuts and on which a seedbed could have been prepared and a normal crop produced using practices and equipment normally used in the county for planting peanuts. Land not considered suitable includes, but is not limited to, established orchards, vineyards, one-row shelter belts, land seeded to trees, and land being prepared for housing developments, shopping centers, or other noncorp uses as determined by the county committee.

(g) *Crushing.* The processing of peanuts (1) to extract oil for food uses and meal for feed uses, or (2) into flakes for domestic food uses other than peanut butter, candy, confections or other traditional domestic edible uses.

(h) *Director.* The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stablization and Conservation Service, U.S. Department of Agriculture.

(i) *Domestic edible use.* Peanuts which are: (1) used for milling to produce domestic food peanuts, other than peanuts used for crushing; (2) used for seed; or (3) dug peanuts used or consumed on the farm.

(j) *Effective farm poundage quota.* The quota determined in accordance with § 729.126.

(k) *Excess peanuts.* The quantity of peanuts marketed or considered marketed for domestic edible use in the current marketing year in excess of the effective farm poundage quota.

(l) *Farm poundage quota.* The quota determined in accordance with Section 729.124.

(m) *Farm yield.* The farm yield determined in accordance with § 729.127.

(n) *Farmers stock peanuts.* Dug peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers.

(o) *False identification.* False identification shall include the following:

(1) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production; or

(2) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm; or

(3) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm.

(p) *Final acreage.* The acreage on the farm from which peanuts are produced as determined and adjusted in accordance with Part 718 of this chapter.

(q) *Green peanuts.* Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

(r) *Inspector.* A Federal or Federal-State inspector authorized or licensed by the U.S. Department of Agriculture.

(s) *Marketed.* To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "market", "marketing", and "for market" shall have corresponding meanings to the term "marketed" in the connection in which they are used. The terms "barter" and "exchange" shall include the payment by the producer of any quantity of peanuts, for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer by anyone. Any lot of farmers stock peanuts will be considered as marketed when delivered by the producer to the buyer pursuant to an oral or written sales agreement. Peanuts which are delivered by the producer as collateral for or in settlement of a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when unloaded at the delivery point. Any peanuts retained on the farm for seed or other use shall be considered marketings of quota peanuts or marketings for domestic edible use.

(t) *Marketing year.* For each crop of peanuts, the period beginning August 1 of the current year and ending July 31 of the following year.

(u) *National poundage quota.* 1,200,000 tons for 1982.

(v) *Planted acreage.* The final acreage of peanuts on a farm determined in accordance with the provisions of Part 718 of this chapter.

(w) *Peanuts.* All peanuts produced, excluding any peanuts which were not dug or were not picked or threshed before or after marketing from the farm and excluding any peanuts marketed by the producer before drying or removal of moisture from such peanuts by natural or artifical means for consumption exclusively as boiled peanuts (referred to as "green peanuts"). If a lot of farmers stock peanuts has been inspected by the Federal-State Inspection Service at the time of marketing, the quantity in the lot shall be the gross weight thereof less foreign material and excess moisture (moisture in excess of 7 percent in the southeastern and southwestern areas and 8 percent in the Virginia-Carolina area). If the lot of peanuts is not inspected by the Federal-State Inspection Service, the quantity in the lot shall be the gross weight thereof. If shelled peanuts are marketed by a producer, the quantity in the lot (farmers stock basis) shall be determined by multiplying the poundage of the shelled peanuts by 1.5.

(x) *Preliminary farm poundage quota.* The quota determined in accordance with § 729.123.

(y) *Produced.* The total pounds of peanuts dug.

(z) *Quota peanuts.* Peanuts (except green peanuts) which are marketed or considered marketed from a farm for domestic edible use. This includes all peanuts which are dug on a farm except the following: (1) green peanuts; (2) peanuts which are placed under loan at the additional support rate and not redeemed by the producer; or (3) peanuts which are marketed under a contract between a handler and a producer for export and/or crushing.

(aa) *Seed sheller.* A person who in the course of his usual business operations shells peanuts for producers for use as seed for the subsequent year's corp.

(bb) *Segregation 1 peanuts.* A lot of farmers stock peanuts which (1) have at least 99 percent peanuts of one type, (2) have not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay, and (3) are free from visible Aspergillus flavus mold.

(cc) *Undermarketings.* The number of pounds determined in accordance with § 729.125.

(dd) *Yield per acre or actual yield.* The actual yield per acre for the farm obtained by dividing the total production of peanuts for the farm by the final acreage of peanuts.

§ 729.114 Types of peanuts.

The generally known types of peanuts have identifying characteristics as follows:

(a) *Runner type peanuts.* These peanuts are commonly known as African Runner, Alabama Runner, Georgia Runner, Carolina Runner, Wilmington Runner, Dixie Runner, or Runner. They are produced principally in the southeastern peanut producing area of the United States and are identified by the following characteristics: Typically two-seeded pods which are practically cylindrical, medium sized, stem end round and the other pointed with a slight keel having shells fairly thick and strong, with shallow veining and corrugation; seeds crowded in pod with adjacent ends sharply shouldered.

(b) *Spanish type peanuts.* These peanuts are commonly known as White Spanish, Small Spanish, Medium-Small Spanish, or Spanish. They are produced principally in the southeastern and southwestern peanut-producing areas of the United States and are identified by the following general characteristics: Typically two-seeded pods which are small, with both ends rounded, the end opposite the stem having an inconspicuous point or keel, and the waist slender; shells very thin, with veining and corrugation but not deep, and seed globular to oval and practically smooth.

(c) *Valencia type peanuts.* These peanuts are commonly known as New Mexico Valencia, Tennessee Valencia, Tennessee White, Tennessee Red, or Valencia. They are produced principally in Tennessee and New Mexico and are inditified by the following general characteristics: Typically three of four-seeded, and sometimes five-seeded pods which are long and slender, with the end opposite the stem having a definite point or keel with conspicuous veining and corrugation, and seeds globular to oval.

(d) *Virginia type peanuts.* The peanuts are commonly known as Virginia Runner, Virginia Bunch, North Carolina Runner, North Carolina Bunch, Jumbo, or Virginia. They are produced principally in North Carolina, Virginia, northeastern South Carolina, and Tennessee, and are identified by the following general characteristics: Typically two-seeded pods which are of an average size larger than any other type, pods are roughly cylindrical, with veining and corrugation deep, and seeds cylindrical with pointed ends, length two or three times diameter, and practically smooth.

§ 729.115 Supervisory authority of State committee.

The State committee shall take any action required to be taken by the county committee which the county committee fails to take. The State committee shall correct or require the county committee to correct any action taken by the county committee which is not in accordance with this subpart. The State committee shall also require the county committee to withhold taking any action which is not in accordance with this subpart.

§§ 729.116–729.119 [Reserved]

State Poundage Quota, Farm Poundage Quota, Notice to Farm Operator and Appeals

§ 729.120 Instructions and forms.

The Director shall issue such forms and instructions as are necessary for carrying out the regulations in this subpart.

§ 729.121 Determination of State poundage quota.

The State poundage quota shall be the State's share of the current year's national poundage quota calculated to equal the percentage of the 1981 national poundage quota allocated to farms in the State.

§ 729.122 Reserve for corrections.

For the purpose of correcting errors, the State committee shall establish a reserve of not to exceed 2 percent of the State poundage quota. If the amount of poundage quota necessary to correct errors is in excess of the reserve established by the State committee, such errors may nevertheless be corrected with the approval of the Deputy Administrator. However, the Deputy Administrator may require the State committee to recalculate the farm poundage quotas for all farms in the State, if the Deputy Administrator determines that the amount of poundage quota necessary to correct errors is substantially in excess of the reserve. In such case, the State committee shall reissue corrected farm poundage quotas for all farms in the State and such corrected farm poundage quota shall be considered the farm poundage quota for the farm for all purposes.

§ 729.123 Determination of preliminary farm poundage quota.

The preliminary farm poundage quota shall be the farm poundage quota established for the farm for the preceding year.

§ 729.124 Determination of farm poundage quota.

The farm poundage quota shall be the preliminary farm poundage quota adjusted downward for poundage quota reductions as required by this section, plus permanent adjustments from reserves and permanent transfers.

(a) *Poundage quota reductions.* The preliminary farm poundage quota for each farm shall be reduced by the county committee in the following order of priority to the extent necessary, in whole or in part, to accomplish the reduction in the total of the preliminary farm poundage quotas for the State to the State poundage quota less the amount withheld for the reserve for the current marketing year.

(1) Inadequate tillable cropland. The preliminary farm poundage quota shall be reduced for a farm to the extent the county committee determines that the farm did not have adequate tillable cropland to produce the farm poundage quota during the preceding crop year. A farm for which the acreage allotment and farm poundage quota was in the eminent domain pool on December 22, 1981 shall be considered as having adequate tillable cropland.

(2) *Quota not produced.* The preliminary farm poundage quota for a farm shall be reduced, or further reduced, to the extent the county committee determines that the farm poundage quota for such farm was not produced or considered produced during any two of the base period years. An individual determination shall be made for the farm as constituted during each year of the base period if the current constitution differs from any one or more of the base period years.

(3) *Calculation of farm poundage quota reductions under subparagraphs (a)(1) and (2).*

(i) The amount of the farm poundage quota reduction made under subparagraph (a)(1) of this section shall equal the amount of the farm poundage quota that was not produced on the farm during the previous crop year because of inadequate tillable cropland.

(ii) The amount of the farm poundage quota reduction made under subparagraph (a)(2) shall equal: (A) the preliminary farm poundage quota times the average of the two highest percentages of the farm poundage quota that was not produced or considered produced during two of the three base period years minus (B) the amount of any reduction under subparagraph (a)(3)(i) of this section, but not less than zero.

(4) *Application of State factor.*

(i) If the cumulative totals of individual farm poundage quota reductions computed in accordance with paragraphs (a)(1) or (2) of this section are more than the required reduction (including amounts withheld for the reserve) in the State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the reductions of farm poundage quotas computed for the farms in the category for which the farm poundage quota reductions exceed the total of the required reduction for the State, so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(ii) If the cumulative total of individual farm poundage quota reductions in paragraphs (a)(1) and (2) of this section is less than the required reduction (including amounts withheld for the reserve) in State poundage quota for the current year, a uniform State factor shall be determined by the State committee and multiplied times the preliminary farm poundage quotas on the remaining farms in the State (including those not reduced to zero in paragraphs (a)(1) and (2) of this section), so as to cause the cumulative total of reductions of individual farm poundage quotas to equal the total reduction for the State plus amounts withheld for the reserve.

(b) *Permanent adjustments.* The preliminary farm poundage quota, after adjustments under paragraph (a) of this section, if any, shall be adjusted by the county committee to reflect permanent transfers or adjustments from reserves as set forth in this subpart.

(c) *Eminent domain pool quota.* The farm poundage quota in the eminent domain pool on December 22, 1981 shall not be adjusted by the county committee pursuant to paragraph (a) (1) and (2) of this section. Notwithstanding the provisions of § 719.11 of this chapter, peanut farm poundage quotas in the eminent domain pool on December 22, 1981 shall only be transferred from the eminent domain pool in accordance with § 729.147. Peanut farm poundage quotas on farms acquired by an agency having the right of eminent domain after December 22, 1981 shall not be eligible to be pooled under the provisions of § 719.11. In order to preserve farm poundage quotas in the eminent domain pool on December 22, 1981, such quota must be transferred pursuant to the provisions of § 729.147 during calendar year 1982.

§ 729.125 Determination of undermarketings.

(a) *Actual undermarketings.* Actual undermarketings are the number of pounds by which the total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1980 crop) were less than the total amount of the applicable farm poundage quotas (disregarding adjustments for undermarketings from prior marketing years) for such marketing years. For purposes of the foregoing sentence, total marketings of quota peanuts for any marketing year shall be the larger of (1) the total production of segregation 1 peanuts on the farm for such year, or (2) the total amount of quota peanuts which were

marketed or considered marketed from the farm. However, the total marketings of quota peanuts for any marketing year shall not exceed the effective farm poundage quota for that farm for such year.

(b) *Effective undermarketings.*

(1) If 10 percent of the national poundage quota for the marketing year to which the actual undermarketings are to be applied is equal to or greater than the acutal undermarketings on all farms, the effective undermarketings for the farm shall be the same as the actual undermarketings.

(2) If the conditions in paragraph (b)(1) of this section are not applicable, the actual undermarketings will be apportioned to each farm in such manner that the effective undermarketings (i) will not be less than the smaller of the actual undermarketings or 10 percent of the farm poundage quota; (ii) will not be more than the actual undermarketings; and (iii) will be apportioned so as to cause, insofar as practicable, the total of the effective undermarketings on all farms to equal 10 percent of the national poundage quota for the marketing year to which the effective undermarketings are to be applied.

§ 729.126 Determination of effective farm poundage quota.

The effective farm poundage quota shall be the farm poundage quota adjusted for temporary transfers and effective undermarketings.

§ 729.127 Determination of farm yield.

The farm yield established for a farm for which a farm poundage quota is established for the current year shall be the farm yield established for the farm for the immediately preceding year. If a farm yield is not established for a farm on which a farm poundage quota is established, the county committee shall establish a farm yield in accordance with instructions issued by the Deputy Administrator.

§ 729.128 Determination of farm yield for reconstituted farm.

For reconstitutions which are effective after farm yields have been established the farm yield shall be determined as follows:

(a) *Combination*—(1) *Quota farm.* The farm yield for a combined farm shall be the weighted average of the farm yields for the tracts being combined.

(2) *Quota and nonquota farm.* A combined farm shall be assigned the farm yield of the tract with an established quota if placed in combination with a nonquota tract even though a farm yield previously had been established for such nonquota tract.

(3) *Nonquota farms.* The farm yield for combined nonquota tracts shall be established by the county committee in accordance with § 729.127 even though a farm yield had been previously established for such tracts.

(b) *Divisions*—(1) *No identifiable tracts having tract yield established.* The farm yield shall be the same for each tract as the farm yield for the parent farm.

(2) *Identifiable tracts with tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is divided from the parent farm.

(3) *Division of an identifiable tract having a tract yield established.* The farm yield shall be the same as the yield which has been previously established for the tract which is being divided.

§ 729.129 Approval of farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, preliminary farm poundage quota, farm poundage quota, and effective farm poundage quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee. The initial notice of farm poundage quota shall not be mailed to a farm operator until the farm poundage quota has been approved. A revised notice may be mailed without prior approval in any case resulting from: (1) farm reconstitution that does not require allocation of additional poundage quota; or (2) a transfer by lease, sale, owner or operator of poundage quota.

(b) *Notice to farm operator.* (1) As soon as possible after the farm poundage quota or the effective farm poundage quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If a farm poundage quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of farm poundage quota or the effective farm poundage quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the opertor shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper has an interest in the farm for which the quota is established.

§ 729.130 Erroneous notice of effective farm poundage quota.

If the official notice of effective farm poundage quota issued for a farm erroneously stated a quota larger than the correct effective farm poundage quota, the quota shown on the erroneous notice shall be used as the effective farm poundage quota and shall serve as the basis for marketing penalty computations for the farm for the current marketing year only, if the county committee determines and the State Executive Director concurs that: (1) the error was not so substantial as to place the operator on notice thereof, and (2) the operator was not notified of the correct effective farm poundage quota prior to marketing peanuts as quota peanuts in excess of the correct effective farm poundage quota. Notwithstanding the foregoing, undermarketings for farms for which the erroneous notice of the effective farm poundage quota is applied shall be determined on the basis of the correct effective farm poundage quota for the farm.

§ 729.131 Request for reconsideration or appeal.

Any producer who is dissatisfied with the initial determination of the farm poundage quota or the effective farm poundage quota which is established for such farm may file a request for reconsideration with the county committee in accordance with Part 780 of this Chapter. Such request must be filed no later than 15 days after the producer receives the notice of the farm poundage quota or effective farm poundage quota. If after reconsideration the producer remains dissatisfied with the determination, the producer may appeal such determination to the State committee in accordance with Part 780 of this Chapter. Determinations rendered by the State committee with respect to the determination of individual farm poundage quotas and effective farm poundage quotas shall be final and there shall be no further administrative appeal.

§ 729.132 Farms with one acre or less of peanuts.

Peanuts produced on a farm on which the acreage of peanuts is one acre or less are eligible to be marketed for domestic edible use provided that all producers that share in the peanuts produced on such farm do not share in the peanuts produced on any other farm.

§§ 729.133–729.139 [Reserved]

Transfers of Farm Poundage Quota

§ 729.140 Transfer by sale or lease.

The owner and operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer for sale or lease of all or any part of the farm poundage quota to any other owner or operator of a farm in the same county. The receiving farm need not have a farm poundage quota. If the owner(s) and operator of the farm from which the transfer by sale or lease is to be made are different persons, each shall execute the record of transfer. However, only the owner(s) or operator of the receiving farm is required to execute the record of transfer.

§ 729.141 Transfer by owner or operator.

The owner or operator of any farm having a farm poundage quota in the current year is eligible to file a record of transfer to transfer the farm poundage quota from such farm to another farm owned or controlled by the applicant: (a) in the same county; or (b) in a county that is contiguous to the transferring county in the same State if the receiving farm had a farm poundage quota established for the 1981 crop.

§ 729.142 Transfer within State.

Notwithstanding the provisions of § 729.140 and § 729.141, a transfer of a farm poundage quota by sale, lease, owner or operator, may be made to any other farm in the same State, pursuant to instructions issued by the Deputy Administrator, in the States of Arizona, Arkansas, California, Louisiana, Mississippi, Missouri, New Mexico and Tennessee.

§ 729.143 Witness of signatures.

A county committee member or employee must witness the signature of either the owner or operator of the transferring farm and the owner or operator of the receiving farm. If such signatures cannot be witnessed in the county office where the farm is administratively located, they may be witnesses in any county office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers who are ill, infirm, reside in distant areas, or are in similar hardship situations, or who may be unduly inconvenienced, may be waived provided the county office mails Form ASCS–375 or such other form approved by the Deputy Administrator to such person for the required signature. In the case of a transfer by sale, such request must be accompanied by a statement signed by all parties to the transaction confirming that the sale has been made.

§ 729.144 Filing transfer agreement and time for filing.

No transfer of any quota under this section shall become effective until a record of transfer, determined by the county committee to be in compliance with the provisions of this subpart, has been executed on Form ASCS–375 or such other form approved by the Deputy Administrator and filed within the time periods set forth in this section with the county committee in the county where the farms are administratively located.

(a) *Transfer filed by July 31.* A record of transfer filed after July 31 may be considered filed by July 31 if the county committee, with approval of the State committee, finds that (1) the transfer was agreed upon no later than July 31, and (2) the record of transfer was not filed by July 31 because of conditions beyond the control of the parties to the transfer.

(b) *Transfer filed after July 31.* A transfer filed after July 31 shall not become effective unless filed no later than December 31 of the current year. A record of transfer filed after December 31 but prior to January 31 may be considered timely filed by December 31 if the county committee with approval of the State committee finds that (1) the transfer was agreed upon no later than December 31, and (2) the record of transfer was not timely filed with the county committee because of conditions beyond the control of the parties to the transfer.

§ 729.145 Maximum period of transfer.

(a) *Owner transfer.* (1) An owner transfer may be approved to a farm owned by such person permanently or temporarily but not beyond the 1985 marketing year. (2) An owner transfer to a farm controlled by such person may be approved for only one year.

(b) *All other transfers.* Transfers by lease and by operator may only be approved for one year. Mulityear leases and permanent operator transfers shall not be permitted.

§ 729.146 Transfer not to be approved.

The county committee shall not approve:

(a) A transfer of poundage quota by sale if poundage quota was transferred to the farm by sale within the 3 preceding crop years.

(b) Temporary transfers by an operator for more than one year.

(c) Permanent transfers by an operator.

(d) Transfers filed after July 31 for more than 1 marketing year.

(e) Transfers of actual or effective undermarketings.

§ 729.147 Permanent transfer of quota in eminent domain pool.

A farm poundage quota established prior to December 22, 1981 as a pooled poundage quota or allotment under Part 719 of this Chapter may be permanently transferred only during calendar year 1982 by the owner to a farm such person owns. Temporary transfers of pooled quota shall not be approved.

§ 729.148 Consent of lienholder.

A transfer of poundage quota from a farm which the county committee has been informed is subject to a mortgage or other lien shall not be approved unless the transfer is agreed to in writing by the lienholder.

§ 729.149 Transfer to and from a farm (subleasing).

(a) *Transfer filed before July 31.* Generally the county committee shall not approve a transfer which is filed (or considered filed) on or before July 31 if the approval would result in a transfer both to and from the farm during the period ending July 31 of the same crop year. However, a transfer may be approved if a poundage quota is transferred temporarily from a farm for 1 or more years (and the transfer remains in effect) and the farm is subsequently combined with another farm that is otherwise eligible to receive poundage quota by transfer.

(b) *Transfer filed after July 31.* A temporary transfer of poundage quota either to or from the same farm (but not both) may be approved by the county committee if filed after July 31 even though a transfer which was filed on or before July 31 is in effect for the farm provided the producers so certify and the county committee determines that the (1) acreage of peanuts planted on the farm was equal to at least 80 percent of the acreage determined by dividing the effective farm poundage quota by the current farm yield for the farm, and (2) the production to peanuts was limited to less than the effective farm poundage quota because of conditions beyond control of the producer.

§ 729.150 Effect of permanent transfer on determination of farm poundage quota.

The quota, pounds produced, pounds considered produced, pounds transferred and produced on a receiving farm for both the transferring farm and the receiving farm shall be adjusted for the current year and for 2 preceding years to reflect the applicable increase or decrease in the farm poundage quota and other historic data or farm practices

affecting the determination of farm poundage quotas.

§ 729.151 County committee action.

(a) *Approval of transfer.* The county committee shall approve the transfer of poundage quota only if it determines that a timely filed record has been received and that the transfer complies with the requirements of this subpart. A transfer shall not be effective until approved by the county committee. The county committee may delegate authority to the county executive director and to other county office employees to approve transfers of poundage quotas.

(b) *Notice of revised quotas.* A revised notice of farm poundage quota must be issued for each farm affected by the transfer of farm poundage quota.

(c) *Cancellation of transfer.* (1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement or approved due to error by the county committee shall be canceled effective as of the date of approval. However, the cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketings of quota peanuts in excess of the revised effective farm poundage quota.

(2) Where cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for cancellation.

§ 729.152 Withdrawal or minor revision.

Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of a transfer upon written request by all parties to the transfer. However, a temporary transfer may be withdrawn or revised before peanuts are harvested during any year of the agreement, and a permanent transfer may be withdrawn or revised before peanuts are harvested only during the first year of the agreement.

§ 729.153 Recomputation of previously approved multiple year transfer.

For a multiple year temporary transfer approved after 1982, the county committee shall annually recompute the transfer by limiting the poundage quota transferred to the smaller of: (a) the poundage quota initially transferred, or (b) the farm poundage quota for the transferring farm.

§ 729.154 Amendment of multiple year transfer agreements approved on or before December 22, 1981.

Notwithstanding any other provision in this section, a multiple year temporary transfer approved on or before December 22, 1981 shall not be effective after the 1981 crop year unless an amended record of transfer is filed. The county committee shall notify the operator of both the transferring farm and the receiving farm of the requirement for filing an amended record of transfer in order for the previously filed transfer agreement to remain in effect. The amended record of transfer must be filed at the county ASCS office within 30 days from the date of notification by the county committee that an amended transfer agreement is required. The amended agreement shall be on the basis of the farm poundage quota established for the farm for 1982 and shall be agreed upon and signed by each person whose signature is required and in accordance with the provisions of this subpart.

Signed at Washington, D.C. on March 4, 1982.

Richard E. Lyng,

Acting Secretary.

[FR Doc. 82-6355 Filed 3-5-82; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1007

[Docket No. AO-366-A18]

Milk in the Georgia Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends amending the Georgia Federal milk marketing order. The change would provide that a distributing plant located within the marketing area that processes and distributes primarily aseptically processed fluid milk products would be fully regulated under the Georgia order, irrespective of the market or markets in which the products may be distributed. The recommendation, which is based on evidence received at a public hearing held at Hapeville, Georgia, on January 21, 1982, is necessary to ensure a stable regulatory environment for such a plant. The hearing was requested by a dairy farmer cooperative association that is now constructing this type of milk plant at Savannah, Georgia.

DATE: Comments are due on or before March 16, 1982.

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

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

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

This action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued January 5, 1982; published January 8, 1982 (47 FR 962).

Correction: Published January 14, 1982 (47 FR 2122).

Preliminary Statement

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

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before March 16, 1982. It is necessary to limit the time for filing exceptions to seven days after **Federal Register** publication in order to complete this proceeding so that an amended order would be effective not later than May 1, 1982. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at

the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Hapeville, Georgia, on January 21, 1982, pursuant to notice thereof issued January 5, 1982 (47 FR 962).

The material issue on the record of hearing relates to whether the pool plant standards should be revised with respect to a milk plant in the marketing area that processes and distributes aseptically processed fluid milk products.

Findings and Conclusions

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

The provisions of the order describing those plants that qualify as pool plants should be modified to include a distributing plant located in the marketing area if the principal activity of the plant is the processing and distribution of aspetically processed fluid milk products. Such pool status should not be dependent upon the amount of route disposition within the Georgia marketing area. Under the current provisions of the order, a distributing plant qualifies as a pool plant if it has route disposition equal to at least 50 percent of its receipts and has route disposition in the Georgia marketing area equal to at least 15 percent of its total Class I disposition.

Dairymen, Inc. (DI), a dairy farmer cooperative, proposed that the order be amended to accommodate the operations of a new milk plant that it is building at Savannah, Georgia, which is in the defined marketing area. The plant is expected to be operational by May 1, 1982. The cooperative's witness stated that the new plant will utilize "aseptic processing and packaging which means the filling of a commercially-sterilized cool product into presterilized containers, followed by the aseptic hermetical sealing with a presterilized closure, in an atmosphere free of microorganisms * * *." The witness indicated that the aseptic process would include the use of ultra high temperature pasteurization, and that the resulting products, commonly referred to as "UHT" milk, could be distributed and stored unfrigerated for several months.[1]

DI proposed that this type of plant be a pool plant if it is in the marketing area and meets the current performance requirements for a distributing plant except the 15 percent in-area route disposition requirement. It is the cooperative's intent that the plant be pooled under the Georgia order irrespective of the level of route sales in this or other markets.

The DI spokesman stated several reasons why the proposal should be adopted. One reason was the UHT product itself and how it is different from other fluid milk products. According to the witness, fluid milk products processed at ultra high temperatures and aseptically packaged in hermetically sealed containers can be shipped and stored unrefrigerated for several months. As a result, DI's planned distribution of UHT products, which is expected to be throughout a number of Federal order markets, will differ from the usual distribution of fluid milk products. The cooperative expects that the distribution channels used will be those more normally associated with dry or canned goods rather than those associated with the distribution of refrigerated fluid milk products, i.e., UHT milk will move in rather large shipments from the plant to central warehoues for subsequent distribution to consumer outlets. The cooperative indicated that these factors will make it more difficult to track the disposition of UHT milk to final destinations for purposes of determining in which market the plant should be pooled.

The cooperative claims that the size of the plant-to-warehouse shipments, coupled with a less frequent and more irregular delivery schedule, will result in greater variations in deliveries from the plant to specific marketing areas. The witness expressed the cooperative's concern that the distribution patterns for UHT milk will be such that, unless order changes are made, the regulatory status of the UHT plant could shift from order to order, perhaps on a monthly basis. Or, the plant might not qualify as a pool plant under any order and thus could be subject to partial regulation under several orders in the same month. In DI's view, such regulatory variations would create operational problems for the UHT plant, administrative problems for the various orders, competitive uncertainty for other handlers in the Georgia market, and payment problems for producers. The cooperative further contended that such a plant could have problems attracting a milk supply under these circumstances.

No opposition to the proposal was expressed at the hearing or in briefs.

As noted earlier, the new milk plant that DI is building is expected to begin processing and distributing aseptically processed fluid milk products by May 1, 1982. The plant will use only Grade A milk, which will be supplied mostly from dairy farms located in Georgia. The plant will use an aseptic processing system that will include ultra high temperature pasteurization. The resulting products, which will be "fluid milk products" as defined in the order, will be capable of being transported and stored without refrigeration for several months. Projected two-shift capacity of the new plant is roughly 22 million pounds of milk monthly.

Since the new plant is not yet in operation, actual marketing experience is not available to draw upon in considering the issues in this proceeding. Nevertheless, DI's planned distribution channels are likely to be substantially different from those currently used for the distribution of refrigerated fluid milk products. The latter products generally are distributed through regular deliveries by the distributing plant to stores, commonly three times a week. Moreover, brokers generally are not involved in the distribution chain. In contrast, it is anticipated that the fluid milk products disposed of from the Savannah UHT plant will be handled largely by brokers and that shipments will be irregular and on a less frequent schedule. Due to the much longer shelf life, inventories may be carried longer, with a much longer span of time between when the product leaves the plant and when it is purchased by consumers. Large central warehouses may be employed to a greater extent than with ordinary fluid milk product distribution, and transportation methods other than refrigerated trucks probably will be utilized. Also, the cooperative anticipates that the UHT products will be distributed over a very wide geographical area. The level of sales in various markets, including the Georgia market, may or may not be sufficient to qualify the plant for pooling in a particular market.

Accordingly, it is reasonable to conclude that the new plant's regulatory status may not be as predictable or stable as for most milk plants currently regulated under Federal orders. Thus, it is necessary to consider whether a different basis for determining the regulatory status of the plant is needed.

[1] The proposal in the notice of hearing and the testimony presented by proponent's witness commonly used the term "UHT" milk (for ultra high temperature milk). However, "UHT" refers only to part of the process that may be used in making an aseptically processed milk product. For this reason, it is more appropriate for purposes of the order provisions to refer to the products involved as aseptically processed fluid milk products rather than as UHT milk. To facilitate the discussion, however, and because of the common usage of the term "UHT," reference will be made to UHT milk or milk products and UHT plant, with the understanding that this is in the above context.

Due to the anticipated distribution pattern, it is not likely that the plant would be pooled under some particular order on a regular basis. At times the plant could be fully regulated under the Georgia order, while at other times it possibly could be regulated under an order applicable to a market considerably distant from where the plant is located. It also is possible that the plant may not meet the pooling standards of any order for a given month, in which case it could be partially regulated under a number of orders.

These pooling situations would not be conducive to maintaining market stability, certainly not in the Georgia market and perhaps not in other markets. For example, the UHT plant would face uncertainty about the level of Federal order Class I prices that would be applicable at the Savannah location. An exhibit introduced at the hearing demonstrates that the Class I price differential at Savannah, which is $2.30 under the Georgia order, could vary from $2.66 under the Upper Florida order to $0.995 under the Memphis order, a range of $1.665 per hundredweight. If the plant's regulatory status changed from one order to another frequently, such a varying pattern of prices would not be desired by either the plant or by the plant's competitors. The record indicates that competitors would prefer to have the new plant subject to a stable pricing system.

In addition, producers who will supply such a plant also would experience uncertainty about the level of returns they would receive for their milk if regulatory status of the plant is unstable. Blend prices under an order are influenced by the amount of the Class I differential, the market's utilization of milk, and the applicable location adjustments. Since these factors vary from order to order, blend prices at the Savannah plant could vary considerably if the plant were to shift regulation from one order to another on the basis of sales shifts. Moreover, some of the markets in the Southeast, such as Georgia, use base-excess plans, while others do not. Also, the base-excess plans differ somewhat from each other. Producers often find it disruptive to their operations and long-range planning to shift from one market to another under this situation.

Providing for the continued pooling of the cooperative's UHT plant on the Georgia market should provide reasonable assurance that the plant will be able to attract adequate supplies of Grade A milk. The plant, irrespective of where it might be pooled, most likely will have to compete in the Georgia market for milk supplies because of its location in that market. This should be facilitated by having the order prices applicable at the plant the same as for any other pool plant under the Georgia order at that same location. It should be noted that there is another fluid milk bottling plant located at Savannah.

For the foregoing reasons, it is concluded that overall market stability will tend to be maintained and the regulatory stability of DI's new plant (or any other such plant) will tend to be assured if the order is modified along the lines proposed.

The actual amendment of the order should be somewhat different from that proposed by DI. As proposed, a plant that *processed only* aseptically processed fluid milk products would be subject to the new pooling provision. Such terminology could be interpreted too narrowly and should be modified to accommodate other milk handling activities at the plant. The record discloses, for example, that some excess cream from DI's UHT plant will need to be disposed of for non-Class I uses. Additionally, DI's witness indicated that the finished products would be held in the plant for a few days while various tests are made to establish product quality. These facts indicate that it may be necessary, on occasion, to dump or otherwise dispose of finished product that does not meet the plant's quality standards. Also, there is no reason to believe that DI's new plant (or any other such plant) would always receive milk that was suitable for processing into aseptically processed fluid milk products. If a load of unsuitable milk were received, the plant should have the operating flexibility to dispose of such milk by transferring it to a manufacturing plant or some other outlet where the milk could be utilized. In addition, although DI indicated that its new plant would process and distribute only products that would be fluid milk products, the record does not provide a basis for concluding that any such plant should be limited to the processing of Class I products. It is conceivable that there might be a desire to extend the UHT process to Class II products as well.

Accordingly, the order should specify that the principal activity at such a plant must be the processing and distribution of aseptically processed fluid milk products. This is intended to assure that a plant would not be able to be pooled under the particular pooling provision at issue unless at least one-half of the plant's receipts are processed and distributed in the form of aseptically processed fluid milk products. Thus, the plant would have some operating flexibility that may have been precluded under the proposal.

In connection with the pooling changes for a UHT plant, it is necessary to indicate in the pool supply plant definition that shipments from a supply plant to a pool distributing plant processing primarily aseptically processed fluid milk products will count as qualifying shipments from the supply plant for purposes of establishing the supply plant's pool status.

A second proposal by DI, which is not adopted, was intended to provide a basis for resolving administrative conflicts that might arise when its UHT plant qualifies for pool status under the Georgia order and under one or more other Federal orders. The association's intent was that the proposal would serve to assure continued regulation by the Georgia order in such a case.

It is not possible to eliminate pooling conflicts between the provisions of the Georgia order and other orders by amending only the Georgia order. Whenever a plant meets the pooling requirements of the Georgia order and another order, an administrative decision as to the order under which the plant shall be pooled may be necessary, depending upon the particular provisions of each order. Although apparently not the cooperative's intent, DI's proposed change would have allowed its UHT plant to be pooled under another order if the other order required such pooling even though route dispositions in the Georgia marketing area were larger. Adoption of this proposal would not be consistent with the other provisions adopted herein to lock a UHT milk plant into regulation by the Georgia order.

It is concluded that the interests of all parties involved in this issue will be served best by the issuance of a recommended decision and an opportunity to file exceptions thereto. At the hearing, DI asked that the recommended decision be omitted. DI's basis for this was that it is desirable to have an amended order effective by May 1 when the new UHT plant is expected to become operational. However, DI indicated in its brief that issuance of a recommended decision would be acceptable if the entire proceeding would be completed by May 1.

An amended order should be possible by May 1 even with the issuance of a recommended decision. Since this decision involves an issue that is unique, it is especially appropriate that

parties have an opportunity to file exceptions to the Department's proposed changes. It is necessary, though, to limit the amount of time for filing exceptions in view of the relatively short time remaining until May 1.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusions were filed on behalf of the proponent cooperative association. The brief, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by the cooperative are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions is denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar, as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

PART 1007—MILK IN GEORGIA MARKETING AREA

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Georgia marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1007.7 is revised to read as follows:

§ 1007.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A distributing plant, other than a plant specified in paragraph (d) of this section, that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of its total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) or (d) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed fluid milk products.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant (except a plant that is a pool plant pursuant to paragraph (d) of this section) that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants pursuant to paragraph (a) of (d) of this section than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

Signed at Washington, D.C., on March 4, 1982.

Eddie F. Kimbrell,

Acting Administrator.

[FR Doc. 82-6342 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Proposed Rescission of REA Bulletin 100-2

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA hereby proposes to rescind Bulletin 100-2, "minutes of the Meetings of Boards of Directors, Members, or Stockholders," because the procedures and recommendations it sets forth are no longer necessary. The need for a formalized document explaining these procedures and recommendations no longer exists. Rescission of this bulletin will reduce the burden of regulation on REA borrowers.

DATES: Public comments must be received by REA no later than: May 10, 1982.

ADDRESSES: Persons interested in the proposed rescission may submit written comments to Charles Weaver, Director, Electric Loans and Management Division, Rural Electrification Administration, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250

FOR FURTHER INFORMATION CONTACT: David Rabideau, Management Analyst, Electric Loans and Management Division, Room 3342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number (202) 382-1904. The Draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 9801 et. seq.) REA proposes to amend Appendix A by withdrawing Bulletin 100-2, "minutes of the Meetings of Boards of Directors, Members, or Stockholders." Proposed rescission of the bulletin will not result in increased costs or prices to consumers or industries nor will it have an annual effect of $100 million or more. Therefore in conformance with Executive Order 12291, Federal Regulation, this proposed action has been determined to be "not major." a regulatory Flexibility Analysis is not required, and an OMB Circular A-95 review is not applicable to this action.

The subject bulletin was reviewed in accordance with Executive Order 12291, Federal Regulation, to assess its: (1) Continued need and (2) clarity. Requirements concerning the submission of resolutions or excerpts of minutes in certain designated circumstances are already covered under existing REA Bulletins or contractual agreements (i.e., the electric loan contract, standard form of the REA-CFC common mortgage. REA Bulletins 20-2, 103-2, 109-4, 115-1, 121-1, etc.). Because the procedures and recommendations which the bulletin sets forth are no longer necessary, rescission of the bulletin was the option selected. Rewriting the bulletin or republishing it in its present form were other options which were considered. For the above reasons and the cost savings which will accrue from eliminating these regulations, the option of rescinding the bulletin was selected.

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

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

Dated: March 2, 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-6197 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-15-M

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins; Bulletin 345-84, Specification for Expanded Dielectric Coaxial Cable, PE-84

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A by revising Bulletin 345-84, REA Specification for Expanded Dielectric Coaxial Cable, PE-84, to include two additional cable sizes and to require lower attenuation values for all sizes of coaxial cable. The large diversity of population densities served by REA borrowers makes a larger selection of cables desirable, and technology has advanced to where low-loss cables are readily available. This proposal would permit REA borrowers to more cost effectively design systems.

DATE: Public comments must be received by REA no later than May 10, 1982.

ADDRESS: Submit written comments to Joseph M. Flanagan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Harry M. Hutson, Chief, Outside Plant Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1342, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8667. The draft Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A by issuing a revised Bulletin 345-84. This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as not major. A Regulatory Flexibility Analysis is not required and an OMB Circular A-95 review is not applicable to this action.

This program is listed in the Catalog of Federal Domestic Assistance as 10.853—Community Antenna Television Loans and Loan Guarantees, and 10.851—Rural Telephone Loans and Loan Guarantees.

All written submissions made pursuant to this action will be made available for public inspection during regular business hours, above address.

There have been significant advances in technology since the promulgation of Bulletin 345-84, and a wider selection of cable sizes is considered desirable for system design considerations. The existing bulletin is not applicable to much of the new technology and restricts cable availability so that as a result REA borrowers would be required to use outmoded less cost-effective technology. If the existing specification is deleted, rather than revised, there would be no REA specification for expanded dielectric coaxial cable which manufacturers would be required to meet. Unacceptable equipment could be sold to REA borrowers which could result in the loss of system effectiveness which could be a threat to REA loan security. As a result, revision of the Bulletin is being proposed since it is considered to be in the best interest of the program.

Dated: February 26, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-6343 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Change of Practice in Classifying Garments With Simulated Features; Extension of Time for Comments

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments with respect to a notice of a proposed change of practice in Customs classification of garments with simulated features. A document inviting the public to comment on this notice of proposed change of practice was published in the **Federal Register** on January 14, 1982 (47 FR 2126). Comments were to have been received on or before March 15, 1982. Requests have been received to extend the period of time for the submission of comments claiming that additional time is needed to prepare a comprehensive statement of the pertinent facts and law in response to the invitation of comments. Customs believes additional time for comment is warranted. Accordingly, this notice extends the period of time for comment to April 14, 1982.

DATES: Comments must be received on or before April 14, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Philip Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

Dated: March 1, 1982.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 82-6318 Filed 3-8-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Public Disclosure of Comments Received From Federal Agencies on the Resubmitted Illinois State Permanent Regulatory Program

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

ACTION: Proposed rule; announcement of public disclosure of comment.

SUMMARY: Before the Secretary of the Interior may approve permanent State regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain Federal agencies must be solicited and disclosed. The Secretary has solicited comments from these agencies and is today announcing their public disclosure with regard to the Illinois permanent regulatory program.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204

Office of Surface Mining, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240

Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Lanny Moore, Office of Surface Mining, Illinois Program Review, 46 East Ohio Street, Indianapolis, Indiana 46204, Telephone: (317) 269-2629.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the Illinois permanent regulatory program originally submitted by Illinois for review on March 3, 1980. The Illinois program was partially approved on October 31, 1980 (45 FR 72468). Illinois resubmitted a revised program for review on December 22, 1981. In the notice published on December 24, 1981 (46 FR 62477), the agency solicited comments on the resubmitted Illinois program. In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1), the Illinois program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed. In this regard, the following Federal agencies were invited to comment on the Illinois program:

Department of Agriculture
- Soil Conservation Service
- Forest Service
- Farmers Home Administration
- Agriculture Stabilization and Conservation Service

Department of Labor, Mine Safety and Health Administration

U.S. Environmental Protection Agency

Department of Energy

Department of the Interior
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

U.S. Army Corps of Engineers

Of those agencies invited to comment, OSM received comments from the following offices:

Department of Agriculture
- Soil Conservation Service
- Forest Service

U.S. Environmental Protection Agency

Department of the Interior
- Bureau of Mines
- Bureau of Land Management
- Fish and Wildlife Service
- National Park Service
- U.S. Geological Survey

These comments are available for review and copying during business hours at the locations listed above under "ADDRESSES."

Dated: March 2, 1982.

J. S. Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-6328 Filed 3-8-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-2057-6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Missouri has submitted proposed amendments to its State Implementation Plan (SIP) involving the control of volatile organic compounds (VOC) from perchloroethylene dry cleaning

installations and pertaining to sulfur dioxide and particulate emissions in the south St. Louis area. EPA has reviewed the state's submission and is proposing to approve the proposed amendments to the SIP provided the state does not make substantive changes to its submission and there are no public comments which would affect the approvability of the regulations. Today's notice is published to advise the public of EPA's proposed action and to request comments.

DATE: Comments must be received on or before April 8, 1982.

ADDRESSES: Comments should be addressed to Mr. Wayne G. Leidwanger, Air Branch, Environmental Protection Agency, 324 East 11th Street, Kansas city, Missouri 64106. Copies of the state submission and EPA's technical evaluation are available at the preceding address as well as the following locations: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at (816) 374-3791 (FTS) 758-3791).

SUPPLEMENTARY INFORMATION: On December 21, 1981, the State of Missouri submitted proposed amendments to Rules 10 CSR 10-2.280, applicable in the Kansas City ozone nonattainment area, and 10 CSR 10-5.320, applicable in the St. Louis ozone nonattainment area. These two rules control VOC emissions from perchloroethylene dry cleaning installations. EPA previously approved these regulations (April 3, 1981, 46 FR 20172) as part of Missouri's control strategy for attainment of the National Ambient Air Quality Standard for ozone as required by Part D of the Clean Air Act, as amended. These two rules, as approved by EPA, require dryer exhaust to be vented through a carbon adsorber such that the maximum solvent concentration in the vent from the adsorber does not exceed 100 ppm. EPA found that these regulations represented reasonably available control technology (RACT) as required by section 172(b)(3) of the Act. The proposed amendments to the rules would allow the use of equally effective control devices as carbon adsorbers. Such devices would be subject to approval by the Director of the Missouri Department of Natural Resources. Any device which is equally effective would meet the requirements for RACT. Therefore, EPA believes the proposed amendments are approvable.

The State of Missouri also submitted on December 21, 1981, proposed changes to Rule 10 CSR 10-5.290, More Restrictive Emission Limitations for Sulfur Dioxide and Particulate Matter in the South St. Louis area. EPA previously approved this rule on April 9, 1980 (45 FR 24140) as meeting RACT and the requirements of Part D of the Act. The proposed amendment would update the names of the facilities covered by the rule and provide for any future changes in ownership and operating responsibilities. EPA believes the state's submission is approvable.

Proposed action: EPA proposes to approve the amendments to Missouri Rules 10 CSR 10-2.280, 10 CSR 10-5.320 and 10 CSR 10-5.290 provided that the state submits final revisions which are substantially the same as the draft changes and there are no public comments which would affect the approvability of the submission. If the rules as adopted by the state are substantially changed, EPA will evaluate those changes and publish a revised notice of proposed rulemaking if necessary.

EPA is soliciting comments on the state's submission and on the proposed approval of these regulations as a revision to the Missouri SIP. The Administrator's decision to approve or disapprove this submission will be based upon the comments received and on whether the SIP revisions meet the requirements of Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

EPA believes the 30-day period allowed for public comments is adequate because the proposed SIP revisions are limited in their impact.

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709, January 27, 1981). The attached rule, if promulgated, constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves state actions. It imposes no new requirements.

This notice is issued under the authority of Sections 110 and 172 of the Clean Air Act, as amended.

Dated: February 4, 1982.

John Franke, Jr.,

Regional Administrator.

[FR Doc. 82-6321 Filed 3-8-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 265

[SW-FRL-1999-3]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

Correction

In FR Doc. 82-4900 appearing on page 8307 in the issue of Thursday, February 25, 1982; on page 8309, second column, the formula should read as follows:

$$V = \frac{H}{100}$$

for H less than 25 feet

or

$$V = 0.3 - \frac{H}{500}$$

for H equal to or greater than 25 feet

where V = the allowable volumetric fraction of the total volume of wastes and reasonable intermediate cover in the landfill that can be used for disposal of containers holding free liquids

H = the maximum vertical depth of waste and reasonable intermediate cover in the landfill at closure (as measured in feet)

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6218]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) Flood elevations for selected locations in the City of Worthington, Nobles County, Minnesota, previously published at 45 FR 62104 on December 22, 1981.

DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287-0230,

Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Worthington, Nobles County, Minnesota previously published at 45 FR 62104 on December 22, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

Lake Okabena and an area of shallow flooding were omitted from the original BFE notice.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota	(C) Worthington, Nobles County	Lake Okabena	At shoreline	*1,579
		Shallow flooding	Intersection of Winifred Street and West Okabena Street.	#2

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

Issued: February 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6281 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6224]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule, revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Island Lake, McHenry and Lake Counties, Illinois.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published at 45 FR 63335 on December 31, 1981, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Village of Island Lake, McHenry and Lake Counties, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (proposed) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements; of itself it has no economic impact.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V) Island Lake, McHenry and Lake Counties	Fox River	About 1.9 miles downstream of State Route 176	*738

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

Issued: February 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6280 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5966]

Proposed Flood Elevation Determinations; Arizona

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Clarkdale, Yavapai County, Arizona.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 85111 on December 24, 1980 and in the *Daily Independent*, published on or about December 4, 1980 and December 11, 1980, and hence supersedes those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at Town Hall, Ninth Street, Clarkdale, Arizona.

Send comments to: the Honorable Dorothy Benatz, P.O. Box 308, Clarkdale, Arizona 86324.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287–0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Clarkdale, Yavapai County, Arizona, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Verde River	At the center of the Tuzigoot National Monument Road crossing of Verde River	*3,350
Deception Wash	20 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing	*3,375
	At the center of the State Highway 279 crossing of Deception Wash	*3,655
	At intersection of western corporate limits and center of Deception Wash	*3,888
Bitter Creek	40 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (downstream crossing).	*3,393
	110 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (upstream crossing).	*3,523
Bitter Creek—south fork	30 feet upstream from center of State Highway 279 crossing	*3,691

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

Issued: February 22, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6279 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6224]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 46 FR 63342 on December 31, 1981. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Village of Middleburgh, Schoharie County, New York.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287-0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Middleburgh, Schoharie County, New York, previously published at 46 FR 63342 on December 31, 1981, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The notice of Proposed Base Flood Elevation Determinations should be amended to read as follows:

Source of flooding	Location	*Elevation in feet, national geodetic vertical datum
Schoolhouse Creek	Upstream of Main Street	*648
Tributary A	Corporate limits	*635
	Approximately 2,800' upstream of Corporate Limits	*638

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

Issued: February 19, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6278 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6061]

Proposed Flood Elevation Determinations; Colo.

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule; revision.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of La Junta, Colorado.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 46 FR 28446 on May 27, 1981 and in the *La Junta Tribune-Democrat*, published on or about May 6, 1981, and May 13, 1981, and hence supersedes those previously published rules for the areas cited below.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Utility Room, City Hall, 6th & Colorado, La Junta, Colorado.

Send comments to: Honorable Donald J. Rizzuto, P.O. Box 489, La Junta, Colorado 81050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 287-0230, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of La Junta, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however,

impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Anderson Arroyo	30 feet upstream of intersection of Third Street and Anderson Arroyo	*4,078

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

Issued: February 12, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6292 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-6153]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Gaithersburg, Montgomery County, Maryland.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the **Federal Register** at 46 FR 48727 on October 2, 1981, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Code Enforcement Office, City Hall, 31 South Summit Avenue, Gaithersburg, Maryland.

Send comments to: Honorable Sanford Daily, City Manager of Gaithersburg, 31 South Summit Avenue, Gaithersburg, Maryland 20760.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, P.E., Federal Emergency Management Agency, National Flood Insurance Program, (202) 287–0230, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Gaithersburg, Montgomery County, Maryland, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

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

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

The proposed base (100-year) flood elevation are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Muddy Branch	Downstream corporate limits	*316
	Approximately 80 feet upstream of confluence of Muddy Branch Tributary 1.	*330
	Upstream of Muddy Branch Road.	*359
	Upstream of Brighton West Storm Water Retention Structure.	*375
	Upstream of Interstate Route 270 culvert.	*410
	Downstream of State Route 355.	*435
Whetstone Run	Downstream corporate limits	*322
	124 feet upstream of confluence with Watkins Mill Run.	*333
	Approximately 2,360 feet upstream of Watkins Mill Road.	*341
	Upstream of Goshen Road	*389
	Approximately 320 feet upstream of confluence with Left Branch Whetstone Run.	*398
	Upstream corporate limits	*435
Muddy Branch Tributary 1.	Confluence with Muddy Branch.	*330
	Approximately 130 feet upstream of Muddy Branch Road.	*351
	Upstream corporate limits	*371
Long Draught Branch.	Upstream of Long Draught Road culvert.	*348
	Confluence of Long Draught Branch Tributary 1.	*360
	Approximately 80 feet upstream of Quince Orchard Clusters II Water Retention Structure.	*384
	Upstream of Clopper Road	*401
	Upstream of Quince Orchard Road Culvert.	*422
	Downstream of West Diamond Avenue Culvert.	*429
Left Branch Wetstone Run.	Confluence with Whetstone Run.	*396
	Upstream of Victory Farm Storm Water. Retention Structure.	*434
	Upstream of Brooks Avenue Culvert.	*448
	Approximately 860 feet upstream of Brooks Avenue Culvert.	*452

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

February 11, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6293 Filed 3-8-82; 8:45 am]

BILLING CODE 6710-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 82-82; RM-3965; FCC 82-72]

Elimination of the Portable to Vehicular Mobile Ratio in Loading Criteria for Private Land Mobile Radio Systems Operating Above a Specific Frequency

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The FCC proposes to amend its rules and regulations to eliminate the portable to vehicular mobile ratio in loading criteria for private land mobile radio systems operating above 470 MHz. This action is necessary so that all mobile units would count equally in a communications system.

DATES: Interested parties may file comments on or before April 1, 1982, and reply comments on or before April 16, 1982.

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

FOR FURTHER INFORMATION CONTACT: Charles F. Turner, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Adopted: February 11, 1982.

Released: February 23, 1982.

1. The Commission has before it for consideration on August 7, 1981, petition from the Associated Public Safety Communications Officers, Inc. (APCO) to amend Part 90 of the Commission's Rules to eliminate the 2-to-1 ratio of portable to vehicular mobile units as an element of the loading criteria for public safety land mobile licensees operating in the 470–512 MHz and 800 MHz bands.[1] [2]

2. In support of its petition APCO notes that in Docket No. 18261, which allocated the 470/512 MHz band for land mobile use,[3] the Commission at first adopted a ratio of 4-to-1 for hand carried to vehicular mobile units as an element of the loading criteria for 470–512 MHz band systems. On reconsideration, however, the Commission revised the 4-to-1 ratio to 2-to-1 in the public safety pool and 3-to-1 in all other pools.[4] This lowering of the 4-to-1 ratio initially adopted by the Commission represented an attempt to balance the needs of small users who required spectrum against those of applicants with large fleets of portables which would have captured the available spectrum rapidly if no distinction between hand-held and vehicular mobiles had been made. The loading rules promulgated in § 90.313[5] for the 470–512 MHz band prescribed 50 mobile units as the loading limit in the public safety services, with higher levels for other groups of eligibles. Section 90.313(c) defines a unit "as one vehicular mobile unit or two hand carried transmitter-receivers for the Public Safety services, three hand-units for the Industrial and Land Transportation Services."[6]

3. A similar approach was taken when we allocated channels in the 800 MHz band for land mobile use.[7] However, rather than a different ratio for public safety *vis-a-vis* other groups of eligibles, an across-the-board 2-to-1 ratio of portables to vehicular mobile units was prescribed in the case of conventional systems.[8] No distinction was made in the case of trunked equipment.[9]

4. APCO contends that substantial evolution in the technology of portable units and their resulting popularity justifies treating them as the equivalent of vehicular mobile units for channel loading purposes. From a heavy and cumbersome backpack set available several decades ago the portable has evolved into a lightweight, hand-held transistorized unit. Current technology offers higher power units than were available in the past. Today's multi-channel units, when coupled with "satellite" receivers, provide great flexibility in police operations. Thus, APCO asserts, portable usage is as effective in coverage as vehicular unit usage.

5. Because the portable is as efficient as the vehicular mobile unit, APCO asserts, there is no basis for assuming that the handheld unit generates less traffic than its vehicular counterpart; it may even generate more traffic, it says, because of the user's ability to communicate after leaving the vehicle. APCO points to the increased popularity of the portable marketplace of the 800 MHz band conventional portable unit.

6. We believe that initiation of rule making looking towards abolition of the vehicular unit/portable distinction for channel loading purposes on freqencies above 470 MHz has merit in light of new technology for portable equipment and the handheld unit's acceptance in the marketplace. However, the arguments advanced by APCO in support of public safety land mobile systems would, it appears, be equally applicable to portable use by all other groups of eligibles licensed under Part 90 of our rules. We are, therefore, proposing to eliminate the distinction between vehicular and portable transmitters for channel loading purposes in all Part 90 radio services operating above 470 MHz. This is in keeping with our expressed intention to revisit and adjust the parameters of these systems when our experience indicates that revisions would be appropriate.[10] We request comments in particular as to whether the application of the proposed revision to all groups of eligibles is appropriate; whether the need to save channel space for smaller systems, which led in part to adoption of the present distinction, still exists; and, if so, whether the portable/vehicular mobile ratio is an effective method of doing so.

7. *Regulatory Flexibility Act Initial Analysis.*

I. *Reason for action.* Petitioner, the Associated Public Safety Communications Officers, Inc. (APCO), seeks elimination of the 2-to-1 portable/vehicular mobile ratio for loading channels occupied by public safety users in the 470–512 MHz and 800 MHz bands. Experience since the mid-1970's in the management of this spectrum and the current wider use of hand-held

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[1] In a September 23, 1981, statement, APCO clarifies its petition by emphasizing that it seeks modification of the rules with respect to all public safety licensees operating in these bands, and not just police and fire eligibles.

[2] At present in the 470–512 MHz band two portables equal one vehicular mobile for loading purposes on public safety radio service channels. For all other groups of eligibles in this band, three portables equal one vehicular mobile in determining channel loading. In the 806–821 MHz and 851–866 MHz bands, there is an across-the-board 2-to-1 portable/vehicular unit ratio for loading conventional systems in all radio services.

[3] *Land Mobile-UHF TV Channel Sharing, Second Report and Order, Docket No. 18261,* 30 FCC 2d 221 (1971).

[4] *Land Mobile Use of TV Channels 14 through 20, Memorandum Opinion* and *Order, Docket No. 18261,* 32 FCC 2d 572 (1971).

[5] 47 CFR 90.313.

[6] 47 CFR 90.313(c).

[7] See generally, Land Mobile Radio Services, Second Report and Order, Docket No. 18262, 46 FCC 2d 752 (1974); Land Mobile Service, Memorandum Opinion and Order, Docket No. 18262, 51 FCC 2d 945 (1975), and Frequency Band 806–960 MHz, 55 FCC 2d 771 (1975) 55 FCC 2d 771 (1975), on appeal sub nom. National Association of Regulatory Utility Commissioners v. Federal Communications Commission, 173 U.S. App. D.C. 413, 525 F. 2d 630 (1976), cert. denied, 425 U.S. 992 (1976).

[8] See 47 CFR 90.377.

[9] See 47 CFR 90.375.

[10] *Land Mobile Service,* f.n. 7 *ante,* 51 FCC 2d at 978–9.

radios do suggest that there is merit to APCO's position that the ratio be eliminated. The Commission, therefore, proposes to do so for all classes of eligibles using these bands.

II. *The objectives.* The Commission desires to revise the rules because they may be burdensome to users of portable mobile equipment and unnecessary to our regulatory objectives.

III. *Legal basis.* Action proposed is in furtherance of Sections 303(r), 4(i) and of the Communications Act of 1934, as amended, which permits the Commission to make such rules and regulations, not inconsistent with law, as may be necessary in the execution of its functions, with the additional view of the public welfare.

IV. *Description, potential impact and number of small entities affected.* Portable and vehicular mobile units are licensed to both large and small entities. The Commission, however, does not require licensees of these units to submit information enabling it to determine what portion of these units are licensed to small entities. When the portable/vehicular mobile unit ratios were promulgated the Commission was concerned that if portables and vehiculars mobiles were placed on an equal footing, users with large fleets of portables would preempt spectrum to the detriment of smaller users. Our information, however, has not disclosed that such preemption has occurred. Experience has shown, in fact, that the great utility of the hand-held unit, resulting from technological innovations, has given it a firm position in the marketplace, even among smaller users, and in some cases a unit is used interchangeably as a portable and as a vehicular mobile, thereby reducing equipment costs to the users including small entities. In addition, record-keeping costs could be reduced because of possible simplification in the procedures relating to channel loading.

V. *Recording, record-keeping and other compliance requirements.* No additional recording or record-keeping, or other compliance requirements would be necessary. In fact, the record-keeping will be simplified because all mobile transmitters will be counted alike for loading purposes.

VI. *Federal rules which overlap, duplicate or conflict with these rules.* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objectives.* None, and retention of the *status quo* may constitute a continuing burden to users of portable units in the 470–512 MHz and 800 MHz bands.

8. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission whichever is earlier. In general, and *ex parte* presentation is any written of oral communication (other than formal written comments/pleadings and formal oral arguments between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who make an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

9. Accordingly, notice is hereby given of rulemaking to amend Part 90 of the Commission's Rules, in accordance with the proposal set forth in the Appendix.

10. The proposed amendment to the Rules is issued pursuant to authority contained in Sections 4(i), 303(b), 303(f), 303(g), and 303(r) of the Communications Act, as amended

11. Pursuant to procedures set out in § 1.415 of the Commisssion's Rules, 47 CFR 1.415, interested persons may file comments on or before April 1, 1982, and reply comments on or before April 16, 1982. The Commission will consider all relevant and timely comments before taking final action in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

12. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

13. For further information contact Charles F. Turner, Federal Communications Commission, Private Radio Bureau, Rules Division, Washington, D.C. 20554, (202) 632–6497.

(Secs. 4, 303, 307 48 Stat., as amended, 1066, 1082, 1083d (47 U.S.C. 154, 303,307))

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

It is proposed that 47 CFR, Part 90 be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.313(c) is revised to read as follows:

§ 90.313 Frequency loading criteria.

* * * * *

(c) A unit is defined as a vehicular mobile unit or a hand-carried transmitter-receiver. Loading standards will be applied in terms of the number of units actually in use or to be placed in use within 8 months following authorization. A licensee will be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional frequency pair. Channel capacity may be reached either by the requirements of a single licensee or by several users sharing a channel. Until a channel is loaded to capacity it will be available for assignment to other users in the same area. A frequency pair may be reassigned at distances 64 km. (40 mi.), 32 km. (20 mi.) for Channel 15, Chicago: Channel 20, Philadelphia and Channel 17, Washington or more from the location of base stations authorized on that pair without reference to loading at the point of original installation. Following authorization, the licensee shall notify the Commission either during or at the licensee shall notify the

Commission either during or at the close of the 8 months period of the number of units in operation. In the Industrial Radio Services, if the base station facility is to be used by more than a single licensee, the frequency assigned to it will not be reassigned for use by another facility within 64 km. (40 mi.) where applicable for a period of 12 months, *Provided*, That the facility is constructed within 90 days from the date of the first grant, meets the loading standards to at least 50 percent within 9 months, and meets all loading standards within 12 months.

2. Section 90.377(b) is revised to read:

§ 90.377 Conventional systems loading requirements.

* * * * *

(b) Where stations are located within 120 km. (75 mi.) of the designated centers of the top 25 urbanized areas as set forth in Section 90.477(c) of this Part, Table 1 below will govern. In all other cases, Table 2 below will govern.

TABLE 1.—LOADING REQUIREMENTS FOR CONVENTIONAL SYSTEMS

[Located within 120 km. (75 mi.) of the top 25 urbanized areas as set forth in section 90.477(c)]

Service group	Channel loading units per channel
Police and fire group	50
Business radio group	90
Taxi radio group	150
Motor carrier radio group (urban and inter-urban passenger motor carriers, only)	150
Other Service group	70
Mixed service group	

1. Where the primary activity of the licensee is the operation of urban or interurban passenger motor carriers, the loading requirements shall be as shown for the motor carrier group.

TABLE 2.—LOADING REQUIREMENTS FOR CONVENTIONAL SYSTEMS

[Located outside 120 km. (75 mi.) of the top 25 urbanized areas as set forth in section 90.477(c)]

Service Group	Channel loading units per channel		
	Single/licensees	2 to 5 licensees	Over 5 licensees
Police and fire group	50	40	30
Business radio group	90	70	50
Taxicab radio group	150	125	100
Motor carrier radio group (urban and interurban passenger motor carriers only	150	125	100
Other services group [1]	70	50	40
Mixed service group		70	50

[1] Where the primary activity of the licensee is the operation of urban or interurban passenger motor carriers, the loading requirements shall be as shown for the motor carrier group.

[FR Doc. 82-6308 Filed 3-8-82; 8:45 am]
BILLING CODE 6712-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387-399

[BMCS Docket No. MC-101; Notice No. 82-4]

Regulatory Cost Accounting Program (RCAP); Public Meeting and Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: Comments and information are solicited to assist the FHWA in its effort to access the economic burden placed on the motor carrier industry by the Federal Motor Carrier Safety Regulations (FMCSR). A public meeting will be held on March 18 to receive comments.

DATE: Comments must be received on or before April 8, 1982.

ADDRESS: Submit comments, preferably in triplicate, to BMCS Docket No. MC-101; Notice No. 82-4, Room 3404, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. James K. O'Steen, Bureau of Motor Carrier Safety, (202) 426-1700; or Mr. Stanley H. Abramson, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA's Bureau of Motor Carrier Safety (BMCS) has been asked by the Office of Management and Budget (OMB) to participate in a pilot program for the purpose of testing the feasibility of a Regulatory Cost Accounting Program (RCAP). The objective of the RCAP is to identify the cost components of each regulatory requirement on the regulated industry, then aggregate those components to determine the total cost burden associated with any part of each agency's regulatory program. These cost data could then be used to identify those regulations that impose particularly costly burdens on the industry.

In order to accomplish a task of this magnitude with an acceptable degree of reliability by the end of August 1982, it is essential to have input from motor carriers, drivers, manufacturers and other interested parties. This notice serves as a request for such input, either in the form of written comments to the docket (address above) or, orally at a public meeting scheduled for March 18, Room 6336, DOT Headquarters, 400 Seventh Street, SW., Washington, D.C., 9:00 a.m. to 4:00 p.m. Such input should assist the BMCS in evaluating the economic burden created by the FMCSR on the affected industry. Advance notification of the public meeting is necessarily short because of the time constraints placed on this project.

The data needed to accomplish this effort should focus on the direct costs incurred as a result of a regulation. The BMCS has structured this evaluation such that four primary types of burden will be considered. For the purpose of this exercise, burden is defined as the "cost borne by the industry to stay in compliance with the FMCSR." The four types of burden to be addressed are:

1. Paperwork burden which includes any paperwork preparation and filings necessitated by the FMCSR;

2. Operational burden which includes any time a qualified driver and/or vehicle, both of which are in compliance with the FMCSR, are restricted totally or in part from a revenue generating activity;

3. Hardware burden which includes capital costs directly attributable (at least in part) to the FMCSR; and

4. Overhead burden which includes costs incurred as a result of the FMCSR and not defined in the other three burdens, e.g., mechanical maintenance, file maintenance, administrative, etc., excluding paperwork.

Certain considerations should be made when attempting to determine costs directly attributable to the FMCSR. For example, Section 393.13 of the FMCSR requires that a truck tractor have two operational headlamps. The question arose: Has this requirement been institutionalized to the extent that industry would continue to install two operational headlamps on vehicles if this requirement did not exist? If so, how much (if any) of the compliance cost is attributable to the FMCSR?

Similar questions, concerning those regulations which have been adopted by some or all of the States, were encountered. In such cases, should the cost burden be attributed to the FMCSR or to the State regulation, or a percentage of the burden to each. If a percentage allocation approach is

recommended, what percentage should be allocated to each? Without the FMCSR, would the cost burden decrease or would the nonuniformity of State requirements increase the cost burden.

Many of the FMCSR requirements are based on good accident prevention management principles. Would such practices be used by most motor carriers without the FMCSR requirements?

Comments to these considerations are requested to assist in the development of an approach which is mutually agreeable to both the regulated industry and the BMCS.

Additional comments are requested concerning the RCAP process: Along with comments concerning the scope and methodology of this effort, specific data is needed to identify the cost components of each regulatory requirement on the motor carrier industry. Please provide cost data, if possible, by FMCSR part and section in accordance with the four burden types defined in this notice and estimate the degree of reliability of such data.

All comments submitted will be available, both before and after the closing date, for examination by interested persons in the Docket Room of the BMCS, Room 3404, 400 Seventh Street, SW., Washington, D.C. 20590.

(49 U.S.C. 304; 49 CFR 1.48(b) and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on March 5, 1982.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 82-6379 Filed 3-8-82; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 47, No. 46
Tuesday, March 9, 1982

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

Food and Nutrition Service

Demonstration Project for the Distribution of Surplus Cheese

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: On December 29, 1981, the U.S. Department of Agriculture announced that it would provide at least 30 million pounds of surplus process cheese to requesting State agencies for distribution to eligible recipients. (See 46 FR 62882). The Department of Agriculture now announces that it will provide at least 70 million additional pounds of surplus cheese to such State agencies.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Acting Deputy Administrator, Special Nutrition Programs, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302.

DATE: Requests for allocations of cheese must be submitted by July 1, 1982.

SUPPLEMENTARY INFORMATION: In addition to the 30 million pounds of surplus process cheese previously made available to State agencies for distribution to eligible recipients, the Department is prepared to provide at least an additional 70 million pounds of process cheese to requesting State agencies for the same purpose. The Department will pay the cost of transporting the cheese from Federal storage facilities to centralized storage facilities designated by recipient State agencies. State agencies will be responsible for arranging and financing distribution of the cheese within the State.

The cheese is being offered under the provisions of section 416 of the Agriculture Act of 1949 and section 1114 of the Agriculture and Food Act of 1981. It may be used only in nonprofit school lunch programs, nonprofit summer camps for children, and other child nutrition programs providing food service, in nutrition projects operating under authority of the Older Americans Act of 1965, including congregate nutrition sites and providers of home-delivered meals, in assistance to needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served.

Distribution to needy persons for use in the preparation of meals in the home may be made only through food banks participating in the program established under section 211 of the Agriculture Act of 1980. States wishing to distribute cheese for this use will be required to assist the Department in designating food banks for participation in that program.

State agencies will not be allowed to charge recipients for the cheese or the cost of distributing it.

State agencies participating in this distribution of cheese will be required to enter into an agreement with the Department embodying the terms and conditions under which the cheese is being provided if they have not already done so. A copy of the agreement may be obtained from the appropriate Regional Administrator, Food and Nutrition Service. Agencies wishing to participate in the distribution should advise the appropriate Regional Administrator of their interest and of the amount which they would like to receive, in writing, by July 1, 1982. There is no limitation on the amount of cheese which may be requested by a State agency.

Gene P. Dickey,
Acting Administrator.
February 26, 1982.

[FR Doc. 82-6199 Filed 3-8-82; 8:45 am]
BILLING CODE 3410-30-M

Summer Food Service Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs public or private nonprofit school food authorities, public or private nonprofit residential summer camps, or units of local, municipal, county, or State governments of the availability of the Summer Food Service Program (SFSP) for Children.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Aleaxandria, Virginia 22302, 703-756-3888.

SUPPLEMENTARY INFORMATION: The Summer Food Service Program is authorized by Section 13 of the National School Lunch Act. Comprehensive regulations for the Summer Food Service Program were published in the **Federal Register** February 16, 1982 (47 FR 6790).

The Summer Food Service Program provides nutritious meals and snacks to children during the summer months when school is not in session.

What Are the Eligibility Requirements?

Organizations which may sponsor the Program are limited to: (1) Public or private nonprofit school food authorities; (2) public or private nonprofit residential summer camps; and (3) State, local, municipal, or county government entities provided that these governmental entities certify that they will directly operate the Program at each site under their sponsorship. Direct operation means that the sponsor will be responsible for: (1) Managing site staff, including such areas as hiring, conditions of employment, and termination; and (2) managing Program operations at sites during the period of Program participation. Managing site staff does not prohibit the staffing of sites by either paid employees or volunteers; however, site staffs must be finally accountable to the sponsor.

When applying for the Program, a potential sponsor must demonstrate that it has the necessary financial and administrative capability to meet Program objectives and comply with Program regulations. Sponsors must also accept final financial and administrative responsibility for all sites under their auspices. All approved sponsors must operate the Program according to the provisions of the SFSP regulations, relevant instructions, Program guidance materials, and applicable State and local laws.

Sponsors of sites which are not camps must serve either: (1) An area in which at least 50 percent of the children who live in the area from which the site

draws its attendance are eligible for free or reduced-price meals in the National School Lunch Program and the School Breakfast Program; or (2) serve a site where at least 50 percent of the enrolled children in the Program are eligible for free or reduced-price meals in the National School Lunch Program or School Breakfast Program.

Sponsors offering the SFSP at camps may claim reimbursement only for those meals served to enrolled children who are eligible for free or reduced-price meals under the National School Lunch Program or the School Breakfast Program guidelines.

Who Can Participate?

Children who are 18 years of age or younger and handicapped persons regardless of age who participate in special education programs are eligible.

Meal Service Requirements

Meals served under the Program must meet meal pattern requirements established by the U.S. Department of Agriculture. Noncamp sites can serve either one meal each day (breakfast, lunch, or snack) or two meals consisting of either a lunch and a snack or a lunch and a breakfast. Sites which are camps or which primarily serve children of migrant families may serve up to four meals per day.

What Federal Funds Are Available?

Federal funds are available in the form of per-meal reimbursement rates for Program administrative and operating costs. Each sponsor periodically reports to the administering agency the number of meals it has served and the costs it has incurred on a claim for reimbursement. The administering agency pays each sponsor the lesser of meals times rates or net Program costs. Sponsors earn administrative reimbursement at higher rates for rural sites and for sites where they prepare their own meals.

What Is the Deadline Date To Apply for the Program?

Potential sponsors must submit written applications for Program participation to the appropriate State agency or Regional Office of the Food and Nutrition Service (FNS) by June 15. However, the State Agency may establish an earlier deadline date for Program application submission.

Equal Opportunity

The Summer Food Service Program is an equal opportunity program. If you believe you have been discriminated against because of race, color, national origin, sex, age, or handicap, write immediately to the Secterary of Agriculture, Washington, D.C. 20250.

How Do You Apply for the Program?

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regonal Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, IL 60605.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75202.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430, Denver, CO 80211.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, CA 94108.

(Catalog of Federal Domestic Assistance Program No. 10.559)

Dated: March 4, 1982.

Gene P. Dickey,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 82-6325 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Extension of Public Comment Period; Alternative Goals—1985 Resources Planning Act (RPA) Program

On December 31, 1981, the Forest Service published in the **Federal Register** (46 FR 63361) a request for public comment on "Alternative Goals—1985 RPA Program". The deadline for the public comment period was set at March 15, 1982. That deadline is now extended to March 31, 1982.

Comments and inquiries should be addressed to: Thomas E. Hamilton, Director, Resources Planning and Assessment; Room 3243 South Building, USDA, Forest Service, Box 2417, Washington, D.C. 20013, (202) 447-5440.

Douglas R. Leisz,

Associate Chief.

March 4, 1982.

[FR Doc. 82-6353 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-11-M

Gila National Forest Grazing Advisory Board; Meeting

The Giles National Forest Grazing Advisory Board will meet at 10:00 a.m., April 9, 1982 in large Conference Room, Federal Building, 2610 North Silver Street, Silver City, New Mexico.

The agenda for this meeting is:

1. Review Allotment Management Plans.

2. Review Program for Range Betterment Funds.

3. New Advisory Board Charter, 1982–84.

4. Election of Officers procedure for 1982.

The meeting will be open to the public.

Dated: March 1, 1982.

Kenneth C. Scoggin,

Forest Supervisor.

[FR Doc. 82-6326 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Seminole Electric Cooperative, Inc.; Finding of No Significant Impact

The Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to the proposed coal transportation arrangement for Seminole Electric Cooperative, Inc., (Seminole) of Tampa, Florida. The coal transportation arrangement would provide approximately 2.7 to 3.5 million tons of coal annually for the 1200 MW Plant Seminole Units 1 and 2 now under

construction near Palatka, Florida. The coal would travel by rail from the Dotiki Mine in Webster County, Kentucky, and later from the White County Mine in White County, Illinois, to a barge loading facility at Mt. Vernon, Indiana, from there by barge to Port St. Joe, Florida, and by rail from Port St. Joe to Plant Seminole. Approximately 100 3,000-ton barges will be used, and it is anticipated that each shipment of coal will consist of six barges in tow, with approximately three tows a week.

REA determined that the Borrower's Environmental Report (BER) and addendum submitted by Seminole is a satisfactory assessment of the environmental aspects of the proposed coal transportation arrangement. Based on the BER and Federal and State agency comments, REA prepared an Environmental Assessment addressing the impacts of the proposed coal transportation arrangement. REA concluded that REA approval of the proposed coal transportation arrangement would not be a major Federal action significantly affecting the quality of the human environment.

The proposed coal transportation arrangement will not significantly affect any prime farmland, wetlands, floodplains or known cultural resources. It is not likely to affect any threatened or endangered species or critical habitats. In REA's judgment, the proposed coal transportation arrangement will not result in any unacceptable environmental impacts.

Seminole and REA considered various alternatives to the proposed coal transportation arrangement, including the all rail option which was specified in the original Environmental Impact Statement (EIS) for Plant Seminole, and various other barge unloading points and rail routes. The substitution of the barge and rail transportation arrangement for the original all rail option was based on projected economics. Based on the information in the BER and consideration of Federal and State agency comments, REA concluded that the proposed coal transportation arrangement is an environmentally acceptable way to transport coal to Plant Seminole. In December 1981, Seminole published public notices in local newspapers, soliciting comments on the proposed coal transportation arrangement. One letter was received before the notice was published and these comments were addressed in the EA. No other comment letters were received within 30 days of the notice publication.

The FONSI, EA, and BER may be requested from or reviewed at the office of the Director, Power Supply Division, Room 0230, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone: (202) 382-1400; or the Manager (Mr. Harry Wright), Seminole Electric Cooperative, Inc., P.O. Box 17100, Tampa, Florida 33682, telephone: (813) 933-7406.

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

Dated at Washington, D.C., this 2nd day of March 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-6198 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-15-M

East River Electric Power Cooperative, Inc.; Finding of No Significant Impact

The Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) in connection with the construction by East River Electrical Power Cooperative, Inc., (East River) for a 40 km (25 mi), 3 phase, 69 kV transmission line. The proposed line would connect the Aberdeen Substation in Brown County, South Dakota, with the Ipswich Substation in Edmonds County, South Dakota. The proposed line is required to meet the additional power requirements of East River's member systems.

East River prepared a Borrower's Environmental Report (BER) concerning the project. Based on this BER and other support documents, REA prepared an Environmental Assessment which incorporates the BER. REA's independent evaluation of the project leads to the conclusion that approval of the project does not represent a major Federal action that will significantly affect the quality of the human environment and, in accordance with REA Bulletin 20-21:320-21, REA has made a FONSI.

Alternatives discussed in the BER are no action, alternative types of construction and four alternative routes. The nature of the alternative routes is that the end points are the same and the terrain is similar. The proposed alternative, which is described above, was selected because it avoided, to the extent practicable, closed section lines, Lakes Richmond and Mina and prime farmland. Approximately 10.4 km (6.5 mi) of wetlands and 2.2 km (1.4 mi) of floodplains would be crossed by the proposed line. REA has determined that there is no practicable alternative to crossing these areas and that there should be no long term effects to the ecological functions of these areas. Further information is in the Environmental Assessment.

Copies of the FONSI, REA's Environmental Assessement and East River's Borrower's Environmental Report may be obtained from Frank W. Bennett, Director, Power Supply Division, Room 0230, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone: (202) 382-1400 or the East River Electric Cooperative, Inc., at Drawer E, Madison, South Dakota 57042, telephone: (605) 256-4536.

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

Dated at Washington, D.C., this 3rd day of March 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82-6354 Filed 3-8-82; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Open 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 Arizona Advisory Committee to the Commission will convene at 10:00 a.m., and will end at 1:00 p.m., on April 3, 1982, at the Ramada Inn, 3801 East Van Buren, in the Kachina Room, Phoenix, Arizona. The purpose of this meeting is to discuss civil rights issues and priorities for project planning and development.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Professor Morrison F. Warren, 1081 East Magdalena Drive, Tempe, Arizona, 85283, (602) 965-6529 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 4, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-6331 Filed 3-8-82; 8:45 am]

BILLING CODE 6335-01-M

District of Columbia Advisory Committee; Agenda and Notice of Open 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 District of Columbia Advisory Committee to the Commission will convene at 2:30 p.m., and will end at 6:00 p.m., on March 25, 1982, at the Gelman Building, 2120 L Street, NW., on the lower level, Washington, D.C. 20037. The purpose of this meeting is to receive and discuss reports on block grant proposals by local government.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Walter E. Washington, 408 T Street, NW., Washington, D.C. 20001, (202) 387-4613 or the Mid-Atlantic Regional Office, 2120 L Street, NW., Room 510, Washington, D.C. 20037, (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 3, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-6251 Filed 3-8-82; 8:45 am]

BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Notice of Open 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 New York Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 6:30 p.m., on March 25, 1982, at the New York Sheraton Hotel, 7th Avenue and 56th Street, in the Manhattan Suite, New York, New York. The purpose of this meeting is to discuss activities for the remaining period of fiscal year 1982.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Robert J. Mangum, 10 Nathan D. Perlman Place, New York, New York 10003, (212) 420-3935 or the Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, New York 10278, (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 3, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-6252 Filed 3-8-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit To Take Marine Mammals

On January 25, 1982, notice was published in the **Federal Register** (47 FR 3400), that an application had been filed with the National Marine Fisheries Service by the State of Alaska, Department of Fish and Game, P.O. Box 3-2000, Juneau, Alaska 98802, for a Permit to take belukha whales (*Delphinapterus leucas*) for scientific research.

Notice is hereby given that on March 2, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a scientific research permit for the above taking to the State of Alaska, Department of Fish and Game, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 2, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-6332 Filed 3-8-82; 8:45 am]

BILLING CODE 3510-22-M

Issuance of a General Permit

A general permit was issued on March 2, 1982 to the Embassy of the Republic of Korea, Washington, D.C. to take marine mammals incidental to commercial fishing operations under Category 1: Towed or Dragged Gear, pursuant to 50 CFR 216.24.

The general permit allows the taking of not more than 8 cetaceans, 50 otariid seals or 50 phocid seals by certificate holders operating under this permit within the U.S. fishery conservation zone.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: March 3, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mamals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-6333 Filed 3-8-82; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Marineland Amusements Corporation.

b. Address: 6610 Palos Verdes Drive, South, Rancho Palos Verdes, California 90274.

2. Type of Permit: Public Display.

3. Name and Number of Animals:

Pacific Pilot whales (*Globicephala macrorhynchus*), 4

Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), 6

4. Type of Take: To take for public display.

5. Location of Activity: Within 10 miles to the east, south, and west of Catalina Island and between Catalina Island and Palos Verdes Peninsula.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a

hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 3, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-6335 Filed 3-8-82; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pennwalt Corporation, having a place of business at Philadelphia, Pennsylvania an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Encapsulation by Entrapment Within Starch Adduct Matrix," U.S. Patent Application 202,306 (dated October 30, 1980). The availability of this invention for licensing was announced in the **Federal Register** (Vol. 46, No. 68, page 21220, April 9, 1981). Copies of the Patent Application may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above, NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: March 2, 1982.

Douglas J. Campion,

Office of Government Inventions and Patents, National Technical Information Service, U.S., Department of Commerce.

[FR Doc. 82-6240 Filed 3-8-82; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Decision on Applications by Northern Tier Pipeline Co. To Construct Tanker Berthing Facilities and Crude Oil Pipeline Crossings in Waters of the United States Within the Seattle District

AGENCY: US Army Corps of Engineers, DOD.

ACTION: Notice of Decision.

SUMMARY: The Seattle District Corps of Engineers has determined that construction and operation of tanker berthing and offloading facilities at Port Angeles, Washington and oil pipeline crossings of waters of the United States in Washington, Idaho and Western Montana by the Northern Tier Pipeline Company (NTPC) is in the public interest. The proposed facilities will be used for unloading oil tankers and transporting crude oil to inland refineries. Accordingly, on 2 March 1982, pursuant to section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C.) and section 404 of the Clean Water Act of 1977 (Pub. L. 95-217; 91 Stat. 1600), Department of the Army permits with special conditions were issued to the NTPC. This notification is required by section 511(a) (Pub. L. 95-617), Public Utility Regulatory Policies Act of 1978.

EFFECTIVE DATE: March 2, 1982.

ADDRESS: Department of the Army, Seattle District, Corps of Engineers, P.O. Box C-3755, Seattle, Washington 98124.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Baxter (206) 764-3495 at above address or Mr. Gerald Chastain, Pulaski Building, 20 Massachusetts Avenue Northwest, Washington, DC 20314, telephone (202) 272-0200.

Norman C. Hintz,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 82-6282 Filed 3-8-82; 8:45 am]

BILLING CODE 3710-92-M

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Monday and Tuesday 12-13 April 1982, Plaza West, Rosslyn, Virginia. The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on the Department of Defense Intelligence Information System.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 4, 1982.

[FR Doc. 82-6327 Filed 3-8-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Husky Oil Co.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Husky Oil Company and provides an opportunity for public comment on the proposed Consent Order.

DATE: Comments by: April 8, 1982.

ADDRESS: Send comments to: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3115, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration,

Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3115, Washington, D.C. 20461, (202) 633-9165.

Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On January 8, 1982, the ERA executed a proposed Consent Order with Husky Oil Company (Husky) of Denver, Colorado. Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, 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. The Consent Order

Husky, with its home office located in Denver Colorado, is a firm engaged in the production, refining, and marketing of crude oil and petroleum products, and was subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212 during the period covered by this Consent Order, August 19, 1973, through January 27, 1981. To resolve certain potential civil liability arising out of the mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211, 212 (and predecessor regulations), in connection with Husky's transactions involving crude oil and petroleum products ("covered products") during the period covered by this Consent Order, the ERA and Husky entered into a Consent Order, the significant terms of which are as follows:

The ERA conducted an audit to determine Husky's compliance with the federal petroleum price and allocation regulations ("Regulations"), for the period August 19, 1973 through January 27, 1981. As a result of that examination, the DOE alleged that certain sales of covered products were made by Husky at prices in excess of the maximum allowable prices in violation of the Regulations.

Notwithstanding DOE's position to the contrary, Husky maintains that it correctly calculated all costs, determined all prices, and operated in all other respects in accordance with the Regulations. Both Husky and DOE believe that their positions on the issues raised by the ERA's allegations are likely to be sustained if tried before a court. Husky desires, however, to resolve the issues in order to avoid further business disruption and the expense of protracted, complex litigation and has thus agreed to enter into the Consent Order.

The Consent Order settles all matters arising from Husky's sales of covered products during the period covered by this Consent Order with the exceptions noted in the Consent Order relating to litigation currently pending in the United States District Court for the District of Wyoming (*Husky Oil Company* v. *DOE*, No. C-77-190B), and matters relating to the DOE's entitlements program. Execution of this Consent Order constitutes neither an admission by Husky or a finding by DOE of any violation of the federal petroleum price and allocation regulations.

DOE believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Husky audit, and thus, that the Consent Order is in the public interest.

II. Refunds

Under this Consent Order, Husky will pay the sum of $2,000,000 to the United States Department of Energy within ten (10) days following the effective date of the Consent Order. The ERA will determine the ultimate disposition of these funds.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation, "Comments on the Husky Oil Company Consent Order." The ERA will consider all comments received by 5:00 p.m. on the thirtieth day following publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C., March 1, 1982.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 82-6242 Filed 3-8-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51403; PH-FRL-2068-7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of sixteen PMNs and provides a summary of each.

DATES: Written comments by: PMN 82-140 and 82-141—April 23, 1982. PMN 82-142, 82-143, 82-144, 82-145, 82-146, 82-147, 82-148 and 82-149—April 24, 1982. PMN 82-150, 82-151, 82-152, 82-153 and 82-154—April 25, 1982. PMN 82-155—April 26, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS-51402]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMNs received by EPA:

PMN 82-140

Close of Review Period. May 23, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Oxirane (chloromethyl) polymer with 2-(substituted) ethyl amine fractionation forecuts, methal oxirane and oxirane.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Clear, dark amber liquid.

pH—5.1.

Specific gravity @ 60° F—1.16.

Flash point—>200.

Viscosity @ 60° F—4910.

Percent volatiles @ 75° F—1.

Vapor pressure @ 100° F—55 mm/Hg.

Toxicity Data

Acute oral toxicity LC_{50} (rat)—>5,000 mg/kg.

Acute dermal toxicity LD_{50} (rat)—2,000 mg/kg.

Primary skin irritation (rabbit)—Mild irritant.

Primary eye irritation (rabbit)—nonirritant.

Exposure. The manufacturer states that during manufacture, processing, use and disposal a total of 64 workers may experience dermal exposure up to 8 hrs/day, up to 27 days/yr.

Environmental Release/Disposal. The manufacturer states that 100–1,000 kg/yr will be released to water. Disposal is to a publicly owned treatment works (POTW).

PMN 82–141

Close of Review Period. May 24, 1982.

Importer's Identity. Takeda U.S.A., Inc., 400 Park Avenue, New York, NY 10022.

Specific Chemical Identity. Adduct of bis (isocyanatomethyl) benzene with 2-ethyl-2 (hydromymethyl)-1,3-propanediol.

Use. The importer states that the PMN substance will be used as an industrial hardener for polyurethane coatings.

IMPORT ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	300	1,500
2d year	500	2,000
3d year	500	3,000

Physical/Chemical Properties

Appearance—Clear viscous liquid.

Viscosity (Gardner)—U–Z (25° C).

Color (Gardner)—1 max.

Percent solids content—74–76.

Solvent—Cellosolve acetate.

NCO content—11.3–11.7%.

Tolerance: ethyl acetate—Over 1,000; methyl ethyl ketone—Over 1,000; methyl isobutyl ketone—Over 1,000.

Toxicity Data

Acute oral toxicity LD_{50} (rat) (Dried film of Takenate D–110N)—>10 g/kg.

Environmental Test Data

LD_{50} 4 hr. (Takenate D–110N)—2.0 g/m^3 with a standard error of 0.279/m^3.

Exposure. The importer states that during use and disposal 15 workers may experience dermal and inhalation exposure 3 hrs/day, 150 days/yr during weighing, mixing, coating, cleaning and disposal.

Environmental Release/Disposal. The importer states that release to the environment will be negligible.

PMN 82–142

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Uniroyal Chemical Company, Spencer Street, Naugatuck, CT 06770.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Isocyanate terminated polyether prepolymer.

Use. The manufacturer states that the PMN substance will be used in sheet goods, load wheels, and rollers.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Viscous Liquid.

Color, Gardner @ 70° C—2 (maximum).

Amine equivalent—447–467.

Isocyanate content—9.0–9.4.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing 4 workers may experience inhalation exposure during drumming and handling.

Environmental Release/Disposal. The manufacturer states that no release to the environment is anticipated. Disposal is by landfill.

PMN 82–143

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over $500 million.

Manufacturing site—Northeastern region.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Heterocyclic-phenyl azo substance.

Use. The manufacturer states that the PMN substance will be used as a site-limited chemical intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Amber, oily liquid.

Water content—5 to 10% by weight.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 12 workers may experience dermal exposure 3 hrs/day, 36 days/yr during sampling and cleaning.

Environmental Release/Disposal. The manufacturer states that 50 kg/yr will be released to water 2 hrs/day, 36 days/yr. Disposal is to a plant waste treatment works.

PMN 82–144

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Over 500 million.

Manufacturing site—Northeastern region.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Heterocyclic-alkoxyphenyl azo substance.

Use. The manufacturer states that the PMN substance will be used as a site-limited chemical intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Amber, oily liquid.

Water content—5 to 10% by weight.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 12 workers may experience dermal exposure 3 hrs/day, 36 days/yr during sampling and cleaning.

Environmental Release/Disposal. The manufacturer states that 50 kg/yr will be released to water 2 hrs/day, 36 days/yr. Disposal is to a plant waste treatment works.

PMN 82–145

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—Middle Atlantic region.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Modified polyester polyurethane from substituted alkanediols, alkandioic acid, and a diisocyanate.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that

the PMN substance will be used as an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	10,000	40,000
2d year	40,000	100,000
3d year	100,000	300,000

Physical/Chemical Properties

Appearance—Translucent to opaque.

Flash point—>190° F.

Viscosity—1.8 sec.

Percent solids—35.0.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing a total of 106 workers may experience dermal and occular exposure up to 6 hrs/day, up to 150 days/yr.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air and water with 100–1,000 kg/yr released to land. Disposal is by distillation and incineration.

PMN 82–146

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—$500,000,000–$1,000,000,000.

Manufacturing site—Middle Atlantic region.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Acrylic copolymer.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used as a pressure sensitive adhesive.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 1–2 workers may experience dermal exposure 1–2 hrs/day, 30 days/yr during blending, packaging and transfer.

Environmental Release/Disposal. No data were submitted.

PMN 82–147

Close of Review Period. May 24, 1982.

Importer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Organorhodium complex.

Use. The importer states that the PMN substance will be used as a catalyst.

Import Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Green crystals.

Solubility: water—Insoluble; acetone—Soluble; benzene—Soluble; chlorinated solvents—Soluble.

Toxicity Data

Oral toxicity LD_{50} (rat)—>50–200 mg/kg.

Acute toxicity LD_{50} (rat) (Intratracheal instillation)—12.1 mg/kg.

Uncovered skin irritation (rabbit)—Minor.

Eye irritation (rabbit)—Severe corneal and eyelid injury, iritis.

Environmental Test Data

Inhalation toxicity, Dust (rat)—0.8 mg/l.

Exposure. The importer states that during processing, quality control and materials handling 8 workers may experience dermal, inhalation and occular exposure at 4 hr intervals, 1 to 2 times per year during reactor charging.

Environmental Release/Disposal. The importer states that release to the environmental is nil. Disposal is by recovery.

PMN 82–148

Close of Review Period. May 24, 1982.

Manufacturer's Identity. E. I. du Pont de Nemours and Company, Inc., 1007 Market Street, Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Ethylene interpolymer.

Use. The manufacturer states that the PMN substance will be used as a modifier for plastics.

PRODUCTION ESTIMATES

	Maximum (kilograms per year)
1st year	340,000
2d year	680,000
3d year	1,360,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 6 workers may experience dermal exposure 10 days/yr.

Environmental Release/Disposal. Disposal is by approved landfill and incineration.

PMN 82–149

Close of Review Period. May 24, 1982.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Trisubstituted phenol.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used as a minor constituent of an article for commercial and consumer use.

PRODUCTION ESTIMATES

	Maximum (kilograms per year)
1st year	3,000
2d year	3,500
3d year	4,000

Physical/Chemical Properties

Melting point—217° C.

Solubility: water—<0.1%; octanol—<0.1%.

Toxicity Data

Acute oral toxicity LD_{50} (rat)—>3,000 mg/kg.

Acute dermal toxicity LD_{50} (rat)—>1,000 mg/kg.

Skin irritation (rabbit)—Slight.

Eye irritation (rabbit)—Slight.

Exposure. The manufacturer states that during manufacture and processing a total of 70 workers may experience dermal and inhalation exposure up to 1 hr/day, up to 40 days/yr.

Environmental Release/Disposal. The manufacturer states that release to the environment will be negligible. Disposal is by incineration and biological treatment system.

PMN 82–150

Close of Review Period. May 25, 1982.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—Between $100,000,000 and $499,999,999.

Manufacturing site—East North Central region.

Standard Industrial Classification Code—285.

Specific Chemical Identity. Polymer of methyl methacrylate, acrylamide, butyl acrylate, acrylic acid, methacrylic acid.

Use. The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st Year	50,000	400,000
2d Year	100,000	455,000
3d Year	200,000	492,000

Physical/Chemical Properties

Specific gravity—0.995.
Flash point—38° F.
Percent solids—55.8.
Toxicity Data. No data were submitted on the PMN substance.
Exposure. The manufacturer states that during manufacture and disposal 11 workers may experience dermal and inhalation exposure 8 hrs/day, 80 days/yr.
Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr will be released to air. Disposal is by approved landfill.

PMN 82-151

Close of Review Period. May 25, 1982.
Manufacturer's Identity. Ashland Chemical Company, P.O. Box 2219, Columbus, OH 43216.
Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of aliphatic and aromatic diacids and an aliphatic diol.
Use. The manufacturer states that the PMN substance will be used in a cured, cross-linking coating for commercial articles.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	30,000	100,000
2d year	100,000	250,000
3d year	200,000	335,000

Physical/Chemical Properties

Viscosity @ 70% in ethoxyethanol acetate—2,000-5,000 cps.
Solubility: water—Insoluble.
Acid value—5-10.
Vapor pressure—Negligible.
Molecular weight—2,500.
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that exposure is negligible.
Environmental Release/Disposal. Disposal is by approved landfill and incineration.

PMN 82-152

Close of Review Period. May 25, 1982.
Manufacturer's Identity. Claimed confidential business information. Organization information provided:
Annual sales—$100,000,000-$499,000,000.
Manufacturing site—East North Central region.
Standard Industrial Classification Code—285.
Specific Chemical Identity. Claimed confidential business information. Generic name provided: Fatty acids, tall oil, polymers with alicyclic glycol, phthalic anhydride and trimethylol propane.
Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use.

PRODUCTION ESTIMATES

	Kilograms per year	
	Minimum	Maximum
1st year	50,000	100,000
2d year	90,000	290,000
3d year	150,000	400,000

Physical/Chemical Properties

Appearance (polymer)—Tacky semi-solid
Specific gravity (polymer)—1.09; (80% solution)—1.04.
Viscosity (80% solution)—U-W (G-H).
Solubility: water—Insoluble; alcohol—Soluble; aromatic hydrocarbons—Soluble; esters—Soluble; ketones—Soluble; aliphatic hydrocarbons—Insoluble.
Acid value—5.8.
Color (G-C)—2-4.
Toxicity Data. No data were submitted.
Exposure. The manufacturer states that during manufacture and processing 15 workers may experience dermal exposure 1.5 hrs/day, 20-250 days/yr during sampling, testing and filling.
Environmental Release/Disposal. The manufacturer states that 100-1,000 kg/yr will be released to land.

PMN 82-153

Close of Review Period. May 25, 1982.
Importer's Identity. Claimed confidential business information.
Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkyl (substituted aryl) alkylate.
Use. Claimed confidential business information. Generic use information provided: The importer states that the PMN substance will be used in a contained use.
Import Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Light yellow viscous liquid.
Specific gravity ($H_2O=1$)—1.1.
Boiling point—260° C @ 1 mm Hg.
Flash point (Pensky Martens)>302° F.
Solubility: water—Insoluble.
Refractive index —1.58.
Odor—Undefined odor.

Toxicity Data

Oral toxicity LD_{50} (rat)—>5,000 mg/kg.
Skin irritation (rabbit)—Slight.
Eye irritation (rabbit)—Minimal.
Exposure. Claimed confidential business information.
Environmental Release/Disposal. Claimed confidential business information.

PMN 82-154

Close of Review Period. May 25, 1982.
Importer's Identity. Claimed confidential business information.
Specific Chemical Identity. Claimed confidential business information. Generic name provided: Alkyl (substituted aryl) alkylate.
Use. Claimed confidential business information. Generic use information provided: The importer states that the PMN substance will be used in a contained use.
Import Estimates. Claimed confidential business information.

Physical/Chemical Properties

Appearance—Light yellow viscous liquid.
Specific gravity ($H_2O=1$)—1.1.
Boiling point—260° C @ 1 mm Hg.
Flash point (Pensky Martens)>302° F.
Solubility: water—Insoluble.
Refractive index —1.58.
Odor—Undefined odor.

Toxicity Data

Oral toxicity LD_{50} (rat)—>5,000 mg/kg.
Skin irritation (rabbit)—Slight.
Eye irritation (rabbit)—Minimal.
Exposure. Claimed confidential business information.
Environmental Release/Disposal. Claimed confidential business information.

PMN 82-155

Close of Review Period. May 26, 1982.
Manufacturer's Identity. Claimed confidential business information. Organization information provided:
Annual sales—$500,000,000.
Manufacturing site—East South Central region.
Standard Industrial Classification Code—284.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polyether alkanyl esters.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in a contained use.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Boiling point—Estimated to be >260° C with decomposition.

Solubility @ 25° C: ethyl alcohol (95%)—>10 g/l; toluene—>10 g/l; carbon tetrachloride—>10 g/l.

Density (Liquid) @ 25° C—1.0–1.2 g/cm^3.

Solidification temperature——20 to 15° C.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture, processing, use and disposal a total of 25 workers may experience dermal exposure up to 8 hrs/day, up to 250 days/yr during transfer.

Environmental Release/Disposal. The manufacturer states that 1,000–10,000 kg/yr will be released to water 1 hr/day, 50 days/yr with 1,000–10,000 kg/yr release to land. Disposal is by landfill, biological treatment facility, settling sump and aeration basis.

Dated: March 2, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-6248 Filed 3-8-82; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-6-AR-1]

Arkansas Radiological Emergency Response Plan for the Arkansas Nuclear One Power Plant

AGENCY: Federal Emergency Management Agency.

ACTION: Certification of FEMA Findings and Determination.

In accordance with FEMA Rule 44 CFR Part 350 (proposed), the State of Arkansas submitted its plans relating to the Arkansas Nuclear One Power Plant to the Regional Director who has forwarded his evaluations to the Associate Director for State and Local Programs and Support, in accordance with § 350.11 of the proposed rule. Consideration in his evaluations of the State and associated local plans were the contiguous State and local plans involved in the 10 and 50 mile emergency planning zones, a critique of the exercise conducted on March 24–25, 1981, in accordance with § 350.9 and a report of the public meeting held on March 16, 17, 19, and 20, 1981, to discuss the site specific aspects of the State and local plans in accordance with § 350.10 of the proposed Rule.

Based on a review of the Region's evaluations by FEMA Headquarters, the Associate Director finds and determines that, subject to the condition stated below, State plans and preparedness including local plans and preparedness for the Arkansas Nuclear One Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. There is reasonable assurance that appropriate protective measures can and will be taken offsite in the event of a radiological emergency. The condition for the above approval is that the public alerting and notification system already installed and in operation be tested and evaluated by the FEMA Region VI in accordance with the criteria in NUREG 0654/FEMA-REP-1, Rev. 1 by February 1, 1982.

FEMA will continue to review the status of preparedness of the State and its local jurisdictions associated with the Arkansas Nuclear One Plant in accordance with § 350.13 of the proposed rule.

For further details with respect to the action, refer to Docket File FEMA-REP-6-AR-1 for Arkansas Nuclear One maintained by the FEMA Regional Director at the Federal Center, Denton, Texas 76201.

Dated: January 27, 1982.

For the Federal Emergency Management Agency.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6298 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-01-M

[Docket No. FEMA-REP-8-CO-1]

The State of Colorado Radiological Emergency Response Plan for the Fort St. Vrain Nuclear Generating Station; Certification of FEMA Findings and Determination

AGENCY: Federal Emergency Management Agency.

ACTION: Certification of FEMA Findings and Determination.

In accordance with the FEMA Rule 44 CFR Part 350, (proposed), on June 12, 1980, the State of Colorado submitted its Plans relating to the Fort St. Vrain Nuclear Generating Station to the Director of FEMA Region VIII for review and approval. The Regional Director forwarded his evaluation to the Associate Director for Plans and Preparedness on May 1, 1981, in accordance with § 350.11 of the proposed Rule. Included in this evaluation were a review of the State and local plans around the Fort St. Vrain facility; a critique of the exercise conducted in the vicinity of the site on February 28, 1980, in accordance with § 350.9 of the propsed Rule; a report on the public meeting held on August 13, 1980, to explain the site specific aspects of the State and local plans in accordance with § 350.10 of the proposed Rule. On August 12, 1981, a second exercise was held followed by an exercise critique on August 13, 1981.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Fort St. Vrain facility are adequate to protect the health and safety of the public living in the vicinity of the facility. The plans and preparedness are assessed as providing reasonable assurance that appropriate protective measures can and will be taken off-site in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that by February 1, 1982, the public alerting and notification system must meet the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA Criteria (NUREG-0654/ FEMA-REP-1, Revision 1).

Other deficiencies were noted, however, they either have been or are in the process of being corrected.

FEMA will continue to review the status of plans and preparedness of the State and locality associated with Fort St. Vrain in accordance with § 350.13 of the proposed Rule.

For further details with respect to this action, refer to the FEMA docket file maintained by the Regional Director, FEMA Region VIII, Federal Regional Center, Building 710, Denver, Colorado 80225.

Dated: January 29, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6296 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

[Docket No. FEMA 6255]

National Flood Insurance Program; Communities With Flood-Prone Areas Subject to Section 202(a); Prohibition of Federal and Federally Related Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Notice, correction.

SUMMARY: Appearing in the **Federal Register**, Vol. 46, No. 200, Docket No. FEMA 6159, FR Doc. 81-29664, at page 51015 in the issue of Friday, October 16, 1981, on page 51023, delete the Village of Savannah, Wayne County, New York from this list. Effective January 1, 1980, the Village dissolved and became part of the Town of Savannah, Wayne County, New York. The Town was eligible to participate in the National Flood Insurance Program February 1, 1980.

FOR FURTHER INFORMATION CONTACT: Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: February 25, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-6309 Filed 3-8-82; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL HOME LOAN BANK BOARD

Unity Savings Association; Norridge, Ill.; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended (12 U.S.C. 1729(c)(2)), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as receiver for Unity Savings Association, Norridge, Illinois, effective February 20, 1982.

Dated: March 2, 1982.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-6296 Filed 3-8-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

First Freeport Corp.; Acquisition of Bank

First Freeport Corporation, Freeport, Illinois, has applied for the Board's approval under Section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Polo Bancorp, Inc., Polo, Illinois. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 1, 1982. 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.

Board of Governors of the Federal Reserve System, March 2, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-6253 Filed 3-8-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the months of March and April 1982:

Mental Health Small Grant Review Committee

March 31-April 3; 1:30 p.m.

The Holiday Inn of Georgetown, The Mandelieu and Monte Carlo Rooms, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20007

Open—March 31; 1:30-2:30 p.m.

Closed—Otherwise

Contact: Carole J. Tully, Room 9-104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4843

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychiatry, sociology, anthropology, psychological sciences, biological sciences, and epidemiology, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30-2:30 p.m., March 31, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact person listed above. A summary of the meeting and a roster of the Committee members will be furnished upon request from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Room 9-95, Parklawn Building, Rockville, Maryland 20857, (301) 443-4333.

Dated: March 3, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 82-6297 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place. April 2, 1 p.m., Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and panel section leader. This meeting will be held by a conference telephone call. A speaker phone will be provided in the conference room to allow public participation in open sessions of the meeting. Open public hearing, 1 p.m. to 1:30 p.m.; open committee discussion, 1:30 p.m. to 4 p.m.; Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the panel section leader before March 15, 1982, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for polylactic acid (P800012) and for a plastic material for construction of endosseous implants (P810014).

Dermatologic Drugs Advisory Committee

Date, time, and place. April 26, 9 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and executive secretary. Open public hearing, 9 a.m. to 10 a.m.; open commmittee discussion, 10 a.m. to 4:30 p.m.; D. C. Bostwick, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6798.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the treatment of dermatological disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss labeling for 13-cis retinoic acid (NDA 18-662, Hoffmann-La Roche, Inc.) for use in cystic acne; Thilidomide (IND 11,359) in the treatment of pyoderma gangrenosum and other dermatological disorders; and Selsun Shampoo (NDA 7-936) in the treatment of tinea versicolor.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Section 10.210 (21 CFR 10.210) of FDA's procedural regulations requires FDA to give notice of the availability of reimbursement for participation and certain FDA proceedings including advisory committee meetings. However, on November 27, 1981, the United States Court of Appeals for the Fourth Circuit held that FDA does not have authority to reimburse public participants in its administrative proceedings. *Pacific Legal Foundation* v. *Goyan*, No. 80-1854 (4th Cir. November 27, 1981). Accordingly, reimbursement will not be available for participation in the proceedings described in this notice.

Dated: March 2, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6131 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 77N-0080]

Polychlorinated Biphenyls (PCB's) in Fish and Shellfish; Reduction of Tolerances; Availability of Initial Decision; Opportunity for Submission of New Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of the Initial Decision of the Administrative Law Judge and an opportunity for the submission of posthearing briefs concerning new information relevant to the rulemaking but outside the scope of the formal evidentiary hearing.

DATES: Posthearing briefs must be received by April 5, 1982. Reply briefs must be received by May 3, 1982.

ADDRESSES: Copies of the Initial Decision are available from, and briefs may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 1, 1981 (46 FR 24551), FDA announced a public hearing on an objection to the final rule that reduced tolerances for unavoidable residues of PCB's in several classes of food. FDA had published the final

regulation in the **Federal Register** of June 29, 1979 (44 FR 38330).

The notice of hearing stated that the public hearing would consider only one factual issue: What is the magnitude of the human food loss that would result from lowering the tolerance for PCB's in fish and shellfish from 5 parts per million (ppm) to 2 ppm? FDA further announced in the notice of hearing that new information on other issues, including PCB toxicity, could be submited and commented upon to the Commissioner of Food and Drugs in posthearing briefs and reply briefs, which are to be due on the same dates as the hearing participants' exceptions to the Initial Decision and replies to exceptions. The Commissioner will consider the information in these briefs if he finds good cause for their late inclusion in the administrative record of this rulemaking proceeding.

The Administrative Law Judge issued his Initial Decision on February 8, 1982. A copy of the decision may be obtained from the Dockets Management Branch at the address given above. The Initial Decision provided that exceptions are due by March 10, 1982, and replies to exceptions are due by March 30, 1982. At the request of one of the hearing parties, the Commissioner of Food and Drugs extended these dates to April 5, 1982, and May 3, 1982, respectively.

Therefore, FDA announces that interested persons may submit briefs containing new information that is relevant to this rulemaking proceeding and that is not already part of the administrative record, and may comment upon that information. A person need not have been a hearing participant to submit such a brief or reply brief. Briefs should be addressed to the Dockets Management Branch at the address given above and should be received by the dates given above. Each brief should include a statement concerning why the submitted information was not submitted to FDA during the notice and comment portion of this proceeding.

Dated: March 2, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6132 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0168]

Proposed Recommendation to the Drug Enforcement Administration Regarding the Scheduling Status of Tetrahydrocannabinol

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a proposed recommendation on the appropriate scheduling of tetrahydrocannabinol (THC) under the Controlled Substances Act (CSA). The document also includes a scientific and medical evaluation of THC. The proposed recommendation is published to give interested persons the opportunity to comment on the recommendation and on the scientific and medical evaluation. FDA will consider these comments in preparing its final recommendation on, and scientific and medical evaluation of, tetrahydrocannabinol before transmitting them to the Assistant Secretary for Health of the Department of Health and Human Services (DHHS). the Assistant Secretary for Health is responsible for making the DHHS' recommendation to the Drug Enforcement Administration.

DATE: Comments by May 10, 1982.

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

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382 or 443-6490.

SUPPLEMENTARY INFORMATION:

I. Background

The full chemical name for tetrahydrocannabinol, or THC, is (-)-*delta*-9-(trans)-tetrahydrocannabinol. THC, the principal active ingredient in the marihuana plant, *Cannabis sativa*, is present in the plant at varying concentrations. THC can be extracted from plant material or synthesized independently. However, it was not until 1970, after THC synthesis, that sufficient quantities of THC, in purified form, became available for medical research. Investigators have studies THC primarily for its use in treating the nausea and vomitting of some patients receiving cancer chemotherapy. In addition, investigators have studied THC's use in treating glaucoma and muscle spasticity. Medical or investigational use of a drug such as THC that has potential for abuse is regulated under two principal Federal statutes, the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*) and the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq*). Under the FFDCA a drug may be marketed only if (1) it has received an approved new drug application from FDA; (2) the drug is generally recognized as safe and effective on the basis of adequate and well-controlled clinical investigations by well-qualified experts; or (3) the drug is subject to the "grandfather" provisions of the FFDCA.

Enacted in 1970, the CSA establishes domestic control schedules I through V for substances of abuse (21 U.S.C. 812(b)(1) through (5)). Congress placed THC into schedule I, the schedule providing the most stringent controls. The findings required for schedule I are that the substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The major schedule I controls are: dispensing for research use only, separate recordkeeping, and maximum quotas on amounts produced during a given year. The latter two controls also apply to schedule II substances.

In addition to controls under the FFDCA and the CSA, medical or investigational use of a drug that has a potential for abuse also may be subject to control under international treaties: the Single Convention on Narcotic Drugs, and the Convention Psychotropic Substances. Detailed discussion of controls applicable to THC under the Psychotropic Convention are beyond the scope of this notice. However, currently THC is controlled in the most restrictive schedule of the Psychotropic Convention, Psychotrophic schedule I. Schedule I of the Psychotropic Convention also includes certain other hallucinogenic substances, e.g., mescaline, parahexyl, and LSD. The major controls for substances in Psychotropic Convention schedule I are: prohibition of use except for scientific and limited medical purposes, and restriction of the amount supplied to a duly authorized person to the quantity required for an authorized purpose. Thus, the Psychotropic Convention requires the United States to impose certain domestic controls on THC. The United States' responsibilities under the Psychotropic Convention are assigned by the CSA, as amended by the Psychotrophic Substances Act of 1978 (Pub. L. 95-633).

The CSA contains procedures by which changes in domestic scheduling can be effected (21 U.S.C. 811(a)), including "on petition of any interested person." In may 1972, the National Organization for the Reform of Marijuana Laws (NORML) petitioned the Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement

Administration (DEA)) under section 201(a) of the CSA (21 U.S.C. 811(a)) to remove marihuana and its components from control under the CSA or to move marihuana and its components to a less restrictive schedule. DEA denied NORML's requests (see 37 FR 18097, September 1, 1972). NORML sought judicial review of the denial and the United States Court of Appeals for the District of Columbia, in *NORML* v. *Ingersoll*, 497 F. 2d 654 (D.C. Cir. 1974), ordered DEA to hold hearings and reconsider the NORML petition on the basis of evidence introduced at these hearings. Following these hearings, DEA again denied the NORML petition and ruled that the substances at issue must remain in CSA schedule I (40 FR 44164, September 25, 1975). NORML sought judicial review of the second denial and the court remanded the matter to DEA with instructions to refer the NORML petition to the Secretary of DHHS for medical and scientific evaluations and recommendations for rescheduling. See *NORML* v. *DEA*, 559 F. 2d 735, 750 (D.C. Cir. 1977). The court directed DEA to comply with the rulemaking procedures in 21 U.S.C. 811 (a) and (b) after DEA received the Secretary's evaluation and recommendation. Although the original NORML petition requested a change in the scheduling status only of marijuana leaves and other plant components, the court allowed NORML to amend its petition to include THC. *Id.* at p. 757.

The court directed the Secretary of DHHS to make separate evaluations and recommendations for each of the following cannabis materials: "Cannabis" and "cannabis resin" (minimum control—CSA II); cannabis leaves (minimum control—CSA V); cannabis seeds capable of germination (minimum control—CSA V); THC (no minimum control under CSA). The "minimum control" schedules relate to the least restrictive domestic schedules which the court in 1977 stated were consistent with treaty obligations under the Single Convention on Narcotic Drugs, 1961. Each of the "cannabis" materials, other than THC, is controlled by the Single Convention.

The Psychotropic Convention, which requires the United States to impose controls on THC, did not become effective in this country until July 1980. Thus, although the court in 1977 in *NORML* v. *DEA* concluded that no minumum domestic control for THC was required by virtue of international treaty, the court's decision did not take into account the present obligations of the United States under the Psychotropic Convention. See Psychotropic Substances Act of 1978 (amending the CSA to include United States obligations under the Psychotropic Convention).

In June 1977, DEA referred the NORML petition to the Secretary of DHEW (now the Department of Health and Human Services (DHHS)). FDA's Controlled Substances Advisory Committee (CSAC) considered NORML's petition in November 1977 and March 1978. The CSAC (now FDA's Drug Abuse Advisory Committee (DAAC)) recommended that the marihuana plant materials remain in CSA schedule I and that THC be rescheduled to CSA schedule II. The CSA schedule II recommendations were based on the advisory committee's view that placement in schedule II would facilitate research. On June 4, 1979, the Secretary transmitted to DEA the DHHS' evaluation and recommendation that each of the cannabis materials listed above and THC remain in schedule I. DHHS differed with the advisory committee recommendation because the substances met the legal criteria for CSA schedule I and because control of the substances in schedule I was not viewed as a significant impediment to research. On June 20, 1979, DEA denied NORML's petition and request for a hearing on the ground that there was lack of substantial evidence to support lesser control of the substances in question (44 FR 36123).

NORML petitioned the Court of Appeals for review of DEA's final order denying the petition. On October 16, 1980, the court ordered that the case once again be remanded to DEA and that DEA refer all the substances at issue to DHHS for scientific and medical findings and recommendations on scheduling. The court directed that the DHHS review take into account new evidence concerning medical use of the substances at issue. *NORML* v. *DEA and DHEW*, No. 79-1660 (D.C. Cir., October 16, 1980). On April 22, 1981, DEA referred the NORML petition to DHHS for review.

On June 25, 1981, FDA received a new drug application (NDA) seeking approval to market THC for the antinausea indication described above. FDA is now reviewing this NDA. If FDA approves the NDA, THC could not become commercially available until its scheduling status under the CSA were changed.

DHHS has adopted the following special procedures in making its evaluation and scheduling recommendation for THC (a separate procedure applies to the other cannabis-containing substances covered by the court order, which procedure will be the subject of a future **Federal Register** notice):

(a) Hearing before FDA's DAAC on the scheduling status of THC as a proposed marketed drug for nausea and vomiting in patients receiving cancer chemotherapy.

(b) Review by FDA of evidence concerning THC for this use, including the DAAC recommendation and comment from other appropriate units in DHHS.

(c) Publication in this **Federal Register** notice of the proposed scientific and medical evaluation and recommendation for public comment.

(d) Consideration of the comments received in response to this **Federal Register** notice in preparing FDA's evaluation and scheduling recommendation for transmittal to the Assistant Secretary for Health, DHHS.

(e) Review of the evaluation and recommendation by the Assistant Secretary for Health, DHHS, and transmittal to DEA.

To accomplish the first of these steps, FDA issued a **Federal Register** notice on May 15, 1981 (46 FR 26869-70), announcing that the DAAC would meet to consider the scheduling status of THC. An NDA was submitted to the agency on June 25, 1981 seeking approval to market THC for treatment of nausea and vomiting in patients undergoing cancer chemotherapy. The DAAC met on June 29, 1981 and was asked to make a recommendation for appropriate scheduling if the NDA for THC were approved. The DAAC recommended that upon NDA approval THC should be controlled in CSA schedule II. Transcripts of the June 29, 1981 DAAC meeting as well as the November 1977 and March 1978 CSAC meetings are on file at the FDA Dockets Management Branch (address above).

Following the DAAC meeting, FDA conducted the review referred to in the second step above. This notice represents the third step, notice of FDA's proposed scientific and medical evaluation and scheduling recommendation.

II. Scheduling Recommendation

FDA proposes to recommend to the Assistant Secretary for Health, DHHS, that THC remain in schedule I, but that if the NDA for THC marketing is approved by the agency, THC be rescheduled under the CSA to schedule II.

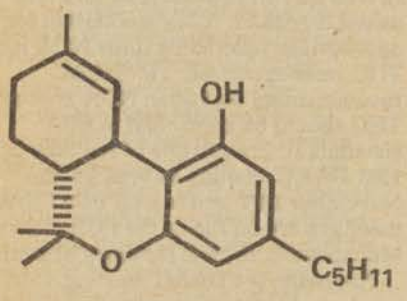
FDA notes that several members of the DAAC voted against the majority's recommendation for CSA schedule II and implied that they prefer a schedule with lesser controls. The agency has

carefully considered schedule III especially, but also schedules I, IV, and V, and no control, and proposes to conclude that, on balance, THC as a marketed drug would fit best in CSA schedule II.

FDA also notes that any rescheduling of THC from schedule I to II will be influenced not only by the results of this proceeding but also by U.S. treaty obligations under the Psychotropic Convention. As a matter separate from this proceeding but still related to domestic scheduling, FDA is considering with the other interested agencies of government involved in international scheduling whether rescheduling of THC to schedule II domestically could be accomplished without international rescheduling. The agency is not seeking comment on this legal issue.

In making a scheduling recommendation, consideration must be given to the eight factors listed at 21 U.S.C. 811(c). FDA's consideration of these eight factors with respect to THC follows:

(1) *Its actual or relative potential for abuse (21 U.S.C. 811(c)(1)).* The natural source of (-)-*delta*-9-(trans)-THC is the plant *Cannabis sativa*, also called marihuana (Refs. *1* through *4*). THC as a single active substance also can be synthesized chemically. THC's chemical structure is:



THC occurs in the plant material at concentrations up to approximately 9 percent of the weight of the leaves. Most cannabis contains less than 3 percent THC (Ref. *6*). THC is the major active psychotropic substance in the marihuana plant material.

The legislative history of the Comprehensive Drug Abuse Prevention and Control Act of 1970 defines potential for abuse as:

(1) [E]vidence that individuals are taking a drug or drugs containing a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community;

(2) [S]ignificant diversion of the drug or drugs containing the substance from legitimate drug channels;

(3) Individuals * * * taking the drug or drugs containing the substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse as to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions of the drug from legitimate channels, significant use contrary to or without medical advice, or that the drug has a substantial capability of creating hazards to the health of the user or to the safety of the community (Ref. *5*).

Pure THC has not been available in the United States except in research settings. However, because THC is the major psychoactive ingredient of cannabis, the potential for abuse of THC is indicated by the actual abuse of cannabis. This relation is supported by the practice among abusers of rating the quality of cannabis according to THC content. The higher the THC content, the more desirable the cannabis becomes and the more expensive it becomes on the illicit market (Ref. *6*). As an estimate of the magnitude of the actual abuse of cannabis, approximately 10,000 to 15,000 tons of cannibis were smuggled into the United States in 1978 with a value of approximately $15 to $23 billion (Ref. *7*). The price on the illicit market in 1978 for cannabis was approximately $35 to $50 per ounce or $375 to $800 per pound (Ref. *8*). The usual concentration of THC in illicit cannabis is 1 to 4 percent THC. By comparison, the price of sinsemilla, which is a specially grown high-potency marihuana with a THC content of up to 8 percent, has been reported to be $1,000 to $3,000 per pound (Ref. *7*). At that price per unit of THC, the illicit market value of 100 percent THC would be $12,500 to $37,500 per pound. This is equivalent to the illicit value of cocaine, which sells for approximately $2,000 per ounce or $32,000 per pound. To the extent that the illicit price of a substance is a measure of its potential for abuse, THC would have a high potential for abuse.

Further supporting the conclusion that pure THC has a potential for abuse is the presence on the illicit market of substances alleged to be pure THC but which in fact contain other hallucinogenic substances, such as PCP or LSD (Ref. *9*). Thus, FDA proposes to conclude that there exists a high potential for abuse of THC.

(2) *Scientific evidence of its pharmacological effect, if known (21 U.S.C. 811(c)(2)).* The pharmacological effects of THC have been investigated since it became available in sufficient quantity for extensive studies in the early 1970's. The effect primarily responsible for THC's desirability as a substance of abuse is its ability to produce euphoria. The effects of pure THC are essentially similar to those of cannabis containing THC in equivalent amounts. Responses to THC vary with dosage, frequency of use, and attitude toward the drug (Ref. *10*). External factors such as setting or environment, previous drug experience, and age also affect the response to cannabis. A study of subjective marihuana experience revealed that frequent use of cannabis was associated with reports of increased "creative lucidity," which includes original ideas and greater insight into self, "somatosensory enhancement," which includes more sensual and new touch qualities, and "social withdrawal," which includes a more quiet activity and less talking (Ref. *11*). An individual's perception of space and time (which influences sensory perceptions) is also changed by cannabis (Ref. *12*). Cannabis can produce a slowing or even a stopping of time perception. At high doses THC produces hallucinogenic effects, paresthesias (abnormal sensations), altered perceptions, difficulty with thinking, concentrating, or speaking, and depersonalization (Ref. *13*).

Two physiological effects of cannabis and THC are an increase in heart rate and reddening of the eyes. The increase in heart rate is dependent on the dose of THC in marihuana with a peak effect about 20 minutes after smoking and a duration of about 85 minutes (Ref. *12*). Reddening of the eyes reaches a peak about one hour after smoking and slowly declines. THC acts on both the central and autonomic nervous systems (Ref. *12*).

(3) *The state of current scientific knowledge regarding the drug or other substance (21 U.S.C. 811(c)(3)).* THC synthesis was first reported in 1964 (Ref. *1*). By 1970 there had been sufficient work on the chemistry of THC to produce the material in purified form in sufficient quantities for research (Ref. *15*). Since 1970, the scientific and medical literature concerning THC and THC as a component of cannabis has been extensive (Refs. *14* and *16*). Under

the Marijuana and Health Reporting Act of 1970 (Pub. L. 91-296), Congress receives reports on the health consequences of marihuana and marihuana constituents. These reports present summary information of scientific knowledge accumulated on THC and include an extensive bibliography of research with THC (Ref. *17*). The Institute of Medicine of the National Academy of Sciences currently is conducting an independent assessment of the physiological and behavioral effects mainly of marihuana but also of THC. The results of this assessment are not yet available (Ref. *18*). Much of the scientific work done with THC was performed under contract from the National Institute on Drug Abuse and is compiled in FDA's Drug Master File No. 1631 (Ref. *19*).

The National Cancer Institute (NCI) distributes THC as a group C drug under an investigational new drug application for the indication of nausea and vomiting resulting from cancer chemotherapy. Group C drugs are investigational drugs with sufficient evidence of safety and efficacy that they may be useful in the care of cancer patients who are not enrolled in formal clinical trials. Group C drugs are not yet marketed, in part because full documentation of safety and/or effectiveness is still being compiled. THC was classified as a group C investigational new drug on the basis of clinical studies indicating THC's effectiveness in the treatment of some cancer chemotherapy patients with nausea and vomiting refractory to standard antiemetics and because the benefits of treatment with THC exceed the risks identified to date (Ref. *27*). Group C distribution is intended both to provide anti-cancer drugs to patients for humanitarian reasons and to acquire additional information on adverse effects in the context in which the drug is likely to be used in clinical practice after marketing. Under group C distribution, THC remains an investigational drug and is provided only to properly trained physicians who have registered with NCI as clinical investigators.

The precise mechanism of action of THC at the cellular level is unknown. One of the major metabolites of THC is 11-hydroxy-*delta*-9-THC. This metabolite produces effects similar to those of THC but appears to have a more rapid onset and to be more potent (Ref. *14*). Studies have indicated, however, that THC has activity separate from those of the metabolite 11-hydroxy-*delta*-9-THC (Ref. *14*).

(4) *Its history and current pattern of abuse (21 U.S.C. 811(c)(4)).* Pure THC has not been available in the United States except in research settings, and there are no reports of significant diversion or abuse of synthetic THC from scientific and research institutions.

Typical THC values obtained from plant materials in the illicit market and reported in the literature (Ref. *20*) are as follows:

	Percent
Fiber-type cannabis	0.05 THC.
Drug-type cannabis	1.0 to 4.0 THC.
Hashish (resin)	10.0 THC.
Red oil (cannabis distillate)	20.0 THC.

As the concentration of THC increases, the monetary value of the substance on the illicit market also increases. See the above discussion of factor one, potential for abuse. Attempts have been made to increase the THC content of plant materials which are available on the illicit market. It is reasonable to conclude that the pattern of abuse of synthetic THC would be similar to that of cannabis materials with high concentrations of THC.

(5) *The scope, duration, and significance of abuse (21 U.S.C. 811(c)(5)).* There has been no actual abuse of THC reported, either from diverted material or in patients given the drug under the stringent controls that apply to investigational drugs. However, cannabis, which contains THC, is widely abused. See the above discussion of factor one.

(6) *What, if any, risk there is to the public health (21 U.S.C. 811(c)(6)).* The risks to the public health from the illicit use of THC are likely to be similar to those of marihuana. Further, the dosage form proposed in the NDA is a capsule for oral use containing THC in sesame oil. If this dosage form were diverted and injected intravenously, it could cause severe problems to the individual from oil embolism. Taken orally, as intended, the THC capsule would produce psychotropic effects and, like marihuana, could adversely affect job performance and automobile driving. Studies utilizing pure THC or cannabis indicate that the substances impair skills and behavior related to driving (Ref. *21*).

(7) *Its psychic or physiological dependence liability (21 U.S.C 811(c)(7)).* Physical dependence on THC has not been demonstrated. Although one investigator (Ref. *14*) reported withdrawal signs and symptoms after large doses of THC, other investigators have failed to observe a withdrawal syndrome in chronic abusers of marihuana or THC (Ref. *22*).

With respect to psychological dependence, there is evidence to suggest such dependence in some individuals. Marihuana is capable of producing, in certain individuals who use it heavily and repeatedly, an amotivational syndrome (Ref. *22*). Concentrated forms of cannabis such as hashish or red oil have also been reported to produce an acute neurological syndrome which include the clouding of mental processes, disorientation, confusion, and marked memory impairment (Ref. *23*). Illicit marihuana has shown a trend in recent years toward higher concentrations of THC in illicit cannabis-containing plant substances. This material commands a high price and is particularly attractive to certain individuals. A recent report of the American Medical Association's Council on Scientific Affairs, as adopted by the AMA House of Delegates, concluded that marihuana is hazardous to health and that there was a growing prospect of an appreciable number of marihuana users incurring physiological and psychological impairment (Ref. *24*).

FDA proposes to conclude that some individuals should be considered as sufficiently strong drug-seeking in their behavior to be considered severely psychologically dependent on cannabis and that a similar potential dependence should be anticipated for THC. Therefore, FDA proposes to conclude that THC poses a risk to the public health.

(8) *Whether the substance is an immediate precursor of a substance already controlled under this title (21 U.S.C. 811(c)(8)).* THC is not an immediate precursor to a substance already controlled under this title.

III. Criteria for Scheduling

The eight factors discussed above are used to determine which of the five CSA schedules, if any, is appropriate for a given drug or substance. Each of the five CSA schedules has three criteria to aid in this determination. To assign a substance to a specific schedule, the Attorney General must find that the substance meets the statutory criteria for that schedule. 21 U.S.C. 811(a)(1)(B).

Criterion A for all five schedules is a series of descriptions of abuse potential, declining from high to low. Schedules I and II are identical in this regard, both requiring a finding of "high" potential for abuse. Schedules III through V require findings of lower, though still some, abuse potential.

Criterion B for all five schedules is whether the drug, or other substance,

has a currently accepted medical use. Schedule I drugs must be found to have "no currently accepted medical use in treatment in the United States" while schedules II through V all require a "currently accepted medical use in treatment in the United States." In addition, criterion B for schedule II allows an alternative finding, "currently accepted medical use with severe restrictions."

Criterion C is different for schedule I than for the other schedules. For schedule I, the criterion requires a finding of "lack of accepted safety for use of the drug or other substance under medical supervision." For schedules II through V, this criterion consists of a sliding scale of the drug's dependence-producing capacity, either physical or psychological. Schedule II drugs require a finding of the highest dependence-producing capacity while schedule V drugs require the lowest.

The "accepted medical use" status of a drug, therefore, plays a significant role in the scheduling analysis, as one of the three criteria for each schedule. Because FDA has received but not yet acted on an NDA for THC, two separate proposed scheduling recommendations are made: one which would take effect if the drug is approved for marketing (which would signify that there is an accepted medical use for THC), and a second recommendation for THC absent NDA approval.

1. Upon NDA Approval

a. *Criterion A.*—On the scale of abuse potential, FDA proposes to conclude that THC has a high potential for abuse and thus meets this criterion for schedules I and II (the criterion is identical for these two schedules).

As noted above, THC is the major active ingredient in the plant *Cannabis sativa*. As a plant constituent, it has been shown to have a high potential for abuse (see discussion of factor one above). As a single active chemical entity, THC has not been abused because it has been subject to stringent controls as an investigational drug and a schedule I substance under the CSA. The abuse potential of THC must be presumed to be at least as great as that for marihuana. THC has marked psychotropic effects and, if freely available, would very likely to be a major drug of abuse (see above discussion of factors two and four). If THC is marketed in capsules as a drug product, it can be anticipated that there will be attempted thefts, that attempts will be made to divert the drug from legitimate channels, and that any drug so diverted will command premium prices in the illicit market.

The proposed conclusion that THC has a high potential for abuse (thus meeting criterion A for schedules I and II) logically precludes THC from meeting criterion A for schedules III through V, because drugs in each of these three schedules have a progressively lower abuse potential than schedule I and II drugs.

(b.) *Criterion B.*—As with any drug, upon approval of an NDA for marketing, THC would have a "currently accepted medical use in treatment in the United States". FDA interprets the term "accepted medical use" to mean lawfully marketed in this country under the Federal Food, Drug, and Cosmetic Act.

The mechanism set up by Congress for a company lawfully to market a new drug is for the company (the "sponsor") to submit a new drug application to FDA and for FDA to approve that application. Before FDA can approve an NDA, however, the drug's sponsor must submit data from an extensive battery of experimental testing on both animals and humans to establish the drug's safety and effectiveness for its proposed uses. In addition, the sponsor must submit data on manufacturing controls demonstrating that standards of identity, strength, quality, and purity will be met. Finally, the sponsor must submit labeling which adequately reflects the proper conditions for use. See 21 U.S.C. 355(d) and 21 CFR 314.1. Only after FDA has evaluated this large array of information can the agency make a decision on whether the NDA should be approved and the drug marketed.

Thus, FDA's approval of an NDA clearly establishes that a drug has an "accepted medical use", and THC would therefore fall into this category if an NDA were approved.

c. *Criterion C.*—Because an approved NDA for THC would be based, in part, on an FDA finding of THC's safety for its proposed use, in that situation THC would clearly not meet criterion C for schedule I ("lack of accepted safety * * * under medical supervision"). Rather, with an approved NDA the question is where THC fits on the sliding scale of dependence-producing capacity for the remaining schedules, II through V.

Criterion C for schedule II provides that "[a]buse of the drug or other substance *may* lead to severe psychological *or* physical dependence" (emphasis added). FDA proposes to recommend the conclusion that abuse of THC may lead to severe psychological dependence in some individuals (see discussion above under factor seven). Whether this psychological dependence might better be characterized as "high" (the schedule III criterion) rather than "severe" (the schedule II criterion) is a subject of scientific controversy. However, FDA agrees with a majority of its DAAC members that THC's psychological dependence-producing ability lies at the top end of the spectrum and is most appropriately characterized as "severe", meeting the criterion for schedule II.

In terms of possible physical dependence, FDA believes the available information at this time is insufficient to determine with certainty whether physical dependence occurs. As noted above under factor seven, physical dependence on THC has not been clearly demonstrated; the finding of physical dependence by one investigator has not been confined by others.

d. *Summary Chart.*—FDA's proposed findings for the scheduling of THC, if an NDA is approved, are summarized as follows:

Note.—The criteria vary according to the schedule.

	Criterion		
	A	B	C
Schedule I	Met	Not met	Not met.
Schedule II.	Met	Met	Met.
Schedule III.	Not met	Met	Possibly met.
Schedule IV.	Not met	Met	Not met.
Schedule V.	Not met	Met	Not met.

e. *Conclusion.*—For the reasons stated above, FDA proposes to recommend that, if an NDA is approved for THC, THC would meet all three criteria of schedule II, and, therefore, at that time DEA should reschedule the drug accordingly.

2. Without NDA Approval:

In 1979, FDA stated that it believed that, from a medical and scientific standpoint, THC "could be placed in either schedule I or schedule II" (44 FR 36127) but that for policy reasons the agency recommended schedule I. Although certain new developments have occurred with respect to THC in the intervening years (i.e., investigational group C status and enabling legislation in some States providing for various degrees and kinds of more relaxed research controls), these developments do not change FDA's opinion that THC (without an approved NDA) meets all three criteria for both schedule I and schedule II. Accordingly, because there appears to be no advantage to rescheduling THC at this time, FDA proposes that because of

policy considerations it remain in schedule I. These policy considerations are discussed in section (e) below.

a. *Criterion A.*—As explained above, FDA proposes to conclude that THC has a high potential for abuse, and thus meets this criterion for both schedules I and II but does not meet this criterion for schedules III through V.

b. *Criterion B.*—This criterion involves the "accepted medical use" of the drug and has three variations among the five schedules, as follows:

(1) *Schedule I:* "The drug or other substance has no currently accepted medical use in treatment in the United States".

(2) *Schedule II:* "The drug or other substance has a currently accepted medical use in treatment in the United States *or* a currently accepted medical use with severe restrictions" (emphasis added).

(3) *Schedules III through V:* "The drug or other substance has a currently accepted medical use in treatment in the United States".

For the following reasons, FDA proposes to recommend that THC currently meets equally well criterion B in both schedule I and schedule II.

As explained above, FDA defines "currently accepted medical use * * *" (schedules III through V and schedule II, first clause) to mean lawfully marketed under the Federal Food, Drug, and Cosmetic Act. Conversely, "no currently accepted medical use * * *" must mean not lawfully marketed. THC fits into the latter category because there is not an approved NDA for the drug, and because it cannot be legally marketed without an approved NDA. Therefore, THC meets criterion B for schedule I.

THC also, however, meets the second clause of criterion B for schedule II involving "a currently accepted medical use with severe restrictions". Although this clause is not defined in the statute or the legislative history, the agency believes that certain investigational drugs, such as THC, in the later stages of the investigational process may fall within this statutory language.

Investigational drugs progress from experimentation in a very limited, closely supervised setting involving only a few individuals to use in a broader investigational protocol using hundreds of patients. Under FDA regulations, reports of these clinical studies are periodically sent to FDA so that the agency can properly monitor the ongoing research and progression to broader clinical trials. See 21 CFR Part 312.

The placement of THC in NCI's group C distribution scheme represents an example of clinical research that has progressed sufficiently far to be termed "currently accepted medical use with severe restrictions." As stated in the Surgeon General's September 10, 1980 press release announcing the placement of THC in group C, the new plan would make THC available to an estimated 4,000 cancer specialists for use in combating nausea and vomiting in cancer patients undergoing chemotherapy (Ref. *25*). FDA decided to authorize this broader distribution plan because, among other reasons, the close supervision required by the study protocol appeared to provide adequate safeguards for patient safety, and sufficient evidence of effectiveness existed to support broader availability for treatment of patients. This decision was based on review of a significant amount of clinical testing already performed on THC and on the advice of FDA's Oncology Advisory Committee. Thus, although FDA does not propose to define "accepted medical use with severe restrictions" as limited to group C drugs, because that definition would improperly limit the statutory language to drugs involved in cancer therapy, FDA does believe that THC's placement in group C fits the statutory language of "accepted medical use with severe restrictions."

Group C distribution of THC, however, should not be confused with the "accepted medical use" standard of lawful marketing. Group C drugs such as THC remain investigational drugs requiring research protocols, informed consent of patients, drug availability to a limited number of physicians registered as clinical investigators, and reports of adverse effects to FDA. These requirements together constitute "severe restrictions" under the statutory language that distinguish investigational drugs like THC from marketed drugs.

Similarly, enabling laws in over 20 States that now authorize the use of marihuana and THC in the context of medical research do not satisfy the "accepted medical use" standard of lawful marketing. For example, at least 11 States have FDA-approved protocols for THC research use. Moreover, such State-enabling laws should not be confused with State laws which "decriminalize" the possession or transfer of certain marihuana materials for personal use, including recreational uses. The latter State laws involve reductions in criminal penalties and do not relate directly to the use of these substances in medical research.

FDA specifically requests comment on its interpretation of the CSA that criterion B of schedule I and criterion B of schedule II may be met simultaneously by a substance, such as THC, that is not approved for marketing but that is available on a limited basis for investigational use.

c. *Criterion C*—As discussed above, on the sliding scale of dependence-producing capacity (schedules II through V), FDA proposes to recommend that THC fits into schedule II because abuse of the drug may lead to severe psychological dependence.

FDA also proposes that THC meets criterion C for schedule I because there is "a lack of accepted safety for use of the drug or other substance under medical supervision". FDA believes that "accepted safety", like "accepted medical use", refers to an attribute possessed only by drugs lawfully marketed under the Federal Food, Drug, and Cosmetic Act. Accordingly, because THC is not so lawfully marketed, there is a "lack of accepted safety * * *".

As noted above, the FFDCA directs FDA to approve an NDA based upon scientific evidence that the drug has been shown to be safe and effective for its proposed uses. See 21 U.S.C. 355(d). Because no drug is ever completely safe in the absolute sense, FDA considers "safe" to mean (in the context of a human drug) that the therapeutic benefits to be derived from the drug outweight its known and potential risks under the conditions of use prescribed in the labeling. For this reason FDA requires, before approval of an NDA, that extensive clinical and preclinical testing be conducted to establish the safety of the drug. Indeed, FDA must deny approval of an NDA if inadequate information about adverse reactions is presented. See 21 U.S.C. 355(d)(1).

Another factor considered by FDA in assessing the drug's safety is the proposed labeling, which is approved at the time of approval for marketing. A drug might be considered safe under some labeling but not others. Physicians depends on detailed labeling for information on when and how a drug should be used, and any claims in the labeling must be supported by clinical studies. False or misleading proposed labeling also precludes FDA approval of an NDA. 21 U.S.C. 355(d)(6).

Clearly, the futher along a drug is in the investigational process, the more information about safety and effectiveness there will be. But it is only upon approval for marketing that there has been a decision, based on scientific judgment by the regulatory agency charged with the responsibility of evaluating the safety and efficacy of new drugs, that a drug becomes "accepted" as safe under medical supervision.

THC for use in cancer chemotherapy is a drug near the end of the

investigational phase, but FDA has not completed its evaluation of the drug's safety and effectiveness. THC is currently distributed to physicians only as an investigational drug under the group C plan for cancer drugs operated by its sponsor, NCI. NCI's drug master file describes the purpose of group C, in part, as follows:

> The purpose of this distribution *is to acquire information on safety* in the context in which the drug is likely to be used in clinical practice after marketing.

(Ref. *26* at p. 21) (emphasis added).

Thus, participating physicians are required to submit reports directly to NCI when adverse reactions to THC are encountered (Ref. *27*).

THC is also being investigated under IND's for both safety and effectiveness. Only when full information is received and reviewed by FDA can a responsible, scientific judgment be made about THC's "accepted safety for use * * * under medical supervision". Accordingly, FDA proposes that THC meets criterion C for schedule I.

d. *Summary Chart*—FDA's proposed recommendations on scheduling criteria for THC, without an approved NDA, may be summarized in the following chart:

Note.—The criteria vary according to the schedule.

	Criterion A	Criterion B	Criterion C
Schedule I	Met	Met	Met.
Schedule II	Met	Met	Met.
Schedule III	Not met.	Not met.	Possibly met.
Schedule IV	Not met.	Not met.	Not met.
Schedule V	Not met.	Not met.	Not met.

e. *Conclusion*—FDA proposes to recommend that, based on the scientific and medical evaluation, without an approved NDA THC meets all three criteria for both schedules I and II and thus could be placed in either schedule I or II. FDA proposes to recommend that THC remain in schedule I until an NDA is approved, for the following policy reasons.

As noted above, THC is currently in schedule I because Congress put it there. FDA believes that, where discretion is involved, the status quo created by Congress should not be changed unless there are clear data requiring the change or identifiable benefits to be gained by such change. Changing the status of THC under the CSA while THC is still investigational could set a precedent for other investigational drugs and would reasonably imply to physicians and the public that there is some scientific or regulatory reason for such change. At the present time, THC is available for research and for the treatment of cancer patients under a distribution system operated by NCI and under other investigational new drug applications. More widespread availability of the drug is limited by lack of an approved NDA for marketing, not by its schedule I status. FDA is, therefore, unaware of any health problem or barrier to research that would be materially relieved by downscheduling THC from schedule I to schedule II while the drug is still investigational. Also, FDA opposes the expenditure of public resources without commensurate public benefit. FDA would thus propose to recommend downscheduling only if this action is necessary to facilitate marketing of the drug. Accordingly, based on these policy grounds, FDA proposes to conclude that THC not be rescheduled to schedule II unless and until an NDA is approved for marketing of THC.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Gaoni, Y. and R. Mechoulam, "Isolation, Structure and Partial Systhesis of an Active Constituent of Hashish," *Journal of the American Chemical Society*, 86: 1646, 1964.

2. Hively, R. L., W. A. Mosher, and F. W. Hoffman "Isolation of Trans-A6 Tetrahydrocannabinol from Marijuana," *Journal of the American Chemical Society*, 88:1832, 1966.

3. Archer, R. A., D. B. Boyd, P. V. Demarco, I. V. Tyminsky, and N. L. Allinger, "Structural Studies of Cannabinoids. A Theoretical and Proton Magnetic Resource Analysis," *Journal of the American Chemical Society*, 92:5200, 1970.

4. Transcript of the Drug Abuse Advisory Committee Meeting of June 29, 1981, p. 162, line 6.

5. House Report No. 91–1444 (Part 1), Comprehensive Drug Abuse Prevention and Control Act of 1970, p. 34.

6. Bill on Narcotics, 1980, Vol. XXXII, No. 4, p. 47.

7. Drug Enforcement, March 1980, p. 16.

8. Pharmchem Newsletter, Vol. 7, No.8.

9. Grassroots "Street Drugs", 118 S. Bedford St., Madison, WI 53703.

10. International Journal of Addictions, 1977, Vol. 12, No. 1, p. 121.

11. International Journal of Addictions, 1976, Vol. 11, No. 2, p. 295.

12. Marihuana and Health, Second Annual Report to Congress, May 1972, p. 114.

13. Marihuana and Health, Third Annual Report to Congress, 1973, p. 132.

14. Braude, M. C. and S. Szara, ed., "Pharmacology of Marihuana," Ravin Press, New York, 1976.

15. Razdan, R. K., G. R. Handrick, H. G. Pars, A. J. Puttick, K. K. Weinhardt, and J. F. Howes, "Cannabis: Studies on A^8 and A^9 Tetrahydrocannabinols: Their Preparation, Stability and Water Soluble Derivatives," Reported to the Committee on Problems of Drug Dependence, pp. 6860–6867, 1970, National Academy of Sciences, National Research Council, Division of Medical Sciences, Washington, DC.

16. Waller, C. W., J. L. Johnson, J. Buelke, and C. E. Turner, "Marihuana: An annotated Bibliography," Macmillan Co., New York, 1976.

17. Marihuana and Health, 6th Annual Report, 1976, 7th Annual Report, 1977, 8th Annual Report, 1980, U.S. Government Printing Office, Washington, DC.

18. **Federal Register**, Vol. 46, No. 36, Tuesday, February 24, 1981, pp. 13816–13818.

19. Drug Master File 1631 for Marihuana and Cannabinoids—FDA Files.

20. Cohen, S., The Substance Abuse Problem, The Harvorth Press, New York, 1981.

21. Drugs and Highway Safety, 1980, by the U.S. Department of Transportation, DOT, HS–805 461.

22. NIDA Research Monograph No. 14, July 1977, p. 152.

23. Marihuana and Health, 8th Annual Report, 1980, p. 21.

24. "Marijuana in the '80s," Report of the American Medical Association on Scientific Affairs as Adopted by the House of Delegates, December 1980.

25. DHHS Press Release—Group C Distribution of THC, September 10, 1980.

26. Drug Master File 2803, Division of Cancer Treatment, National Cancer Institute, p. 21.

27. Group C Guidelines for the Use of Delta-9-Tetrahydrocannabinol, NSC 134454, for nausea and vomiting Induced by Antineoplastic Chemotherapy, Protocol I80–12, National Cancer Institute, September 1980.

Interested persons may, on or before May 10, 1982, 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.

Dated: December 31, 1981.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82–6135 Filed 3–8–82; 8:45 am]

BILLING CODE 4160–01–M

Public Advisory Committees; Request for Nominations of Voting Members

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for membership on the Medical Radiation Advisory Committee. Four vacancies will occur on June 30, 1982.

DATE: Nominations must be received by April 23, 1982.

ADDRESS: Nominations must be submitted to the Bureau of Radiological Health (HFX-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gordon C. Johnson at the address given above (301-443-6220).

SUPPLEMENTARY INFORMATION: The function of the Medical Radiation Advisory Committee is to advise the Commissioner of Food and Drugs on the formulation of policy and development of a coordinated national program relating to application of radiation to obtain maximum diagnostic information and therapeutic benefit per unit of radiation exposure to the public.

The committee meets approximately twice a year and has advised FDA on programs related to the medical and dental use of radiation, diagnostic imaging and therapeutic radiation devices, training and education of medical radiation users, and the development of policy statements on the effective use of medical radiation.

Among its current activities, the committee reviews qualifications of operators of radiation devices; reviews radiological training and education programs; advises on radiation devices guidelines and standards; and considers efficacy in relation to the selection and character of medical and dental uses of radiation.

The committee consists of 13 members including the chairperson. Members are selected and appointed by the Secretary of Health and Human Services from those nominees who have expertise appropriate to the work of the committee in one or more fields of medicine, dentistry, health sciences, biomedical engineering, public health, or related technology. For the 1982 membership, the Medical Radiation Advisory Committee will have particular need for candidates with knowledge of medical diagnosis and decisionmaking, diagnostic imaging technology, and health care delivery. Members are invited to serve 4-year terms. Effective July 1, 1982, there will be a total of four vacancies on this committee. Interested persons are invited to submit names of qualified candidates and accompanying curriculum vitae and other pertinent information.

In previous notices published in the Federal Register of February 2, 1980 (45 FR 9328) and May 1, 1981 (46 FR 24693), FDA requested nominations of qualified persons to replace members whose terms expired on June 30, 1980 and June 30, 1981, respectively. Eligible individuals nominated in response to those notices who were not selected will be reconsidered for a period of 2 years thereafter, along with new nominations for membership. The names and affiliations of those appointed under the previous notices have not yet been announced.

FDA has a special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extend particular encouragement to nominations for appropriately qualified female, minority, and physicaly handicapped candidates.

Any interested person may nominate one or more qualified persons for membership. A complete curriculum vitae of the nominees shall be included. Nominations shall state that the nominee is aware of the nomination, is willing to serve as member of the committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: March 2, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-6134 Filed 3-8-82; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Advisory Board Subcommittees; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Cancer Advisory Board Subcommittees on National Organ Site Programs and Activities and Agenda, March 31-April 1, 1982. Both Subcommittees will be held in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. Both Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings, substantive program information and rosters of members, upon request.

Name of committee: *Subcommittee on National Organ Site Programs*
Date of meeting: March 31-April 1, 1982
Place of meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health
Open: March 31, 7:30 p.m.—adjournment; April 1, 8:30 a.m.—adjournment
Agenda: To review Organ Site Program and make appropriate recommendations
Name of committee: *Subcommittee on Activities and Agenda*
Date of meeting: April 1, 1982
Place of meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health
Open: April 1, 1:30 p.m.—adjournment
Agenda: To discuss administrative details and plan the agenda and activities for the NCAB and its meeting for May 1982.

Dated: March 1, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

[FR Doc. 82-6299 Filed 3-8-82; 8:45 am]

BILLING CODE 4140-01-M

NIDR Special Grants Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, on March 22-23, 1982, in Conference Room 9, Building 31-C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on March 22, 1982, for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:00 a.m. on March 22 to adjournment on March 23, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Emil L. Rigg, Executive Secretary, NIDR Special Grants Review Committee, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 504,

Bethesda, MD 20205, (telephone 301 496-7658) will provide summaries of meeting, rosters of committee members, and substantive program information.

Dated: March 1, 1982.

Thomas E. Malone,

Deputy Director, National Institutes of Health.

(Catalog of Federal Domestic Assistance Programs Nos. 13.840—Caries Research, 13.841—Periodontal Diseases Research, 13.842—Craniofacial Anomalies Research, 13.843—Restorative Materials Research, 13.844—Pain Control and Behavioral Studies, 13.845—Dental Research Institutes, 13.878—Soft Tissue Stomatology and Nutrition Research, National Institutes of Health)

NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

[FR Doc. 82-6300 Filed 3-8-82; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Office of the Actuary; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Part S, as published in the **Federal Register** (44 FR 46347) on *August 7, 1979,* is being amended to reflect the removal of the Office of the Actuary (SRG) from the Office of Policy (SR) and its establishment as a new office reporting directly to the Office of the Commissioner, through the Deputy Commissioner, Programs. Accordingly, the Sections of Chapter SR, which describe the mission, organization and functions of OP, are being changed to remove reference to OACT, and a new Chapter is being established which describes an independent OACT reporting directly to the Office of the Commissioner. The revisions and new material are as follows:

1. Section SR.00 is being revised so that the tenth sentence reads as follows: The Office provides overall administrative direction to, and coordinates the activities of the offices included in OP in carrying out the OP mission.

2. Section SR.10 is being revised by removing subsection D. OACT (SRG). All remaining material lettered E-H should be relettered D-G.

3. Section SR.20 is being revised by removing subsection D. OACT. All remaining subsections lettered E-H should be relettered D-G.

4. A new Chapter SN is titled and reads as follows:

Sec. SN.00 Office of the Actuary—(Mission)

OACT plans and directs a program of actuarial estimates and analyses pertaining to SSA-administered retirement, survivors and disability insurance programs and to projected changes in those programs. It evaluates operations of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, conducts studies of program financing, performs actuarial and demographic research on social insurance and related program issues, and projects future workloads. The Office provides technical and consultative services to the Commissioner, to HHS officials and to the Board of Trustees of those two Trust Funds, and its staff appears before Congressional Committees to provide expert testimony on the actuarial aspects of Social Security issues.

Sec. SN.10 Office of the Actuary—(Organization)

OACT, under the leadership of the Chief Actuary, includes:

A. The Chief Actuary (SN).

B. The Deputy Chief Actuary (Short-Range) (SN).

C. The Deputy Chief Actuary (Long-Range) (SN).

D. The Immediate Office of the Chief Actuary (SN).

E. The Office of Short-Range Actuarial Estimates (SNS).

F. The Office of Long-Range Actuarial Estimates (SNL).

Sec. SN.20 Office of the Actuary—(Functions)

A. The Chief Actuary (SN) is directly responsible to the Commissioner for carrying out OACT's mission and provides general supervision to the major components of OACT.

B. The Deputy Chief Actuary (Short-Range) (SN) assists the Chief Actuary in carrying our his/her OACT-wide responsibilities and performs other duties as prescribed.

C. The Deputy Chief Actuary (Long-Range) (SN) assists the Chief Actuary in carrying out his/her OACT-wide responsibilities and performs other duties as prescribed.

D. The Immediate Office of the Chief Actuary (SN) provides the Chief Actuary and his/her Deputies with staff assistance on the full range of their responsibilities, and conducts special actuarial studies and analysis.

E. The Office of Short-Range Actuarial Estimates (SNS) is responsible for planning, directing and coordinating the development of short-range cost estimates for all Social Security programs both under current provisions and proposed changes in law or regulation. It develops special cost analyses involving technical actuarial issues, projects operations of the Trust Funds, provides a variety of actuarial data services including data collection, statistical support, and prepares estimates for general fund and interprogram reimbursement.

F. The Office of Long-Range Actuarial Estimates (SNL) is responsible for planning, directing and coordinating the development of long-range cost estimates for all Social Security programs both under current provisions and proposed changes in law or regulation. It designs the economic, demographic and programmatic assumptions and the methods needed to develop these estimates, analyzes and publishes actuarial research based on projections and actual program experience, and provides authoritative advice to agency policymakers and Congressional staffs relating to the long-range actuarial impact of current law and proposed program changes.

Dated: March 1, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-6307 Filed 3-8-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Intent To Prepare an Environmental Impact Statement for a Proposed Construction of a Railroad on the Navajo Indian Reservation in McKinley and San Juan Counties in Northwestern New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The Bureau of Indian Affairs (BIA) is issuing this notice to advise that a Draft Environmental Impact Statement will be prepared for a proposed construction of a railroad on the Navajo Indian Reservation in McKinley and San Juan Counties located in Northwestern New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy R. Analla, Environmental Protection Specialist, Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona 86515, Telephone (602)

871–5151, extension 5314 or FTS 479–5314.

SUPPLEMENTARY INFORMATION: The BIA, in cooperation with the Navajo Tribe, Federal Railroad Administrarion (FRA) and Interstate Commerce Commission (ICC), will prepare a Draft Environmental Impact Statement (DEIS) on a proposed railroad to be constructed from Gallup, New Mexico, north to the San Juan River, east of Shiprock, New Mexico. The proposed project would be approximately 73 to 93 miles long and constructed primarily for transporting coal from the Consolidation Coal Company (CONSOL) coal lease in the Burnham-Bisti area of the Navajo Indian Reservation. A possibility exists that secondary use as a common carrier may be considered, should sufficient need develop.

Information describing the proposed action will be sent to the appropriate Federal, tribal, state and local agencies and to private organizations and citizens who have proviously expressed an interest in this proposal. Briefly, potential environmental impacts resulting from construction of the railroad of the eastern and southern alignments and operations of coal transportation via rail cars are:

1. Land uses.
2. Water Resources and water rights.
3. Noise and Safety.
4. Cultural and historic resources.
5. Socio-economic adjustment.

Scoping will consist of coordination with involved agencies, public meetings, public review of the draft environmental impact statement and formal public hearings. Approximately 29 public meetings have been held to date at the Chapters which are being directly affected. Since this public exposure provided sufficient comments, a formal scoping meeting is not planned at this time.

We estimate that the DEIS will be made available to the public by June 1, 1982.

Comments on the scoping of this project, and identified environmental issues are invited from all interested parties and should be directed to the BIA at the address provided in this Notice. Requests for copies of the DEIS should also be sent to the same address.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmentala Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and Department of the Interior procedures (516 DM 1–6) implementing these regulations.

This Notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: February 22, 1982.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 82–6311 Filed 3–8–82; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Arizona Strip District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Grazing Advisory Board will meet on Tuesday, April 6, 1982 at 10:00 a.m. to discuss range improvement plans for Fiscal Year 1982.

DATE: April 6, 1982.

ADDRESS: The Four-Seasons Convention Center—Suite 8, 747 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, 196 E. Tabernacle St., St. George, Utah 84770, (801) 673–3545.

SUPPLEMENTARY INFORMATION: The Arizona Strip District Grazing Advisory Board will meet at 10:00 a.m. on Tuesday, April 6, 1982 in Suite 8 of the Four Seasons Convention Center at 747 East St. George Blvd. in St. George, Utah. The primary topic on the agenda will be road maintenance and range improvement plans to implement Allotment Management Plans on the Arizona Strip District. This will include a discussion of prescribed burning techniques for range improvement; the wilderness study as it relates to range management; and, urinium mining as it relates to livestock production.

The meeting is open to the public. Anyone wishing to make a presentation to the Board should contact the District Manager of the Arizona Strip District at 196 E. Tabernacle St. in St. George, Utah or call (801) 673–3545 at least 5 days prior to the meeting.

Billy R. Templeton,

District Manager, Arizona Strip District.

[FR Doc. 82–6249 Filed 3–8–82; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Mines

Transfer of the Mineral Institutes Program

AGENCY: Bureau of Mines, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Secretarial Order No. 3073 dated February 1, 1982, authority for administration of the State Mining and Mineral Resources and Research Program has been transferred from the Director, Office of Surface Mining to the Director, Bureau of Mines.

Until further notice by the Director, Bureau of Mines, all Office of Surface Mining regulations concerning the Program will remain in effect.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Morgan, Chief Staff Officer, Bureau of Mines, 2401 E Street NW., Washington, D.C. 20241, Telephone: (202) 634–1330.

Dated: March 2, 1982.

(30 U.S.C. 1201)

Robert C. Horton,

Director, Bureau of Mines.

[FR Doc. 82–6255 Filed 3–8–82; 8:45 am]

BILLING CODE 4310–53–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Correction

In FR Doc. 82–4936 appearing at page 7883 in the issue of Tuesday, February 23, 1982, make the following change:

On page 7884, third column, "OKLAHOMA" should be inserted above "Caddo County".

BILLING CODE 1505–01–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 26, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance 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 on or before March 24, 1982.

William Brabham,

Acting Keeper of the National Register.

ALABAMA

Dallas County

Browns vicinity, *St. Luke's Episcopal Church,* S of Browns

Jefferson County

Birmingham, *Whilldin Building,* 513–517 21st St., N.

ARIZONA

Maricopa County

Phoenix, *Kenilworth Elementary School*, 1210 N. 5th Ave.
Wickenburg, *Garcia School*, Yavapai St. and U.S. 89

ARKANSAS

Benton County

Bentonville, *Terry Block Building*, 101–103 N. Main St.

Madison County

Kingston, *Bank of Kingston*, 101 Public Sq.

Miller County

Texarkana, *Garrison, Augustus M., House*, 600 Pecan St.

Union County

El Dorado, *Bank of Commerce*, 200 N. Washington St.

CALIFORNIA

Placer County

Newcastle vicinity, *Newcastle Portuguese Hall*, Taylor Rd.

CONNECTICUT

Hartford County

Bloomfield, *Gillette, Francis, House*, 511 Bloomfield Ave.
Bristol, *Terry-Hayden House*, 125 Middle St.
Burlington vicinity, *Wiard, John, House*, CT 4
East Hartford, *Bemont, Makens, House*, 307 Burnside Ave.
East Hartford, *First Congregational Church of East Hartford and Parsonage*, 829–837 Main St.

Litchfield County

Sharon, *Gov. Smith Homestead*, S. Main St.

Middlesex County

Essex, *Steamboat Dock Site*, Main St.

New Haven County

East Haven, *First Congregational Church of East Haven*, 251 Main St.

Tolland County

Coventry, *Brigham's Tavern*, 12 Boston Tpke.

INDIANA

Wayne County

Richmond, *Murray Theater*, 1003 Main St.

MARYLAND

Frederick County

Buckeystown, *Buckeystown Historic District*, MD 85

Harford County

Havre de Grace, *Havre de Grace Historic District*, Roughly bounded by Chesapeake Bay, Susquehanna River, U.S. 40, Stokes, Juniata and Superior Sts.

Prince Georges County

Hyattsville, *Hyattsville Historic District*, Off U.S. 1

MISSISSIPPI

Adams County

Natchez, *Dicks, John, House*, 802 N. Union St.
Natchez, *Keyhole House*, 1016 Main St.
Natchez vicinity, *China Grove Plantation*, 12 mi. S of Natchez

Tallahatchie County

Sumner, *Murphy-Jennings House*, 307 Walnut St.

NEVADA

Clark County

Boulder City, *Old Boulder City Hospital*, 701 Park Pl.

Esmeralda County

Goldfield, *Goldfield Historic District*, Roughly bounded by 5th St., Miner, Spring, Crystal and Elliott Aves.

NEW MEXICO

Guadalupe County

Santa Rosa, *Casaus, Jesus M., House*, 628 3rd St.

Santa Fe County

Cerrillos vicinity, *San Marcos Pueblo (L.A. 98)*

OHIO

Adams County

West Union, *Woods, Tet, Building*, 307 Main St.

Montgomery County

Dayton, *Hanitch-Huffman House*, 139 W. Monument Ave.

Scioto County

Portsmouth, *All Saints Episcopal Church*, 4th and Court Sts.

Stark County

Massillon, *Fourth Street Historic District*, Roughly bounded by Federal Ave., 3rd, 5th, and Cherry Sts.

Washington County

Watertown, *Watertown Historic District*, Off OH 339

SOUTH CAROLINA

Abbeville County

Abbeville vicinity, *Cedar Springs Historic District*, SR 33, SR 112 and SR 47

Aiken County

Aiken, *St. Mary Help of Christians Church*, York St. and Park Ave.

Georgetown County

Georgetown vicinity, *China Grove*, SC 512

Horry County

Bucksville vicinity, *Buck's Upper Mill Farm*, N of Bucksville

Jasper County

Ridgland vicinity, *Church of the Holy Trinity*, SC 13 and SC 29

TENNESSEE

Carroll County

Trezevant vicinity, *Hillsman House*, Old Hinkledale-McKenzie Rd.

Carter County

Watauga vicinity, *Range, Henry, House*, S of Watauga on Smallings Rd.

Davidson County

Nashville, *Bush-Herbert Building*, 174 3rd Ave., N.
Nashville, *Goodwill Manor (President's Residence, Tennessee A & I State College)* 3500 Centennial Blvd.
Nashville, *Woodland in Waverly Historic District*, Roughly bounded by I–65, 8th, Bradford and Wedgewood Aves.

Gibson County

Humboldt, *Dodson House*, 119 N. 17th Ave.

Greene County

Greeneville vicinity, *Lowry, James, House*, Asheville Hwy.

Grundy County

Monteagle, *Monteagle Sunday School Assembly Historic District*, Off U.S. 64, U.S. 41 and TN 56

Hamilton County

Chattanooga, *Isbester, Caleb, House*, 551 Oak St.

Knox County

Knoxville, *Knoxville Iron Foundry Complex-Nail Factory and Warehouse*, 715 Western Ave., NW.
Knoxville, Louisville and Nashville Freight Depot, 700 Western Ave., NW.
Knoxville, *Louisville and Nashville Passenger Station*, 700 Western Ave., NW.

Lincoln County

Fayetteville, *Douglas, Hugh Bright, House*, 301 Elk Ave. N.

McMinn County

Niota vicinity, *Cate, Elijah, House*, W of Niota on SR 1

Robertson County

Springfield vicinity, *Beeches, The (John Woodard House)* SC 49

Shelby County

Memphis, *Stonewall Place Historic District*, Stonewall St. between Poplar Ave. and North Pkwy.
Memphis, *Toof, John S., House*, 246 Adams Ave.

Sumner County

Gallatin, *Gallatin Presbyterian Church*, 167 W. Main St.
Hendersonville vicinity, *Fite, Leonard B., House*, 1154 W. Main St.

Weakley County

Greenfield vicinity, *Sims, Capt. William, House*, Liberty Rd.
Martin, *Ivandale*, 115 N. McCombs St.
Martin, *Lawler, W. T., House*, 229 University St.
Martin, *Marshalldale*, 115 Ryan Ave.

Winnebago County

Eureka vicinity, *Carpenter Site (47Wn246)* NE of Eureka

WISCONSIN

COBBLESTONE BUILDINGS OF ROCK COUNTY THEMATIC RESOURCES. Reference—see individual listings under Rock County.

Dane County

Madison, *Biederstaedt Grocery*, 851–853 Williamson St.

Rock County

Beloit, *Carpenter-Douglas Barn (Cobblestone Buildings of Rock County Thematic Resources)* 910 Broad St.

Beloit, *Clark-Brown House (Cobblestone Buildings of Rock County Thematic Resources)* 3457 Riverside Dr.

Beloit, *Lathrop-Munn Cobblestone House (Cobblestone Buildings of Rock County Thematic Resources)* 524 Bluff St. (previously listed in the National Register 8–22–77)

Beloit, *Rasey House (Cobblestone Buildings of Rock County Thematic Resources)* 517 Prospect St. (previously listed in the National Register 12–27–74)

Beloit, *Turner-Barber House (Cobblestone Buildings of Rock County Thematic Resources)* 326–328 St. Lawrence

Beloit vicinity, *Murray-George House (Cobblestone Buildings of Rock County Thematic Resources)* SR P

Clinton, *Richardson-Brinkman Cobblestone House (Cobblestone Buildings of Rock County Thematic Resources)* 607 W. Milwaukee Rd. (previously listed in the National Register 7–28–77)

Clinton vicinity, *Jones, Samuel S., Cobblestone House (Cobblestone Buildings of Rock County Thematic Resources)* Milwaukee Rd. (previously listed in the National Register 2–23–78)

Janesville, *Belle Cottage (Kellogg-Damrow House) (Cobblestone Buildings of Rock County Thematic Resources)* 1837 Center Ave. (previously listed in the National Register 5-8-79)

Janesville, *Fredendall Block*, 33–39 S. Main St.

Tiffany, *Stark-Clint House (Cobblestone Buildings of Rock County Thematic Resources)* Creek Rd.

[FR Doc. 82-5967 Filed 3-8-82; 8:45 am]

BILLING CODE 4310-70-M

Frederick O. and Virginia M. Swain; Intention To Negotiate Concession Permit

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before April 8, 1982, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Frederick O. Swain and Virginia M. Swain (Partners), authorizing them to continue to provide boat, canoe and bike rental and visitor convenience item facilities and services for the public at C&O Canal National Historical Park, Maryland, for a period of four (4) years from January 1, 1982, through December 31, 1985.

This permit renewal has been determined to be a categorical exclusion under the National Park Service regulations implementing the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1979, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants Frederick O. Swain and Virginia M. Swain (partners), as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new permit and a preference in the award of the permit, if, thereafter, the proposal of Frederick O. Swain and Virginia M. Swain (partners), is substantially equal to others received. In the event a responsive proposal superior to that of Frederick O. Swain and Virginia M. Swain (partners), (as determined by the Secretary) is submitted , Frederick O. Swain and Virginia M. Swain (partners), will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new permit will be negotiated with Frederick O. Swain and Virginia M. Swain (partners). The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be post marked or hand delivered on or before April 8, 1982, to be considered and evaluated.

Interested parties should contact the Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed permit.

Dated: February 25, 1982.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 82-6310 Filed 3-8-82; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

Request for Comments on the Subject of Increasing Oil and Gas Royalty Rates on Certain Federal and Indian Lands

AGENCY: Office of the Secretary, Interior.

ACTION: Request for Comments Regarding Onshore Royalty Rates.

SUMMARY: The Commission on Fiscal Accountability has recommended to the Secretary of the Interior that a royalty rate of one-sixth be charged on certain Federal onshore and Indian leases. The Secretary has asked that a study be prepared reviewing this recommendation. To assist on this effort, the Department of the Interior is requesting that industry and other interested members of the public provide it with information regarding the potential impacts of a one-sixth royalty.

The Department is asking the oil and gas industry and other interested members of the public for their views on the merits of increasing onshore royalty rates. The Department is particularly interested in quantitative analysis of what effect, if any, a higher royalty rate would have on: (1) The level and rate of oil and gas exploration and production, (2) exploration in frontier or less accessible areas, (3) oil and gas production in small or marginal fields or where "pay zones" are small, (4) effects on minimum developable field size and (5) effects on leasing Federal lands.

DATES: Comments on or before April 8, 1982.

ADDRESS: Comments should be mailed to: Mr. George Thomas, Room 6619 Department of the Interior, 1800 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: George Thomas, (202) 343–6306 or David Luken, (202) 342–8804.

Donald Paul Hodel,

Acting Secretary of the Interior.

March 2, 1982.

[FR Doc. 82-6329 Filed 3-8-82; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer

to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-34

Decided: February 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 11220 (Sub-235), filed February 16, 1982. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Ave., Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101, (901) 775-2042. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with J. C. Penney Company, Inc., of New York, NY.

MC 13070 (Sub-4), filed February 16, 1982. Applicant: GERALD LIPPOLD and RODNEY ARNETT, d.b.a. LIPPOLD & ARNETT, 1302 South Broad, Carlinville, IL 62626. Representative: Rodney Arnett, (same address as applicant), (217) 854-2508. Transporting: *meat packinghouse products, supplies, and equipment,* between points in the U.S., under continuing contract(s) with Diamond Meat Packers, Inc., of Carlinville, IL.

MC 47171 (Sub-220), filed February 16, 1982. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant), (803) 879-2101. Transporting: *general commomdities* except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with Melville Private Cartage, of Brockton, MA.

MC 121600 (Sub-17), filed February 16, 1982. Applicant: AVERITT EXPRESS, INC., P.O. Box 273, Livingston, TN 38570. Representative: Robert L. Baker, Sixth Floor, United Southern Bank Building, Nashville, TN 37219, (615) 244-8100. Transporting: *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TN, on the one hand, and, on the other, those points in the U.S. in and east of KA, NE, ND, OK, SD, and TX.

Note.—Applicant intends to tack the requested authority with its existing regular-route authority.

MC 135231 (Sub-69), filed February 16, 1982. Applicant: NORTH STAR TRANSPORT, INC., Rt. 1, Highways 1 and 59 North, Thief River Falls, MN 56701. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118, (612) 457-6889. Transporting: *metal products,* between points in the U.S.

MC 136511 (Sub-114), filed February 17, 1982. Applicant: VIRGINIA APPALACHIAN LUMBER CORP., 9640 Timberlake Road, Lynchburg, VA 24502. Representative: J. Johnson Eller, Jr., 513 Main St., Altavista, VA 24517, (804) 369-5661. Transporting: *general commodities* (except classes A and B explosives), between points in OR, on the one hand, and, on the other, points in the U.S.

MC 145240 (Sub-15), filed February 16, 1982. Applicant: L. D. BRINKMAN TRUCKING CORP., 520 N. Wildwood, Irving, TX 75060. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358-3341. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Inland Storage Distribution Center, Division of Beatrice Foods, of Kansas City, KS.

MC 145300 (Sub-8), filed February 16, 1982. Applicant: MINUTE MAN TRANSIT, INC., 24 Williams Street, Dedham, MA 02026. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Chrysler Corporation, of Center Line, MI.

MC 145771 (Sub-1), filed February 11, 1982. Applicant: OCONEE TRANSFER SERVICE, INC., P.O. Box 1181, Seneca, SC 29678. Representative: Robert L. Cope, Suite 501, 1730 M St., NW., Washington, DC 20036, (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NJ and RI, those points in PA in and east of Lancaster, Dauphin, Schuykill, Columbia, Luzerne, Wyoming and Susquehanna Counties, those points in NY in and south of Brome, Delaware, Greene, Albany and Rennsselaer Counties, points in Fairfield, Hartford, Litchfield and New Haven Counties, CT, points in New Castle County, DE, and points in Berkshire and Hampden Counties, MA.

MC 147511 (Sub-3), filed February 16, 1982. Applicant: DELMER RAY IPOCK, d.b.a. EAST CAROLINA CARTAGE CO., P.O. Box 1245, Kinston, NC 28501. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602, (919) 828-0731. Transporting *cores and tubes,* between points in NC, on the one hand, and, on the other, points in VA and DE.

MC 148490 (Sub-14), filed February 18, 1982. Applicant: C & N EVANS

TRUCKING COMPANY, INC., Route 2, Box 39E, Stoneville, NC 27048. Representative: Harry G. Grubbs (same address as applicant), (919) 573–3761. Transporting *general commodities* (except classes A and B explosives and household goods), between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 148560 (Sub-8), filed February 16, 1982. Applicant: GOLD STAR, INC., 130 Davidson Avenue, Somerset, NJ 08873. Representative: A. David Millner, P.O. Box Y, 7 Becker Farm Road, Roseland, NJ 07068, (201) 992–2200. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Progresso Quality Foods, of Vineland, NJ. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's Office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the applications for common control to team 1, room 6354.

MC 149330 (Sub-1), (Republication), filed June 22, 1981, previously noticed in the **Federal Register** issue of July 16, 1981. Applicant: DUNBAR ARMORED SECURITY, INC. 32 Belmont St., Hartford, CT 06106. Representative: George W. Dunbar, Jr. (same address as applicant), (203) 246–8805. Transporting *coin, currency, food stamps, gold and silver*, between points in the U.S., under continuing contract(s) with banks and banking institutions. Condition: Prior to issuance of a permit in this proceeding, applicant shall submit a written request for cancellation of the permit issued December 8, 1981.

Note.—The purpose of this republication is to correct the commodity description and to also indicate the correct class of contracting shippers.

MC 150221 (Sub-12), filed February 18, 1982. Applicant: CENTRAL SOUTHERN, INC., P.O. Box 375, Drayton, SC 29333. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687, (803) 244–9314. Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Noramco Systems, Inc., of Plymouth, MA.

MC 152640 (Sub-1), filed February 16, 1982. Applicant: RAPID DISTRIBUTION SERVICE, INC., 2392 N. Dupont Hwy., Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *such commodities* as are dealt in or used by variety and retail department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with J. Riggings—Outrigger, of Norcross, GA.

MC 154861 (Sub-6), filed February 17, 1982. Applicant: CAROLINA MOTOR EXPRESS, INC., P.O. Box 550, Forest City, NC 28043. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Avenue, N.W., Washington, DC 20005, (202) 347–9332. Transporting *food and related products*, between the facilities of Wilson Foods Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 156340 (Sub-1), filed February 17, 1982. Applicant: VALLEY GRAIN CO., TRKG., P.O. Box 299, Browns Valley, MN 56219. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *chemicals and related products*, between points in Reno County, KS, on the one hand, and, on the other, points in IL, IA, MN, NE, ND, SD and WI.

MC 158720, filed February 17, 1982. Applicant: CHARLIE GUESS TRUCKING INCORPORATED, P.O. Box 722, Lockeford, CA 95237–0722. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, DC 20006, (202) 833–8884. Transporting *steel buildings and component parts, steel products, and lumber and wood products*, between points in the U.S., under continuing contract(s) with Bob R. Andersen Co., Inc., of Lockeford, CA.

MC 159901, filed February 16, 1982. Applicant: WOODY DISTRIBUTORS, INC., 1122 Rockland Ave., NW., Roanoke, VA 24012. Representative: J. Bernard Young (same address as applicant), (703) 563–9741. Transporting *yarn*, between points in VA, on the one hand, and, on the other, points in NC, GA, and TN.

MC 160120 (Sub-1), filed February 16, 1982. Applicant: INBULK TRASNSPORT, INC., 5723 Kennedy Ave., Hammond, IN 46323. Representative: Allan C. Zuckerman, 29 South LaSalle St., Suite 905, Chicago, IL 60603, (312) 236–9375. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with Clark Chemical Corporation, of Blue Island, IL, and Cosden Oil & Chemical Company, of Dallas, TX. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 6358.

MC 160151, filed February 16, 1982. Applicant: SHOREVILLE TRUCK RENTAL, INC., 38 Roosevelt Place, Massapequa, NY 11758. Representative: John P. Tynan, P.O. Box 777, Jupiter, FL 33458, (305) 746–6777. Transporting *malt beverages*, between points in the U.S., under continuing contract(s) with Midway Beverage Corporation, of Farmingdale, NY.

MC 160200, filed February 16, 1982. Applicant: ANTHONY'S TRUCKING, INC., 350 Brookes Drive, Hazelwood, MO 63042. Representative: Orville L. Handshy, Jr. (same address as applicant), (314) 731–1717. Transporting *household applicances, furniture, and insulation*, between points in MO, on the one hand, and, on the other, points in AR, IL, IN, KS, KY, MO, OH and TN.

MC 160570, filed February 16, 1982. Applicant: CITY SERVICE TAXICAB OF BUFFALO, INC., 1379 Niagara Street, Buffalo, NY 14213. Representative: Donald A. Fisher, 343 Elmwood Avenue, Buffalo, NY 14222, (716) 881–3010. Transporting *passengers*, between the Veterans Administration Medical Center at Buffalo, NY, and points in PA, under continuing contract(s) with Veterans Administration Medical Center, of Buffalo, NY.

MC 160571, filed February 16, 1982. Applicant: DON FLEMING, d.b.a. FLEMING TRUCKING, P.O. Box 398, Loop, TX 79342. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408, (806) 763–9555. Transporting (1) *chemicals and related products and clay products*, between points in WY, SD, TX, and NM; and (2) *oil field commodities*, between points in MT, WY, UT, and Ector County, TX.

MC 160581 (Sub–1), filed February 16, 1982. Applicant: PILGRIM TRANSPORT, INC., 610 West 138th St., Riverdale, IL 60627. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, KY, MI, and OH.

MC 160590, filed February 16, 1982. Applicant: MICHAEL A. and JUDITH A. FALATOVICH, d.b.a. J & M TRAVEL, 227 Chestnut St., Birdsboro, PA 19508. Representative: Charles K. Serine, 542

Court St., P.O. Box 66, Reading, PA 19603, (215) 376–6651. As a *broker* at Birdsboro, PA, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, between points in PA, on the one hand, and, on the other, points in the U.S.

MC 160591, filed February 16, 1982. Applicant: ALASKA TOUR & MARKETING SERVICES, INC., d.b.a. EXPLORATION HOLIDAYS & CRUISES, 1500 Metropolitan Park Bldg., Seattle, WA 98101. Representative: Edward G. Lowry, III, The Bank of California Center, Seattle, WA 98164, (206) 682–5151. As a broker at Seattle, WA, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in the U.S.

MC 160600, filed February 17, 1982. Applicant: ALLSTATE MOVING & TRANSFER CO., INC., 26 W. 16th Street, Bayonne, NJ 07002. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365–5141. Transporting *household goods, new furniture and fixtures*, between points in CT, DE, FL, GA, IN, IL, MA, MD, ME, NC, NH, NJ, NY, OH, PA, RI, SC, VA, VT, WV and DC.

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Decided: February 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 12723 (Sub-1), filed February 12, 1982. Applicant: VALLEY TRANSPORTATION, INC., d.b.a. CONNECTICUT AMERICAN CHARTERS, 516 Oxford Rd., Oxford, CT 06483. Representative: L.C. Major, Jr., Suite 304 Overlook Bldg., 6121 Lincolnia Rd., P.O. Box 11278, Alexandria, VA 22312, 703–750–1112. As a broker, at Oxford and Milford, CT, in arranging for the transportation of *passengers and their baggage*, between points in the U.S.

MC 45893 (Sub-18) (Correction), filed December 29, 1981, published in the **Federal Register**, issue of January 20, 1982, and republished, as corrected, this issue. Applicant: ROSS TRUCK LINES, INC., 1010 North Pearl, Paola, KS 66071. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. Transporting (1) *petro chemical construction equipment and materials, crane parts, trailers, and trailer parts*, between points in Harris County, TX, on the one hand, and, on the other, points in the U.S.; (2) *filters and filter parts*, between points in Montgomery County, TX, on the one hand, and, on the other, points in the U.S.; (3) *pipe, pipe valves, and pipe fittings*, between points in Jefferson County, TX, on the one hand, and, on the other, points in the U.S.; (4) *fabricated structural steel items*, between points in Galveston County, TX, on the one hand, and, on the other, points in the U.S.; (5) *rack and pinion material and personnel hoists, and such commodities* used in construction, maintenance and servicing of hoists, between points in Douglas County, KS, on the one hand, and, on the other, points in the U.S.; and (6) *universal joints*, and such commodities, materials and parts used in the installation and repair of such joints, between points in Johnson County, KS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this republication is to correct the commodity description in part (6).

MC 52793 (Sub-92), filed February 9, 1982. Applicant: BEKINS VAN LINES CO., 333 S. Center St., Hillside, IL 60162. Representative: David A. Gallagher (same as applicant), (312) 547–2184. Transporting *household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lerner Stores Corporation, of New York, NY.

MC 67733 (Sub-4), filed February 16, 1982. Applicant: CHAPIN TRUCKING LINE, INC., P.O. Box 1317, Elyria, OH 44036. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, 612–228–1541. Transporting *general commodities* (except classes A and B explosives and household goods), between Cleveland, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, OH, PA and WV.

MC 108223 (Sub-47), filed February 10, 1982. Applicant: CENTURY MOTOR FREIGHT, INC., P.O. Box 43050, St. Paul, MN 55164. Representative: Warren K. Wahoske (same address as applicant), 612–786–9650. Transporting *general commodities* (except classes A and B explosives), between the facilities of Reliance Electric Co., its subsidiaries and divisions, at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 127253 (Sub-55), filed February 16, 1982. Applicant: STEWCO, INC., P.O. Box 728, Waskom, TX 75692. Representative: Clayte Binion, 623 S. Henderson, 2nd Fl., Fort Worth, TX 76104, 817–332–4415. Transporting *petroleum products and chemicals*, (1) betwen points in Caddo Parish, LA, on the one hand, and, on the other, points in TX, LA, AR, KS, MO, IL, IN, OH, PA, WA, NJ, FL, VA, NC, SC, TN, GA, AL, MS, OK, KY, and CO, and (2) between points in Washington County, MS on the one hand, and, on the other, points in AL, LA and AR.

MC 129712 (Sub-68), filed February 12, 1982. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326, 404–237–6472. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Steelabrade Corp., of St. Louis, MO.

MC 129712 (Sub-69), filed February 16, 1982. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., NE., Atlanta, GA 30326, (404) 237–6472. Transporting *metal products*, between points in MO and IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146062 (Sub-1), filed February 12, 1982. Applicant: J.C. HAULING CO., P.O. Box 12, Millstadt, IL 62260. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO. 63102, 314–421–0845. Transporting (1) *metal products and hazardous materials*, between Gary, IN, on the one hand, and, on the other, points in Montgomery County, KS and Montgomery County, IL, and (2) *clay, concrete, glass or stone products*, between points in St. Francois County, MO and Morris County, TX.

MC 149133 (Sub-14), filed February 10, 1982. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWEELALEN EXPRESS, INC., 1333 Nevada Blvd., P.O. Box 7191, Charlotte, NC 28217. Representative: Charles L. Garrison (same address as applicant), 704–588–2109. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Meldisco-Division of Melville, Corporation, of Hackensack, NJ.

MC 153643 (Sub-1), filed February 16, 1982. Applicant: JIM C. TAYLOR, JR., d.b.a. TAYLOR TRUCK & RIGGING, P.O. Box 235, Coffeyville, KS 67337. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting (1) *machinery* (a) between points in Sebastian County, AR, on the one hand, and, on the other, points in KS, LA, MO, OK, and TX , and (b) between points in Dallas, TX, on the one hand, and, on the other, points in AR, KS, LA, MO, and OK, (2) *materials and equipment* used by electrical contractors and railroads, between Kansas City, MO, on the one hand, and, on the other, points in AR,

LA, KS, OK, and TX, (3) *such commodities* as are dealt in and used by foundries, between points in Montgomery County, KS, on the one hand, and, on the other, points in AR, LA, MO, and TX, (4) *machinery and equipment,* between Tulsa, OK, on the one hand, and, on the other, points in AR, MO, and TX, and (5) *Mercer commodities, machinery and equipment,* between points in Montgomery County, KS, on the one hand, and, on the other, points in AR, LA, MO, and TX.

MC 159072 filed February 9, 1982. Applicant: STEVEN A. HEINTZ & SON, INC., Box 15, Vanderbilt, MI 49795. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with H & H Tube & Manufacturing Co., of Southfield, MI.

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Decided: March 1, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 47583 (Sub-151), filed February 16, 1982. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Rd., Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044, (913) 843–0110. Transporting *general commodities* (except classes A and B explosives and household goods), between the facilities of Kal Kan Foods, Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 120038 (Sub-10), filed February 16, 1982. Applicant: LINCOLN COACH LINES, P.O. Box 369, Irwin, PA 15642. Representative: John C. Fudesco, Suite 960, 1333 New Hampshire Ave., NW., Washington, DC 20036, (202) 659–5157. Transporting *passengers and their baggage,* in charter operations, between point in the U.S., under continuing contract(s) with Lincoln Coach Travel, Inc., of Irwin, PA.

MC 133562 (Sub-47), filed February 22, 1982. Applicant: HOLIDAY EXPRESS CORPORATION, Iowa Hwy. No. 4—P.O. Box 452, Estherville, IA 51334. Representative: Herbert W. Allen (same address as applicant), 712–362–5812. Transporting (1) *clay, concrete, glass or stone products,* between points in GA, on the one hand, and, on the other, points in IA, IL, IN, MN, NE, ND, MO, SD, and WI, (2) *such commodities* as are dealt in or used by manufacturers and distributors of automobile and truck parts, between Bradford and Oil City, PA, Detroit, MI, Indianapolis, IN, Chicago, IL, St. Louis and Kansas City, MO, Ashland, KY, Congo, WV, Port Arthur, TX, and Philadelphia, PA, on the one hand, and, on the other, points in IA, IL, IN, MN, MO, NE, ND, SD, and WI, (3) *metal products,* between St. Louis, MO and Chicago, IL, on the one hand, and, on the other, points in IA, MN, NE, and SD, (4) *such commodities* as are dealt in or used by manufacturers and distributors of ice machines, energy products, and appliances, between points in IA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (5) *ink and pulp, paper and related products,* between points in the U.S. (except AK and HI).

MC 135653 (Sub-13), filed February 16, 1982. Applicant: SPECIAL SERVICE TRANSPORTATION, INC., 1100 West Smith, Medina, OH 44256. Representative: Michael Spurlock, 275 East State St., Columbus, OH 43215, (614) 228–8575. Transporting *food and related products and such commodities* as are dealt in or used by food stores, between points in OH, PA, NJ, MA, CT, MD, NY, IN, IL, MI, WI, VA, SC, NC, GA, AL, WV, KY, TN, and DC.

MC 139243 (Sub-7), filed February 22, 1982. Applicant: RIVER BEND TRANSPORT COMPANY, Sunset Ave., North Bend, OH 45052. Representative: David F. Boehm, 2208 Central Trust Tower, Cincinnati, OH 45202, 513–621–1045. Transporting *general commodities,* between Cincinnati, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, OH, and WV. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

MC 146402 (Sub-43), filed February 12, 1982. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Robert L. Baker, 6th Floor, U.S. Bank Bldg., Nashville, TN 37219, 615–244–8100. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 146602 (Sub-8), filed January 5, 1982, published in the **Federal Register** issue of January 26, 1982, and republished, as corrected, this issue. Applicant: ODEAN DUANE BAKKEN, d.b.a. BAKKEN TRUCK LINE, 1301 Third Ave South, Northwood, IA 50459. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, 612–542–1121. Transporting food and related products, between Kansas City, MO, Omaha, NE, points in Warren County, IL, Saline County, MO, Freeborn County, MN and IA, on the one hand, and, on the other, points in AR, CT, DE, IA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MO, NE, NJ, NH, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI and DC. The purpose of this republication is to include NH as one of the sought states.

MC 147553 (Sub-18), filed February 18, 1982. Applicant: DENNIS MOSS AND GARY MOSS, d.b.a. MOTOR WEST, P.O. Box 1405, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, 208–343–3071. Transporting *chemicals and related products,* between points in CA, ID, OR, and WA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151083 (Sub-3), filed February 22, 1982. Applicant: JACKSONVILLE EXPRESS, INC., 5912 New Kings Rd., Jacksonville, FL 32209. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, 904–632–2300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Duval County, FL, on the one hand, and, on the other, points in AL, FL, GA, and SC.

MC 151162 (Sub-8), filed February 16, 1982. Applicant: LOWELL E. CAWOOD, d.b.a. L. E. CAWOOD PRODUCE, P.O. Box 83, Springdale, AR 72764. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521–8121. Transporting *excelsior, textiles, fiberglass tubing and filter elements,* between points in Riverside County, CA, Gadsen County, FL, Spartanburg County, SC, Palo Pinto County, TX, and Barron County, WI, on the one hand, and, on the other, points in the U.S.

MC 154053 (Sub-1), filed February 16, 1982. Applicant: EAST-TEX PLASTICS EXPRESS, INC., 3850 Williams, Orange, TX 77630. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245, 214–358–3341. Transporting *rubber and plastic products and chemicals and related products,* between points in TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159403, filed February 16, 1982. Applicant: CHARLES BEUKEMA, Rte. 1, Box 35, Kañawha, IA 50447. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, 515–244–2329. Transporting *livestock trailers and horse trailers,* between point in Hancock County, IA, on the one hand, and, on the other, points in ID, KS, MT, ND, NE, OR, SD, UT, WA, WY, CA, AZ, and CO.

MC 160292, filed January 28, 1982. Applicant: ONE WAY FREIGHT

SYSTEMS, INC., 11102-C Valleydale, Dallas, TX 75230. Representative: Andrew L. Emerson (same address as applicant), 214-748-9448. Transporting OVER REGULAR ROUTES, *general commodities* (except classes A and B explosives), between Dallas-Ft. Worth, TX and Oklahoma City, OK, over Interstate Hwy 35.

MC 160332, filed February 1, 1982. Applicant: JACQUELYN S. SNIDER, d.b.a. TEXAS TRAIL TOURS, P.O. Box 1075, 307 W. Franklin, Waxahachie, TX 75165. Representative: James R. Jenkins, 516 West Main St., Waxahachie, TX 75165, 214-937-5710. As a broker, at Waxahachie, TX, in arranging for the transportation by motor vehicle of *passengers and their baggage*, in the same vehicle with passengers, between points in TX, on the one hand, and, on the other, points in the U.S.

MC 160433, filed February 16, 1982. Applicant: ROBERT H. BOLDUC, d.b.a. ROBO, 2 Stuart St., Hudson, NH 03051. Representative: Robert M. Parodi, 41 E. Pearl St., Box 541, Nashua, NH 03061, 603-889-6131. Transporting *machinery and related parts*, between points in Hillsborough and Rockingham Counties, NH, and MA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 160563, filed February 16, 1982. Applicant: DM&S, INC., 1431 Okie St. NE., Washington, D.C. 20002. Representative: Dimitri H. Gekas (same address as applicant) 202-832-3600. Transporting *household goods, office furniture, equipment and accessories*, between points in the U.S. (except AK and HI), under continuing contract(s) with Lascaris Design Group International, Inc., of Washington, D.C.

MC 160603, filed February 16, 1982. Applicant: BOBBY R. KELLEY AND SONS, INC., Rte. 1 Old Stage Rd., Camden, TN 38320. Representative: John Davidson, Box 1456, Corinth, MS 38834, 601-287-5452. Transporting *ores and minerals*, between points in the U.S. (except AK and HI), under continuing contract(s) with Tri-State Sand Company, of Camden, TN.

MC 160623, filed February 18, 1982. Applicant: DAVID L. RUDD TRUCKING, INC., P.O. Box 4, Johnson St. Troy, TN 38260. Representative: David L. Rudd (same address as applicant), 901-536-4657. Transporting *lumber and wood products, building materials, and machinery*, between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

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Decided: March 3, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 30446 (Sub-23), filed February 22, 1982. Applicant: BRUCE JOHNSON TRUCKING COMPANY, INC., 3408 Graham St., P.O. Box 5647, Charlotte, NC 28225-5647. Representative: Leon Thompson (same address as applicant), (704) 376-9101. Transporting *department store supplies and merchandise*, between points in the U.S., under continuing contract(s) with The Gap Stores, Inc., of Erlanger, KY.

MC 55886 (Sub-23), filed February 23, 1982. Applicant: BLUE LINE TRANSFER CO., INC., 3rd and Broomall Sts., Chester, PA 19013. Representative: James W. Murphy (same address as applicant), (215) 876-6251. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. in and east of WI, IL, KY, TN and MS.

MC 13900 (Sub-38), filed February 22, 1982. Applicant: RAPIER SMITH, Rural Route 5, Loretto Rd., Bardstown, KY 40004. Representative: William P. Whitney, Jr. (same address as applicant), (502) 348-5159. Transporting *such commodities* as are manufactured, processed, distributed or dealt in by manufacturers of paper, paper products, and specialty chemicals between the facilities of the Westvaco Corporation and its subsidiaries at points in the U.S. on the one hand, and, on the other, points in the U.S.

MC 144316 (Sub-3), filed February 22, 1982. Applicant: J. H. FOODS, INC., 915 W 80th St., Bloomington, MN 55420. Representative: Val M. Higgins, 121 S 8th St., Minneapolis, MN 55402, (612) 333-1341. Transporting *food and related products*, between Minneapolis, MN, on the one hand, and, on the other, points in ND, SD, WI, and MN.

MC 146126 (Sub-1), filed February 24, 1982. Applicant: PAUL GREEN, d.b.a. P & G Trucking, 21418 Peterson, Sauk Village, IL 60411. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298-1094. Transporting *packaging materials*, between points in the U.S. (except AK and HI), under continuing contract(s) with Republic Packaging Corp., of Chicago, IL.

MC 157406 (Sub-2), filed February 24, 1982. Applicant: AUTAUGA TRANSPORT, INC., 1410 S Memorial Dr., Prattville, AL 36067. Representative: Terry P. Wilson, 428 S Lawrence St., Montgomery, AL 36104, (205) 262-2756. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between the facilities of Union Camp Corporation and Moore Handley, Inc., their subsidiaries and affiliates, at points in the U.S., on the one hand, and, on the other, points in AL, AR, FL, GA, IN, KY, LA, MS, NC, SC, TN, TX and VA.

MC 160716, filed February 23, 1982. Applicant: ASAP HOT SHOT SERVICE, INC., P.O. Box 109, Cromwell, OK 74837. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036, (405) 262-1322. Transporting *Mercer commodities*, between points in OK, on the one hand, and, on the other, points in AR, KS, LA, TX and WY.

Volume No. OP4-77

Decided: March 2, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 1606 (Sub-76), filed February 23, 1982. Applicant: RADIO HENDERSONVILLE, INC., 1450 7th Ave. East, Hendersonville, NC 28739. Representative: Mark J. Prak, P.O. Box 1151, Raleigh, NC 27602, (919) 821-4711. To engage in operations, in interstate or foreign commerce, as a *broker*, at Hendersonville, NC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, between points in NC, on the one hand, and, on the other points in the U.S.

MC 145906 (Sub-9), filed February 22, 1982. Applicant: GENERAL TRUCKING CO., INC., P.O. Box 269, Columbia, TN 38401. Representative: Edward C. Blank, II, P.O. Box 1004, Columbia, TN 38401, (615) 388-3200. Transporting *metal products*, between points in IA, MD, and DE, on the one hand, and, on the other points in TN.

MC 151036 (Sub-7), filed February 22, 1982. Applicant: DECATUR TRANSIT, INC., 161 First Avenue NE., Decatur, AL 35601. Representative: Eric G. Hancock (same address as applicant), (205) 353-9601. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in Morgan County, AL, on the one hand, and, on the other points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, and VA.

MC 159986 (Sub-1), filed February 18, 1982. Applicant: AMAZON INDEPENDENT TRANSPORTATION, INC., 12480 24th Ave., Marene, MI 49435. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 677-1017. Transporting *paper and paper products*, between points in Muskegon County, MI, on the one hand, and, on the other points in the U.S.

MC 160666, filed February 22, 1982. Applicant: ODELL MIKEL TRUCKING AND WAREHOUSE STORAGE

COMPANY, 7221 Norvic, P.O. Box 15031, Houston, TX 77029. Representative: Claude W. Ferebee, 3910 Fm 1960 West, Suite 106, Houston, TX 77068, (713) 537–8156. Transporting *metal products*, between points in TX, on the one hand, and, on the other points in AR, LA, OK, MS, NM, and TX.

MC 160706, filed February 23, 1982. Applicant: CHARLES FOLKENS, R.R. #1, Big Lake, MN 55309. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542–1121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Geo. A. Clark and Son, of Minneapolis, MN.

Volume No. OP4–78

Decided: March 3, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, And Williams.

MC 21866 (Sub-200), filed February 24, 1982. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., (except AK and HI).

MC 144256 (Sub-3), filed February 23, 1982. Applicant: ARIZONA EXPRESS, INC., P.O. Box 6038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoneix, AZ 85014, (602) 258–2662. Transporting *general commodities* (except classes A and B explosives), between points in AZ.

MC 148106 (Sub-2), filed February 24, 1982. Applicant: CASEY TRANSPORTATION, INC. P.O. Box 1054, Leominster, MA 01453. Representative: David M. Marshall, 101 State St.-Suite 304 Springfield, MA 01103, (413) 732-1136. Transporting *general commodities* (execpt classes A and B explosives, household goods and commodities in bulk), between points in Cheshire, Hillsborough, Merrimack, Rockingham, Strafford and Sullivan Counties, NH, and points in MA, RI, on the one hand, and, on the other, points in ID, CO, CA and those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 158196, filed February 23, 1982. Applicant: BANKS WRIGHT, d.b.a. WRIGHT MOTOR LINES, P.O. Box 177 Armagh, PA 15920. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740 (301) 797–6060. Transporting *tungsten and tungsten products* between points in the U.S., under continuing contract(s) with Kennmetal, Inc., of Latrobe, PA.

MC 159026 (Sub-1, filed February 24, 1982. Applicant: NCH CORPORATION, 2730 Carl Rd., Irving, TX 75062. Representative: B. W. Huie (same address as applicant), (214) 438–0550. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of lamps and lighting fixtures, between points in the U.S., under continuing contract(s) with Kichler Company, of Cleveland, OH.

Volume No. OP5–50

Decided: March 1, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 29948 (Sub-13), filed February 23, 1982. Applicant: EMPIRE LINES, INC., 910 West Spraque St., Spokane, WA 99210. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St. NW., Washington, DC 20005, 202–783–3525. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter operations between points in the U.S. including AK but excluding HI, under continuing contract(s) with Empire Tours, Inc. of Spokane, WA.

MC 31389 (Sub-335), filed February 23, 1982. Applicant: McLEAN TRUCKING COMPANY, P.O. Box 213, Winston-Salem, NC 27154. Representative: Daniel R. Simmons (same address as applicant), 919–721–2433. Transporting general commodities (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. (except AK and HI).

MC 118569 (Sub-11), filed February 18, 1982. Applicant: HALBERG CONSTRUCTION & SUPPLY, INC., d.b.a. KIRSCHER TRANSPORT, South 18th Ave. & 8th St., Virginia, MN 55792. Representative: Robert F. Berger, 1000 Lincoln Bldg., Virginia, MN 55792, 218–749–1962. Transporting *mining and construction equipment*, between points in MN, WI, and ND on the one hand, and, on the other, points in the U.S.

MC 136849 (Sub-2), filed February 19, 1982. Applicant: E & H DISTRIBUTING COMPANY d.b.a. VALLEY FOOD DISTRIBUTORS, P.O. Box 1843, Las Vegas, NV 89114. Representative: William J. Lippman, Steele Park, Suite 588, 50 South Steele St., Denver, CO 80209, 303–322–0800. Transporting *alcoholic beverages*, between points in the U.S. under continuing contract(s) with Southern Wine and Spirits of Las Vegas, NV.

MC 145168 (Sub-3), filed February 23, 1982. Applicant: BRACKEEN TRUCKING, INC., Route 2, Box 612, Scurry, TX 75158. Representative: Thomas L. Cook, Allied Bank-Southwest, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237–2385, 214–339–4108. Transporting *transportation equipment*, between points in LA and TX, on the one hand, and, on the other, points in AR and MS.

MC 150939 (Sub-28), filed February 19, 1982. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, 703–522–0900. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 151559 (Sub-1), filed February 19, 1982. Applicant: THE GRAY ROCK FARM, INC., Route 12, Box 143, Statesville, NC 28677. Representative: Theodore Polydorff, Suite 301, 1307 Dolly Madison Blvd., McLean, VA 22101, 703–893–4924. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S. under continuing contract(s) with Western Steer-Mom 'n' Pop's, Inc., of Claremont, NC.

MC 152878 (Sub-1), filed February 22, 1982. Applicant: LEXINGTON CARTAGE COMPANY, 2180 Young Dr., Lexington, KY 40593. Representative: Herbert D. Liebman, 403 West Main St., P.O. Box 478, Frankfort, KY 40602, 502–875–3493. Transporting *such merchandise as is dealt in by wholesale, retail and chain grocery and business houses and equipment materials and supplies used in the conduct of such business*, between points in the U.S. under continuing contract(s) with The Kroger Company of Cincinnati, OH.

MC 155658 (Sub-7), filed February 22, 1982. Applicant: D. F. SYSTEM, INC., 875 Providence Hwy, P.O. Box 242, Dedham, MA 02026. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *suitcases, traveling bags, and briefcases*, between points in the U.S., under continuing contract(s) with American Tourister, Inc., of Warren, RI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 1134(a) or submit an affidavit, indicating why such approval is unnecessary, to the

Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 6370.

MC 157858, filed February 22, 1982. Applicant: NICK OLIVAS, d.b.a. OLIVAS TRUCKING, 833 Mt. Taylor Ave., Grants, NM 87020. Representative: Nick Olivas (same address as above), (505) 285-5069. Transporting *coal* between points in Sandoval County, NM, on the one hand, and, on the other, Amarillo, TX, and points in Lincoln County, AZ.

MC 159558 (Sub-2), filed February 8, 1982. Applicant: EIGHTEEN WHEEL TRANSPORTATION, INC., 355 South Santa Fe Ave., Los Angeles, CA 90013. Representative: Frederick J. Coffman, 1834 N. Kelly Ave., P.O. Box 1455, Upland, CA 91786, (714) 981-9981. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Birmingham, AL, Los Angeles, Oakland and San Diego, CA, Atlanta, GA, Chicago, IL, New Orleans, LA, Baltimore, MD, Boston, MA, Kansas City and St. Louis, MO, Omaha, NE, Cincinnati, OH, Memphis, TN, Dallas and Houston, TX and points in Hudson County, NJ, on the one hand, and, on the other, points in the U.S.

MC 160639, filed February 19, 1982. Applicant: MIDTRANS CORPORATION, 4700 Fisher Rd., Columbus, OH 43228. Representative: Charles H. McCreary III, 100 East Broad St., Columbus, OH 43215, 614-227-2300. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those of unusual value, and those requiring special equipment), between Columbus, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, TN, and MS.

MC 160658, filed February 22, 1982. Applicant: YOUR VIP LINES, INCORPORATED, 12623 Cranbrook, Hawthorne, CA 90250. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, 714-667-8107. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter operations, beginning and ending at points in Los Angeles County, CA and extending to points in AZ, UT, NV, and NM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-6305 Filed 3-8-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-78982. By decision of February 22, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Marathan Bus Lines, Inc. of South Amboy, NJ of Certificate No. MC-140797 (Sub No. 3) issued June 16, 1981 to Blue & Gray Transit, Inc. of Brooklyn, NY authorizing the transportation over regular routes of passengers and their baggage in the same vehicle with passengers between Middletown, NJ and New York; over alternate routes for operating convenience only between Port Street Interchange of the NJ Turnpike and US 9 in Newark, NJ. Between points over the Garden State Parkway, including Woodbridge. Sayreville, Matison TWP, Matawan TWP, Keyport, NJ, and return over the same route, over alternate routes for operating convenience only between Newark and Jersey City, NJ for joinder only. Between Lincroft, Middletown TWP and Keyport, NJ serving all intermediate points; between Holadel, and Matawao, NJ, between points in Raritan TWP, NJ. Subject to the following conditions: No incidental charter operations. Representative: John R. Simms Jr., 915 Pennsylvania Bldg. 425 13th Street NW., Washington, DC 20004.

Note.—The purpose of this Publication is to include the above described (sub 3) authority to the authority approved for transfer by this Board and published in the **Federal Register** on June 15, 1981, and November 16, 1981.

MC-FC-79437. By decision of February 19, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Austin Verity & Son, Inc. of Seaford, NY of Certificate No. MC-144276 issued to Massapequa Movers, Inc., of Massapequa, NY authorizing *household goods*, between New York, NY and points on Long Island, on the one hand, and, on the other, points in AL, KY, MI, MO, TN, and TX. Representative: Piken & Piken, 95-25 Queens Blvd., Rego Park, NY 11374. TA lease is not sought. Transferee is a carrier.

MC-FC-79561. By decision of February 19, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Larrymar Corporation of Mount Holly, NJ of Certificate No. MC-119821 and No. MC-119821 (Sub-Nos. 2, 4, and 7) issued February 10, 1982, respectively. The Sub 7 certificate cancels Certificates Nos. MC-124495 and No. MC-119821 issued to Ochroch Transportation Co., Inc. of Philadelphia, PA authorizing the transportation in (A) (Sub-No. 2F) of *such commodities* as are dealt in by grocery stores, from Baltimore, MD, to New York, NY, those points in PA and east of U.S. Hwy 15, those in NJ on and north of NJ Hwys 70 and 34, and points in Kent and New Castle Counties, DE (B) (Sub-No. 4F) of *pulp paper or allied products*, between points in Bucks and Philadelphia Counties, PA, and Spotsylvania County, VA, on the one

hand, and on the other, points in CT, DE, MD, NJ, NY, PA, VA and DC. (C) (Sub-No. 7) of (1)(a) *petroleum lubricants* and *cleaning oils*, in customers and *advertising material and premiums, display racks*, cleaning *machines* and *sheet metalware*, used in the distribution and comsumption of petroleum lubricating and cleaning oils, from Philadelphia, PA, to points in NY, NJ, DE, and described portions of MD and VA, and DC and (b) *paper, paper products, rubber printing plates*, and *machinery, equipment* and *supplies* used or useful in the manufacturing and processing of such commodities, from New York, NY, to points in CT, MA, NY, NJ, and PA, within 100 miles of City Hall, New York, NY. *RESTRICTION:* The separately stated authorities above shall not be traced or joined one to another for the purpose of performing any through transportation; and (2) *paper products*, and *such commodities* as are dealt in by wholesale and retail dry goods and grocery houses, between Philadelphia, PA, on the one hand, and, on the other, Newark, New Brunswick, Trenton, Perth Amboy, Passaic, and Paterson, NJ and points in the New York, NY Commercial Zone. (B) *Various washing,, cleaning, and bleaching compounds* between Philadelphia named points in RI, CT, DE, MD, NC and DC., subject to a restriction. (4) *Office furniture*, between Philadelphia, on the one hand, and, on the other, Baltimore, MD, and Washington, DC., and (5) *frozen berries* from Baltimore, MD, to New York, NY.

MC-FC-79614. By decision of February 22, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Deborah Murphy and Edwin R. Benedict, A Partnership, d/b/a Murphy's Horse Transportation of Elmont, NY, of Certificate No. MC-102917 issued to Carey Cummings Equities, Inc. of Glen Head, NY authorizing the transportation of *flowers and plants* (not including cut flowers), from points in Nassau County, NY to points in CT, DE, MD, MA, NJ, PA, RI, VA, and DC; *horses* (other than ordinary livestock), *equipment and paraphernalia, stable supplies, and equipment, and personal effects* of their attendants, trainers, or exhibitors between named points in NY, and points in NJ, MD, DE, MA, VA, PA, OH, IN, IL, SC, CT, KY, ME, NH, NC, RI, and VT. Representative: Thomas J. O'Brien, 230 Park Avenue, New York, NY 10017. TA lease is not sought. Transferee is/is not a carrier.

MC-FC-79619. By decision of 2-23-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to TRINITY TRANSPORT, INC. of Certificate No. MC-149483 and MC-149483 (Sub-No. 1) issued to C & H TRUCK BROKERS, INC. authorizing the transportation of (1) *foodstuffs* (a) between points in Sussex County, DE, on the one hand, and, on the other, points in the United States (except AK and HI), and (b) between points in Talbot County, MD, and Northampton County, VA, on the one hand, and, on the other, points in the United States (except AK, AZ, CA, CO, HI, ID, MN, MT, NV, NM, ND, OR, SD, UT, WA, and WY); (2) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions, for or on behalf of the United States Government, between points in the United States. NOTE: Transferee is a carrier pursuant to a certificate issued in MC-154194. Representative: Andrew D. Lipman, 1777 F Street, NW., Washington, DC 20006. Condition: Transferor must pay any debts owing to owner-operators prior to consummation.

MC-FC-79621. By decision of 2-23-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number approved the transfer to Midwest Transit Service, Inc. of Certificate No. MC-71452 (Sub-Nos. 19, 21, 22, and 23) issued to Indiana Transit Service, Inc. authorizing the transportation of: Sub-No. 19: *personal care products, nutritional supplements and foods, and cleaning compounds*, over irregular routes, between the facilities of the Shaklee Corporation at or near Chicago, IL, on the one hand, and, on the other, points in IN; Sub-No. 21: *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.; Sub-No. 22: (1) *general commodities* (except classes A and B explosives), between Indianapolis, IN, on the one hand, and, on the other, points in certain IN counties, (2) *motion picture film, theatre equipment, supplies and accessories and printed matter*, (a) between points in Indiana; (b) between points in Indiana, on the one hand, and, on the other, points in Iroquois County, IL, Jefferson County, KY, and Cincinnati, OH; (c) between points in Iroquois County, IL, on the one hand, and, on the other, points in Jefferson County, KY and Cincinnati, OH; and (d) between Cincinnati, OH, and Louisville, KY; and (3) *advertising booklets, pamphlets, catalogues, calendars, paper books and display racks*, (a) between points in Indiana; Sub-No. 23X: *general commodities* (except classes A and B explosives), (1) between Indianapolis, IN, on the one hand, and, on the other, points in certain IN counties, and (2) between points in Indiana, and points in Henderson, Daviess, Jefferson, Boone, Kenton, and Campbell Counties, KY, Hamilton, Butler, Preble, Montgomery, Paulding, Defiance, and Williams Counties, OH, Branch County, MI, and Iroquois, Vermilion, and Clark Counties, IL.

MC-FC-79622. By decision of February 23, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 3 approved the transfer to Ted M. Conrad doing business as Brett Freight Service of Certificate No. MC-33925 (Sub-No. 8) issued December 11, 1981 to Lloyd M. Brett & Gary L. Brett doing business as Brett Freight Service authorizing the transportation of. Representative is: Ted M. Conrad, Brett Freight Service, P.O. Box 2941, Wenatchee, WA 98801.

MC-FC-79625. By decision of 2-22-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Intercoastal Express, Inc. of Certificate No. MC-152332 (Sub-No. 2) issued November 27, 1981, to Intercoastal Warehouse Corporation of Louisiana authorizing the transportation of general commodities (except classes A and B explosives), between points in Alabama, Arkansas, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, subject to the following conditions, if any. Applicant's representative: David B. Schneider, Esq. Suite 200, 401 W. Sheriden, Oklahoma City, OK 73102.

MC-FC-79626. By decision of 2-23-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 3 approved the transfer to Fremont Express, Inc., of Fremont, NE, a part of Certificate No. MC-11022 (Sub-No. 2)X issued July 22, 1981, to Sullivan Transfer & Storage Company, of Lincoln, NE authorizing the transportation of household goods between points in Nebraska, on the one hand, and, on the other, points in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Oklahoma, Ohio, South Dakota, Texas, Wisconsin, and Wyoming. Applicant's representative is: Scott T. Robertson, P.O. Box 94748, Lincoln, NE 68509. TA has been filed.

MC-FC-79631. By decision of February 19, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Eugene Walker

and Mildred Walker, d.b.a. Walker Trucking, of 10201 West Beaver Street, Lot 89, Jacksonville, FL 32220, of Certificate of Registration No. MC-121819, issued February 27, 1979, to Lightning Trucking Company, of 435 South Cassat Avenue, Jacksonville, FL 32205, evidencing a right to engage in transportation of interstate commerce corresponding in scope to State Certificate No. 1365, dated June 21, 1978, issued by the Florida Service Commission. Representative: O.C. Beakes, 836 Riverside Avenue, Jacksonville, FL 32204.

MC-FC-79633. By decision of February 22, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to James R. Rutledge d/b/a Jim Rutledge Trucking of Afton, IA of Certificate No. MC-154471 issued March 11, 1981 to Gary R. Bailey d.b.a. Gary R. Bailey Trucking of Afton, IA authorizing transportation as a motor common carrier over regular routes, transporting *feed* between Omaha, NE and Prescott, IA, serving intermediate and off-route points, from Prescott over IA Hwy 186 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Glenwood, IA, then over U.S. Hwy 275 to Council Bluffs, IA, and then across the Missouri River to Omaha. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA.

MC-FC-79634. By decision of 2-25-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Georgia-Carolina Truck Transportation Co., Inc. of Certificate No. MC-26088 (Sub-No. 29X) issued to the Sanders Truck Transportation Co., Inc. authorizing the transportation of *cranes, crane parts, fork lifts, welding machines, dollies, boilers, boiler parts, clay products, steel beams, steel bins, steel and tanks and caprolactam, and machinery and machinery parts,* between points in GA and SC, on the one hand, and, on the other, points in the United States.

Note(s).—Transferee is a non-carrier. Applicants' representative: Clyde W. Carver, P.O. Box 720434, Atlanta, Georgia 30328.

MC-FC-79635. By decision of 2-24-82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132, Review Board Number 3 approved the transfer to Kaibab Distribution Corporation of Permit Nos. MC-152109 and MC-152109 (Sub-No. 1) issued March 6, 1981 to Kaibab Transportation, Inc. authorizing in MC-152109 the transportation of *asphalt roofing products* between points in the U.S. under continuing contract(s) with Tamko Asphalt Products, Inc. of Denver, CO and in MC-152109 (Sub No. 1), *crushed automobile bodies* between points in the U.S., under continuing contract(s) with Milford Pepper, d.b.a. Century Enterprises, Inc. of Denver, CO, subject to the following conditions, if any. Applicant's Representative: Michael F. Morrone, 1150 17 M Street N.W. Suite 1000, Washington, D.C. 20036.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-6303 Filed 3-8-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Restriction Removals; Decision-Notice

Decided: March 3, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 4426 (Sub-5)X, filed February 24, 1982. Applicant: M & T TRANSPORT, INC., 7391 Richmond Road, Post Office Box 292, East Syracuse, NY 13057. Representative: Herbert M. Canter, Benjamin D. Levine, 305 Montgomery Street, Syracuse, NY 13202. Lead: (1) broaden machinery, contractors' equipment and commodities used in the construction or maintenance of telephone and telegraph systems to "those commodities which because of their size or weight require the use of special handling or equipment and commodities used in the construction or maintenance of telephone and telegraph systems," and (2) change Syracuse, NY to Onondaga County, NY.

MC 25823 (Sub-15)X, filed February 16, 1982. Applicant: WERCH TRUCKING COMPANY, INC., Rte. 2, Box 113, Berlin, WI 54923. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. Lead and Subs 1, 2, 3, 4 (embraces former Subs 5 and 7), and 10 certificates, (1) change one-way service to radial; (2) broaden commodities to: lead certificate, "machinery, chemicals and related products, textile mill products, food and related products, farm products, coal and coal products, and petroleum, natural gas and their products," from farm implements, fertilizer, twine, feed, seed, flour, coal, and oil; Sub 1, "chemicals and related products, and food and related products," from fertilizer and animal and poultry feed; Sub 2, "food and related products, chemicals and related products, and bags and containers," from dry animal and poultry feed and ingredients, insecticides, medication used for treating animals and poultry, and empty bags and other containers, when transported on the same vehicle or as part of a shipment of the described commodities; Sub 3, (a) "food and related products," from animal and poultry feed, condensed milk, and canned goods and preserves; (b) "clay, concrete, glass or stone products," from glassware; and (c) "chemicals and related products," from fertilizer; Sub 4, (a) "food and related products," from animal and poultry feed and concentrates, in bulk, feed and feed ingredients, canned vegetables, and soybean meal (except commodities in bulk, in tank vehicles); and (b) "petroleum, natural gas and their products, food and related products, chemicals and related products, farm products, rubber and plastic products, and machinery," from petroleum products, in containers, animal and poultry feed, fertilizer, in bags or containers, seed, rubber tires, and farm machinery and hardware; and Sub 10, "pulp, paper and related products," from lignin pitch; (3) broaden towns, plantsite, and milage radii descriptions to countywide authority; lead certificate, Green Lake, Waushara, Fond du Lac and Winnebago Counties, WI (Berlin, Ripon, Waukau, Rush Lake, and Borth);

Sub 1, Langlade County, WI (Antigo); Sub 2, Racine County, WI (Burlington); Sub 3, Peoria, Sangamon, McLean and Madison Counties, IL (Bartonsville, Springfield, Bloomington, and Alton): Waupaca and Outagamie Counties, WI (New London): and Madison and Marshall Counties, IN (Lapel and Plymouth); Sub 4, St. Croix County, WI (New Richmond, Stanton, Star Prairie, and Forest): Polk County, WI (Alden): Washington and Dakota Counties, MN (Newport and South St. Paul): Clark and Marathon Counties, WI (Abbotsford): Scott County, MN (plantsite at Savage): and Aitkin, Anoka, Blue Earth, Brown, Carlton, Carver, Cass, Chippewa, Chisago, Cottonwood, Crow Wing, Dakota, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Le Sueur, Lyon, McLeod, Martin, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Olmsted, Otter Tail, Pine, Pope, Ramsey, Redwood, Renville, Rice, St. Louis, Scott, Sherburn, Sibley, Stearns, Steele, Stevens, Swift, Todd, Wabasha, Wadena, Waseca, Washington, Watonwan, Winona, Wright and Yellow Medicine Counties, MN (points in MN within 160 miles of New Richmond, WI); and (5) remove the "originating at" restriction in Sub 4, and "except points on U.S. Hwy 41 between the WI–IL Stateline and Milwaukee, including Milwaukee" in Sub 1.

MC 41657 (Sub-1)X, filed February 12, 1982. Applicant: ROSENDO DIAZ, d.b.a. JENSEN MOVERS AND KELLY MOVERS, 2520 Orthodox St., Philadelphia, PA 19137. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Lead: broaden (1) household goods to "household goods and furniture and fixtures".

MC 76472 (Sub-23)X, filed February 22, 1982. Applicant: MATERIAL TRUCKING, INC., 924 S. Heald St., Wilmington, DE 19801. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046. Lead and Subs 3, 7, 8, 12 and 15. Broaden: lead, from sand and stone, in bulk, in dump trucks and from such bulk commodities as are transported in dump trucks; in Subs 3, 7 and 15, from salt in bulk, salt, in bulk, in dump vehicles (except rock salt and rock salt compounds in bulk); and in Subs 8 and 12 from sand, gravel, stone, clay, earth and bituminous concrete, and gypsum, in bulk, to "commodities in bulk" lead from Glen Mills, PA and points within five miles of Glen Mills to Delaware and Chester Counties, PA and from points in NJ within 60 miles of Glen Mills, PA to Mercer, Burlington, Camden, Gloucester, Salem, Atlantic, Cumberland and Cape May Counties, NJ; Subs 3, 7, 12 and 15, from Wilmington, DE/facilities to New Castle County, DE; and to radial service.

MC 77016 (Sub-25)X, filed February 16, 1982. Applicant: BUDIG TRUCKING CO., 1100 Gest Street, Cincinnati, OH 45203. Representative: George M. Catlett, Suite 700–702, McClure Building, Frankfort, KY 40601. Subs 2, 4, 8, 9, 10, 11, 12, 15, 19F, 23 and 24. Broaden all but Subs 8 and 10 to authorize service at all intermediate points on regular routes; broaden descriptions of general commodities, with exceptions, by removing exceptions of: in Sub 2, milk, empty milk cans, livestock; in Sub 9, other dangerous articles, silk, vehicles; broaden: in Sub 12, unmanufactured tobacco to "tobacco products (except insecticides)" and brick, sand, gravel and cement, in bulk, to "brick, sand, gravel and commodities in bulk"; in Sub 15, roofing to "building materials"; petroleum products to "petroleum, natural gas and their products"; radiators to "transportation equipment"; paint and paint materials to "chemicals and related products"; leather and leather board to "leather and leather products"; in Sub 24, fresh meat, cured meat, smoked meat, lard, oleo and eggs to "food and related products"; remove restrictions: in Sub 10, against service to points in OH within the Maysville and Vanceburg, KY, commercial zones; in Sub 11, to traffic originating at/destined to, Cincinnati, OH; in Sub 19F, against serving points in KY within the Maysville, and Carrollton, KY, commercial zones, and in Sub 23, at Louisville, KY, and Nashville, TN, to traffic originating/destined to or interchanged at points in Mason, Fayette, and Scott Counties, KY; and remove facility restrictions in Sub 24.

MC 95211 (Sub-3)X, filed February 23, 1982. Applicant: JOE FORTUNER, 99 South Main Street, Carbondale, PA 18407. Representative: Joseph A. Keating Jr., 121 South Main Street, Taylor, PA 18517. Lead: (1) broaden household goods to "household goods, and furniture and fixtures," and (2) replace Carbondale, PA with Lackawanna, Susquehanna, and Wayne Counties, PA.

MC 102298 (Sub-19)X, filed February 19, 1982. Applicant: MOHAWK VAN LINES, INC., 251–57 Jericho Turnpike, Bellerose, NY 11426. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Lead and Sub 18F (acquired in MC–F–14051) certificates and E1 through E143 letter notices: broaden to "household goods and furniture and fixtures" from household goods, in all Subs.

MC 105997 (Sub-13)X, filed February 22, 1982. Applicant: ALL CHEMICAL TRANSPORT CORP., 1544 Irving St., Rahway, NJ 07065. Representative: Edward L. Nehez, P.O. Box Y, 7 Becker Farm Road, Roseland, NJ 07068. Lead permit: (1) broaden (a) denatured alcohol, denatured alcohol solvents, in bulk, in tank vehicles, (b) solvents (except denatured alcohol solvents), in shipments not exceeding 2500 gallons, in bulk, in tank vehicles (c) synthetic resin, ester gum solutions, and tall oil (crude and esterified), in bulk in tank vehicle to "chemicals and related products"; (2) to between points in the U.S. (except AK and HI) under continuing contract(s) with a named shipper.

MC 115331 (Sub-555)X, filed February 22, 1982. Applicant: TRUCK TRANSPORT INCORPORATED, 11040 Manchester Rd., St. Louis, MO 63122. Representative: J. R. Ferris (same as applicant). Sub Nos. 86, 307, 402, 428, 430, 443, 445, 459, 489 and 547 broaden (1) to "clay, concrete, glass or stone products" from lime and limestone products, Sub 86; cement, Subs 307, 402, 430, 443, 445, 459 and 489; cement and cement kiln dust, Sub 428; and lime and limestone and cement, Sub 547 (2) Davenport, IA to Scott and Muscatine Counties, IA and Rock Island County, IL; Selma, MO to Jefferson County; St. Louis, MO to St. Louis, and St. Louis County; Clarksville, MO to Pike County; Rock Island, IL to Rock Island, IL and Rock Island County; LaSalle, IL to LaSalle County; Chattanooga, TN to Hamilton County; Union, LA to St. James Parish; Alabaster, Allgood and Siluria, AL to Shelby and Blount Counties; (3) remove facilities limitation, restrictions (a) against transportation of lime and limestone, in bags, to points in MN, Sub 86; (b) to in bulk, in bags and (4) to radial authority.

MC 119741 (Sub-314)X, filed February 22, 1982. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). Sub-No. 277F: broaden (1) Tampa, FL, to Hillsborough County; St. Paul and Eagan, MN, to St. Paul and Dakota Counties; Brockport, NY, to Monroe County; Columbus, Toledo, and London, OH, to Columbus, Lucas, and Madison Counties; Bristol, PA, to Bucks County; (2) remove facility restrictions and delete originating at or destined to limitations; (3) delete bulk exceptions.

MC 134925 (Sub-5)X, filed April 6, 1981, previously noticed in the **Federal Register** of April 27, 1981, republished as follows: Applicant: CUMMINGS

TRUCKING COMPANY, INC., 1321 7th Ave., North, Birmingham, AL 35202. Representative: Lewis Cummings, Jr. (same as applicant). As is pertinent here, applicant seeks to broaden its Sub-No. 5X* certificate by broadening the territorial description to Bibb, Chilton, Fayette, Greene, Hale, Jefferson, Lamar, Perry, Pickens, Shelby, Sumter, and Walker Counties, AL, from Tuscaloosa, AL, and 50 mile radius. The certificate issued in this proceeding failed to encompass this revision. The purpose of this republication is to correct this inadvertent omission.

MC 141160 (Sub-6)X, filed February 23, 1982. Applicant: NEWTON TRANSPORTATION, INC., 301 West Railroad St., Pottsville, PA 17901. Representative: Joseph A. Keating Jr., 121 South Main St., Taylor, PA 18517. Lead and Subs 1, 2F, 3F and 5F permits: (A) broaden to "metal products" from wire, cable and copper; "chemicals and related products" from PVC virgin compound and chemical additives; "pulp, paper and related products" from paper and corrugated cartons; "waste or scrap materials not identified by industry producing" from plastic scrap; and "photographic and x-ray film" from discarded photographic and x-ray film, lead; (B) remove (1) "commodities in bulk, in tank vehicle" restriction, lead; and (2) "size or weight" restriction, Sub 3F; and, (C) broaden to "between points in the U.S., "under continuing contract(s) with named shippers, all subs.

MC 145966 (Sub-11)X, filed February 22, 1982. Applicant: NELSEN BROS., INC., P.O. Box 613, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. MC–145743 Subs 7 and 27 (portions acquired in MC–F–14717); (A) broaden animal feed and animal feed ingredients and canned and preserved foodstuffs to "food and related products" in both Subs; (B) remove: commodities in bulk, and frozen foodstuffs exceptions in both subs; facilities restrictions in both Subs; originating at and destined to restriction in Sub 27; (C) replace LeSueur, Blue Earth, Glencoe and Montgomery, MN with LeSueur, Faribault and McLeod Counties, MN in Sub 27; and (D) change one-way to radial authority.

MC 147494 (Sub-10)X, filed February 24, 1982. Applicant: BOBBY KITCHENS, INC., P.O. Drawer 5690, Jackson, MS 39208. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205. Sub 2F (1) expand to Talladega County, AL for Talladega, AL; Chatham, Berrien, Elbert and Lowndes Counties, GA for Savannah, Nashville, Elberton and Valdosta, GA; Orleans and Acadia Parishes, LA for New Orleans and Crowley, LA; Mecklenburg and Catawba Counties, NC for Charlotte and Hickory, NC; Spartanburg County, SC for Spartanburg, SC; Shelby County, TN for Memphis, TN; Harris County, TX for Houston, TX; and Warren County, VA for Front Royal, VA; and (2) expand to two-way authority; and delete destined to restrictions to allow service between the above named points, on the one hand, and, on the other, named facilities in four states; and (3) remove bulk restrictions.

MC 147807 (Sub-14)X, filed February 18, 1982. Applicant: TERESI TRUCKING INC., 900½ Victor Road, Lodi, CA 95240. Representative: Eldon Johnson, 650 California Street-Suite 2808, San Francisco, CA 94108. Sub 12X: Broaden construction equipment, to "building materials, construction equipment, materials and supplies."

MC 148788 (Sub-5)X, filed February 12, 1982. Applicant: HARDEE'S TRANSPORT, INC., P.O. Box. 26159, Jacksonville, FL 32218. Representative: Norman J. Bolinger, 3100 University Blvd. South, Jacksonville, FL 32216. Sub-No. 4 (1) delete intermodal container restriction in part 1; (2) remove prior or subsequent movement by water restriction in part 1; (3) include the exception of classes A and B explosives in its general commodity authority in part 1.

MC 150069 (Sub-2)X, filed 11–17–81, previously noticed in the **Federal Register** of 12–3–81, republished as follows: Applicant: RARITAN TRANSPORTATION SERVICES, INC., P.O. Box 1384, Nixon Station, Edison, NJ 08817. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006. Sub 1F: (1) broaden Perth Amboy, NJ, to Middlesex, Monmouth and Union Counties, NJ, and Richmond, Bronx, Kings, Queens, and New York Counties, NY. The purpose of this republication is to include the five NY counties, which were not included in the original "X" certificate draft.

MC 150378 (Sub-3)X, filed February 22, 1982. Applicant: CHASE EXPRESS, INC., 22410 72nd Avenue South, Kent, WA 98031. Representative: Jack R. Davis 1100 IBM Building, Seattle, WA 98101. Sub 2F certificate, remove ex-water restriction in general commodity authority between points in Washington and Oregon.

[FR Doc. 82–6304 Filed 3–8–82; 8:45 am]

BILLING CODE 7035–01–M

[Amdt. No. 3, to Third Revised I.C.C. Order No. 80 Under Service Order No. 1344]

Rail Carriers; Rerouting Traffic; St. Louis Southwestern Railway Co. et al.

To: St. Louis Southwestern Railway Company; Cadillac & Lake City Railway Company; Oklahoma, Kansas and Texas Railroad Company; and Chicago and North Western Transportation Company.

Upon further consideration of Third Revised I.C.C. Order No. 80 and good cause appearing therefor:

It is ordered, I.C.C. Order No. 80 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The order shall expire at 11:59 p.m., May 31, 1982, unless otherwise modified, amended or vacated.

Effective date. This order shall become effective at 11:59 p.m., February 28, 1982.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., February 28, 1982.

Interstate Commerce Commission.

Bernard Gaillard,

Agent.

[FR Doc. 82–6302 Filed 3–8–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

Correction

In FR Doc. 82–4490 appearing at page 7520 in the issue for Friday, February 19, 1982, please make the following corrections:

On page 7527, in the first column, the paragraph beginning "MC 157569 (Sub-1)", application of Midwest General, Inc., should have begun "MC 157568 (Sub-1)".

BILLING CODE 1505–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2),

Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given of the Forty-eighth meeting of the Board for International Food and Agricultural Development (BIFAD) on March 25, 1982.

The purpose of the meeting is to consider such matters as: BIFAD functions, structure, and relationships; reports on the study of incentives for university involvement in international programs, implementation of recommendations in the General Accounting Office (GAO) report on Title XII, the management of the proposed cooperative program between U.S. research institutions and the international agricultural research centers, and the future of A.I.D. University Strengthening Programs; and to meet with the BIFAD Support Staff to discuss staff actions and operational procedures.

The meeting will begin at 9:00 a.m. and adjourn at 12:15 p.m., and will be held in Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. The meeting with the BIFAD Support Staff will begin at 1:30 p.m. and adjourn at 3:00 p.m. This meeting will be held in Room 2248, New State Department Building, 22nd and C Streets, NW., Washington, D.C. The meetings are open to the public. Any interested person may attend, may file written statements with the Board before or after the meetings, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meetings permit.

Dr. Erven J. Long, Coordinator, Title XII Strengthening Grants and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, State Department, International Development Cooperation Agency, Washington, D.C. 20523. or telephone him at (703) 235–8929.

Dated: March 3, 1982.

Dr. Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 82-6301 Filed 3-5-82; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-118]

Certain Sneakers With Fabric Uppers and Rubber Soles; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 3, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Van Doren Rubber Company, Inc., 704 E. Broadway, Anaheim, California 92805. The complaint alleges unfair methods of competition and unfair acts in the importation of certain sneakers with fabric uppers and rubber soles into the United States, or in their sale, by reason of alleged (1) unfair competition, (2) false designation of source, (3) common-law trademark infringement, and (4) passing off in the manufacture and sale of said shoes. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to conduct expedited temporary relief proceedings and to issue (1) a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond, and (2) a temporary cease and desist order; and, after a full investigation, to issue (1) a permanent exclusion order and (2) a permanent cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation:

Having considered the complaint, the U.S. International Trade Commission, on March 2, 1982, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain sneakers with fabric uppers and rubber soles into the United States, or in their sale, by reason of alleged (1) unfair competition, (2) false designation of source, (3) common-law trademark infringement, and (4) passing off in the manufacture and sale of said shoes, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Van Doren Rubber Company, Inc., 704 E. Broadway, Anaheim, California 92805

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chin Yang Corporation, CPO Box 5731, Seoul, Korea

Thom McAn Shoe Company, Inc., 67 Millbrook, Worcester, Massachusetts 01606

Stride Rite Footwear, Inc., 960 Harrison Avenue, Boston, Massachusetts 02118

(c) Juan S. Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer with instructions to issue a recommended determination as to temporary relief by May 10, 1982, and the Commission hereby shortens to five (5) days the period to be allowed for filing exceptions to the recommended determination and for filing alternative findings of fact and conclusions of law under § 210.54 of the Commission's Rules of Practice and Procedure.

(4) The presiding officer shall also establish a schedule for oral presentations concerning the remedy, bonding, and public-interest aspects of the investigation for the purpose of creating an administrative record to be certified to the Commission by May 14, 1982. In addition, the presiding officer shall provide for a prehearing briefing schedule to be published in the **Federal Register** soliciting the written views of any persons interested in the temporary relief phase of the investigation. The transcript of the oral presentations, the prehearing briefs, and the other written comments will constitute the administrative record concerning remedy, bonding, and the public interest to be certified to the Commission. The Commission shall issue its

determination on temporary relief by June 14, 1982.

Responses conforming to the requirements of § 210.21(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b)) must be submitted by each named respondent. Such responses will be considered by the Commission if received not later than 10 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commisssion, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-1233.

By order of the Commission.

Issued: March 8, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-6522 Filed 3-10-82; 10:57 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Arizona State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator OSHA), under a delegation of authority from the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On October 29, 1974, notice was published in the **Federal Register** (39 FR 39037) of the approval of the Arizona plan and the adoption of Subart CC to Part 1952 containing the decision.

The Arizona plan provides for the adoption of Federal Standards as State standards after public hearing. Section 1953.20 provides that where "* * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State Program, a program change supplement to a State plan shall be required." In response to Federal standards changes, the State has submitted by letter, with attachments, dated August 31, 1981, from Larry Etchechury, Director to Gabriel J. Gillotti, Regional Administrator, and incorporated as part of the plan, State standards reflecting federal standards changes to 29 CFR Parts 1910, 1926, and 1928 published in the **Federal Register.** The standards adopted were 29 CFR part 1910, several sections on Fire Protection; Means of Egress; Hazardous Materials (45 FR 60656); 29 CFR 1910.301-.399; Electrical Standards (46 FR 4034); 29 CFR 1910.1000, Benzene (46 FR 32021); 29 CFR 1910.1025, Lead (46 FR 6134, 14897, 18974, 23741, 27358, 28845, 33244 & 38074); 29 CFR 1910.1046, Cotton dust (46 FR 32021); and 29 CFR 1926.500, Guarding of Low-Pitched Roof Perimeters (45 FR 75618). These standards which are contained in the Arizona Occupational Safety and Health Standards, Arizona construction safety and health regulations, and Arizona occupational standards for agriculture were adopted after public hearings and the resolution adopted by the Industrial Commission of Arizona, Division of Occupational Safety and Health, pursuant to the Arizona Occupational Safety and Health Act of 1972.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has ben determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, Calilfornia 94102; Director, Division of Occupational Safety and Health, 1624 West Adams, Phoenix, Arizona 85007; and Directorate of Federal Compliance and State Programs, Room N3613, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Arizona plan as a proposed change and making the OSHA Regional Administrator's approval effective upon publication for the following reasons:

The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective March 9, 1982.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at San Francisco, California this 2nd Day of November 1981.

Gabriel J. Gillotti,

Regional Administrator.

[FR Doc. 82-6520 Filed 3-8-82; 9:16 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Notice of Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on March 24, 1982, at the AMFAC Hotel, 2910 Yale Bldv., Albuquerque, NM. The Subcommittee will discuss the NRC's use on LOCA/ECCS computer codes, aspects of the recent transient at the Ginna plant that impact of LOCA/ECCS concerns, and other miscellaneous items related to the Subcommittee's activities.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify

the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 24, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding the topics to be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or reschedule, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close sessions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: March 3, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-6350 Filed 3-8-82; 8:45 am]

BILLING CODE 7510-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safeguards and Security; Meeting

The ACRS Subcommittee on Safeguards and Security will hold a meeting on March 23, 1982, at the SANDIA NATIONAL LABORATORY, Room-A, Building 882, Albuquerque, NM. The Subcommittee will review standard plant designs to determine if protection against sabotage can be enhanced. Notice of this meeting was published February 17, 1982 (47 FR 7022).

The meeting will involve discussion of information related to national security and defense.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it will be necessary to close this meeting to public attendance to permit a discussion of national security information. The authority for such closure is Exemption (1) to the Sunshine Act, 5 U.S.C. 552b(c)(12).

Dated: March 3, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-6351 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on March 25, 26 and 27, 1982, at the ARGONNE NATIONAL LABORATORY, Building 208, Room C-234, Argonne, IL. The Subcommittee will continue discussion of a report on LMFBR safety philosophy. Notice of this meeting was published February 17, 1982 (47 FR 7022).

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4.) To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Thursday, Friday and Saturday—March 25, 26 and 27, 1982, 8:30 a.m. until the conclusion of business each day.

The Subcommittee and its consultants will discuss possible design considerations, issues, or criteria for future commercial advanced reactors.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: March 3, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-6352 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Facility Operating License No. DPR-23 issued to Carolina Power and Light Company (the licensee), which revised Technical Specifications for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (the facility) located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to indentify three existing hydraulic snubbers that have been included in the snubber surveillance program although not previously listed as being safety related.

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. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not

result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 27, 1982, (2) Amendment No. 62 to License No. DPR-23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of March 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-6345 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 63 to Facility Operating License No. DPR-23 issued to Carolina Power and Light Company (the licensee), which revised Technical Specifications for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (the facility) located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications related to the operation and surveillance of shock suppressors (snubbers).

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. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 27, 1981, (2) Amendment No. 63 to License No. DPR-23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of March 1982.

For the Nuclear Regulatiory Commission.

Steven A Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-6346 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 78 to Facility Operating License No. DPR-31, and Amendment No. 72 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensees), which revised Technical Specifications for operation of Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications to permit removal of the requirements for Boron Injection Tanks (BIT) effective upon installation of the new model 44F steam generator.

The application for the amendments 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 amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 30, 1981, as supplemented February 10, 1982, (2) Amendment Nos. 78 and 72 to License Nos. DPR-31 and DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commmission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 2nd day of March 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-6347 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability—ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice

inspection of light-water-cooled nuclear power plants. This guide is revised periodically to update the listing of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Md. this 2nd day of March 1982.

For the Nuclear Regulatory Commission.

Deanwood F. Ross, Jr.,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-6349 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and Cleveland Electric Illuminating Co; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised Technical Specifications (TSs) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment is effective as of its date of issuance.

This amendment changes the TSs to permit a one-time extension to the maximum surveillance interval for certain surveillance requirements which are due on various dates in March 1982. This extension permits continued facility operation to a revised refueling outage start date of March 19, 1982, for the purpose of accomplishing more pre-outage work required to complete the large number of TMI-related modifications during refueling.

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. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 23, 1982, (2) Amendment No. 43 to License No. NPF-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the William Carlson Library, University of Toledo, 2801 W. Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 26th day of February 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch #4, Division of Licensing.

[FR Doc. 82-6348 Filed 3-8-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Nos. 301-27-31]

Members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America; Initiation of Investigation on Petition Filed Seeking Relief

On December 2, 1981, the Chairman of the Section 301 Committee received a petition from the Tool and Stainless Steel Industry Committee and the United Steelworkers of America alleging that certain subsidies granted by the governments of Austria, Belgium, Brazil, France, Italy, Sweden and the United Kingdom were inconsistent with the provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) and constituted an unreasonable and unjustifiable burden on U.S. commerce. The petition filed pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411 *et seq.*), was supplemented by substantial additional information on January 12, 1982.

On February 26, 1982 the United States Trade Representative decided to intiate investigations concerning the allegations made with respect to five of the seven countries named in the petition: Austria (301-27), France (301-28), Italy (301-29), Sweden (301-30) and the United Kingdom (301-31). A public hearing will be scheduled in the near future in order to provide interested parties with an opportunity to submit their views with respect to the issues raised in the petition regarding these five countries.

The United States Trade Representative decided on February 26, 1982 not to initiate investigations concerning the petitioners' allegations made with respect to Brazil and Belgium. With regard to Brazil, the petitioners' allegations relate almost exclusively to export subsidies. However, because Brazil, pursuant to Art. 14(5) of the Subsidies Code, has entered into a commitment to eliminate its export subsidies, the United States is precluded, pursuant to Art. 14(6) and (8), from challenging Brazil's use of export subsidies as long as Brazil continues to meet the obligations contained in its commitment. With regard to Belgium, the only Belgian producer for which the petitioners provided specific subsidy information is Cockerill-Sambre. The United States Trade Representative has learned, however, that Cockerill-Sambre does not export specialty steel to the United States.

A copy of the petition, in its entirety is printed below. Petitioners have also submitted two supplements to the petition which are available for viewing and copying at the Office of the United States Trade Representative, 600 17th

Street, NW., Rm. 222, Washington, D.C. 20506.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

Before the Office of the United States Trade Representative

Members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America, Petitioners; Petition filed seeking relief under Section 301 of the Trade Act of 1974, as amended.

This petition is filed on behalf of members of the specialty steel industry of the United States by members of the Tool and Stainless Steel Industry Committee and the United Steelworkers of America pursuant to 15 CFR 2006.0(b) (1980) and section 301 *et seq.* of the Trade Act of 1974, as amended, 19 U.S.C. 2411 *et seq.* (Supp. III 1979). The dramatic increase in the import penetration of specialty steel products from certain producers in the European Economic Community (hereinafter "the E.C."), Austria, Brazil, and Sweden has burdened or restricted U.S. Commerce and has caused or threatened to cause injury to the U.S. domestic industry. This increase in imports is largely the result of the bestowal of unreasonable and discriminatory government subsidies by the E.C. member states as well as the aforementioned non-E.C. countries. Petitioners contend that the use of these subsidies violates obligations arising under the provisions on the General Agreement on Tariffs and Trade (hereinafter "the General Agreement") and the Agreement on Interpretation and Application of Articles IV, XVI and XXIII on the General Agreement on Tariffs and Trade (hereinafter the "Subsidies Code") and in so doing burdens and restricts U.S. Commerce.

Petitioners

Petitioners are members of the Tool and Stainless Steel Industry Committee, (hereinafter TSSIC) a nonprofit corporation and a trade association representing sixteen domestic producers of tool and stainless steel. A list of the TSSIC members filing this petition is included in Appendix I. The United Steelworkers of America (hereinafter USW) representing most of the employees in this industry, are also petitioners in this action.

TSSIC and USW have closely monitored the growth of imports of specialty steel products. Both groups are deeply concerned that despite the technological superiority of U.S. specialty steel producers, foreign steel producers (many of whom are highly subsidized or are outright owned by their governments) have captured an increased share of the specialty steel markets in this country. This has resulted in a decline in export opportunities for U.S. producers. Moreover, the growth in imports has directly contributed to plant closings, increased unemployment in the domestic industry, and it has resulted in significant reductions in profits for all domestic firms as well as financial losses by some of the most efficient U.S. companies. TSSIC and USW are filing this petition in the hope that it will trigger a strong response from the U.S. governmemt in opposition to the unfair foreign subsidy practices which the industry believes are largely responsible for this import growth. The injury caused by these practices threatens the ability of the industry to reinvest and thereby maintain its high level of innovation and technological efficiency. Indeed, these practices have so distorted competition in the domestic specialty steel market that the very existence of the U.S. domestic industry is being threatened.

Statutory Basis for This Petition

This petition arises under section 301(a)(2)(A) and (2)(B) of the Trade Act of 1974, as amended, 19 U.S.C. 2411 (Supp. III 1979), Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade and Articles 8, 11, 12 and 13 of the Subsidies Code.

Pricing below cost of production, possible only because of the availability of massive government subsidies to foreign producers of specialty steel, has contributed to increased import penetration in the U.S. domestic market and has caused the U.S. specialty steel industry to suffer injury, and threatens to cause further injury, through the impact of these subsidies on domestic competition. Such subsidies violate commitments made pursuant to Articles 8 and 11(2) of the Subsidies Code, that parties seek to avoid subsidies causing such adverse effects. Articles 12(3) and 13(2) of the Subsidies Code provide that signatories may request consultations, of failing that, refer certain matters to conciliation or dispute settlement if a signatory has reason to believe any subsidy causes injury to its domestic industry or nullifies or impairs benefits accruing to it under the General Agreement. To enforce these provisions, section 301(a)(2)(A) authorizes the President to respond to any act which is inconsistent with the provisions of, or otherwise denies benefits to the United States under any trade agreement (*e.g.*, the Subsidies Code).

Section 301(a)(2)(B) provides that the U.S. may respond to any practice of a foreign government "which is unjustifiable, unreasonable or discriminatory and burdens or restricts United States commerce." It is petitioners' contention that foreign government subsidies on specialty steel are also actionable under this statutory provision as an unreasonable burden on U.S. Commerce, regardless of whether or not they are directly actionable under the Subsidies Code.

Foreign Countries Which are the Subject of This Petition

E.C. members Belgium, France, Italy and the United Kingdom, as well as non-members Austria, Brazil, and Sweden are the subject of this petition. The E.C. signed the Subsidies Code on behalf of all of its member states. Austria, Brazil, and Sweden are individual signatories.

Foreign Products Which are the Subject of This Petition

The specialty steel products for which the rights of the United States under the General Agreement, Subsidies Code and section 301 are being denied include stainless steel sheet and strip;[1] stainless steel plate;[2] stainless steel bar;[3] stainless steel wire rod;[4] and alloy tool steel.[5]

Requests for Other Relief

Pursuant to section 201 of the Trade Act of 1974, 19 U.S.C.A. 2251 (1978) specialty steel companies representing approximately 75 percent of U.S. production and the United Steelworkers of America representing more than 70 percent of the industry's employees filed a petition with the U.S. International Trade Commission (ITC) on July 16, 1975, seeking import relief from foreign producers. Following an affirmative ITC determination,[6] the President established a three-year import restraint program for specialty steel effective June 14, 1976.[7] Among the elements of this program were an orderly marketing agreement with Japan and quotas on imports from the European Economic Community.

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[1] TSUSA numbers 607.7610, 607.9010, 607.9020, 608.2600, 608.2900, 608.4300, 608.5700.

[2] TSUSA numbers 607.7605, 607.9005.

[3] TSUSA numbers 606.9005, 606.9010.

[4] TSUSA numbers 607.2600, 607.4300.

[5] TSUSA numbers 606.9300, 606.9400, 606.9505, 606,9510, 606.9520, 606.9525, 606.9535, 606.9540, 607.2800, 607.3405, 607.3420, 607.4600, 607.5405, 607.5420, 607.7205, 607.7220, 607.8805, 607.8820, 608.3405, 608.3420, 608.4905, 608.4920, 608.6405, 608.6420, 609.4520, 609.4550.

[6] U.S. International Trade Commision, USITC Pub. 756, "Stainless Steel and Alloy Tool Steel (TA-201-5)" (1976).

[7] 41 FR 24101 (1976).

The industry subsequently petitioned the ITC for an extension of the existing program, as authorized by section 203(i)(3) of the Trade Act of 1974, 19 U.S.C.A. 2253(i)(3) (978). While the ITC found in favor of the domestic industry,[8] the President chose to phase out the quotas over an eight month period ending February 1980.[9]

The industry is currently investigating unfair trade practices of various other foreign producers to determine whether to file antidumping or countervailing duty cases.

II. Foreign Practices Which are the Subject of This Petition

A. The U.S. Specialty Steel Industry

The U.S. specialty steel industry is separate and distinct from large integrated carbon steel producers because the end product is a high-alloy and high performance material not amenable to mass production. Furthermore, the U.S. specialty steel industry is a world leader in technological advancement and is cost competitive with its foreign competitors. Like the integrated carbon steel industry, however, the domestic industry has been losing market share as the result of the relentless assault of imports, which are frequently dumped or subsidized by foreign governments.

Technologically modern and efficient, the U.S. specialty steel industry is ready and able to compete with fair competition from all quarters. The unfair subsidy practices of foreign governments have, however, enabled foreign producers to capture an ever increasing share of the U.S. market over the past year-and-a-half. This is particularly significant since domestic demand has remained relatively constant or has declined over the same period. Nevertheless, in certain product areas, import penetration has exceeded the levels in existence in 1975 and 1976 when the U.S. government granted the industry import relief. In view of the fact that the U.S. specialty steel industry is relatively small, this degree of import penetration becomes particularly injurious.

B. Foreign Subsidy Practices—Generally

U.S. specialty steel companies must compete with foreign firms that are either owned by their governments, or that are the beneficiaries of generous financial assistance from their governments.

1. *Foreign Ownership and Control.* The American Iron and Steel Institute has reported that U.S. steel companies compete with foreign firms that are owned wholly or partly by their governments, and that specifically 30 percent of American steelmakers' Free World competition in terms of tonnage capacity is government owned (50 percent or greater equity participation).[10] This includes Sweden, which is 59 percent government-owned, Brazil (68 percent), the United Kingdom (79 percent), and Italy (57 percent).[11] Moreover, in France, the National Assembly recently approved a state takeover of Sacilor and Usinor (which recently acquired Creusot-Loire), the country's two major integrated steelmakers.

Generally government ownership has come about either through the conversion of massive debt into government equity holding or through direct government investment in its domestic steel industry. The former method has typified the growth of government control in such developed countries as France and the United Kingdom; the latter has typified the trent in developing countries such as Brazil.

Initially, foreign specialty steel companies were able to escape the growing trend toward government ownership. Because of the nature of the specialty steel production process, most foreign producers were smaller private-owned companies which specialized in stainless or alloy tool steelmaking. The trend of late, however, has been toward both merger and restructuring. Consequently, even the once privately-owned specialty steel producers are being swallowed up as nations continue the process of rationalizing and nationalizing their steel industries, a trend that has been hastened by the general depression in world steel markets.

2. *Government Assistance to Specialty Steel.* In addition to growing foreign Government involvement in the ownership and management of specialty steel, there has been a trend toward increased subsidization in the foreign industry over the past two years. The subsidization may be characterized in terms of forgiveness of producer's debt; preferential loans—both for purposes of expansion and export assistance; loan guarantees; inventory financing; regional assistance aid; capital grants; preferential utility or freight rates; and raw material subsidies.

Such financial assistance is not limited to the national governments. For example, the E.C. has for many years granted generous loans to the specialty steel industries of its member countries. These loans, aimed at facilitating the industry's rationalization process, are extended at interest rates well below those individual companies would have been able to receive in private financial markets. Moreoever, regional assistance aid in many producing countries is growing at a very rapid pace.

The U.S. specialty steel industry intends that this petition will bring to the attention of the U.S. government the extensive evidence of subsidization it has accumulated over the past two years. The industry hopes that once this evidence is reviewed by the Government in connection with the extent of injury it has suffered as a result of subsidization, the U.S. Government will use all of the tools at it disposal under U.S. and international law to challenge and halt these market distorting practices. The expansion of these subsidization practices by foreign governments virtually ensures the ability of foreign producers to remain viable even while sustaining losses resulting from below cost pricing in foreign markets indefinitely.

C. Foreign Subsidy Practices—Specific

1. *Austria.* Vereinigte Edelstahlwerke (VEW), the nationalized specialty steel company of Austria, posted a loss of Sch 553 m in 1979, and a Sch 1000 m loss in 1980.[12] These were the fifth and sixth consecutive years that the company has turned a loss. Six month 1981 figures show no improvement.

VEW has already received *Sch 1400 m* ($90 million) this year from Osterreichisch Industrieverwaltung AG (OIAG), the holding company for Austrian nationalized industries. It will also receive an additional *Sch 600 m* ($40 million) in the next few months. Voest Alpine, VEW's parent company, has received *Sch 1500 m* ($100 million) this year and will receive a further input of *Sch 500 m* ($33 million) in 1982. Total capital injection into the two companies will add up to *Sch 4000 m* ($260 million).[13] Prior to 1981, Voest and VEW had already received over *Sch 2000 m* ($130 million) in subsidies from the Austrian government.

Government funds will continue to be granted to OIAG as an indirect subsidy to the two companies. Prior to 1979, the companies had been able to meet their financial needs from their own

[8] U.S. International Trade Commission, USITC Pub. 968, "Stainless Steel and Alloy Tool Steel (TA-203-5)" (1979).

[9] 44 FR 41362 (1979).

[10] American Iron and Steel Institute, "Steel at the Crossroads" (1980) at 76.

[11] *Id.*

[12] *Journal of Commerce*, September 24, 1980.

[13] *Metal Bulletin*, November 10, 1981.

resources and opposed any government subsidization. However, the introduction of a West German subsidy program forced the companies to seek this aid in an effort to stay competitive. Although Austria has consistently been a leading exporter to the U.S. of alloy tool steel products, it is noteworthy that over the past nine months, Austrian imports of stainless products have increased 800 percent over the same period in 1980.[14]

2. *Brazil.* 1980 and 1981 were marked by the expansion of Brazil's leading specialty steel producers. Two of the country's largest producers, Companhia Acos Especias Itabira (Acesita) and Villares Industrias de Base SA (Vibasa), increased capacity to keep up with anticipated domestic demand. Vibasa, in fact, has just completed its new plant which has a capacity to produce 364,000 tons of specialty steel per year. On the other hand, Acesita, Brazil's largest specialty steel producer, has just completed expansion of its one plant, a move which has increased its annual capacity [15] by 300,000 tons. However, because demand has become sluggish in 1981 these companies have begun concentrating on exports. Acesita is agong 25 steel companies participating in a *government program to promote exports* with the governments' iron, steel and nonferrous metals council (CONSIDER) and CACEX, the Bank of Brazil's export department. The companies are expected to receive financial aid in the form of *credit advances.*[16] A principal target of this export effort is the North American market, particularly the United States where through the first three quarters of 1981, imports of Brazilian stainless bars have already exceeded 1980 totals.[17]

3. *Sweden.* In the mid-1970s, the Swedish Government provided a broad array of subsidy programs to benefit its specialty steel industry. In attempting to increase industrial development in the most climatically difficult parts of Sweden, the government generously provided the industry localization loans, investment grants and transport subsidies. To aid stabilization, investment reserve funds were accorded special tax treatment and financial support was given to encourage inventory building. To further improve the industry's competitive advantages, inventories were given special valuation treatment for tax purposes, while certain companies received direct government funds. At the time, the Swedish specialty steel industry was comprised of eight or nine privately-owned producers. The structure of the industry began to change drastically in the late 1970s.

Following some very poor years in 1975 and 1976, the Swedish specialty steel industry began a reorganization. The Government established a guarantee program in 1977 to aid the restructuring effort. The program included an authorization of about *$275 million* in loans to the specialty steel industry.[18] The restructuring culminated in 1979 with a merger of Granges Nyby with the stainless steel activities of Uddeholm to form a new stainless company Nyby Uddeholm AB.[19] The merger created the second largest stainless steel producer in a Scandinavian country with an output well in excess of 100,000 tpy.[20] As part of the merger the Swedish Parliament permitted Uddeholm to transfer a government loan of *Skr 400 m* ($85 million) to the new company.[21] In addition, the new company was to receive further state loan guarantees amounting to *Skr 75 m* ($19 million).[22] In 1979, the Swedish government also granted SKF Steel, its largest specialty steel producer, *Skr 35 m* ($9 million) in subsidies and loans toward the development of its Wiberg plant.[23] It should be noted that the Swedish economy consumes a relatively small share of its specialty steel production (less then twenty percent). The remaining production is exported.[24] Sweden was the second largest source of U.S. specialty steel imports in 1980 oveall, as well as the principal source of U.S. alloy tool steel imports. Import penetration of alloy tool steel from Sweden alone has consistently exceeded ten percent since import relief was removed. Confidential pricing data has revealed Swedish alloy tool steel priced anywhere from 15 to 30 percent below U.S. prices.

4. *Belgium.* The Belgian government recently fell after a government coalition split on the issue of state aid for the country's ailing steel industry. The government, which had already pumped about *Bfr 25 billion* ($610 million) into its two largest companies, had agreed earlier in the year to provide massive state aid to facilitate the merger of Cockerill and Hainaut-Sambre, the nation's two largest steel producers. The Belgian plan involves an injection of almost *Bfr 11.2 billion* ($300 million) to subsidize future losses by the newly merged companies.[25] The government had already bailed out Hainaut-Sambre once before from possible bankruptcy by turning *Bfr 2 billion* ($55 million) in short-term credits into capital. The government has an *80 percent interest* in the new company. More recently the government provided a *Bfr 5.2 billion* ($129 million) guarantee of a commercial loan to Cockerill-Sambre.[26]

Despite the cloud hanging over its future, Cockerill-Sambre has revealed its plan to build a new specialty steel works at Charleroi. The plan is illustrative of the trend on the part of government-owned producers to expand into the specialty steel area.

Cockerill-Sambre also manages specialty steel maker Laminoirs de Jemappes, a company the government had earlier rescued from bankruptcy. Jemappes on 1981 received *bfr 100 m* ($2.5 million) for improvements to its HR bar mill.[27]

Meanwhile SNS, the state-owned steel conglomerate, set up in 1981 as the unbrella for all public holdings in steel, has obtained *$250 million* in syndicated loans for future investments in their holdings.[28] Capital raised from these loans may flow directly to Belgian producers as an indirect government subsidy. There are also indications that ALZ another major stainless producer will benefit from Government largesse. The national steel planning committee has recently approved investments of *Bfr 3,546 m* ($90 million) for the stainless producer.[29]

5. *France.* Although production of specialty steel products represents less than 15 percent of the French steel industry's output, many producers view specialty steel as the only hope for real profits.[30] As a result France's largest integrated producers are grabbing a large share of the specialty steel business, encouraged financially by French government loans and grants. About 50 percent of French specialty steel production is exported.[31]

Included in the government aid has been a *Fr 500 m* ($100 million) *low cost loan* to help launch a new specialty steel manufacturer that groups together Creusot-Loire Dunes, a specialty steel

[14] *Metal Bulletin,* August 7, 1981.

[15] American Metal Market, August 10, 1981 at 8A.

[16] *Id.*

[17] *Id.*

[18] *American Metal Market,* November 15, 1977.

[19] *Metal Bulletin,* June 26, 1979.

[20] *Metal Bulletin,* March 13, 1979, at 37.

[21] *Metal Bulletin,* June 5, 1979.

[22] *Metal Bulletin,* June 15, 1979.

[23] *Metal Bulletin,* August 24, 1979.

[24] U.S. International Trade Commission, USITC Pub. 968, "Stainless Steel and Alloy Tool Steel (TA-203-5)" A-49 (1979).

[25] *Metals Daily,* June 3, 1981 at 1.

[26] *World Business Daily, August 17, 1981.*

[27] *Metal Bulletin,* 1981.

[28] *Wall Street Journal,* October 9, 1981.

[29] *Metal Bulletin,* October 30, 1981.

[30] *The Economist,* May 24, 1980.

[31] U.S. International Trade Commission, USITC Pub. 968, "Stainless Steel and Alloy Tool Steel (TA-203-5)" A-49 (1979).

subsidiary of Creusot-Loire with some of the operations of Chiers-Chatillion, an independent specialty steel producer.[32] Usinor, France's largest general-steel maker, now in the process of being fully nationalized, will hold 75 percentg of the new company. The state loans are at rates of interest *pegged to profitability*. Both Creusot-Loire Dunes and Chiers-Chatillion are losing money, meaning low or no interest will be charged on the loans. The new subsidiary will be among the largest specialty steel producers in Europe.

Similar assistance has been promised for the transfer of another major stainless steel producer, Ugine Aciers, to France's other major integrated steel producer, Sacilor.[33] However, in view of the fact that the French government has recently approved a takeover of Sacilor, it is likely that further merger negotiations will be directly with the French government.[34] Similar takeovers by state-run companies of privately owned subsidiaries have been carried out in the past in Europe, and they have usually coincided with substantial financial support from the foreign government. It should also be noted that President Mitterrand has recently indicated that the government would provide some *Fr 500 m* ($100 million) in aid to some of the smaller steelmakers which are not being nationalized.[35] Either way French specialty steel is bound to benefit.

6. *Italy*. The Italian steel industry, which as of 1980 was 57 percent government owned,[36] has hovered on the brink of disaster. Finsider, the nationalized steel holding company whose output accounts for 54 percent of all Italian production—including a significant proportion of specialty steel—lost $750 million in 1979 and $1 billion in 1980. At the end of the last year, the company had debts of $8.5 billion. In June of 1981, the government agreed to a $6 billion package for the Italian steel industry, of which about $5 billion would go to Finsider as part of a major reorganization. At least 50 percent of the aid will be in the form of *interest-free government loans*. As part of the reorganization, all of Finsider's specialty and general tube production will be shifted to Dalmine, one of six sector operating companies. Plant investment at Dalmine over the next three years will exceed *120 billion lira* ($120 million).[37] The Finsider aid plan calls for steels.[38]

Moves are also underway to nationalize remaining portions of the specialty steel sector. In addition to the state sector companies, the specialty steel industry comprises a number of private firms, notably Fiat's Teksid subsidiary. There are indications that as part of the rationalization, Teksid will merge with Italsider (95 percent owned by Finsider), thereby bringing that producer within the state sector.[39] Finsider has in fact already signed a cooperation agreement with Teksid.[40] If the merger does take place, Teksid too would benefit from the massive government handouts available to the Finsider group.

7. *United Kingdom*. In 1979, British Steel Corporation undertook an ambitious plan to gain prominence in the world's specialty steel market. The increase of stainless steel melting capacity at Sheffield has posed a formidable challenge to U.S. stainless producers. Over *£ 150 million* ($300 million) was spent by the British Government to modernize and expand BSC's stainless capacity and as a result BSC now holds approximately 70 percent of the U.K. market for hot-rolled stainless coil.[41] The UK private sector stainless producers account for only 8 percent of the market; the remainder of the marketplace is left to imports. BSC stainless exports have been running at about 45 percent of its total stainless output. Sheffield Division continued to turn a loss in 1979–1980[42] Total state aid to BSC in the form of interest relief alone during the period since BSC's formation in 1967 has exceeded *£ 1000 m* ($2.5 billion).[43] BSC Stainless has undoubtedly benefited from this relief.

British Steel Corp. has not been the only specialty steel beneficiary of government largesse. The Sheffield-based Aurora group secured a UK government grant in 1981 of *£450,000* ($1 million) and a loan of *£836,000* ($1.7 million) from the E.C. for its specialty steel interest.[44] The funds were to be used in the investment of new plants and the concentration of most of the group's steel production.

The EEC in its function as overseer of its member states' subsidy programs has just approved *£360m* ($800 million) in additional aid to British Steel.[45] The aid is intended to help return BSC to profitability. Stainless exports to the U.S. have increased dramatically over the past 9 months. 1981 exports through September have already doubled 1980 totals, and there is no reason to expect a decline in the near future as subsidies continue to flow the company's way.

III. Legal Justification for This Petition

A. Foreign Subsidies to Specialty Steel Producers Are Inconsistent With International Obligations Undertaken by Signatories to the General Argeement and the Subsidies Code.

The acts, policies and practices of the aforementioned foreign governments are inconsistent with obligations undertaken by those countries as signatories to the Subsidies Code. They are in violation of commitments in the Code that the parties avoid any subsidies which cause or threaten to cause injury to another signatory. Specifically, Article 8 of the Subsidies Code provides that singatories agree that they shall seek to avoid causing, through the *use of any subsidy*, injury to the domestic industry of another signatory. Moreover, Article 11, though recognizing that subsidies *other than export subsidies* are widely used as important instruments for the promotion of social and economic policy objectives, provides that signatories should also recognize that such subsidies.

> may cause or threaten to cause injury to a domestic industry of another signatory or serious prejudice to the interests of another signatory or may nullify or impair benefits accruing to another signatory under the General Agreement, in particular where such subsidies would adversely affect the conditions of normal competition. *Signatories shall therefore seek to avoid causing such effects* through the use of subsidies (emphasis added).[46]

Thus, in two separate articles, the Code establishes an obligation that parties should seek to avoid causing or threatening to cause injury through the granting of domestic subsidies. The Code enumerates several examples of such subsidies including: government financing of commercial enterprises through grants, loans or guarantees, government provision or government financing provision of utility or other support services; government financing of research and development programs; fiscal incentives; and government subscription to or provision of, equity capital[47] This list is intended to be merely illustrative and not exhaustive.

Article 12 of the Subsidies Code provides for consultations between a

[32] *Financial Times*, March 20, 1981.
[33] *Metal Bulletin*, October 16, 1981.
[34] *American Metal Market*, August 10, 1981 at 6A.
[35] *Id.*
[36] American Iron and Steel Institute, "Steel at the Crossroads" (1980) at 76.
[37] *Journal of Commerce*, September 22, 1981.
[38] *Metal Bulletin*, November 3, 1981.
[39] *Metal Bulletin*, June 9, 1981.
[40] *Metal Bulletin*, November 3, 1981.
[41] *Metal Producing*, October 1979 at 43.
[42] *Metal Bulletin*, August 1, 1981.
[43] *Metal Bulletin*, September 26, 1981.
[44] *Metal Bulletin, February 24, 1981.*
[45] *Metal Bulletin*, November 17, 1981.
[46] Subsidies Code, Article 11 ¶ 2.
[47] Subsidies Code, Article 11 ¶ 3.

signatory complaining of (1) an export subsidy being granted or maintained by another signatory in a manner inconsistent with the Code;[48] or (2) *any subsidy granted or maintained by another signatory where the effect causes injury to its industries, nullification or impairment of benefits under the GATT, or serious prejudice to its interests as a GATT signatory* (emphasis added).[49] Furthermore, the Code in Article 13 provides that if consultation under Article 12 fails to resolve an issue, the signatory may refer the matter to the GATT Committee of signatories for conciliation and dispute settlement under procedures provided for in the General Agreement. If these vehicles fail, the Committee may make final recommendations to the parties as may be necessary to resolve the issue. If these recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the nature of the adverse effects found to exist.

In sum, the Subsidies Code not only recognizes an *obligation* on the part of the signatories to avoid the use of harmful subsidies, it also provides a *hierarchy of remedies* for signatories who are adversely affected by the granting of such subsidies.

Section 301(a)(2)(A) of the Trade Act of 1974, as amended, requires the President to respond to "any act, policy or practice of a foreign country that is *inconsistent with the provisions of, or otherwise denies benefits* to the United States under, any trade agreement.[50]

The ligislative history of the Act provides that

> * * * the benefits to the United States from the various nontariff agreements negotiated in the MTN depend very heavily on the vigorous insistence by the United States that its rights be secured and that other countries carry out their obligations under the agreements. Absent such insistence, including the use of dispute settlement procedures, agreements such as have been negotiated on subsidies, countervailing duties * * * will become largely one-way streets whereby the United States assumes obligations without reciprocity and whereby the benefits for international trade are substantially reduced * * *[51]

Petitioners contend that the subsidies granted by foreign governments to their specialty steel producers are inconsistent with obligations set forth in Articles 8 and 11(2) of the Subsidies Code in that:

(1) They have caused injury to the domestic specialty steel industry of the United States; and

(2) They threaten to cause injury to the U.S. domestic industry.

An extensive discussion on the extent of such injury is provided below.

B. Foreign Subsidies to Specialty Steel Producers Are Unreasonable and Also Burden and Restrict U.S. Commerce

Regardless of whether the foreign subsidies in question are inconsistent with obligations under the Subsidies Code, section 301(a)(2)(B) authorizes the President to respond to any "unreasonable" foreign practices that burden or restrict U.S. commerce. The specialty steel industry contends that the subsidies in question are unreasonable and have seriously restricted the growth of the U.S. industry. In some instances, high levels of imports have caused domestic producers to withdraw completely from production of certain product lines.

For purposes of this section, unreasonable acts are defined as acts "which are not necessarily illegal, but which nullify or impair benefits accruing to the United States under trade agreements or which otherwise discriminate against or hinder U.S. commerce." [52] Among the acts, policies or practices originally contemplated by the Trade Act of 1974 are subsidies on foreign exports or *other incentives having the effect of subsidies* on foreign exports which have the effect of substantially reducing sales of competitive products in the United States.[53] Examples of such incentives include: explicit cash payments; implicit payments by means of loans at preferential interest rates; implicit payments through provisions of goods and services at prices or fees below market value; or even subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.[54]

All acts, policies or practices covered by section 301, as enacted in 1974, are also covered by section 301 as revised by the Trade Agreements Act of 1979.[55] Moreover, the broad inclusive nature of the new language in section 301(a)(2)(B) also covers acts or practices, and applies to countries, *not* subject to a trade agreement.[56]

Petitioners recognize that under this alternative legal theory, they must demonstrate, in addition to unreasonableness, that the challenged practices burden or restrict U.S. commerce. Such a showing, however, would be less rigorous than the showing of injury required under the Subsidies Code, which provides for an examination of the impact of the subsidized imports on the domestic industry based on all relevant economic factors including price undercutting decline in output, sales, market share, profits and employment. Petitioners raise this alternative theory to show that, regardless of whether or not the GATT finds it appropriate to challenge foreign subsidies under the Subsidies Code, these subsidies are nevertheless actionable under U.S. legislation based on a showing of "unreasonableness" and a showing that they burden or restrict U.S. commerce. The industry further contends that the U.S. Government has an obligation under section 301 to respond, either in the context of the GATT or unilaterally if the multilateral approach fails.

IV. Economic Justification for This Petition: Injury to the Speciality Steel Industry

This section describes the nature of the injury needed to satisfy the requirements under the Subsidies Code. By implication this section also shows that the less severe requirements of section 301(a)(2)(B) are clearly met.

The U.S. specialty steel industry is suffering injury as a result of imports. The indices of economic vitality reflect that the conditions of the industry are deteriorating at an increasingly rapid pace. The trend shows that importers will capture a significantly larger percentage of the domestic market. The data suggests that the importers are able to capture the domestic market because they charge prices well below U.S. prices, in large part because foreign producers are heavily subsidized by their governments. If action is not taken to deal with the problem, there will be further deterioration of the domestic industry and an even higher domestic unemployment rate for the specialty steel industry than the current rate of over 21 percent.

A. The Economic Health of the Domestic Specialty Steel Industry Is Deteriorating

The results of a survey of the industry will be submitted shortly describing the specialty steel industry's production and utilization, the number of employes and hours worked, and the profit and loss

[48] Subsidies Code, Article 12 ¶ 1.

[49] Subsidies Code, Article 12 ¶ 3.

[50] 19 U.S.C. 2411 (Supp. III 1979).

[51] *See Trade Agreements Add 1979: Report of the Committee on Fiance*, S. Rept. No. 96-249 (96th Cong., 1st Sess.) 236 (1979) (hereinafter S. Rept.).

[52] S. Rept. at 234.

[53] *Id.* at 235.

[54] *See Trade Act of 1974: Report of the Committee on Finance*, S. Rept. No. 93-1298 (93rd Cong., 2nd. Sess.) 164 (1974).

[55] S. Rept. at 236.

[56] S. Rept. at 237.

figures. Petitioners expect the results of this survey to show a severe and growing deterioration in the industry's profits, production, and employment levels.

B. Imports are Injuring the Domestic Industry

In February of 1980 import relief was terminated. Petitioners in its request for government intervention will examine the injury to the domestic industry caused by imports from that time to the present. This time period is relevant because it illustrates the difficulty our modern, efficient industry has competing with subsidized imports.

1. *The Domestic Industry Has Been Injured by a Dramatic Increase in Import Penetration.* In January 1976 the United States International Trade Commission (ITC) made a finding that imports were injuring the domestic industry in the context of section 201 of the Trade Act of 1974. There is a startling similarity between the level of import penetration [52] for the period of time relied on by the ITC to make its injury finding in 1976, and for the period of time since import relief terminated in February, 1980.

Charts 1–6 present the levels of import penetration for the second quarter of 1980 through the third quarter of 1981. The second quarter of 1980 was selected because the relief terminated in February, 1980 and the effects of that termination would begin to appear during the second quarter of 1980. Charts 1–6 also present the levels of import penetration for 1972 through the third quarter of 1975. The third quarter of 1975 was selected because the ITC relied on data through the third quarter of 1975 to make its 1976 injury finding under section 201 of the Trade Act of 1974. The levels of import penetration for these two time periods have been superimposed on Charts 1–6 so that the trends of import penetration for these two time periods can be compared.

The similarity in trends of import penetration for the 1972–75 period and the 1980–81 period are apparent in Chart 1. Chart 1 compares the import penetration for the 1972–75 period and the 1980–81 period for all specialty steel products. After import relief terminated in February of 1980, there was an initial decline in import penetration during the remainder of 1980. However, the increase in import penetration for all specialty steel products has almost doubled from the first quarter 1981 import penetration of 9.4 percent, to the third quarter 1981 import penetration of 17.0 percent.

The import penetration for 1972–75 is comparable. There was a decline during 1972 and 1973, however, the import penetration increased during 1974 and continued to increase to 19.9 percent during 1975. Significantly, at the time the ITC made its injury findings in 1976, the import penetration was only 2.9 percent higher than the figure for the third quarter of 1981.

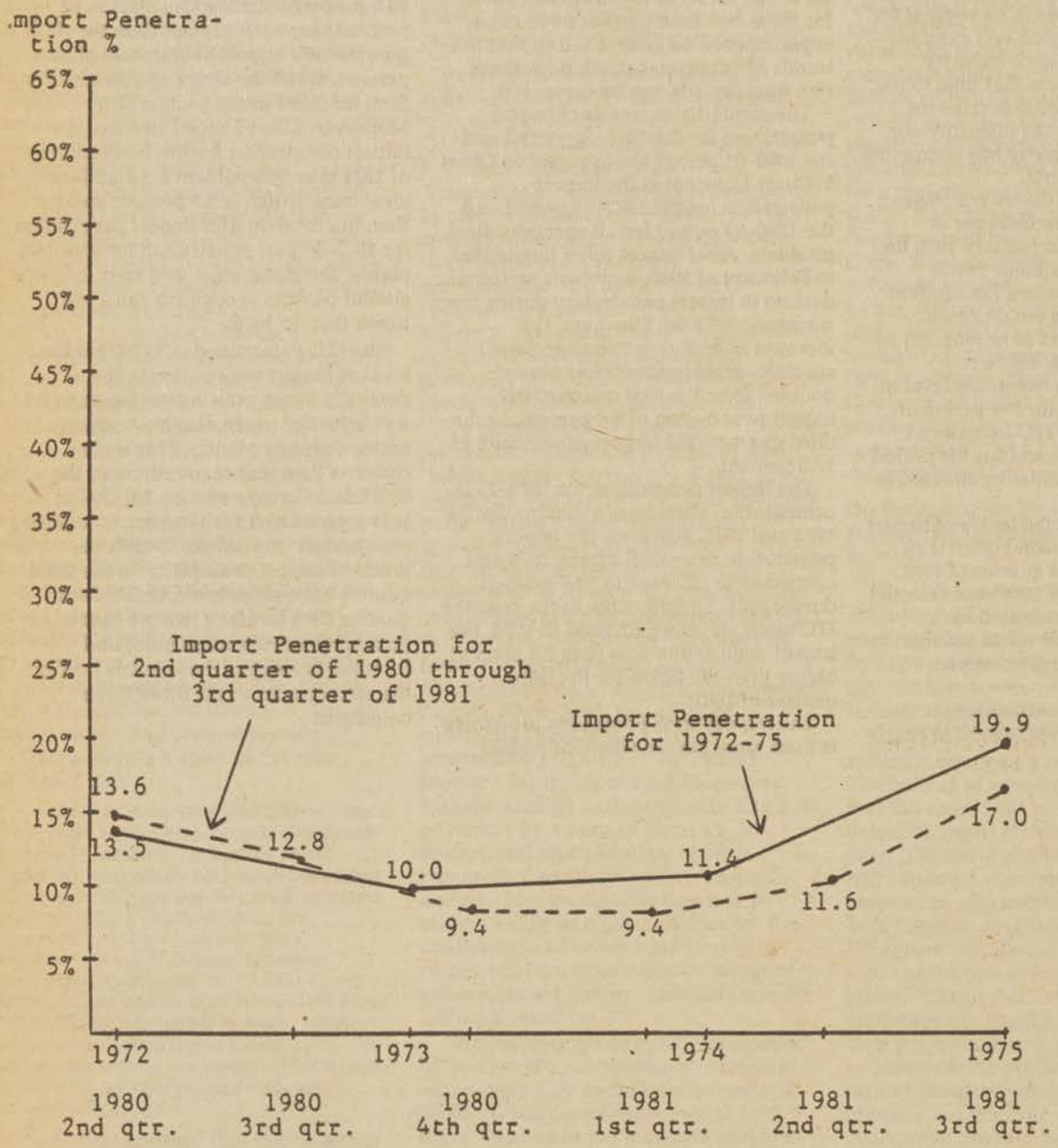
The impact on the domestic producers is even more severe when individual product lines are examined. With respect to stainless steel bars and alloy tool steel, Charts 5 and 6 reflect greater import penetration levels for the second quarter of 1980 through the third quarter of 1981 than for the entire 1972–75 period. As illustrated in Chart 6, the third quarter 1981 import penetration of 39.5 percent for alloy tool steel is *11 percentage points* greater than the third quarter 1975 import penetration of 28.5 percent, when the industry successfully filed for relief under section 201. Moreover, Chart 5 illustrates that the import penetration for the third quarter of 1981 was 26.6 percent for stainless steel bars, which is 2.5 percent greater than the third quarter import penetration for 1975. Import penetration for stainless plates, sheet and strip, and rods follow a similar pattern, though the rates are lower than in 1975.

The ITC determined in 1976 that the level of import penetration in the domestic injury was increasing as to be a *substantial* cause of *serious* injury under an injury standard far more rigorous than that required under the Subsidies Code or section 301. Relief was granted and the increase in import penetration was halted. In 1981 the levels of import penetration in the third quarter have already exceeded third quarter 1975 levels in two product lines (tool steel and stainless bars) and threaten to surpass these levels during the next quarter in the other three categories.

[52] Imports as a percentage of consumption. The consumption equals domestic producer's shipments plus imports, less exports.

CHART 1

The Level of Injury from Imports:
Superimposing Import Penetration Data
for Total Speciality Steel
from 1972-75 and 1980-81 1/

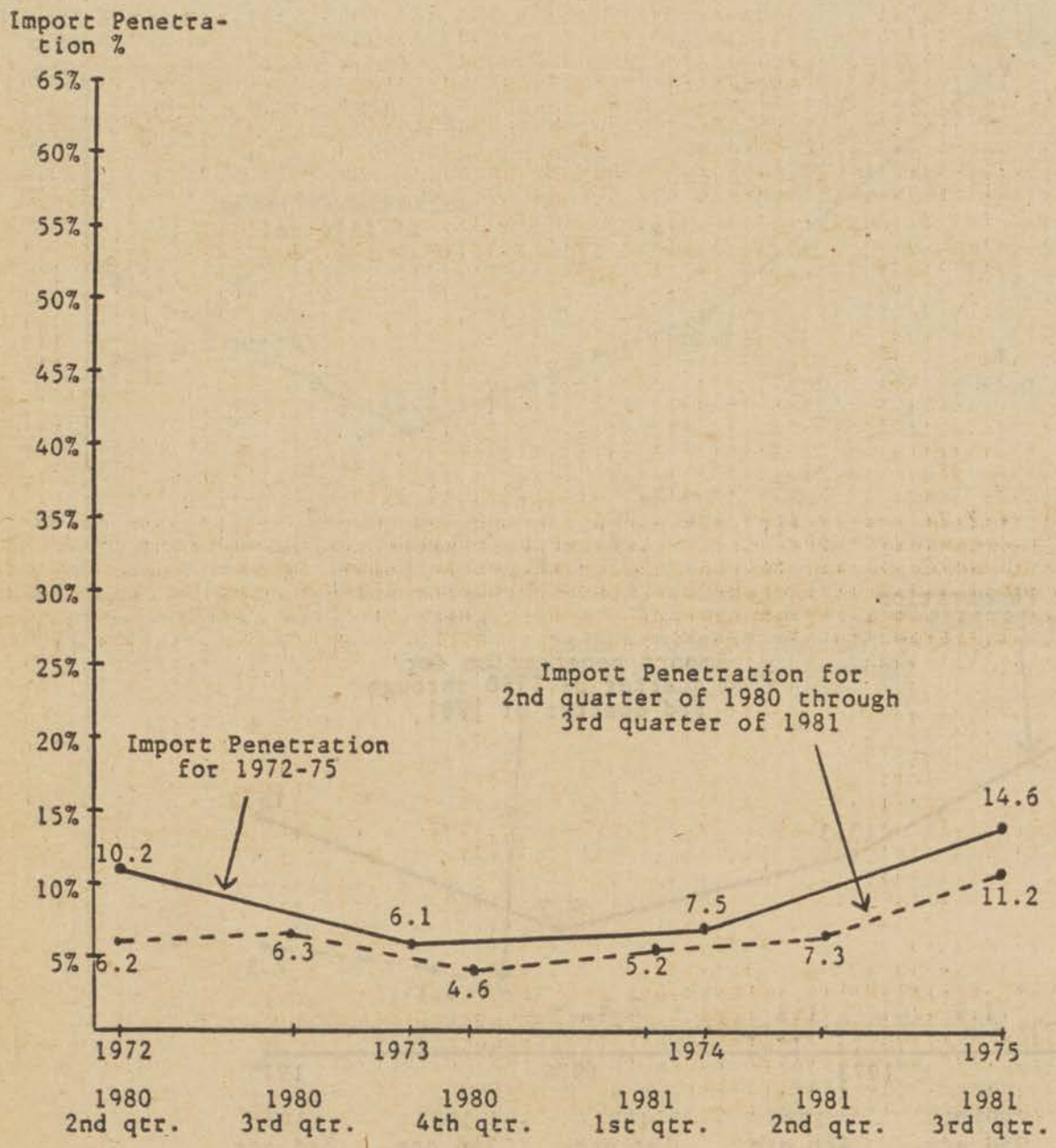


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 1.

CHART 2

The Level of Injury from Imports: Superimposing Import Penetration Data for Stainless Steel Sheet & Strip from 1972-75 and 1980-81 1/

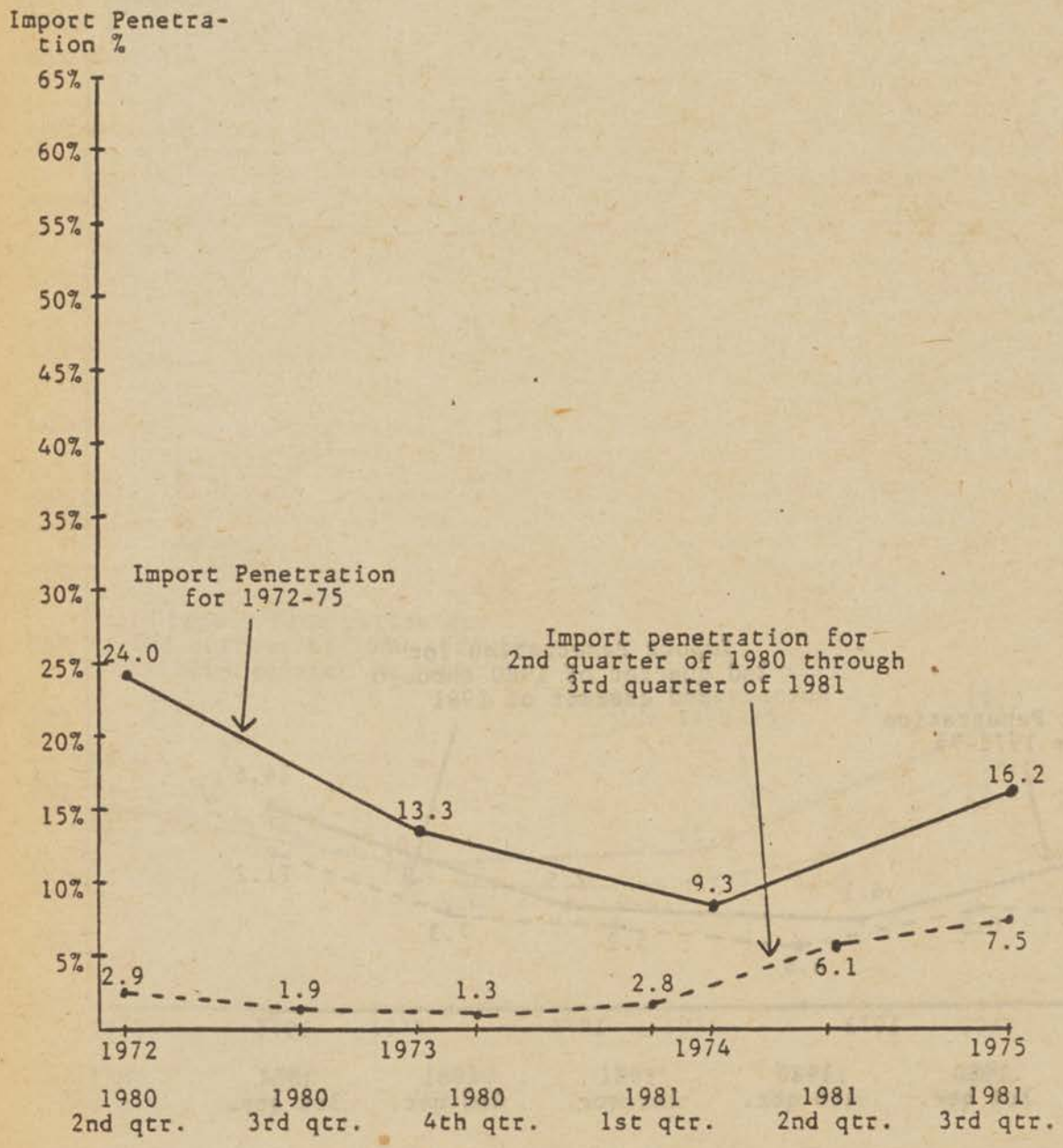


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 2.

CHART 3

The Level of Injury from Imports: Superimposing Import Penetration Data for Stainless Steel Plates from 1972-75 and 1980-81 1/

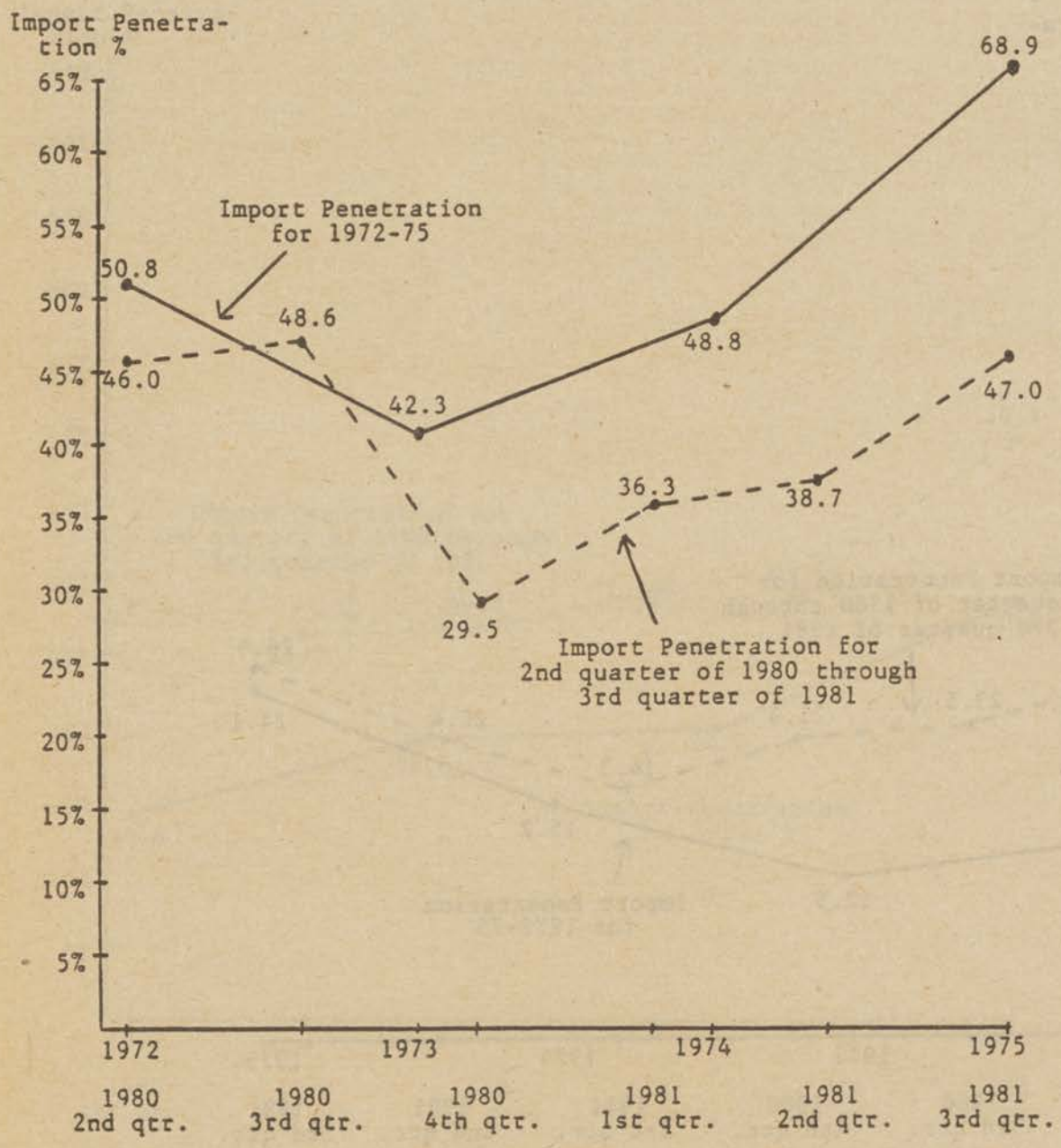


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 3.

CHART 4

The Level of Injury from Imports:
Superimposing Import Penetration Data
for Stainless Steel Rods
from 1972-75 and 1980-81 1/

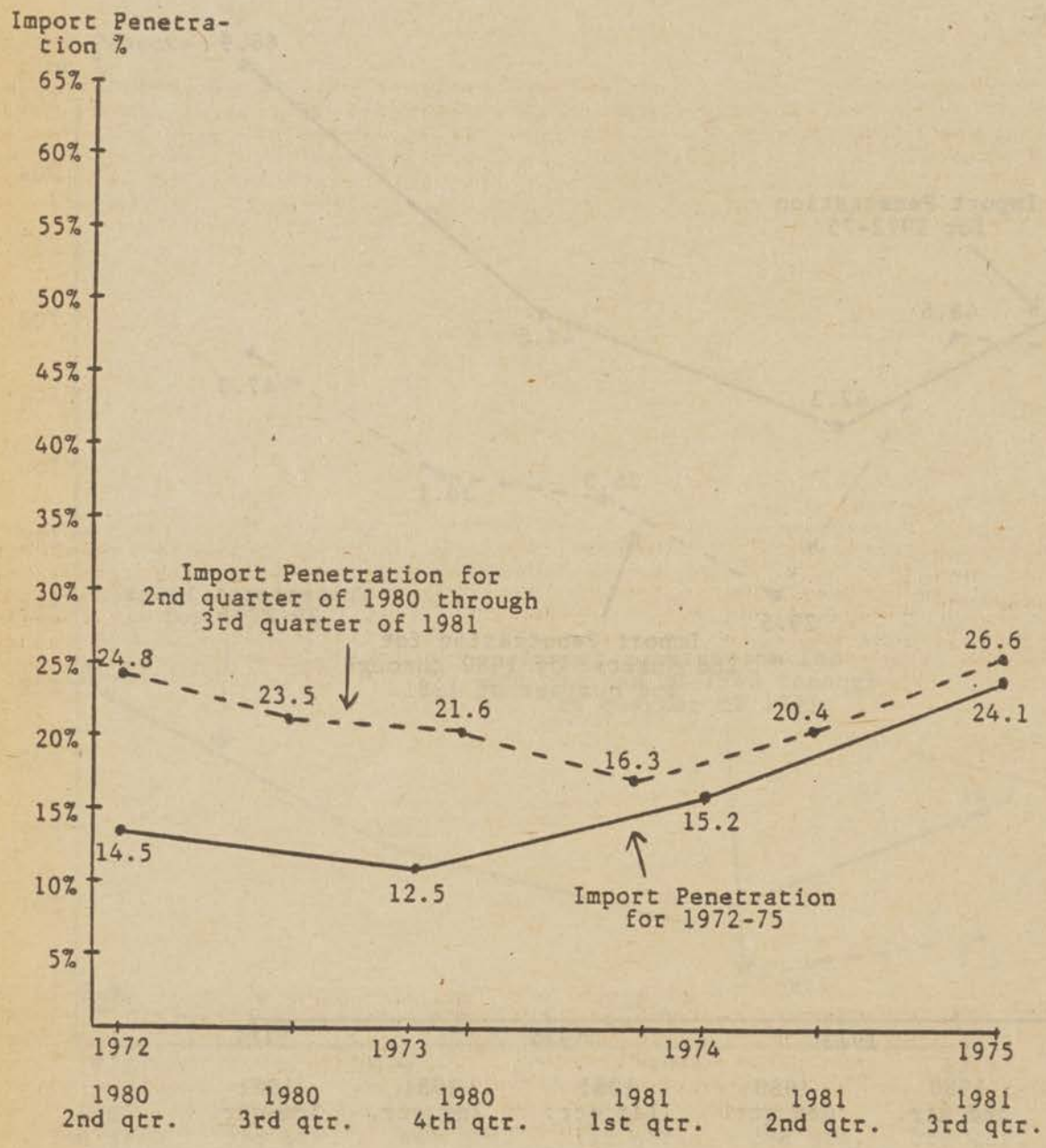


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 4.

CHART 5

The Level of Injury from Imports:
Superimposing Import Penetration Data
for Stainless Steel Bars
from 1972-75 and 1980-81 1/

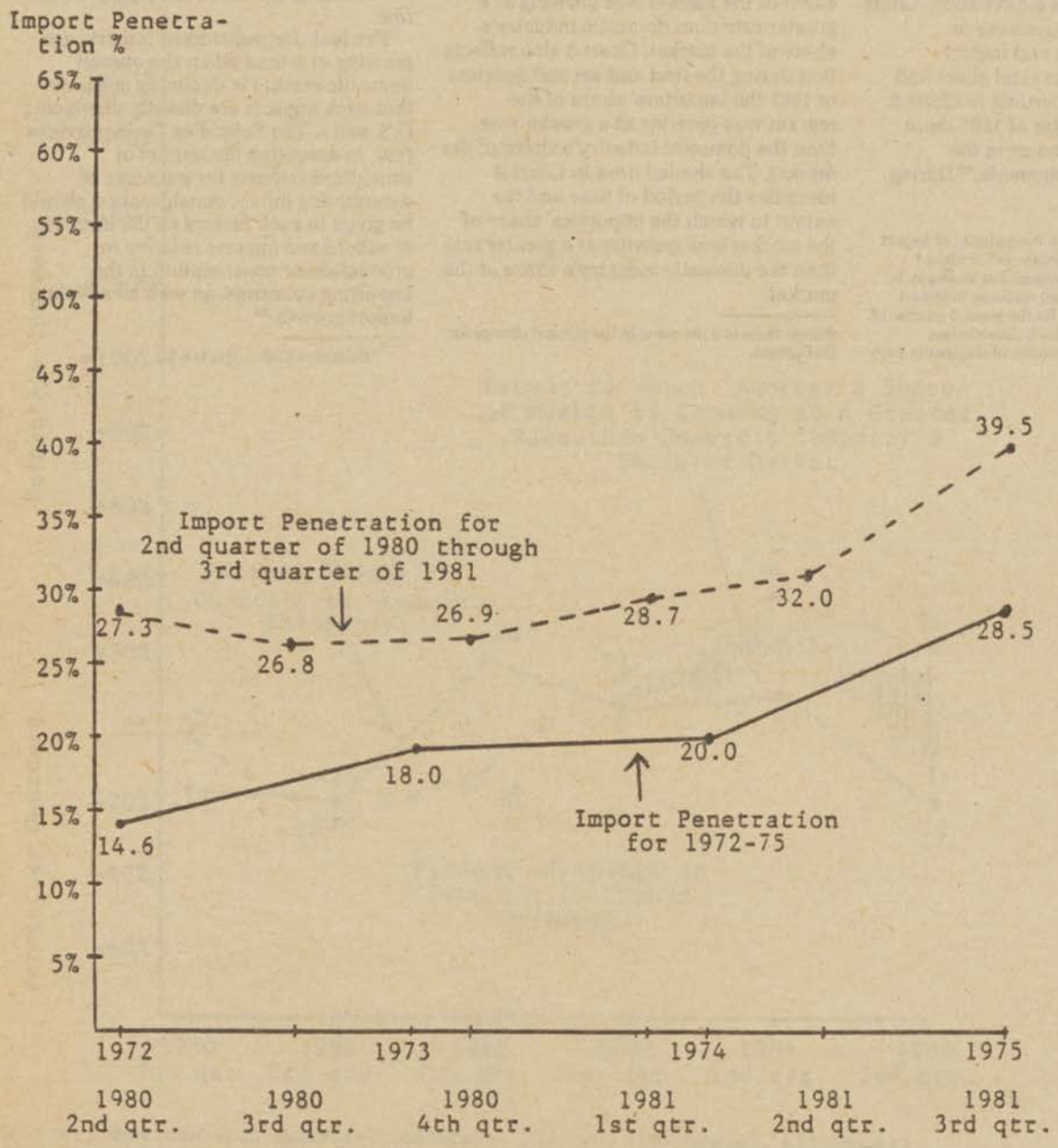


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 5.

CHART 6

The Level of Injury from Imports: Superimposing Import Penetration Data for Alloy Tool Steel from 1972-75 and 1980-81 1/



Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 1, Appendix 2 for data which serves as basis for Chart 6.

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2. *Imports Have Grown in a Declining Market.* Charts 7–12 indicate that imports are taking a growing share of a declining market for all specialty steel products. To understand how this conclusion is reached the nomenclature for Charts 7–12 must be explained. Chart 8 will be used for this explanation. Chart 8 graphs the percent increase or decrease in domestic and import shipments of stainless steel sheet and strip for 1980–81. According to Chart 8, during the third quarter of 1981 there was a 23 percent increase in the quantity of import shipments.[53] During the third quarter of 1981, there was a 21 percent decrease in the quantity of domestic shipments. Consequently, during the third quarter of 1981 the percent change for imports was greater than the percent change for domestic shipments. Therefore, the importers' share of the market was growing at a greater rate than domestic industry's share of the market. Chart 8 also reflects that during the first and second quarters of 1981 the importers' share of the market was growing at a greater rate than the domestic industry's share of the market. The shaded area in Chart 8 identifies the period of time and the extent to which the importers' share of the market was growing at a greater rate than the domestic industry's share of the market.

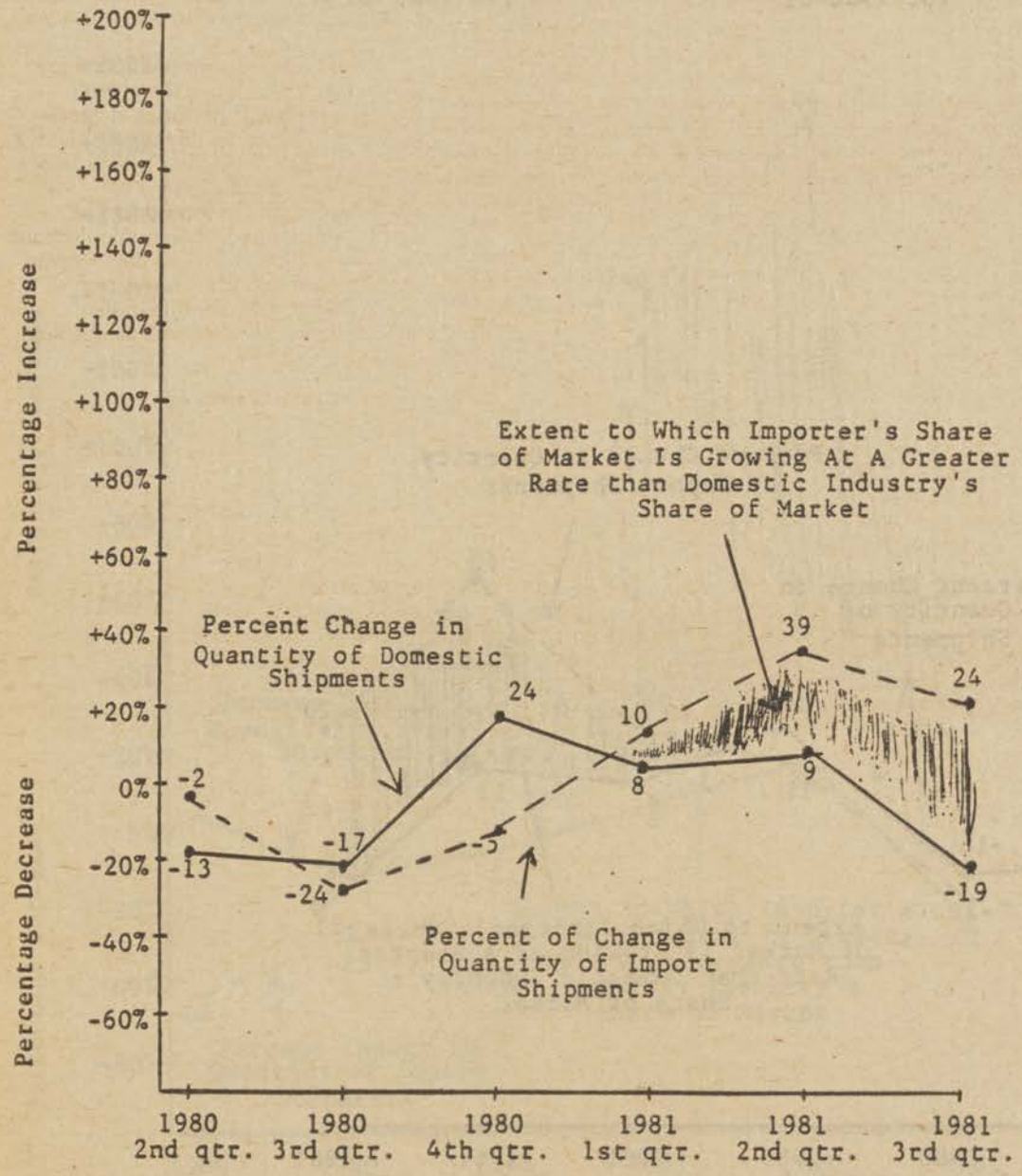
Chart 7 indicates a trend of specialty steel importers increasing their share of the market at a greater rate than the domestic industry is increasing its share of the market for all specialty steel products from the first quarter of 1981 through the third quarter of 1981. Charts 7–12 confirm the trend in *every product line.*

The fact that subsidized imports are growing at a time when the overall domestic market is declining suggests that such imports are directly displacing U.S. sales. The Subsidies Code provides that, in assessing the impact of subsidized imports for purposes of determining injury, consideration should be given to such factors as the increase of subsidized imports *relative to* production or consumption in the importing countries, as well as absolute import growth.[54]

[53] All percent increases in the quantity of import shipments represent an increase in the import volume from the previous period. For example, in Chart 8, a drop in the percent increase in import shipments from 62 percent for the second quarter of 1981 to 23 percent for the third, nevertheless represents an increase in volume of shipments even though there is a decrease in the percent change for that period.

[54] Subsidies Code, Article 6 ¶ 2.

Growth of Imports in a Declining Market:
Percent Change in Quantity of
Import and Domestic Shipments of
Combined Specialty Steel Products
for 1980-81 1/

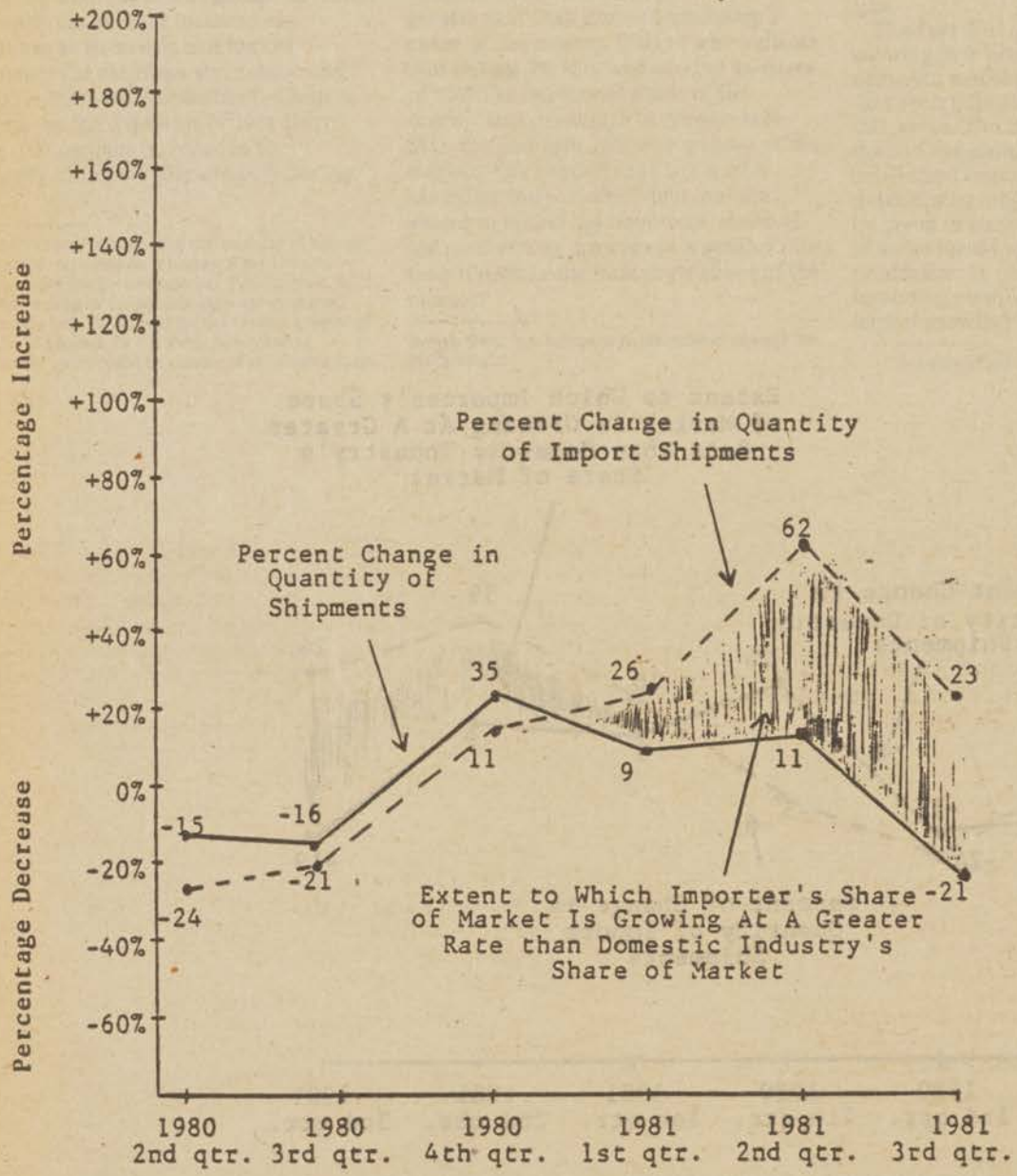


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 2, Appendix 2 for data which serves as basis for Chart 7.

CHART 8

Growth of Imports in a Declining Market: Percent Change in Quantity of Import and Domestic Shipments of Stainless Steel Sheet and Strip for 1980-81

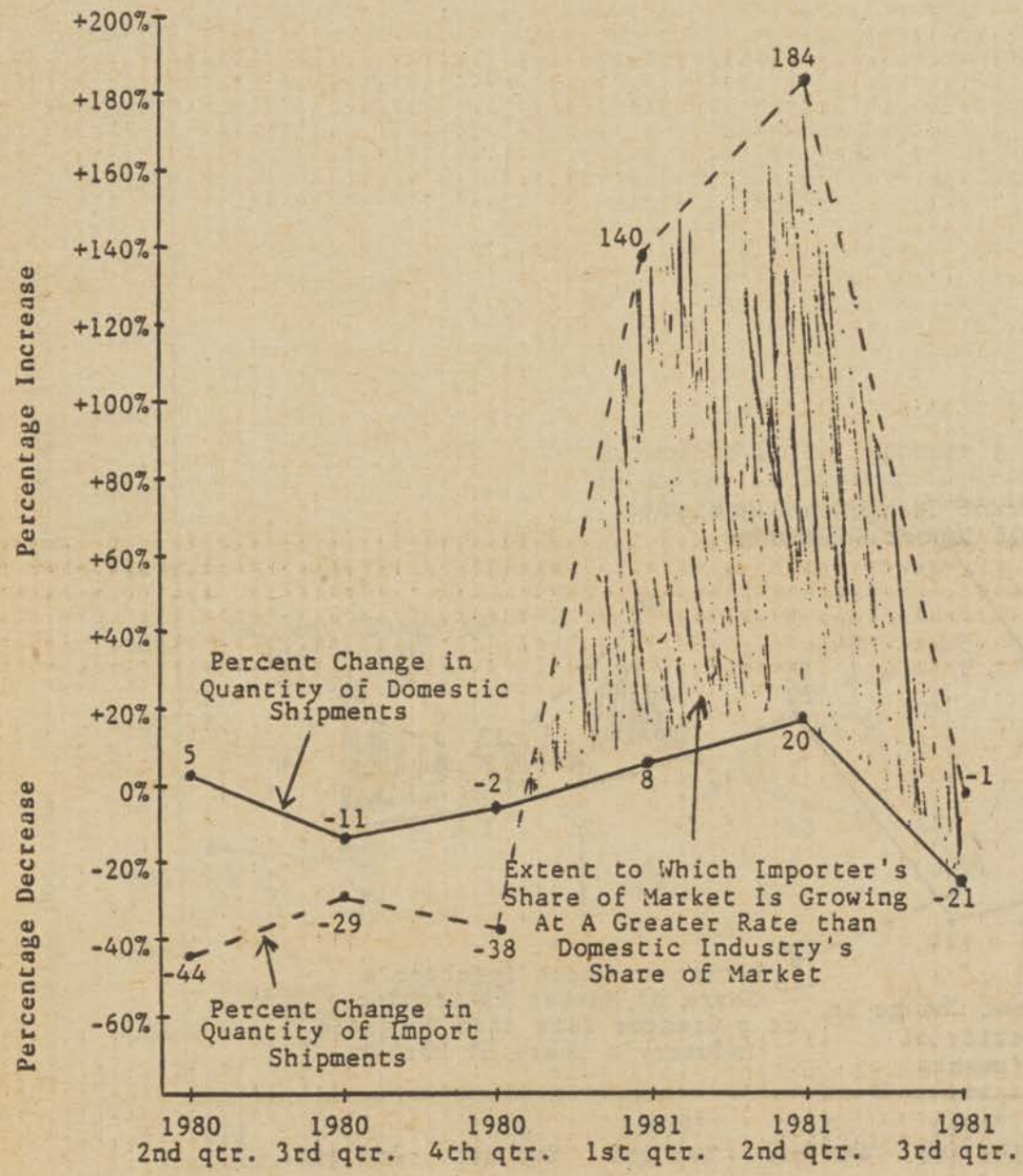


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 3, Appendix 2 for data which serves as basis for Chart 8.

CHART 9

Growth of Imports in a Declining Market: Percent of Change in Quantity of Import and Domestic Shipments of Stainless Steel Plates for 1980-81 1/

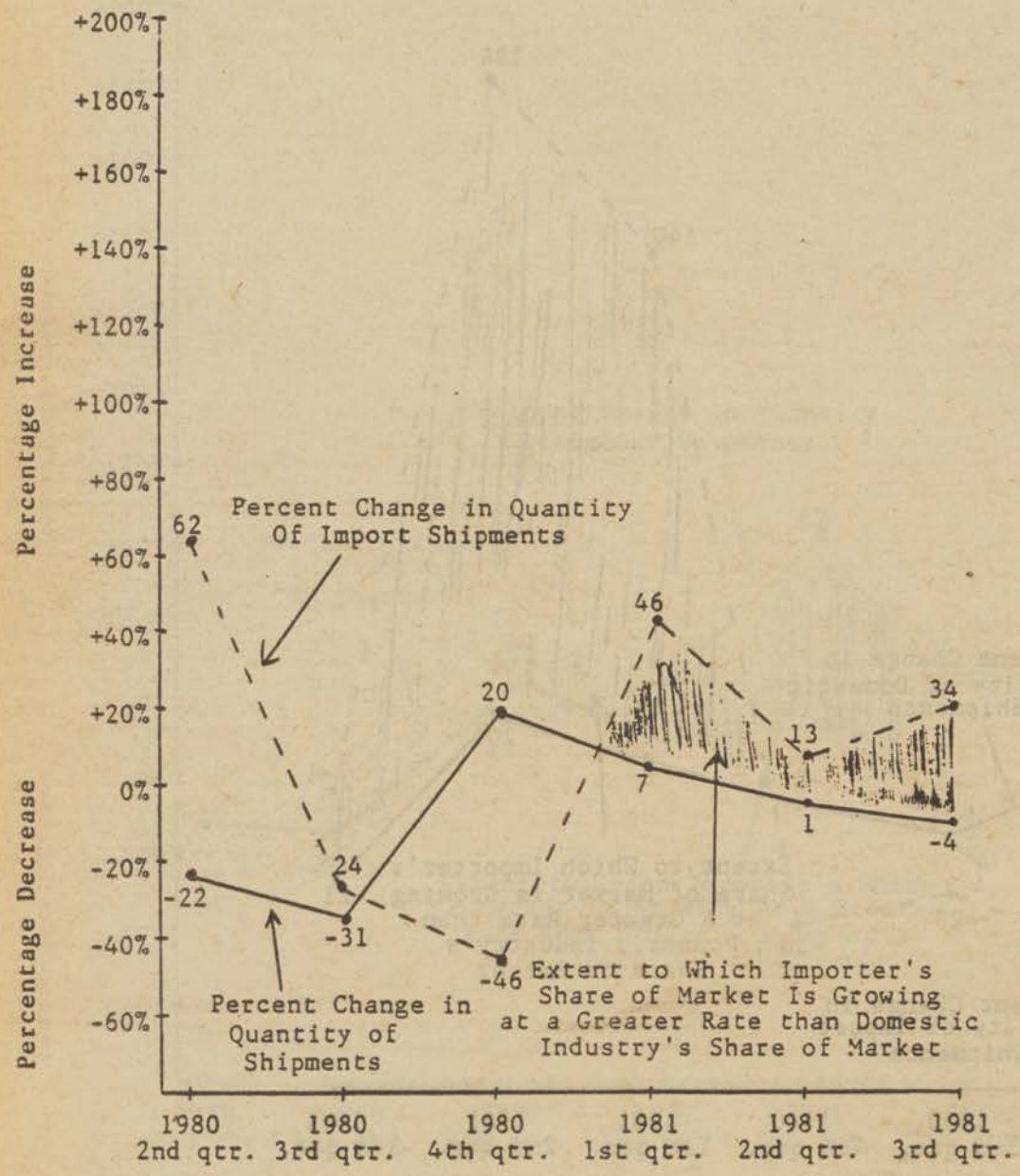


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 4, Appendix 2 for data which serves as basis for Chart 9.

CHART 10

Growth of Imports in a Declining Market:
Percent Change in Quantity of
Import and Domestic Shipments of
Stainless Steel Rods
for 1980-81

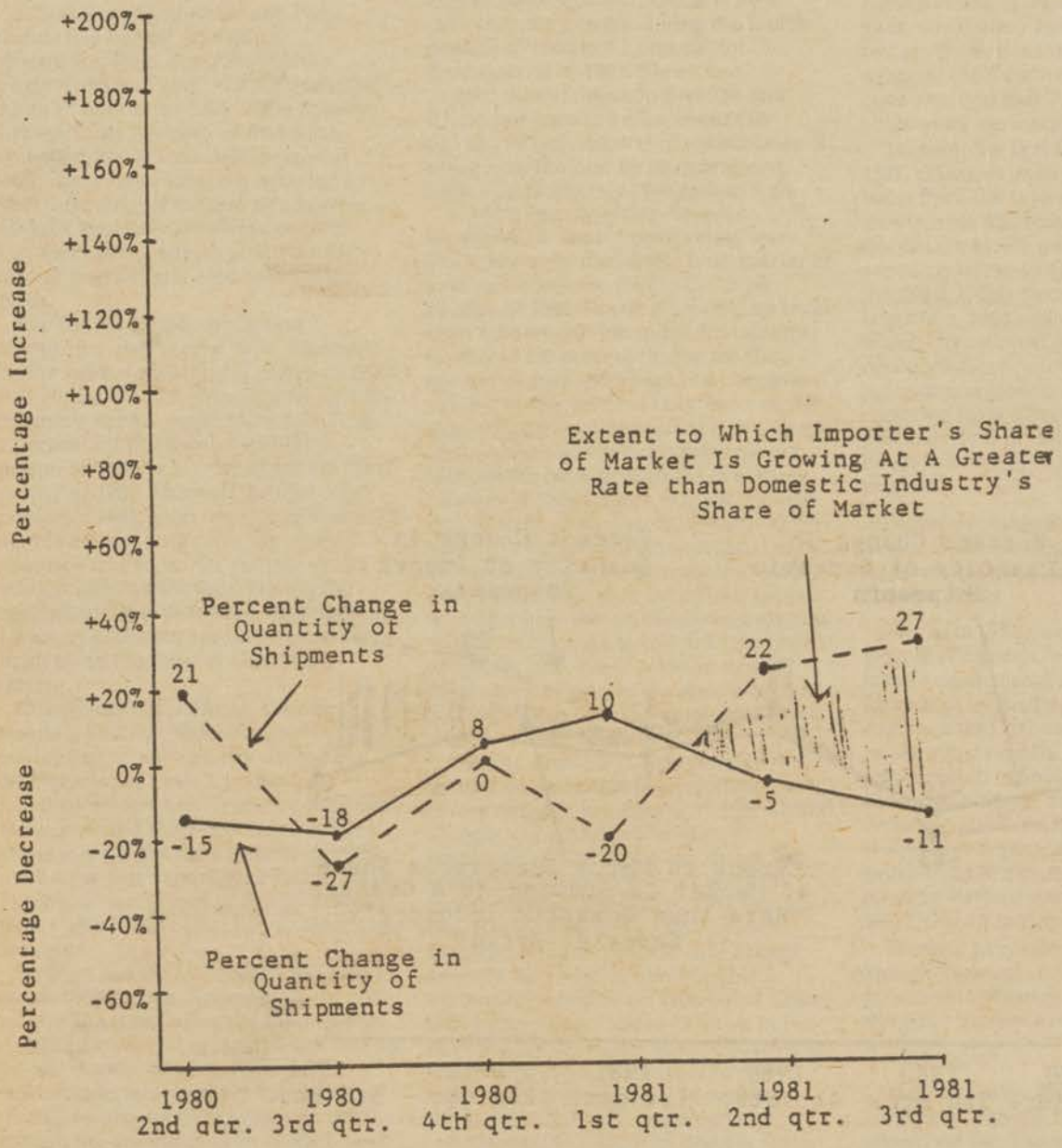


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 5, Appendix 2 for data which serves as basis for Chart 10.

CHART 11

Growth of Imports in a Declining Market:
Percent Change in Quantity
of Import and Domestic Shipments
of Stainless Steel Bars
for 1980-81 1/

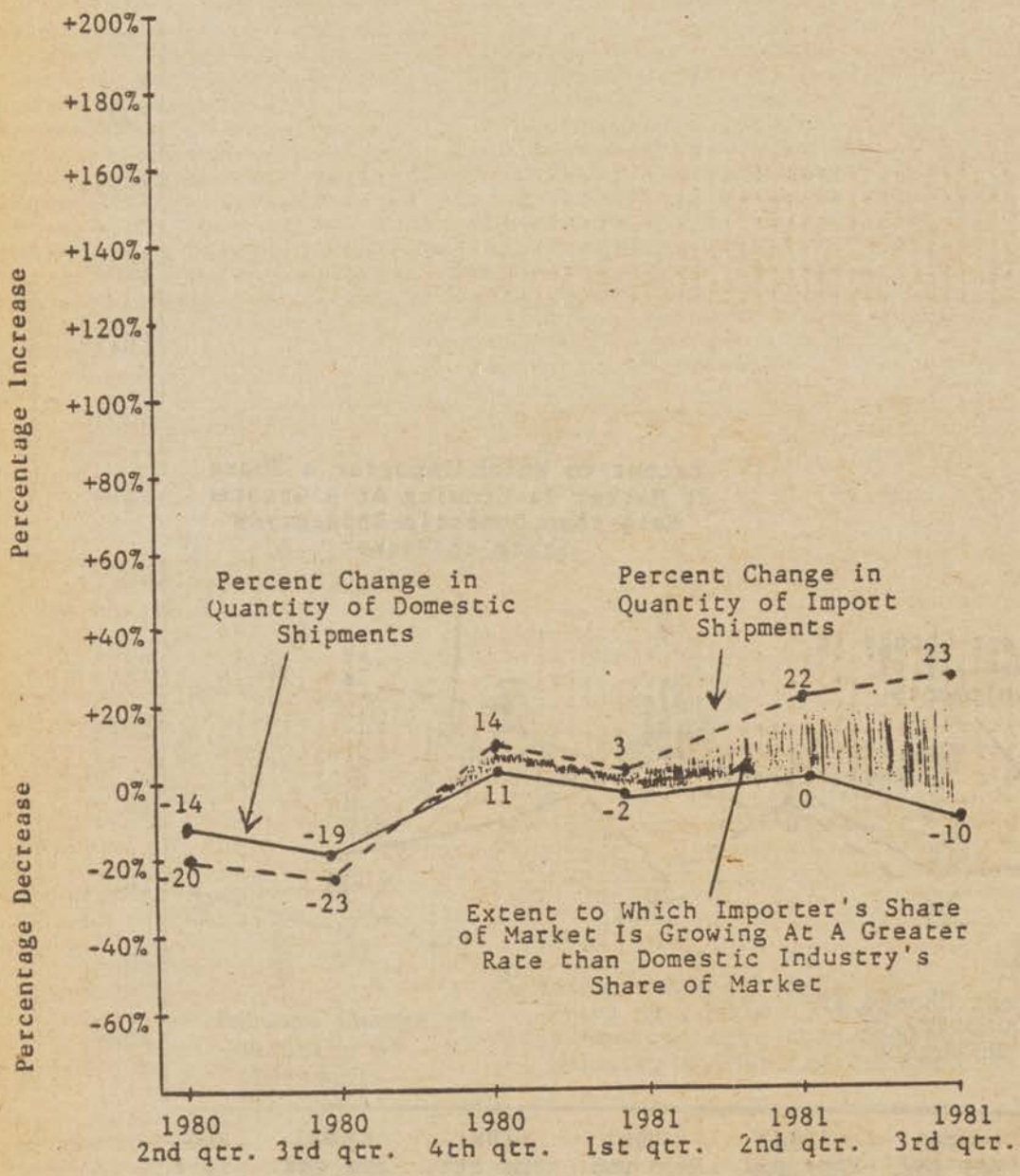


Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 6, Appendix 2 for data which serves as basis for Chart 11.

CHART 12

Growth of Imports in a Declining Market:
Percent Change in Quantity
of Import and Domestic Shipments
of Alloy Tool Steel
for 1980-81[1/]



Source: American Iron and Steel Institute, AIS 10-S (shipments), AIS Imports 2 and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

1/ See Table 7, Appendix 2 for data which serves as basis for Chart 12.

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C. Breakdown of Import Penetration by Country of Origin

This section focuses on specific country's contributions to the total import penetration. The following is an analysis of the data summarized in Table 8–12 in Appendix 2 for each specialty steel product of the declining market.

1. *Stainless Steel Sheet and Strip.* France has *tripled* its imports penetration from .8 percent for the fourth quarter of 1980 to 2.4 percent for the third quarter of 1981. Total imports through three quarters of 1981 have exceeded 10,000 tons. 1980 year-end totals were approximately 6200 tons. Also indicative of current trends were the 1981 quarterly breakdowns: 2427 tons for the first quarter; 3019 for the second quarter; and 4490 tons for the third.

The United Kingdom's import penetration also tripled from .2 percent for the second and third quarters of 1980 to .6 percent for the third quarter of 1981. Belgium's import penetration rose from .1 percent for the second and third quarter of 1980 to .2 percent for the third quarter of 1981. Through the first nine months of 1981, total imports of stainless steel sheet and strip from the seven countries which are the subject of this petition were 15,634 tons. During the same period last year total imports from the seven countries was 9739 tons. This involved an increase of about 60 percent.

2. *Stainless Steel Plates.* United Kingdom had the *highest* import penetration of any country during the third quarter of 1981. The import penetration increased from .2 percent for the second and third quarter of 1980 to 3.5 percent for the third quarter of 1981. The 3.5 percent import penetration level represents nearly half of the 7.5 percent import penetration rate for all importing countries.

Sweden has also increased its import penetration from a .2 percent penetration rate during the first quarter of 1981 to a .7 percent penetration rate in the last quarter of 1981. Belgium increased its import penetration from .0 percent for the second quarter of 1980 through the second quarter of 1981, to .2 percent for the third quarter of 1981.

These three countries plus France, which did not sell plate to the U.S. in 1980, accounted for over 70 percent of U.S. imports during the third quarter of 1981. Moreover, their rate of import growth has been staggering. Through the first nine months of 1981, imports of stainless plate from these four countries has been in excess of 4000 metric tons. During the same period last year, imports from the four countries amounted to only 1130 tons. This is the equivalent of a growth rate of almost 300 percent.

3. *Stainless Steel Rods.* France has increased its import penetration ten-fold to 6 percent from the first quarter of 1981 through the third quarter of 1981.

Belgium has steadily increased its import penetration of stainless steel rods from 1.1 percent during the fourth quarter of 1980 to 5.1 percent for the third quarter of 1981. These two countries in addition to Sweden and Italy have accounted for almost 50 percent of U.S. imports of stainless steel rod during the first three quarters of 1981, approximately 7800 metric tons.

4. *Stainless Steel Bar.* Sweden increased its import penetration level from .5 percent during the first quarter of 1981 to 1.4 percent during the third quarter of 1981. Brazil increased its level from 1.2 percent during the first quarter of 1981 to 1.8 percent during the third quarter of 1981. Although the countries subject to this petition only account for approximately 20 percent of U.S. imports of stainless steel bars (approximately 5000 metric tons through the first three quarters of 1981), there is great concern over the quarterly trends in 1981, which show total imports from Sweden, Brazil, France and the U.K. steadily increasing from 1493 metric tons in the first quarter, to 1539 metric tons in the second quarter to 1983 metric tons in the third. Brazil in particular has raised concern as 1981 third quarter imports are almost sixty percent higher over the same period last year.

5. *Alloy Tool Steel.* Sweden has the second largest import penetration level of any country at 9.9 percent. The United Kingdom has doubled its import penetration from .6 percent during the fourth quarter of 1980 to 1.2 percent during the third quarter of 1981. Among the countries subject to this petition, Sweden, Austria, the U.K. and France account for about 50 percent of U.S. alloy tool steel imports. Moreover, Brazil which has not yet made its mark in the import data, is pricing alloy tool steel as much as 67 percent below U.S. prices, and can therefore expect to penetrate the U.S. market in the coming year.

6. *Aggregate Impact of Imports from Target Countries.* In 1980, the seven countries which are the subject of this petition exported 34,063 metric tons of stainless steel to the U.S. and 14,929 metric tons of alloy tool steel. Collectively, they comprised 34 percent of all U.S. stainless steel imports and 52 percent of all alloy tool steel imports.

Through three quarters of 1981 stainless imports from these seven countries amounted to 32,494 metric tons and for alloy tool steel 10,801 metric tons. At an annualized rate, stainless steel imports from the target countries will increase to almost 43,315 metric tons while alloy tool imports will hold constant at around 14,000–15,000 metric tons. In other words, assuming data through three quarters holds constant, stainless steel imports for the seven countries will increase 27 percent in one year, while alloy tool steels imports remain level. But 1981 data trends suggests the data trends will not hold constant, and that the fourth quarter will show even more rapid import growth.

Through the first three quarters of 1981, stainless imports on a quarterly basis from the target countries have grown from 8,531 metric tons in the first quarter, to 11,157 metric tons in the second quarter, to 12,806 metric tons in the third. If this trend continues, total imports in 1981 could exceed 50,000 in which case annual growth could approach forty percent. Similar, but less pronounced growth can also be expected from alloy tool imports, particularly if Brazilian pricing trends begin to make their mark in the U.S. market.

D. A Relationship Exists Between the Injury to the Domestic Market by Imports and the Subsidies Provided Foreign Firms

The data reflects an increase in the growth of imports in an industry where the economic condition of the domestic firms is deteriorating rapidly. There is evidence that importers are charging prices substantially below the U.S. prices which accounts for imports capturing a larger share of the declining domestic market. Confidential sources reveal that importers are charging prices as much as 67 percent below the U.S. price for certain specialty steel products. *See* Table 13 in Appendix II.

Through government subsidization, foreign firms can continue to sell the goods which they produce in the domestic market at cut-rate prices.

E. Conclusion

The picture for American industry is a bleak one. Imports have had a severe impact on the domestic industry. Workers are being laid off at record levels, plants are being underutilized because of an insufficient domestic market, and profits are falling precipitously. By contrast, imports have dramatically increased their share of the domestic market. Further, importers are increasing their share of the domestic market causing a decline in the domestic industry's shipments to the consuming market. Imports from subsidized foreign

firms are responsible for a substantial degree of the growing injury to the domestic industry.

Relief Requested

Based on the foregoing findings of injury, petitioner respectfully requests that the President, pursuant to section 301 of the Trade Act of 1974, as amended, 19 U.S.C. 2411, take all appropriate and feasible steps within his power to obtain the elimination of injurious foreign subsidies on specialty steel. Such efforts should include making use of the consultation, conciliation and dispute settlement mechanisms as provided by Articles 12 and 13 of the Subsidies Code. In the event such steps fail to bring about a resolution of the issue, the President should undertake such countermeasures as are authorized under section 301 of the Trade Act of 1974, as amended, and as are permitted under the General Agreement and the Subsidies Code.

Petitioners specifically request that a public hearing be held as provided by 19 U.S.C.A. 2412(b)2(A), pursuant to 15 CFR 2006.5.

Dated: December 2, 1981.

Respectfully submitted,

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Appendix I

Allegheny Ludlum Steel Corporation
Al Tech Specialty Steel Corporation
ARMCO, Inc.
Braeburn Alloy Steel Division, Continential Copper & Steel Industry, Inc.
Carpenter Technology Corporation
Columbia Tool Steel Company
Crucible Materials Group, Colt Industries, Inc.
Eastern Stainless Steel Company
Guterl Specialty Steel Corporation
Jessup Steel Company
Jones & Laughlin Steel Corporation
Joslyn Stainless Steels
Latrobe Steel Company
Universal-Cyclops Specialty Steel Division, Cyclops Corporation
Washington Steel Corporation

Appendix II

TABLE 1.—IMPORT PENETRATION DATA

Product	1972	1973	1974	1st 3 quarters 1975	Total 1975	1976	1977	1978	1979	1st quarter 1980	2d quarter 1980	3d quarter 1980	4th quarter 1980	1st quarter 1981	2d quarter 1981	3d quarter 1981
Stainless Steel Sheet and Strip	10.2	6.1	7.5	14.6	13.9	10.6	9.0	9.8	7.1	6.6	6.2	6.3	4.6	5.2	7.3	11.2
Stainless Steel Plate	24.0	13.3	9.3	16.2	16.8	20.0	8.4	9.6	5.0	4.2	2.9	1.9	1.3	2.8	6.1	7.5
Stainless Steel Rods	50.8	42.3	48.8	68.9	68.4	61.3	41.2	39.0	31.5	28.9	46.0	48.6	29.5	36.3	38.7	47.0
Stainless Steel Bars	14.5	12.5	15.2	24.1	24.6	18.2	17.4	17.5	16.5	18.6	24.8	23.5	21.6	16.3	20.4	26.6
Alloy Tool Steel	14.6	18.0	20.0	28.5	27.9	25.9	21.8	24.5	27.0	28.8	27.3	26.8	26.9	28.7	32.0	39.5
Total Specialty [1] Steel	13.5	10.0	11.4	19.9					10.9	11.5	13.6	12.8	9.4	9.4	11.6	17.0

[1] The total for specialty steel includes stainless steel sheet and strip, stainless steel plate, stainless steel rods, stainless steel bars, and alloy tool steel.

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 2.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF TOTAL SPECIALTY STEEL PRODUCTS FOR 1980-81 [1]

	1980 1st quarter domestic shipments	Domestic shipments/percent change					
		1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	37,337	36,775/−2	27,942/−24	26,609/−5	29,277/+10	40,785/+39	50,542/+24
Domestic	308,180	267,820/−13	223,156/−17	277,263/+24	299,564/+8	327,408/+9	264,438/−19

[1] The total for specialty steel includes stainless steel sheet and strip, stainless steel plate, stainless steel rods, stainless steel bars, and alloy tool steel.

Source: American iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 3.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF STAINLESS STEEL SHEET AND STRIP

	Domestic shipments/percent change						
	1980 1st quarter	1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	12,717	9,662/−24	7,607/−21	8,450/+11	10,644/+26	17,205/+62	21,196/+23
Domestic	198,678	168,619/−15	141,090/−16	190,293/+35	207,052/+9	230,485/+11	181,413/−21

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 4.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF STAINLESS STEEL PLATES

	1980 1st quarter domestic shipments	Domestic shipments/percent change					
		1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	1,350	756/−44	537/−29	332/−38	797/+140	2,267/+184	2,243/−1
Domestic	31,711	33,412/+5	29,571/−11	28,995/−2	31,172/+8	37,286/+20	29,323/−21

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 5.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF STAINLESS STEEL RODS

	Domestic shipments/percent change						
	1980 1st quarter	1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	4,795	7,771/+62	5,912/−24	3,168/−46	4,628/+46	5,230/+13	7,012/+34
Domestic	11,884	9,314/−22	6,418/−31	7,703/+20	8,280/+7	8,396/+1	8,031/−4

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 6.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF STAINLESS STEEL BARS

	Domestic shipments/percent change						
	1980 1st quarter domestic shipments	1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	9,291	11,197/+21	8,173/−27	8,162/0	6,521/−20	7,932/+22	10,040/+27
Domestic	42,206	36,075/−15	29,547/−18	31,852/+8	35,096/+10	33,199/−5	29,412/−11

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 7.—PERCENT CHANGE IN QUANTITY OF IMPORT AND DOMESTIC SHIPMENTS OF ALLOY TOOL STEEL

	Domestic shipments/percent change						
	1980 1st quarter domestic shipments	1980 2d quarter	1980 3d quarter	1980 4th quarter	1981 1st quarter	1981 2d quarter	1981 3d quarter
Imports	9,184	7,399/−19	5,713/−23	6,497/+14	6,687/+3	8,151/+22	10,051/+23
Domestic	23,701	20,400/−14	16,530/−19	18,420/+11	17,964/−2	18,042/0	16,259/−10

Source: American Iron and Steel Institute, AIS 10-S (shipments), *AIS Imports 2* and U.S. Department of Commerce, IM 146 (imports). Minor differences in data may exist between sources due to rounding.

TABLE 8.—NUMBER OF IMPORTS AND IMPORT PENETRATION FROM COUNTRIES THAT ARE THE SUBJECT OF THIS PETITION FOR STAINLESS STEEL SHEET AND STRIP [1]

Country	1980 first quarter		1980 second and third quarters		1980 fourth quarter		1980 total		1981 first quarter		1981 second quarter		1981 third quarter	
	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)
Belgium	890	.5	328	.1	0	.0	1218	.2	218	.1	421	.2	[2] 425	.2
France	1796	.9	2973	1.1	1416	.8	6187	.9	2427	1.2	3019	1.3	4490	2.4
United Kingdom	91	.0	459	.2	347	.2	897	.1	587	.3	1030	.4	1147	.6
Sweden	1156	.6	2044	.7	1929	1.1	5129	.8	892	.3	592	.4	386	.2

[1] Data was not available for certain countries where the quantity of import shipments in terms of the total number of import shipments was insignificant.
[2] Data for third quarter of 1981 includes Belgium and Luxembourg.

Source: U.S. Dept. of Commerce IM 146 (imports), American Iron and Steel Institutes (AIS) imports 5. Minor differences may exist between sources due to rounding. Slight discrepancies may also exist between data sources for computing third quarter of 1981. None of these discrepancies account for more than .3% of the total imports.

TABLE 9.—NUMBER OF IMPORTS AND IMPORT PENETRATION FROM COUNTRIES THAT ARE THE SUBJECT OF THIS PETITION FOR STAINLESS STEEL PLATES [1]

Country	1980 first quarter		1980 second and third quarters		1980 fourth quarter		1980 total		1981 first quarter		1981 second quarter		1981 third quarter	
	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)
Belgium	352	1.1	0	.0	0	.0	352	.3	0	.0	0	.0	[2] 57	.2
United Kingdom	62	.2	121	.2	90	.3	273	.2	392	1.4	885	2.4	1051	3.5
Sweden	140	.4	456	.9	39	.2	635	.6	51	.2	5	.2	205	.7
France	0	.0	0	.0	0	.0	0	.0	283	1.0	1016	2.7	41	.1

[1] Data was not available for certain countries where the quantity of import shipments in terms of the total number of import shipments was insignificant.
[2] Data for thir quarter of 1981 includes Belgium and Luxembourg.

Source: U.S. Dept. of Commerce IM 146 (imports), American Iron and Steel Institutes (AIS) imports 5. Minor diffenences may exist between sources due to rounding. Slight discrepancies may also exist between data sources for computing third quarter of 1981. None of these discrepancies account for more than .3% of the total imports.

TABLE 10.—NUMBER OF IMPORTS AND IMPORT PENETRATION FROM COUNTRIES THAT ARE THE SUBJECT OF THIS PETITION FOR STAINLESS STEEL RODS [1]

Country	1980 first quarter		1980 second and third quarters		1980 fourth quarter		1980 total		1981 first quarter		1981 second quarter		1981 third quarter	
	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)
Belgium	315	1.9	436	1.5	118	1.1	870	1.5	306	2.4	562	4.2	[2] 756	5.1
France	1349	8.1	3706	12.8	427	4.0	5482	9.6	82	.6	370	2.7	898	6.0
Italy	314	1.9	2620	9.0	151	1.4	3085	5.4	803	6.3	461	3.4	518	3.5
Sweden	1400	8.4	1715	5.9	303	2.8	3418	6.0	997	7.8	1177	8.7	849	5.7

[1] Data was not available for certain countries where the quantity of import shipments in terms of the total number of import shipments was insignificant.
[2] Data for third quarter of 1981 includes Belgium and Luxembourg.

Source: U.S. Dept. of Commerce IM 146 (imports), American Iron and Steel Institutes (AIS) imports 5. Minor differences may exist between sources due to rounding. Slight discrepancies may also exist between data sources for computing third quarter of 1981. None of these discrepancies account for more than .3 percent of the total imports.

TABLE 11.—NUMBER OF IMPORTS AND IMPORT PENETRATION FROM COUNTRIES THAT ARE THE SUBJECT OF THIS PETITION FOR STAINLESS STEEL BARS [1]

Country	1980 first quarter		1980 second and third quarters		1980 fourth quarter		1980 total		1981 first quarter		1981 second quarter		1981 third quarter	
	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)
France	238	.5	1393	1.7	658	1.7	2289	1.3	542	1.4	240	.6	524	1.4
United Kingdom	249	.5	370	.5	296	.8	915	.5	266	.7	421	1.1	269	.7
Sweden	526	1.1	897	1.2	238	.6	1661	1.0	214	.5	238	.6	522	1.4
Brazil	405	.8	716	.9	531	1.4	1652	1.0	471	1.2	640	1.6	668	1.8

[1] Data was not available for certain countries where the quantity of import shipments in terms of the total number of import shipments was insignificant.

Source: U.S. Dept. of Commerce IM 146 (imports), American Iron and Steel Institutes (AIS) imports 5. Minor differences may exist between sources due to rounding. Slight discrepancies may also exist between data sources for computing third quarter of 1981. None of these discrepancies account for more than .3% of the total imports.

TABLE 12.—NUMBER OF IMPORTS AND IMPORT PENETRATION FROM COUNTRIES THAT ARE THE SUBJECT OF THIS PETITION FOR ALLOY TOOL STEEL [1]

Country	1980 first quarter		1980 second and third quarter		1980 fourth quarter		1980 Total		1981 first quarter		1981 second quarter		1981 third quarter	
	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)	No. of import shipments	Import penetration (percent)
France	518	1.6	244	.5	427	1.8	1189	1.1	267	1.1	136	.5	110	.4
United Kingdom	530	1.7	723	1.5	140	.6	1393	1.3	225	1.0	297	1.2	294	1.2
Austria	445	1.4	2338	3.3	416	1.7	2438	2.3	779	3.3	665	2.6	655	2.6
Sweden	2970	9.3	4816	10.0	2123	8.8	9909	9.5	2391	10.3	2450	9.6	2532	9.9

[1] Data was not available for certain countries where the quantity of import shipments in terms of the total number of import shipments was insignificant.

Source: U.S. Dept. of Commerce IM 146 (imports), American Iron and Steel Institutes (AIS) imports 5. Minor differences may exist between sources due to rounding. Slight discrepancies may also exist between data sources for computing third quarter of 1981. None of these discrepancies account for more than .3% of the total imports.

TABLE 13.—EXAMPLES OF FOREIGN PRICING BELOW U.S. PRICES

Country	Company [1]	Product	Percent below U.S. price [2]
Belgium		Stainless steel sheet and strip.	5
Brazil		Alloy tool steel H-11, H-13 bar.	15-23
		Alloy tool steel D-2 flats and rounds.	67
France		Stainless steel sheet and strip.	13
		Stainless steel sheet and strip.	16

TABLE 13.—EXAMPLES OF FOREIGN PRICING BELOW U.S. PRICES—Continued

Country	Company [1]	Product	Percent below U.S. price [2]
		Stainless steel rods	34
		Stainless steel rods	15-20
		Stainless steel bars	34-40
		Alloy tool steel high-speed.	27-54
Sweden		Stainless steel rods	10-16
		Stainless steel rods	15-20

TABLE 13.—EXAMPLES OF FOREIGN PRICING BELOW U.S. PRICES—Continued

Country	Company [1]	Product	Percent below U.S. price [2]
		Alloy tool steel H-11, H-13 bar.	15-23
		Alloy tool steel	18-31

[1] Confidential information to be submitted.

[2] Specific data will be provided on foreign pricing.

Source: Confidential data to be submitted.

[FR Doc. 82-5937 Filed 3-8-82; 8:45 am]

BILLING CODE 3190-01-M

POSTAL RATE COMMISSION

[Docket No. A82-6; Order No. 420]

Stonewall, Arkansas 72468 (Mr. and Mrs. Wayne Keeling and Others, Petitioners); Order of Filing of Appeal

March 2, 1981.

On February 26, 1982, the Commission received an appeal letter from Mr. & Mrs. Wayne Keeling and others (hereinafter "Petitioners"), concerning United States Postal Service's consolidation of the Stonewall, Arkansas, post office. The appeal letter requests that the Stonewall Post Office be left "at its present status." The appeal letter appears to request the review provided for by section 404(b) of the Postal Reorganization Act [39 U.S.C. 404(b)].[1] The petition does not conform perfectly with the Commission's rules of practice, which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[2] However, section 1 of the Commission's rules of practice [3] calls for a liberal construction of the rules to secure just and speedy determination of issues.

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office consolidation so as to "ensure that such persons will have an opportunity to present their views."[4] The petition requests that the decision to consolidate the Stonewall post office be reconsidered.

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that efective postal services be insured to residents of both urban and rural communities.[5]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to consolidate post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the consolidation of post offices.[6]

Upon preliminary inspection, this case appears to involve the following issues of law:

1. Whether the procedure followed by the Postal Service was in compliance with the statute and the Postal Service's regulations.

2. Whether the Postal Service's actions are consistent with the statutory requirement that the Postal Service provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining [39 U.S.C. 404(b)(2)(C)].

3. Whether the Postal Service gave adequate consideration to the effect the consolidation would have on that portion of the community that now receives "help in addressing mail, purchasing money orders and filling out Local, State and Federal correspondence" at the Stonewall post office.

Other issues of law may become apparent when the Commission has had the opportunity to examine further the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove, Texas, et al.*, Docket Nos. A79-1, *et al.* (May 7, 1979), and the Commission's subsequent decision on appeals of post office closings and consolidations. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by Section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on the Petitioners by the Service.

In briefing the case or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in Section 404(b) cases,[7] and none is being appointed. The Commission orders:

(A) The letter from the Stonewall, Arkansas post office patrons be accepted as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

By the Commission.

David F. Harris,

Secretary.

Appendix

February 26, 1982, Filing of Petition

March 2, 1982, Notice and Order of Filing of Appeal.

March 15, 1982, Filing of Record by Postal Service [*see* 39 CFR 3001.113(a)].

March 18, 1982, Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

March 29, 1982, Petitioner's Initial Brief [*see* 3 CFR 3001.115(a)].

April 13, 1982, Postal Service Answering Brief [*see* 39 CFR 3001.115(b)].

April 28, 1982, (1) Petitioner's Reply Brief should petitioner choose to file [*see* 39 CFR 301.115(c)]; (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.

June 26, 1982, Expiration of 120 day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 82-6250 Filed 3-8-82; 8:45 am]

BILLING CODE 7715-01-M

[1] 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

[2] 39 CFR 3001.1.

[3] 39 CFR 3001.1.

[4] 39 U.S.C. 404(b)(1).

[5] 39 U.S.C. 101(b).

[6] 42 FR 59079-85 (November 17, 1977); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

[7] In the Matter of Gresham, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of relief from disabilities incurred by conviction.

SUMMARY: The persons named in this notice have been granted relief by the

Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Acting, Special Agent in Charge Phillip J. Cojnacki, Firearms Enforcement Branch, Investigations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026 (202–566–7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

Agnos, Nicholas W., 185 Merrimac Avenue, Springfield, Massachusetts, convicted on May 27, 1963, in the Hampden County District Court, Springfield, Massachusetts.

Anderson, Marvin E., 7073 Brookwood Drive, Lithia Springs, Georgia, convicted on December 21, 1961, in the Superior Court of Clayton County, Georgia; and on December 29, 1961, in the Superior Court, DeKalb County, Georgia.

Atkins, William A., Route 3, Box 408, Luray, Virginia, convicted on October 26, 1955, in the Rockingham County Circuit Court, Rockingham County, Virginia.

Baker, Roland B., Route 2, Box 580, Dadeville, Alabama, convicted on May 23, 1967, in the Lee County Criminal Division Circuit Court, Lee County, Alabama.

Basist, Elwain S., 803 West Second Street, Clarksdale, Mississippi, convicted on January 4, 1971, in the United States District Court, Northern District of Mississippi.

Bass, George Edward D., Route 1, Box 369, Wetumpka, Alabama, convicted on May 25, 1964, in the Circuit Court of Montgomery County, Alabama.

Bell, Richard W., 28756 Eagleton Street, Agoura, California, convicted on August 13, 1962, in the Superior Court, Los Angeles, California.

Benton, Willie L., 1517 First Street, NE., Atlanta, Georgia, convicted on April 10, 1975, in the County Court of Monmouth, New Jersey.

Bick, James R., 103 South 22nd Street, Pittsburgh, Pennsylvania, convicted on November 3, 1965, in the Criminal Court of Allegheny County, Pittsburgh, Pennsylvania.

Biggs, Charles T., 3623 Dover Road, Durham, North Carolina, convicted on December 6, 1976, in the United States District Court, Greensboro, North Carolina.

Black, Harold K., 409 Rice, West Memphis, Arkansas, convicted on September 25, 1972, in the Circuit Court of Crittenden County, Arkansas.

Blumling, Eugene H., 215 Chicora Road, Butler, Pennsylvania, convicted on January 30, 1948, in the Butler County Court of Common Pleas, Pennsylvania.

Borgen, Jonathan R., 817 Revere Street, Eau Claire, Wisconsin, convicted on October 12, 1977, in the Barron County District Court, Barron, Wisconsin.

Boyk, Robert F., 10863 Parlin Terrace, Philadelphia, Pennsylvania, convicted on October 17, 1962, in the Philadelphia Court of Sessions, Philadelphia, Pennsylvania.

Brandt, Wayne R., Rural Route 1, Box 141, Wells, Minnesota, convicted on January 22, 1980, in the District Court, Fifth Judicial District of Faribault County, Minnesota.

Branham, Wade L., Route 8, Box 105, Northview Acres, Charlottesville, Virginia, convicted on September 13, 1967, in the Circuit Court of Albemarle County, Virginia.

Britton, William Jr., 307 Monroe Street, Lexington, Nebraska, convicted on December 8, 1978, in the District Court, Dawson, Nebraska.

Brodsky, Jerome, U.S. Highway 301 North, P.O. Box 209, Waldo, Florida, convicted on October 10, 1953, in the Southern District of Miami, Florida.

Brown, Luther M., Jr., 561 Dogwood Street, Concord, North Carolina, convicted on December 13, 1978, in the United States District Court, Greensboro, North Carolina.

Brown, William P., 7210 34th Avenue, Kenosha, Wisconsin, convicted on January 6, 1976, in Branch III, Kenosha County, Wisconsin.

Buchholtz, Dean H., 5106 South Spring Avenue, Kansas City, Missouri, convicted on March 6, 1964, in the Circuit Court of Jackson County, Missouri.

Buhl, Calvin, 8723 2nd NW., Seattle, Washington, convicted on October 19, 1972, in the Superior Court of King County, Washington.

Burkes, Thomas G. Jr., Route 2, Cottondale, Alabama, convicted on September 17, 1953; and on November 15, 1976, in the Sixth Judicial Circuit Court of Alabama.

Bussino, Fred J., Route 2, Brockway Mills Road, Chester, Vermont, convicted on February 24, 1947, in the Federal Court in Rutland, Vermont.

Butler, Drayton O., Route 3, Box 1715, Lufkin, Texas, convicted on October 27, 1970, in the First Judicial District Court, San Augustine County, Texas.

Butler, Gary L., 3168 Modella, Dallas, Texas, convicted on March 12, 1976, in the Criminal District Court #2, Dallas, Texas.

Campbell, Harold A., Route 2, Box 168–E, Longview, Texas, convicted on April 11, 1978, in the 26th District Court, Bossier Parrish, Louisiana.

Campbell, Ricky J., Route 2, Box 2911A, Mercer, Pennsylvania, convicted on February 9, 1976, in the Common Pleas Court, Mercer County, Pennsylvania.

Cannon, Timothy C., 4144 Diamond Drive, Eagan, Minnesota, convicted on August 28, 1979, in the Dakota County Circuit Court, Hastings, Minnesota.

Capone, Louis F., 188 Broad Street, Pittston, Pennsylvania, convicted on July 2, 1976, in the Federal Court, of Harrisburg, Pennsylvania.

Cates, Loralyn, 1315 South Silverlake Space, 148, Tucson, Arizona, convicted on August 22, 1977, in the Superior Court, Pima County, Arizona.

Caudle, Gary H., 408 West First Street, Hopkinsville, Kentucky, convicted on March 9, 1970, in the Circuit Court of Christian County, Kentucky.

Cerasuolo, Donald A., 1 Rose Street, Allison, Pennsylvania, convicted on March 8, 1977, in the United States District Court, Western District of Pittsburgh, Pennsylvania.

Chaney, Curtis E., Route 1, Box 497, in the Pounding Mill, Virginia, convicted on December 5, 1974, in the Buchanan County Circuit Court, Grundy, Virginia.

Chapman, Robert, 1711 Burrell Drive, Lewiston, Idaho, convicted on May 14, 1979, in the District Court of Nez Perce County, Idaho.

Chappell, Clinton, 178 Campground Road, Griffin, Georgia, convicted on October 10, 1961, in the Superior Court of Spalding County, Georgia.

Chatt, L. D., 9512 West Third Street, Dayton, Ohio, convicted on October 23, 1969, in the United States District Court, Southern, Ohio.

Chitwood, Boyd W., 2728 North Colony Avenue, Franksville, Wisconsin, convicted on November 25, 1957, in the Circuit Court, Rock County, Wisconsin.

Christakis, Lee J., 779 West 100 South, Crown Point, Indiana, convicted on March 21, 1974, in the United States District Court, Northern District of Hammond, Indiana.

Coates, Morgan F., 5213 Stephan Drive, Louisville, Kentucky, convicted on April 6, 1976, in the Jefferson Circuit Court, Louisville, Kentucky.

Cocke, James B., Route 2, Box 45, Bumpass, Virginia, convicted on July 11, 1977, in the United States District Court Richmond, Virginia.

Comer, William K., Route 1, Box 287, Shenandoah, Virginia, convicted on June 16, 1977, in the Circuit Court of Page County, Virginia.

Conley, Frank, P.O. Box 6, Joseph, Oregon, convicted on July 3, 1978, in the United States District Court in Oregon.

Copper, Joan V., 212 South Florence Street, Grangeville, Idaho, convicted on October 10, 1975, in the United States District Court, District of Idaho.

Couture, Robert, 25600 Monroe Log Camp Road, Snohomish, Washington, convicted on July 26, 1961, in the Superior Court of Snohomish County, Washington.

Cox, Melvin R. Sr., 502 West 7th, Galena, Kansas, convicted on September 15, 1972, in the United States District Court, Wichita, Kansas.

Crews, Harold T., 2301 Lakeside Drive, Lot 56, Lynchburg, Virginia, convicted on May 6, 1974, in the Lynchburg Circuit Court, Lynchburg, Virginia.

Cronin, Willim F., 810 Paynes Point Beach Road, Neehan, Wisconsin, convicted on April 11, 1966, in the United States District Court, District of Massachusetts.

Curtis, Larry J., 12766 Renton Avenue South, Seattle, Washington, convicted on March 7, 1975, in the United States District Court, Western District, Seattle, Washington.

Dauphinais, Conrad F. Jr., 283 East Wellings Court, Virginia Beach, Virginia, convicted on July 14, 1976, in the Superior Court of Doughety County, Georgia.

Davis, Barry E., 475 Rock Creek Drive, Roswell, Georgia, convicted on June 6, 1962, in the Circuit Court of Garrett County, Maryland.

Davis, Charles K., P.O. Box 245, Hornersville, Missouri, convicted on September 23, 1980, in the Circuit Court Division II, Dunklin County, Kenneth, Missouri.

Davis, Major M., 3810 Fruitwood Court, Portsmouth, Virginia, convicted on November 12, 1958, in the Circuit Court in Portsmouth, Virginia.

Davis, Willie L., 1612 South 13th Street, Yakima, Washington, convicted on October 13, 1941, in Benton Harbor, Michigan.

Dawson, Lisa J., 5525 Highway 63 South, Rochester, Minnesota, convicted on November 17, 1978, in the Olmstead County Court, Rochester, Minnesota.

Day, Lester A., P.O. Box 375, Grand Portage, Minnesota, convicted on September 19, 1968, in the Sixth Judicial District Court, St. Louis County, Duluth, Minnesota.

Delorenzo, Joseph P Jr., 14711 Kellywood, Houston, Texas, convicted on August 29, 1977, in the United States District Court, Southern District of Texas.

Dickerson, Robert L., P.O. Box 595, Aulander, North Carolina, convicted on August 16, 1976, in the Superior Court of Pamilco County, North Carolina; and on May 23, 1978, in the Superior Court of Hertford County, North Carolina.

Dobson, Thomas J., 5801 Lathan Road, Norfolk, Virginia, convicted on November 20, 1971, in the Chesapeake Circuit Court of Virginia.

Donet, Robert B., 1114 Frank Street, Adrian, Michigan, convicted on August 11, 1972; and on June 27, 1975, in the Lenawee County Circuit Court, Adrian, Michigan.

Donovan, Edward L., Route 3, Box 267-A, Dayton, Virginia, convicted on September 14, 1971, in the Circuit Court of Rockingham County, Harrisonburg, Virginia.

Dorris, Robert E. Jr., 2714 Simmondale Drive, Fort Worth, Texas, convicted on August 11, 1976, in the United States District Court for Northern Division , Fort Worth, Texas.

Dubersterin, Jay A., 675 Ridge Road, Lot B-125, Mosinee, Wisconsin, convicted on September 22, 1978, in the Circuit Court of Marathon County, Wisconsin.

Dudley, Elam G., Route 1, Box 243-S, Wildwood Drive, Evans, Georgia, convicted on November 30, 1976, in the Court of General Sessions, McCormick County, South Carolina.

Dyer, Jay S., Route 1, Box 71, Cleo Springs, Oklahoma, convicted on April 19, 1976, in the United States District Court, Southern District of Corpus Christi, Texas.

Ellinsburg, Aubray J., 2349 Meadowbrook, Abilene, Texas, convicted on November 16, 1978, in the Circuit Court, Fourteenth Judicial District of Florida.

Evans, James A., Route 2, Box 358 AA, Mobile, Alabama, convicted on August 2, 1960, in the County Circuit Court, Mobile County, Alabama.

Fidalgo, John J., 251 Metropolitan Avenue, Brooklyn, New York, convicted on February 17, 1971, in the Supreme Court, Second District, New York, New York.

Fidoni, Robert, 4828 South 93rd Avenue, Omaha, Nebraska, convicted on March 13, 1964, in the District Court, Douglas County, Nebraska.

Fisher, Kirk D., 4541 Post Cayon Drive, Hood River, Oregon, convicted on November 21, 1975, in the Circuit Court of Hood River County, Oregon; and on January 22, 1976, in the Circuit Court of Wasco County, Oregon.

Ford, Kenneth O., 5320 East Polk, Phoenix, Arizona, convicted on December 22, 1975, in the Superior Court of Maricopa County, Arizona.

Frisbie, George C., 5515 Yarwell Drive, Houston, Texas, convicted on May 2, 1975, in the 209th District Court, Harris County, Texas.

Gay, Homer A., Box 49, Star Route, Appling, Georgia, convicted on March 25, 1969, in the State Court, Columbia County, Georgia; and on June 28, 1979, in the United States District Court, Savannah, Georgia.

Garrett, David H., Route 1, Box 198 Quinlan, Texas, convicted on June 9, 1972, in the 196th Judicial District Court, Hunt County, Texas.

Gaskill, Wayne P., 1003 Greenway Court, Altoona, Iowa, convicted on September 29, 1970, in the District Court of Taylor County, Texas.

General Electric Company, Armament and Electrical Systems, Lakeside Avenue, Burlington, Vermont, convicted on June 23, 1981, in the United States District Court, Judicial District of New Jersey.

Giano, Castenzio, 1917 Harman Street, Ridgewood, New York, convicted on May 10, 1972, in the Supreme Court of Queens County, New York.

Gibson, Edward W., 5112 West Hughes, Lincoln, Nebraska, convicted on January 6, 1966, in the District Court of Nuckolls County, Nebraska.

Gildemeister, Michael J., 256 North 10th Avenue, West Bend, Wisconsin, convicted on June 2, 1975, in the Circuit Court of Washington County, Wisconsin.

Graber, Gary J., P.O. Box 10688, Aspen, Colorado, convicted on March 26, 1979, in the United States District Court, District of Colorado.

Grace, William E., 6001 Indiana Creek Court, Fort Worth, Texas, convicted on June 30, 1976, in the United States District Court, Eastern District of Michigan.

Graybadger, Gregory L., P.O. Box 82053, College Alaska, convicted on May 15, 1978, in the Shasta County Superior Court, California.

Grieve, Scott M., 5361 Woodlawn Boulevard, Minneapolis, Minnesota, convicted on April 22, 1975, in the Second Judicial District Court, Ramsey County, Minnesota.

Grinstead, Gary B., 748 Arlington, St. Paul, Minnesota, convicted on September 29, 1969, in the District Court of Dakota County, Minnesota.

Hannah, Dewey D., 530 Oakdale Road, Waynesville, North Carolina, convicted on February 4, 1971, in the Haywood County Superior Court, North Carolina.

Harrell, Gordon F. Jr., 4875 Texas Avenue, Norfolk, Virginia, convicted on September 26, 1969, in the Circuit Court, City of Norfolk, Virginia.

Harris, Max G., Covered Bridge Apartments, C-4, Philippi, West Virginia, convicted on June 7, 1977, in the Barbour County Circuit Court of West Virginia.

Harsh, Benjamin D., Box 39, Lot 39, Yucca Trailer Court, Del Rio, Texas, convicted on October 20, 1978, in the District Court, Scottsbluff County, Nebraska.

Harvey, Randy C., Route 5, North Platte, Nebraska, convicted on October 21, 1976, in the District Court of Lincoln County, Nebraska.

Heckert, David F., 6576 Stage Coach Road, Santa Barbara, California, convicted on October 4, 1972, in the Superior Court, Santa Barbara County, California.

Helton, Paul, 2076 Highway 18, Medon, Tennessee, convicted on September 27, 1960, in the United States District Court, Western District of Tennessee.

Henderson, Cornelius J., 413 SW. 9th Court, Delray Beach, Florida, convicted on February 9, 1971, in the Criminal Court of Record, County of Palm Beach, Florida.

Hill, Charles A., 1532 West Wallen Road, Fort Wayne, Indiana, convicted on May 26, 1958, in the Tenth Judicial Circuit Court, Nashville, Tennessee.

Hill, Lee N., 2866 East 42nd Place, Tulsa, Oklahoma, convicted on August 26, 1968, in the District Court, Muskogee County, Oklahoma.

Hinson, William M., Route 4, Box 155-B, Auburn, Alabama, convicted on March 16, 1977, in the United States District Court, Middle District of Alabama.

Holman, Glen W., 4779 Dover Drive, Colorado Springs, Colorado, convicted on January 31, 1949, in the Superior Court of Spokane County, Washington.

Holt, Richard C., 4119 Meadowgreen Court, Richmond, Virginia, convicted on January 28, 1974, in the Circuit Court, City of Richmond, Virginia.

Householder, Thomas W., 522 Anderson Avenue, Akron, Ohio, convicted on July 28, 1952, in Fulton County, Atlanta, Georgia.

Hutchinson, Charles M. Sr., 102 Marlin Drive, Richmond, Virginia, convicted on February 24, 1971, in the Circuit Court, Henrico County, Virginia.

Irby, Fitzhugh W., Route 1, Box 364, Hurt, Virginia, convicted on March 18, 1966, in the Circuit Court, Campbell County, Virgina.

Johnson, Blum V., Route 3, Box 369, North Wilkesboro, North Carolina, convicted on November 28, 1954, and March 22, 1966, in the United States District Court, Statesville, North Carolina; and on November 24, 1958, in the United States District Court, Wilkesboro, North Carolina.

Johnson, Steven F., 1315 Maryland Avenue, Glen Allen, Virginia, convicted on April 6, 1971, in the Circuit Court in Buena Vista, Virginia.

Jones, Robert D., 4808 North Lee Street, Spokane, Washington, convicted on July 18, 1977, in the United States District Court, Spokane, Washington.

Keiley, Wylie E., Route 12, Box 216, Florence, Alabama, convicted on September 23, 1927, in the Landerdale County Circuit Court, Florence, Alabama.

Keine, John S., 24616 North Elda Court, Apt. 220, Mount Clemens, Michigan, convicted on October 15, 1965, in the Circuit Court of Macomb County, Michigan; and on April 5, 1974, in the District Court of Summit County, Colorado.

Kemper, Gregory J., 7325 Thasos Avenue, NE., Bremerton, Washington, convicted on November 15, 1979, in the Superior Court of Kitsap County, Washington.

Knol, Steven D., 2224—60th Street, Everett, Washington, convicted on December 15, 1963, in the Kitsap County Superior Court, Bremerton, Washington.

Koepp, Malcolm P., P.O. Box 734, Caldwell, Texas, convicted on October 10, 1972, in the 180th District Court, Harris County, Texas.

Kramer, Richard F., 3216 Dinnen Avenue, Fort Wayne, Indiana, convicted on September 29, 1977, in the Allen Superior Court, Fort Wayne, Indiana.

Krenk, Leslie R., 427 East South, Grand Island, Nebraska, convicted on May 2, 1977, in the Hall County District Court, in Nebraska.

Kuhn, Delmar F., Route 1, Box 119, Irma, Wisconsin, convicted on October 21, 1969, in the Lincoln County Circuit Court, Merrill, Wisconsin.

Lajavic, Donald O., 2425 Brisbane, Walled Lake, Michigan, convicted on March 6, 1951, in the Recorders Court, Detroit, Michigan.

Landers, Haze, Route 3, Box 172, Marshall, North Carolina, convicted on May 13, 1958, in the United States District Court, Asheville, North Carolina.

Laurence, Elmer S., 600 Middle Lane, Austin, Texas, convicted on February 9, 1979, in the 28th Judicial District Court, Williamson County, Texas.

Lawson, Marlin R., RD #1, Box 3, Friendsville, Maryland, convicted on September 18, 1978, in the United States District Court for the Northern District of West Virginia.

Lichtman, Leonard, 1333 Fanshawe Street, Philadelphia, Pennsylvania, convicted in August 1962, in the Court of Quarter Sessions, Philadelphia, Pennsylvania.

Lindstrom, John R., 2175—202nd Avenue, NW., Cedar, Minnesota, convicted on February 20, 1976, in the First Judicial District Court, Grand Forks County, North Dakota; and on June 30, 1976, in the Ninth Judicial District Court, Polk County, Minnesota.

Locke, Joe C., 10351 SW., 62nd Street, Miami, Florida, convicted on September 23, 1931, in the Court of Records, Escambia County, Florida.

Luckett, Travis J., 1404 South 10th Avneue, Yakima, Washington, convited on April 9, 1979, in the Superior Court of Yakima County, Washington.

Lucord, Garland P., 2211 Brandonview Avenue, Richmond, Virginia, convicted on April 21, 1972, in the Circuit Court of Henrico County, Virginia; and on September 4, 1975, in the United States District Court, Eastern District of Virginia.

Mahaffey, Ray, 849 Myrick Street, Waynesboro, Georgia, convicted on November 4, 1974, in the United States District Court, Augusta, Georgia.

Malone, Charles H. Jr., 117 Millwood Lane, Winchester, Virginia, convicted on May 12, 1975, in the Circuit Court of Fredwick County, Virginia.

Marbry, Hurley D., 1679 Whitney Avenue, Memphis, Tennessee, convicted on March 18, 1977, in the United States District Court, Western District of Tennessee.

Marshall, Don R., 7166 Club Road, Richmond, Virginia, convicted on November 15, 1973, in the Circuit Court of Henrico County, Virginia.

Masterson, Robert V., RD 2, P.O. Box 339, Park Road, Nottingham, Pennsylvania, convicted on January 30, 1949, in the Court of Common Pleas, Delaware County, Pennsylvania; and on January 26, 1953, in the United States District Court, Southern District of Indiana.

Mazur, Stanley A., 326 River Street, Olyphant, Pennsylvania, convicted on October 26, 1977, in the United States District Court, Middle District of Pennsylvania.

McCarthy, James E., 2925 South Semoran Boulevard, Apt. 261, Orlando, Florida, convicted on July 27, 1973, in the United States District Court, Middle District Division of Orlando, Florida.

McComas, Randall C., 450 Palace Avenue, Elsmere, Kentucky, convicted on March 31, 1975, in the United States District Court, Covington, Kentucky.

McFarlin, David D., 806 East Palm Lane, Phoenix, Arizona, convicted on June 7, 1966, in the Circuit Court of Cape Girardeau, Missouri; and on November 8, 1954, in the Circuit Court of Danklin County, Missouri.

McGraw, Debra G., 10900 Jean Drive, Odessa, Texas, convicted on March 26, 1979, in the 244th Judicial District Court of Eaton County, Texas.

Mears, Wilson A. Jr., 1874 Belle View Way, Tallahassee, Florida, convicted on November 7, 1977, in the Florida Circuit Court of Gadsden County, Florida.

Molina, Richard D., P.O. Box 1563, Springerville, Arizona, convicted on December 11, 1978, in the United States District Court, District of Arizona.

Moore, Douglas L., 6806 Silver Hill Drive, Holiday, Florida, convicted on May 15, 1973; April 24, 1974; and in 1975 in the Circuit Court of Duval County, Florida.

Morgan, Ken A., 4745 Solano Way, Fair Oaks, California, convicted on December 21, 1962, and on June 29, 1964, in the Superior Court of Sacramento, California.

Morris, Franklin D., 159 Howard Street, NE., Atlanta, Georgia, convicted on January 8, 1959; and on April 11, 1963, in the Superior Court, Fulton County, Georgia.

Morrissey, Frederick, 28 Greenville Road, North Smithfield, Rhode Island, convicted on August 8, 1958, in the New York Court of General Sessions in New York.

Mowry, David J., 6803 Hallethsville Highway, Apt. 70, Victoria, Texas, convicted on September 8, 1978, in the 262nd District Court, Harris County, Texas.

Namyniuk, Raymond W., P.O. Box 55, Fairfield, North Dakota, convicted on February 5, 1980, in the District Court of Stark County, North Dakota.

Nelson, Uless, 5817 Boca Raton, Apt. A105, Fort Worth, Texas, convicted on June 3, 1977, in the United States District Court, Northern District of Fort Worth, Texas.

Nelson, Wayne E., East 208 Queen, Spokane, Washington, convicted on June 30, 1975, in the Superior Court of Spokane, Washington.

Norman, William E., 828 Pavillion, Dallas, Texas, convicted on December 19, 1968, in the Sixteenth Judicial District Court, Denton County, Texas.

Ostrander, Eugene K., 3304 Itasca, Lubbock, Texas, convicted on May 6, 1961, in the District Court of Washington County, Oklahoma.

Paige, James G., 1601 Memorial Parkway, Portland, Texas, convicted on February 6, 1963, in the Circuit Court of Panama City, Florida.

Parkinson, Roger A., 616 North Oaks Drive, Apt. 206, Osseo, Minnesota, convicted on December 27, 1976, in the Fourth Judicial District Court, Hennepin County, Minnesota.

Pavlovich, Mladen, 4031 North 66th Avenue, Hollywood, Florida, convicted on April 27, 1976, in the Queens County Superior Court, New York.

Perry, William A., Route 3, Box 584, Front Royal, Virginia, convicted on December 12, 1970, in the Warren County Circuit Court, Front Royal, Virginia.

Peters, Constance F., 1636 8th Avenue East, Twin Falls, Idaho, convicted on May 9, 1977, in the Fourth District of Idaho.

Plemons, Henry J., 1097 Bentee Avenue, SE., Apt. 2, Atlanta, Georgia, convicted on March 14, 1960; and on April 15, 1974, in the Superior Court of De Kalb County, Georgia.

Pope, Dwight E., 1461 Northside Drive, Apt. A-2, Clinton, Mississippi, convicted on November 7, 1975, in the Circuit Court of Harrison County, Mississippi.

Porter, Stacy R., Route 1, St. Cloud, Minnesota, convicted on January 16, 1975, in the Seventh Judicial District Court, Stearns County, Minnesota.

Powell, Jeffrey W., 1354 North 10th Street, Fargo, North Dakota, convicted on April 11, 1975, in the District Court of Cass County, North Dakota.

Powers, John O., Rural Route 1, Maple Hill Drive, Washburn, Wisconsin, convicted on January 30, 1978, in the Bayfield County District Court, Washburn, Wisconsin.

Praglowski, Richard J., 1505 West 224th Street, Torrance, California, convicted on September 10, 1964, in the Superior Court of Los Angeles, California; and on February 17, 1965, in the Superior Court of San Bernardino, California.

Pratt, William C., 521 Ida Place, NE., Albuquerque, New Mexico, convicted on December 15, 1964, in the State Court, Montrose County, Colorado.

Quiring, Marcel, Route 4, Box 4161, Nampa, Idaho, convicted on February 8, 1966, in the Superior Court of Walla Walla County, Washington.

Redmond, Ralph A., 4021 El Camino, Las Vegas, Nevada, convicted on February 1, 1965, in the Air Force Court Martial, Shephard Air Force Base, Texas.

Reed, Lawrence J., 5509 West Lewis, Phoenix, Arizona, convicted on August 4,

1961, in the Superior Court of Los Angeles, California.

Reinhardt, Jerome, 49–12 Ditmars Boulevard, East Elmhurst, New York, convicted on April 11, 1961, in the United States District Court, Southern District of New York.

Riley, Brian K., 8509 Island View Court, Olympia, Washington, convicted on October 4, 1979, in the Superior Court of Thurston County, Washington.

Rippee, Danny L., 3523 Garden City Boulevard, SE., Roanoke, Virginia, convicted on November 1, 1965, in the Hastings Court of Roanoke, Virginia.

Roberts, Charles E., Four Freedoms House, Apt. 206, 1600 Antietam, Detroit, Michigan, convicted on November 19, 1952, in the Recorders Court, Detroit, Michigan.

Robinson, Richard L., Route 10, Box 938–20, Springfield, Missouri, convicted on December 29, 1961, in the Circuit Court of Greene County, Missouri.

Rodriguez, Robert R., P.O. Box 112, Badger, California, convicted on October 4, 1966, in the San Francisco Superior Court, California.

Rogers, Shanley, 3251 North Marston Street, Philadelphia, Pennsylvania, convicted in November 1962, in the United States Court, Philadelphia, Pennsylvania.

Rumsey, Robert, 1131 South Duke Drive, Tucson Arizona, convicted on April 15, 1975, in the United States District Court, Tucson, Arizona.

Sander, Lynn Jr., Route 1, Box 111–H, Allendale, South Carolina, convicted on May 4, 1971, in the Aiken County Court, Allsen, South Carolina.

Sarasnick, Joseph L., 420 James Street, Bridgeville, Pennsylvania, convicted on February 2, 1973, in the Court of Commons Pleas, Allegheny County, Pennsylvania; and in September 1969, in the Court of Quarter Sessions, Washington County, Pennsylvania.

Schultz, Charles D., 1541 Apricot Street, Wisconsin Rapids, Wisconsin, convicted on May 8, 1975, in the Branch II County Court, Wood County, Wisconsin.

Scott, Dennis L., RD #1, Punxsutawney, Pennsylvania, convicted on April 12, 1976, in the Court of Common Pleas, Jefferson County, Pennsylvania.

Serle, Michael P., 2622 Swede Drive, Norristown, Pennsylvania, convicted on April 7, 1972, in the Court of Common Pleas, Montgomery County, Pennsylvania.

Shaw, Emery D., P.O. Box 203, Point of Rocks, Wyoming, convicted on January 28, 1971, in the Fourteenth District Court of Oklahoma.

Shumway, Kim B., 6 Broad Street, Milford, Connecticut, convicted on October 4, 1972, in the Superior Court of Litchfield, Connecticut.

Sidden, James C., Route 1, Box 120½, Traphill, North Carolina, convicted on May 19, 1958; July 15, 1965; and on October 21, 1969, in the United States District Court, Wilkesboro, North Carolina.

Simkanin, Mike, 2831 North 55th Drive, Phoeniz, Arizona, convicted on March 17, 1977, in the Superior Court of Maricopa County, Arizona.

Smith, Augustus E., P.O. Box 504, Highway 27, Junction City, Kentucky, convicted on October 15, 1954, in the Common Pleas Court, Westchester, Pennsylvania.

Smoot, Robert E., 303 Dalby Street, Houston, Texas, convicted on April 5, 1972, in the Harris County District Court, Harris County, Texas.

Spencer, Walter E., 1682 Slate Road, Conley, Georgia, convicted on April 15, 1966, and March 11, 1966, in the Superior State Court, Fulton County Georgia; on February 28, 1967, in the Superior State Court of Clayton County, Georgia; and on March 10, 1967, in the Superior State Court of De Kalb County, Georgia.

Sprung, Gene A., P.O. Box 102, Corona, South Dakota, convicted on September 21, 1979, in the United States District Court of South Dakota.

Sprulin, Joey N., Route 1, Box 241–A, Low Gap, North Carolina, convicted on November 14, 1976, in the Superior Court of Surry County, North Carolina.

Stewart, Junius C., 225 North 61st Street, Philadelphia, Pennsylvania, convicted on November 6, 1967, in the Eastern District of Pennsylvania.

Sturtz, James V., 1869 Homestead Farms Lane, Apt. 3, West Valley, Utah, convicted on August 5, 1977, in the United States District Court of Utah.

Swanson, William E., 373 Arcadia, Shelton, Washington, convicted on July 11, 1969, in the Geary County District Court, Kansas; and on October 22, 1969, in the Riley County District Court, Kansas.

Swart, Daniel J., P.O. Box 155, Umatilla, Oregon, convicted on April 17, 1979, in the Circuit Court of Umatilla County, Oregon.

Sweet, Dennis, Rural Route 1, Cuba City, Wisconsin, convicted on February 23, 1973, in the County Court, Grant County, Wisconsin; and on April 29, 1974, in the Circuit Court of Grant County, Wisconsin.

Terrell, Gerald E., 1412 Laredo, Napa, California, convicted on June 24, 1963, in the Solano County Superior Court, California.

Thompson, Charlie, W., Route 1, Box 22–1K, Westover, Alabama, convicted on September 10, 1979, in the United States District Court, Middle District of Alabama.

Thrall, J. D., Route 1, Box 10, Perry, Kansas, convicted on March 5, 1964, and on May 19, 1969, in the Shawnee County District Court, Kansas; and on April 1, 1966, in the Wabaunsee County District Court in Kansas.

Truman, Donald W., 913 East Hill Street, Springfield, Missouri, convicted on July 23, 1979, in the United States District Court, Western District of Missouri.

Vandal, Albert O., 411 First Street, NW., Minot, North Dakota, convicted on July 10, 1978, in the United States District Court, District of North Dakota.

Vaughan, Harold G., 21707 53rd Avenue West, Montlake Terrace, Washington, convicted on June 6, 1977, in the King County Superior Court, Seattle, Washington.

Wagner, Vernon A., 4142 Russell Avenue North, Minneapolis, Minnesota, convicted on November 10, 1971, in the United States Court, Fourth Division, District of Minnesota.

Webb, Robert N., P.O. Box 245, Grant Junction, Texas, convicted on October 18, 1973, in the United States District Court, Western District of Texas.

Wellner, Charles J., P.O. Box 6, Goldendale, Washington, convicted on May 28, 1974, in the Superior Court, Spokane County, Washington.

Westerman, Burl D., 2921 Estates Avenue, Pinole, California, convicted on January 30, 1978, in the United States District Court, District of Arizona.

Wienke, Roy O., 4311 Schofield Avenue, Lot 56, Schofield, Wisconsin, convicted on March 13, 1978, in the Lincoln County Circuit Court, Merrill, Wisconsin.

Williams, David M., 11230 Monday Way, Midlothian, Virginia, convicted on May 2, 1977, in the United States District Court, Richmond, Virginia.

Williams, Ernest L., 200 North Hilton Street, Baltimore, Maryland, convicted on January 31, 1978, in the United States District Court of Baltimore, Maryland.

Williams, John P., 407 18th Plaza, Lynn Haven, Florida, convicted on July 22, 1974, in the Fourteenth Judicial Circuit Court, Bay County, Florida.

Willis, Joseph R., 456 South 3rd West, Cedar City, Utah, convicted on July 11, 1979, in the Fifth Judicial District Court, Washington County, Utah.

Willis, Orum, R. Jr., Route 1, Jackson Gap, Alabama, convicted on August 9, 1976, in the United States District Court, Middle District of Alabama.

Wilson, Willie E., 1498 Martin Luther King Drive, SW., Atlanta, Georgia, convicted on January 30, 1962, in the Superior Court of Fulton County, Georgia.

Winstead, Ralph Q., 415 Sylvia Drive, Forest Park, Georgia, convicted on February 26, 1975, in the Superior Court of Clayton, Georgia.

Wolford, Raymond, 8503 Comolette Street, Dewney, California, convicted on December 19, 1939, in the Washington County Court, Bartlesville, Oklahoma.

Wright, William R., 415 East Kennaston, Montesano, Washington, convicted on December 30, 1977, in the Superior Court, Grays Harbor, Washington.

Wynn, Willis A., 241 South Ardmore Avenue, Dayton, Ohio, convicted on May 24, 1951, in the United States District Court, Dayton, Ohio.

Zacher, Michael P., 3585 East Elswood Drive, Idaho Falls, Idaho, convicted on June 27, 1980, in the Superior Court of Ketsap County, Washington.

Zupnyk, William C., 302 Delancy Street, Philadelphia, Pennsylvania, convicted on June 5, 1950, in the Camden Municipal Court of Pennsylvania.

Compliance With Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Signed: February 26, 1982.

G. R. Dickerson,

Director.

[FR Doc. 82-6146 Filed 3-8-82; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

[T.D. 82-37]

Revision of Customs Criteria for Establishing Ports of Entry and Stations

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice is to advise municipalities, local governments, civic organizations, and other interested parties that Customs has revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The new criteria, which are set forth in this document, modify and expand upon certian unpublished workload criteria which Customs has followed since 1973 in evaluating port of entry requests. They represent an increase in the workload levels formerly used in evaluating these requests. By using the revised criteria, Customs will obtain the most efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

EFFECTIVE DATE: March 9, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service has primary responsibility for: (1) Collecting revenue (including customs duties, excise taxes, fees and penalties) due on imported merchandise; (2) processing persons, cargo, baggage, and mail entering the United States from foreign countries; (3) enforcing import and export prohibitions to protect the general welfare and security of the United States; and (4) collecting international trade statistics.

Individuals, vehicles, and merchandise generally enter that United States through established Customs ports of entry and stations. During Fiscal Year 1979, more than 271 million persons, 81 million automobiles, trucks, and buses, 558,714 aircraft, and 227,364 ships entered the United States. In addition, Customs processed over 4 million formal entries to collect approximately $8 billion in duty and taxes on more than $218 billion of imported merchandise.

Customs Ports of Entry

Customs ports of entery are places (seaports, airports, or land border ports) designated by the Secretary of the Treasury where Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties and enforce the various provisions of Customs and related laws.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. The Commissioner coordinates these matters with other Federal inspection agencies, and, when appropriate, with Canadian or Mexican officials. Staffing at ports of entry may range from one to several hundred employees, depending upon the volume of business. However, most new ports of entry are staffed by at least a port director, one or more inspectors, and a secretary.

Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

Customs Stations

Customs stations are places other than ports of entry where Customs officers or employees are stationed to enter and clear vessels and other carriers, accept entries of merchandise, examine baggage, collect duties, and enforce the various provisions of Customs and related laws. Stations may be established or terminated by the Commissioner of Customs.

The significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry and clearance of vessels; and, except as otherwise provided by the Customs Regulations,

(2) The expenses (including any per diem allowed in lieu of subsistence) but not the salaries of its officers or employees for services rendered in connection with the entry or delivery of merchandise.

Because the cost of services provided at stations must be reimbursed to the Federal Goverment while the cost of services provided at ports of entry is not, Customs receives fewer requests for the establishment of stations. However, the criteria for establishing ports of entry also are applicable to stations. Of course, the potential volume of the workload at a station would be less.

Customs stations are established under the authority of section 1, 37 Stat. 434, section 301, 80 Stat. 379; 5 U.S.C. 301, 19 U.S.C. 1.

Increased Demand for Service

The ability of modern air carriers to transport larger passenger and cargo loads longer distances has prompted demands for additional Customs service throughout the United States. Because Federal inspection facilities at many major airports are overworked, modern air carriers would operate more efficiently by proceeding directly to their destinations instead of stopping for Customs inspection at intermediate points.

Furthermore, because it is advantageous to inspect containerized cargo at or near its ultimate destination, the increased use of containers to transport cargo also has created a demand for additional service at inland locations.

In addition, congestion at "gateway" ports could be reduced by expanding service in alternate locations and by eliminating the requirement that carriers proceeding inland stop at coastal or land border ports for inspection.

To meet these demands, Customs anticipates that it will be necessary to establish or expand areas of Customs service throughout the country.

Procedure for Requesting new or Expanded Service

There is no formal application for requesting new or expanded Customs service. Generally, however, a recognized civic or government organization such as a chamber of commerce, port authority, or city government, makes a request in writing, including the reason for the request, to the District Director of customs in the district where the requested facility is or will be located. In order to receive favorable consideration, there must be a sufficient volume of import business (existing and potential) to justify the expense of maintaining an office or expanding service.

Before approving requests for new service, Customs must have the available manpower. Because budget restrictions have curtailed Customs

resources, permanent manpower may not be assigned for some time. A new port of entry cannot be entirely staffed by part-time help. However, permanent staffing may be supplemented by part-time employees. These factors should be noted by persons making requests for new service.

Criteria

While not absolute, the following criteria should be considered in preparing applications for the establishment of Customs ports of entry and stations.

(1) The requesting community must:

(a) Demonstrate that the benefits to be derived justify the Federal Government expense involved;

(b) Be service by at least two major modes of transportation (rail, air, water, or highway); and

(c) Have a minimum population of 300,000 within the immediate service area (approximately a 70 mile radius).

Land border ports are exempt from (b) and (c).

(2) The actual or potential Customs workload (minimum number of transactions per year), in the area must be:

(a) 15,000 international air passengers; or

(b) 2,500 consumption entries (formal (over $250 in Customs value), information (under $250 in Customs value)); or

(c) 150,000 vehicles (for land border ports); or

(d) 2,000 scheduled international aircraft arrivals (passengers and/or cargo); or

(e) 350 cargo vessel arrivals; or

(f) Any appropriate combination of the above.

(3) Facilities (provided without cost to the Federal Government in most cases) must include:

(a) Wharfage and anchorage adequate for oceangoing cargo/passenger vessels (if a water port);

(b) Cargo and passenger facilities;

(c) Warehousing space for the secure storage of imported cargo pending final Customs inspection and release; and

(d) Administrative office space, cargo inspection areas, primary and secondary inspection rooms and areas, storage areas, and other space necessary for regular Customs operations. Land border inspection stations are provided by the Federal Government.

In addition, Customs must obtain the concurrence of other Federal inspection agencies and ensure that the facility requirements of these agencies are met. Customs also must obtain agreements from Mexican and Canadian officials to establish inspection facilities opposite proposed U.S. ports at land border inspection stations.

Applicability of 5 U.S.C. 553

These criteria shall be used in determining whether to grant requests for establishing or expanding areas of Customs service. Following a decision to grant such a request, any proposed change in the field organization of the Customs Service must be made in accordance witht the notice, comment, and delayed effective date provisions of 5 U.S.C. 553.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William T. Archey,

Acting Commissioner of Customs.

Approved:

John P. Simpson,

Acting Assistant Secretary of the Treasury.

February 17, 1982.

[FR Doc. 82-6317 Filed 3-8-82; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 46
Tuesday, March 9, 1982

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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[M-344, Amdt. 5; Mar. 3, 1982]

CIVIL AERONAUTICS BOARD

Notice of deletion from the March 4, 1982.

TIME AND DATE: 10 a.m., March 4, 1982.

PLACE: Room 1027 (open), Room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 10. Docket 38904, A two-year review for fitness determinations for non-operating carriers. (Memo 1130, OGC, BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S-358-82 Filed 3-5-82; 3:11 pm]

BILLING CODE 6320-01-M

2

[M-344, Amdt. 6; Mar. 3, 1982]

CIVIL AERONAUTICS BOARD

Notice of addition of closed items to the March 4, 1982 meeting.

TIME AND DATE: 10 a.m., March 4, 1982.

PLACE: Room 1027 (open), Room 1012 (closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 43. Discussion on the Upcoming Negotiations with Japan. (BIA)

44. Discussion on Saudi Arabia—Recent Developments. (BIA)

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S-359-82 Filed 3-5-82; 3:12 pm]

BILLING CODE 6320-01-M

3

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVISION ANNOUNCEMENT: 47 FR 9630.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: March 10, 1982, 9:30 a.m.

CHANGES IN THE MEETING: Previous items 1 and 3 have been deleted from the Agenda. Previous item 1 concerning chain saws was addressed at the March 3, 1982 scheduled briefing. Previous item 3 concerning indoor air quality is tentatively scheduled for consideration at the March 31, 1982 Commission meeting. In addition, the Commission has added enforcement matter 092010 to its Agenda for March 10, 1982 for consideration in closed session.

[S-356-82 Filed 3-5-82; 12:42 pm]

BILLING CODE 6355-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 11, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Radio Technical Commission for Marine Services (RTCM). *Summary:* The Commission sponsors the RTCM. As part of the program reductions mandated by the current budget, it is proposed to terminate sponsorship at the end of FY 82.

2—*Title:* Amendment of Section 2.806 of marketing rules (Gen. Docket 81-463). *Summary:* The Commission considers the matter of amending Section 2.806 to clarify the exemption from marketing restrictions to allow operation of computing equipment prior to a determination of compliance.

Issued: March 4, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

Agenda, Item No., and Subject

Private Radio—1—*Title:* Report and Order terminating the Notice of Inquiry in General Docket 78-250 and dismissing RM-2567 and RM-3138. *Summary:* The Commission will consider whether to adopt a Report and Order terminating General Docket 78-250 and dismissing RM-2567 and RM-3138. Docket 78-250 contained a Notice of Inquiry into the administration of telegraphy exams to handicapped applicants for amateur radio operator licenses. RM-2567 proposes rule changes regarding telegraphy exams for deaf applicants. RM-3138 proposes elimination of telegraphy requirements and the telegraphy subbands.

Common Carrier—1—*Title: Western Union Telegraph Company,* Revisions to Tariffs FCC Nos. 240, 252, 258, 260, 263 and 269—Restructuring of Telex and TWX Services (Docket No. 78-97). *Summary:* The FCC will consider applications for review and a petition for reconsideration of the Common Carrier Bureau's order denying petitions to reject or suspend distance insensitive or "postalized" tariff rates. Also to be considered are two motions involving Docket No. 78-97 (*Telex/TWX Investigation*). One seeks enlargement of the investigation and rescission of the ALJ's interim prescription of charges for outbound international traffic. The other requests termination of phase II of the investigation which deals solely with the

2—Application for Review of *New York Telephone Co. (Transmittal No. 550),* Mimeo No. 003011, released August 21, 1981. American Satellite Company seeks review of order entered under delegated authority by Chief, Common Carrier Bureau denying petitions to reject. Commission must consider whether two-year statute of limitations in Communications Act § 415(a) applies to tariff filings.

3—*Title:* American Telephone and Telegraph Company—Offer of Facilities to Other Common Carriers *Summary:* The Commission will consider questions raised by Court's decision in *MCI Telecommunications Corporation* v. *FCC,* No. 80-1624, DC Circuit, September 24, 1981.

Cable Television—1—"Peti;tion for Partial Reconsideration" (CSR-1763) filed January 22, 1981, by WNNE-TV, Inc. WNNE-TV, Inc., licensee of Station WNNE-TV (NBC, Channel 31), Hanover, New Hampshire, seeks partial reconsideration of the Commission's opinion in *Northern New England Television* (WNNE-TV) (Hanover, New Hampshire), FCC 80-721, 83 FCC 2d 418 (1980).

Renewal—1—*Title:* License Renewal Applications of Certain Broadcast Stations Serving the Chicago Metropolitan Area. *Summary:* The Commission considers a petition to deny an informal objection by the Latino Committee on the Media, which challenges the renewal of licenses for 27 stations located within the Chicago metropolitan area, based on allegedly deficient employment practices regarding Hispanics.

Aural—1—*Subject:* Memorandum Opinion and Order in repetition for review filed by ICBC Corporation, New York, New York. *Summary:* The Commission considers whether the Broadcast Bureau erred in

declining to waive Section 73.37(a) so as to accept for filing the applicant's request to change frequencies and operate on an unlimited time basis.

Broadcast—1—*Title:* Request of Mrs. Titilola Payne, construction permittee of translator K43AD, Channel 43, Knoxville, Tennessee, for Special Temporary Authority to originate local programming and operate a teletext service; application of Expo International Broadcasters, Inc. (Expo), for an experimental station, on Channel 7, Knoxville, Tennessee. *Summary:* The proposed Order considers Mrs. Payne's request for Special Temporary Authority and considers allegations raised by South Central Broadcasting and Tennessee Telecasting, Inc., that: (a) Expo's proposal violates the purpose of the Experimental Rules, (b) Expo's application is inconsistent with other applications filed by Expo's President, (c) Expo's President's other broadcast interests cast doubt on the bona fides of Expo's proposal, (d) Expo's programming is not unique or necessary, (e) Expo's application is incomplete, and (f) applicant is not financially qualified to be a Commission licensee.

2—*Title:* Amendment of Form 324, Annual Financial Report of Broadcast Stations. *Subject:* The Commission will review § 73.3611 of its Rules, the annual financial report, and consider whether to expand, reduce or eliminate the report.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

[S–353–82 Filed 3–5–82; 11:20 am]

BILLING CODE 6712–01–M

5

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will consider this additional item on the subject listed below at the Closed Meeting scheduled for Thursday, March 11, 1982, following the Open Meeting which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—Headquarters Relocation.

This item is closed to the public becuase it concerns Permature Disclosure matters (See 47 CFR 0.603(i)).

The following persons are expected to attend: Commissioners and their Assistants, Managing Director and members of his staff, General Counsel and members of his staff, Chief, Office of Public Affaris and members of his staff.

Action by the Commission March 4, 1982: Commissioners Fowler, Chairman; Quello, Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: March 4, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–354–82 Filed 3–5–82; 11:20 am]

BILLING CODE 6712–01–M

6

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, March 11, 1982, following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Applications for Review in the Gulf Coast Communications, Inc., Tampa, Florida Public Coast III–B Maritime Mobile Radio proceeding. (PR Docket No. 78–259–60).

This item is closed to the public because it concerns adjudicatory matters (See 47 CFR 0.063(j)).

The following persons are expected to attend: Commissioners and their Assistants, General Counsel and members of his staff, Managing Director and members of his staff, Chief, Office of Public Affairs and members of his staff.

Action by the Commission January 13, 1982. Commissioners Fowler, Chairman; Quello, Washburn, Fogarty, Jones, Dawson and Rivera voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be optained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: March 4, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–355–82 Filed 3–5–82; 11:21 am]

BILLING CODE 6712–01–M

7

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 3:15 P.M., Friday, March 5, 1982.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

MATTERS TO BE CONSIDERED: The following regulations are to be on the special board meeting.

Amendment of Regulations Regarding Charter Conversion for Supervisory Purposes.

FSLIC Insurance Coverage of Deferred Compensation Plans Sponsored by State and Local Governments.

Employment Contracts and Compensation.

Manufactured Mobil Home Loans.

No. 17, March 5, 1982.

[S–357–82 Filed 3–5–82; 1:05 pm]

BILLING CODE 6720–01–M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open/closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, February 22, 1982.

CHANGES IN THE MEETING: Deletion/additional items.

The following item was not considered at an open meeting scheduled for Wednesday, March 3, 1982:

Consideration of whether to propose for public comment Rule 17f–5 under the Investment Company Act of 1940 which would permit a management investment company to authorize a qualified bank custodian or sub-custodian to place and maintain the company's foreign securities in foreign banks and foreign securities depositories under certain conditions. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2028.

The following items will not be considered at a closed meeting scheduled for Thursday, March 4, 1982, at 10:00 a.m.:

Freedom of Information Act appeal.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

The following were considered at a closed meeting scheduled on February 9, February 24, and March 3, 1982:

Regulatory matters bearing enforcement implications.

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: Diane Klinke at (202) 272-2178.

March 4, 1982.

[S-352-82 Filed 3-5-82; 10:47 am]

BILLING CODE 8010-01-M

federal register

Tuesday
March 9, 1982

Part II

Department of Defense

Office of the Secretary

Enlisted Administrative Separations; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 41

[DOD Directive 1332.14]

Enlisted Administrative Separations

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment to final rule.

SUMMARY: This part, appearing in 46 FR 9571, January 16, 1981, is being revised to include as reason for separation, provisions on drug abuse. Immediate implementation is necessary to conform to DOD policy and implementing documents of the Military Departments. This part will continue to be used for administrative separation proceedings initiated on or before September 30, 1982.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Colonel John L. Fugh, USA, Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management), the Pentagon, Room 3D283, Washington, D.C. 20301; telephone 202-697-3387.

SUPPLEMENTARY INFORMATION: A complete revision of this part is published elsewhere in this part II. The complete revision will apply to separation proceedings initiated on or after October 1, 1982. For the information of the public, the relevant provisions of the Deputy Secretary of Defense Memorandum, "Alcohol and Drug Abuse," December 28, 1981, are as follows:

Urine Testing Procedures

"Section 1. General Guidance. Urinalysis for the purpose of testing for controlled substances may be used for a number of distinct purposes. First, it may be used to identify personnel for referral to counseling, treatment, and rehabilitation programs. Second, it may be used as evidence in actions under the Uniform Code of Military Justice in accordance with Section 2. Evidence of drug abuse that is produced in such tests also may be used in administrative actions as provided in this Enclosure.

"Section 2. Guidelines for Use of Urinalysis for Drug Testing.

"a. Mandatory urinalysis testing for controlled substances may be conducted during—

"(1) An inspection under Military Rule of Evidence 313;

"(2) A search or seizure under Military Rules of Evidence 311-317;

"(3) An examination for a valid medical purpose under Military Rule of Evidence 312(f) to determine a member's fitness for duty; to ascertain whether a member requires counseling, treatment, or rehabilitation for drug abuse; or in conjunction with a member's participation in a DOD drug treatment and rehabilitation program; or

"(4) Any other examination for a valid medical purpose under Military Rule of Evidence 312(f).

"b. Subject to limitations in Section 3, the results of mandatory urinalysis may be used to refer a member to a DOD treatment and rehabilitation program, to take appropriate disciplinary action, and to establish the basis for a separation and characterization in a separation proceeding in accordance with DOD Directives 1332.14 and 1332.30. The results of mandatory urinalysis may be used in other administrative determinations except as otherwise limited in this Enclosure or under rules issued by the Department of Defense or the military departments.

"Section 3. *Limitations on Use of Urinalysis Results.*

"a. Results obtained from urinalysis under Section 2.a.(3) may not be used against the member in actions under the Uniform Code of Military Justice and on the issue of characterization in separation proceedings.

"b. A member's voluntary submission to a DOD treatment and rehabilitation program, and evidence provided voluntarily by the member as part of initial entry into such a program, may not be used against the member in an action under the Uniform Code of Military Justice or on the issue of characterization in a separation proceeding.

"c. Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States may not be introduced against the patient in a court-martial except as authorized by a court order issued under the standards set forth in 21 U.S.C. 1175(b)(2)(C).

"d. The limitations in this Section do not apply to—

"(1) The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been first introduced by the member; and

"(2) Disciplinary or other action based on independently derived evidence, including evidence of drug abuse after initial entry into the treatment and rehabilitation program.".

PART 41—ENLISTED ADMINISTRATIVE SEPARATION

Accordingly, 32 CFR Part 41 is amended as follows:

1. In § 41.7, paragraphs (f) and (i)(6) are revised to read as follows:

§ 41.7 Reason for separation.

* * * * *

(f) *Personal abuse of drugs other than alcoholic beverages.* Discharge with an honorable discharge, or general discharge as warranted by the member's military record, when based on evidence developed as a direct or indirect result of a urinalysis test administered for identification of drug abusers, or by a member's volunteering for treatment for a drug problem under the Drug Identification and Treatment Program administered by his or her particular Armed Force, and:

(1) Member's record indicates lack of potential for continued military service; or

(2) Long-term rehabilitation is determined necessary and member is transferred to a Veteran's Administration or civilian medical facility for rehabilitation; or

(3) Member has failed, through inability or refusal, to participate in, cooperate in, or complete a drug abuse treatment and rehabilitation program.

Note.—Nothing in this section precludes separation under any other provision of this Part in appropriate cases involving a member who has been identified through urinalysis or who has volunteered for treatment, subject to the limitations on characterization in the Deputy Secretary of Defense memorandum, "Alcohol and Drug Abuse," dated December 28, 1981.

* * * * *

(i) * * *

(6) Drug abuse, which is the illegal, wrongful, or improper use, possession, sale, transfer or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 U.S.C. 812, subject to the limitations on characterization in the Deputy Secretary of Defense Memorandum, "Alcohol and Drug Abuse," dated December 28, 1981.

* * * * *

(Title 10, U.S.C. 1162, 1163, 1169, 1170, 1172, and 1173)

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 3, 1982.

[FR Doc. 82-6276 Filed 3-8-82; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 41

[DOD Directive 1332.14]

Enlisted Administrative Separations

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This rule is being reissued to provide guidance to the Military Departments, including the Reserve Components thereof, on enlisted administration separation policy. It provides reasons for separation, standards for separation and characterization of service, and procedures for separation.

EFFECTIVE DATE: October 1, 1982.

ADDRESS: Copies of DOD Directive 1332.14 may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

FOR FURTHER INFORMATION CONTACT: Colonel John L. Fugh, USA, Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management), the Pentagon, Room 3D823, Washington, D.C. 20301, telephone 202-697-3387.

SUPPLEMENTARY INFORMATION: In FR Doc. 81-17882, appearing in the **Federal Register**, on June 17, 1981 (46 FR 31663), the Office of the Secretary of Defense published a proposed rule to revise DOD Directive 1332.14, Enlisted Administrative Separations. The Supplementary Information accompanying the proposed rule described the prior history of this rule.

In response to the notice of proposed rulemaking, DOD received comments from 12 different organizations and individuals. Each comment was reviewed with care. A number of changes were made in the proposed rule as a direct result of comments submitted by the public. Other changes were made as a result of the Department's overall reexamination of the proposed rule in light of the comments. The primary factors considered in evaluating the public comments are set forth in the following material in the Sectional Analysis.

The comments generally reacted favorably to the format, style, and clarity of the proposed rule. Several comments suggested the need for further clarification of the rule, and the final rule reflects the Department's efforts in this regard.

One comment suggested that the Department issue operational guidance for each section of the rule. The operational guidance will be provided by the Military Departments in their implementing documents. As a further means of insuring that operational problems under the final rule are addressed in a timely matter, the final rule delegates authority to modify or supplement the Enclosures to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

Specific comments were directed at a number of substantive and procedural provisions of the proposed rule, and these matters are discussed in the Sectional Analysis, below.

The reissuance applies to all enlisted administrative separations initiated on or after October 1, 1982. In addition, a separate amendment to the current directive has been issued which is applicable to separation proceedings as provided in the implementing documents of the military departments. The separate amendment which is published elsewhere in this Part II, concerns separations involving drug abuse, and is consistent with treatment of drug abuse in the new rule. Immediate implementation is necessary to conform separation policy to the Deputy Secretary of Defense Memorandum, "Alcohol and Drug Abuse," December 28, 1981. The separate amendment and the Deputy Secretary of Defense Memorandum are published elsewhere in this Part II.

The Supplementary Information and the Sectional Analysis contained herein are intended only to improve the internal management of the federal government, and are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sectional Analysis of the Final Rule

DOD Directive 1332.14, 32 CFR Part 41

Section 41.1. Reissuance and purpose. This is taken from § 41.1 of the proposed rule.

Section 41.2. Applicability and scope. This is taken from § 41.2 of the proposed rule with minor changes in terminology. In addition, the final rule deletes the references to the Coast Guard. The final rule will be applicable to the Coast Guard only when that service comes under the direct control of the Department of the Navy.

Section 41.3. Policy. This is taken from § 41.3 of the proposed rule. The final rule provides further detail, with particular emphasis on both the importance of the honorable service and the concept that military service is a calling different from any civilian occupation.

Section 41.4. Responsibilities. 1. *The Secretaries of the Military Departments* (§ 41.4(a)). This subsection, which is new, assigns the responsibility for consistency in separation policy to the Secretaries of the Military Departments. The goal of consistency is limited by the phrase "to the extent practicable in a system that is based on command discretion." This limitation reflects the fact that separation policy is but one aspect of the Department's overall military personnel and force management policies. These policies give commanders the personnel tools needed to meet their readiness requirements. One of the primary features of military personnel policy is the grant of wide discretion to commanders in deciding upon appropriate actions, ranging from reprimands to courts-martial, in dealing with personnel problems. Absolute consistency in disposition of separation cases would be an illusory goal in view of the size of our armed forces, the variety of missions, and the diverse characteristics of different units and commanders. Moreover, a requirement of absolute consistency would unduly constrain the degree of discretion that must be provided to individual commanders to manage their units on the basis of first-hand knowledge of personnel and mission requirements. Subject to the foregoing considerations, there is a substantial potential for consistency in the application of separation policies. General requirements can guide the exercise of discretion by commanders in the use of separation policy, and can provide members facing separation with a set of basic procedural rights. This Directive provides for substantial consistency among the Military Departments in this regard, and the Secretaries of the Military Departments are charged with the responsibility of furthering the goal of consistency within their departments.

a. *Processing goals* (§ 41.4(a)(1)). This is similar to § 41.4(c) of the proposed rule, with minor changes in terminology.

b. *Periodic explanations* (§ 41.4(a)(2)). This is taken from § 41.4(a) of the proposed rule. The final rule adds a reference to the bar to Veterans Administration benefits in Pub. L. No. 97-66 (38 U.S.C. 3103).

c. *Provision of information during separation processing* (§ 41.4(a)(3)). This is taken from § 41.4(b) of the proposed rule, with minor changes in terminology. One comment noted that it was unclear whether the written information provided to the members upon separation would include notice about the Discharge Review Boards and Boards for Correction of Military Records. The final rule has been rewritten to make it clear that the written information should pertain to all the matters covered in this subsection. Another comment suggested that the same information be mailed to the former member a year after separation. This comment was rejected in view of the administrative burden and costs of providing information to the tens of thousands of persons separated each year, when such information would duplicate the material provided upon separation.

2. *The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (§ 41.4(b)). This is taken from § 41.4(d) of the proposed rule, and has

been revised to allow a Deputy Assistant Secretary of Defense to establish reporting requirements for reasons for separation.

Section 41.5. Effective date and implementation. This section is new, and provides guidance to the Military Departments as to when to apply the new directive to separation proceedings. The October 1, 1982 date of application to new proceedings is designed to provide sufficient time for implementation.

Section 41.6. Definitions. The definitions appear in § 41.5 of the proposed rule. The final rule deletes the definition of "counsel," which appeared in § 41.5(h) of the proposed rule, because the definition was substantially procedural. *See* Sections B.1.f and C.1.d. of Appendix A, Part 3, in the final rule. The definition of "noncommissioned officer," which appeared in § 41.5(j) of the proposed rule, has been deleted as unnecessary in the final rule. The definitions in the final rule are discussed below.

Section 41.6(a). Member. This is taken from the proposed rule (§ 41.5(a)).

Section 41.6(b). Discharge. This is similar to the definition in the current directive. The final rule modifies the proposed rule (§ 41.5(b)) to make it clear that a discharge does not sever military status when such status was acquired during unrelated enlistment that was not terminated by a discharge.

Section 41.6(c). Release from active duty. This is taken from the proposed rule (§ 41.5(c)).

Section 41.6(d). Separation. The final rule modifies the proposed rule (§ 41.5(d)) to note that the term "separation" includes changes in military status similar to those matters listed expressly in the definition of separation.

Section 41.6(e). Military Record. This definition embodies the traditional concept that all aspects of an individual's conduct, including conduct while in an off-duty status, may be reflected in the member's military record. The final rule is taken from the proposed rule (§ 41.5(e)).

Section 41.6(f). Separation Authority. This is taken without change from the first sentence of the definition in the proposed rule (§ 41.5(f)). The second sentence of the proposed rule is embodied in the definition of the Convening Authority (Section G).

Section 41.6(g). Convening Authority. This definition, which is new, is taken from the second sentence in the definition of "Separation Authority" in the proposed rule (§ 41.5(f)). The definition provides flexibility when the Separation Authority is located in a centralized headquarters, while the primary responsibility for processing the action rests with a subordinate commander who is otherwise qualified to act as a Separation Authority.

Section 41.6(h). Respondent. This is taken from the proposed rule (§ 41.5(g)).

Section 41.6(i). Entry level status. The final rule modifies the proposed rule (§ 41.5(i)) by adding to the definition the period of assignment to a reserve component prior to active military service.

Appendix A, Standards and Procedures. The Table of Contents is new and is designed to enhance the clarity of the directive.

Part 1, Reasons for Separation. The reasons for separation appear in § 41.6 of the proposed rule. The final rule is similar to the proposed rule, with changes listed below. The new rule substantially changes the current directive by providing greater detail under each reason for separation as to the basis for separation, guidance as to characterization of service or description of separation, counseling requirements (if any), and procedural limitations.

One comment inquired as to whether the new rule repealed by implication any grounds for separation or characterization set forth in the current directive or implementing instructions of the Military Departments. The answer is no. The new rule represents a substantial revision of the terms, standards, and procedures applicable to separation and charaterization. Many grounds for separation in the old rule have been subsumed under different categories in the new rule; other grounds have not been changed, but the standards and procedures applicable to separation or characterization have been revised. The fact that an item from the old rule has been omitted from the new rule should not be taken as a suggestion that the underlying circumstances of military service that might have resulted in separation under the old rule would not support a separation under the new rule. For example, the term "unsuitability" no longer is used as a reason for separation, but the circumstances which provided a basis for an unsuitability separation under the old rule might provide a basis for separation under the new rule for Convenience of the Government, Entry Level Performance and Conduct, Unsatisfactory Performance, Alcohol Abuse Rehabilitation Failure, or Misconduct, depending on the facts of the case and the standards set forth in the new rule. Likewise, although an item in the new rule did not appear in the old rule, the new rule may represent a codification of grounds for separation implicit in the old rule. *See, e.g.*, Appendix A, Part 1, section G (Unsatisfactory Performance). The only limitations on separation or characterization are those that are provided expressly in the new rule.

A. *Expiration of Service Obligation.* This is similar to § 41.6(a)(1)(i) of the proposed rule. The proposed rule listed this reason in conjunction with similar changes in military status which are now listed in Section B of Appendix A. The expiration of Service Obligation has been listed as a separate reason to highlight its place at the benchmark from which all other reasons for separation are measured.

The service of a member separated at the expiration of a term of service normally will be characterized as Honorable. There are circumstances, however, in which characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record. Such a characterization is authorized under this reason only when based on a formal rating system.

B. *Selected Changes in Service Obligation.* The reasons listed in this section involve those circumstances in which the term of service has been shortened for reasons directly related to changes in military status. These reasons are substantially similar to expiration of service obligation for purposes of characterization. The final rule is taken from § 41.6(a)(1) (ii)–(v) of the proposed rule, with the addition of a provision on interservice transfer of inactive reserves.

C. *Convenience of the Government.* This section, which is taken from § 41.6(b) of the proposed rule with changes, lists those reasons in which various personal circumstances render it desirable to terminate a member's service for the convenience of the government. In addition, Section C.4.h. has been revised to make it clear that separation for personality disorder is not appropriate if separation is warranted under any other provision of the directive, such as Unsatisfactory Performance or Misconduct. This is in furtherance of the general policy of the new rule that separation actions generally should be based upon the command's observations concerning performance and conduct rather than determinations outside the chain of command. At the same time, experience has demonstrated that there are circumstances in which various physical

and mental conditions not amounting to disability potentially interfere with performance of duty, and provide a basis for separation before such problems directly affect performance of conduct. Section C.4.h. provides the basis for separation in such cases.

In response to public comments suggesting that psychologists should be authorized to determine the existence of personality disorders, section C.4.h. of the final rule has been amended to permit both psychologists and psychiatrists to make such determinations. In addition, a specific reference to counseling requirements has been included in that section for purposes of clarity.

One comment interpreted the proposed rule as implying that the Department assumed that homosexuality is a personality disorder. Section C.4.h. has been rewritten to preclude such a misinterpretation. Another comment suggested that the rule specify whether section C.4.h. permits separation for venereal disease. Rather than provide such detail in the overall Directive, section C.4.h. requires that the Military Departments designate specific grounds for separation under this provision based upon their particular requirements and experiences.

With respect to character of service, one comment opposed that portion of the proposed rule that would permit issuance of a General Discharge to a person separated for personality disorder. Under the final rule, a person separated during the first six months of active service on the basis of a personality disorder under section C.4.h. will receive an Entry Level Separation. *See* section C.3.a. of Part 2. After six months of service, the member will have established a sufficient record to warrant characterization of service. If an Honorable characterization is warranted, it will be issued. A record that otherwise warrants a characterization as General (under honorable conditions) under section C.2. of Part 2, should not be characterized as Honorable simply because the individual was separated on the grounds of a personality disorder. It is appropriate, however, to take physical and mental condition into account when assessing character of service under section C. of Part 2, and the relationship between a personality disorder and the member's record is an appropriate consideration when characterizing service upon separation for personality disorder.

The rule permits characterization of service as General (under honorable conditions) upon separation for Convenience of the Government (section C) or Disability (section D) based upon a formal, periodic rating system without further notice at separation. One comment suggested that the rule require opportunities to challenge such ratings. Only the Navy and the Marine Corps employ such a system at this time, and they provide appropriate means for challenging ratings. No further guidance from the Department of Defense is needed at this time. Another comment suggested that the full Notification Procedure (section B., Part 3) be required when characterization of service as General (under honorable conditions) is based on such ratings. This comment was rejected because the member is adequately informed of the rating scheme, the requirements for an Honorable characterization, and periodic scores prior to separation. In that context, the full Notification Procedure is unnecessary, particularly in view of the adequate opportunities available to the member for challenging ratings.

D. *Disability.* This is taken from § 41.6(c) of the proposed rule.

E. *Defective Enlistments and Inductions.* 1. *Minority.* This is taken from the proposed rule (§ 41.6(d)(2)) with a minor modification referencing the statutory basis for separation.

2. *Erroneous.* This is taken from the proposed rule (§ 41.6(d)(2)) with minor changes in terminology to reference the standards on separation in section A. of Part 2 and to conform to the revisions in the Notification Procedure with respect to counseling and rehabilitation requirements. *See* Chapter 5, section B. of Part 3.

3. *Defective enlistment agreements.* This section is taken from § 41.6(d)(3) of the proposed rule, and reflects Department of Defense policy described during congressional consideration of the Department of Defense Authorization Act, 1980, Pub. L. No. 96–107, title VIII, 801(a), 93 Stat. 810 (1979) (amending Art. 2, Uniform Code of Military Justice, 10 U.S.C. 802, concerning jurisdiction over persons). *See Amendments* to Articles 2 and 36, *Uniform Code of Military Justice;* Hearings before the *Military Personnel Subcommittee of* the House *Committee on Armed Services,* 96th Cong., 1st Session 11–13 (1979) (Letter from Deanne C. Siemer, General Counsel, U.S. Department of Defense, to Rep. Richard C. White, Chairman, Subcommittee on Military Personnel, June 25, 1979); H.R. Rep. No. 512, 96th Congress, 1st Session 51 (1979).

4. *Fraudulent entry into military services.* The final rule adopts the proposed rule (§ 41.6(d)(4)), with a reference to the standards for separation in section A. of Part 2. It also provides further detail as to the suspension of separation and separation for homosexuality when fraudulent entry is at issue.

Two comments noted the need to clarify the relationship between separation for homosexuality and separation for fraudulent enlistment. The final rule makes it clear that when the enlistment involved a misrepresentation as to homosexuality that amounts to a fraudulent enlistment, the basis for separation is fraudulent enlistment; however, the procedural requirements for separations based on homosexuality are applicable.

One comment recommended that the rule preclude characterization of service Under Other Than Honorable Conditions when the fraudulent enlistment involves a misrepresentation as to homosexuality because such concealment involved a desire to serve the country. The Department rejected this recommendation because there are likely to be cases in which the primary motivation to conceal a disqualifying matter (homosexuality or other disqualification) stems from considerations other than patriotism. It would not be desirable to establish rigid limitations on characterization in such circumstances. Instead, the question of motivation for the fraudulent enlistment is one of the factors that may be considered on the issue of characterization under the guidance in section C. of Part 2.

F. *Entry Level Performance and Conduct.* The final rule is taken from the proposed rule (§ 41.6(e)), with changes to reflect the fact that certain members in entry level status may be assigned to operational units rather than training units. In addition, the final rule refers to the standards for separation in section A. of Part 2, and expressly sets forth counseling and rehabilitation requirements.

G. *Unsatisfactory performance.* The final rule is taken from the proposed rule (§ 41.6(f)) with several changes. First, the reference to "inability or lack of reasonable effort" as part of the basis has been eliminated. Although such factors may be relevant to the issue of characterization or efforts at rehabilitation, the basis for separation is the objective manifestation of unsatisfactory performance. Second, the final rule expressly references the standards for separation in Section A. of Part 2. Third, the counseling and rehabilitation language (incorporated from § 41.8(b)(1) of the proposed rule) has been supplemented to make it clear

that military service is a calling difference from any civilian occupation; it is not a job that an individual can quit, nor is separation necessarily appropriate at the first manifestation of unsatisfactory performance; rather, military service entails an obligation to serve, and the Military Departments are charged with the responsibility for requiring individuals to fulfill that obligation.

One comment stated that separation for unsatisfactory performance is inappropriate for persons who are unacceptable "through no fault of their own." This comment was based upon the premise that the term "unsatisfactory performance" is a mere recharacterization of the term "unsuitability" in the current directive. This premise is incorrect. The term "unsuitability" in the current directive refers to an individual, regardless of time in service, who is determined to be "unsuitable for further military service" because of various deficiencies (personality disorder, alcohol abuse, unsanitary habits, financial irresponsibility, apathy, defective attitudes, inability to expend effort constructively, and inaptitude.) The term "unsatisfactory performance" represents a different approach to separation policy. The new rule focuses solely on the performance of those who have completed at least six months of active duty. Military commanders, Board members, and Separation Authorities are trained in making judgments as to the adequacy of military performance and the potential for further military service. By concentrating on performance rather than the various items listed in the current directive, the new rule is more likely to produce consistency in the application of separation policies. Moreover, by precluding use of this reason for members in entry level status, the new rule will insure that persons who are unacceptable by reason of inability to adapt to military environment will be separated under a different provision of the directive. *See* section F. (Entry Level Performance and Conduct). Finally, the new rule provides sufficient means to address individual circumstances related to performance. Such matters are appropriate for consideration in assessing rehabilitative efforts under subsection G.2. Factors such as age, aptitude and physical or mental condition are appropriate matters for consideration on the issue of characterization under section C. of Part 2.

Another comment suggested that characterization of service as General (under honorable conditions) should not be permitted when the unsatisfactory performance is caused by inability. This comment overlooks the fact that a person who is separated because of inability to perform during the first six months of active duty will receive an Entry Level Separation, not a characterization of service. *See* section F. By contrast, a member who has completed six months of active duty has demonstrated a minimum ability to perform in the military environment, and has established a record of service that permits characterization. If characterization of service as General (under honorable conditions) is warranted on the basis of that record, characterization of service as Honorable should not be mandated simply because the reason for separation is Unsatisfactory Performance whether or not resulting from inability. The effect of aptitude on the reason for separation is not necessarily the same as the effect of aptitude on the character of service prior to separation. It would be inappropriate to establish a rigid requirement for characterization as Honorable in all cases in which the Unsatisfactory Performance of a person with more than six months active duty is affected by inaptitude. The new rule, however, expressly permits consideration of aptitude as a factor bearing on the issue of characterization. *See* section C. of Part 2.

A third comment suggested that the term "unsatisfactory" is unnecessarily pejorative when the reason for unsatisfactory performance is inability. It is not the intent of the Department to take action for pejorative purposes. The primary purpose of the Directive is to provide clear guidance to the Military Departments for incorporation in their implementing documents. Resort to euphemisms would increase the possibility of misinterpretation and misapplication of policy in the field. Cases involving unsatisfactory performance are not readily grouped into separate categories that pertain solely to inability, lack of reasonable effort, or other specific problems; rather, such cases often involve a combination of factors. What is of primary interest to the Department is clear guidance in cases involving an objective manifestation of unsatisfactory performance. Creation of a separate category for cases in which inability was a factor would diminish the clarity of the new rule.

H. *Homosexuality*. The final rule is taken from the proposed rule (§ 41.6(g)) with several changes. First, subsection H.2., relating to characterization of service Under Other Than Honorable Conditions has been changed by expressly requiring consideration of the guidance in section C. of Part 2. Second, the reference in the proposed rule to exemption from counseling and rehabilitation requirements (§ 41.6(g)(3)(ii)) has been deleted as unnecessary. Under the final rule, counseling and rehabilitation requirements have been deleted from the Notification Procedure (section B. of Part 3) and the Administrative Board Procedure (section C. of Part 3), and are applicable only to the extent expressly referenced under specific reasons for separation.

Several public comments expressed disagreement with the listing of homosexuality as a reason for separation. This reason for separation reflects the traditional position of the Department of Defense. The final rule reaffirms the collective judgment of the civilian and military leadership as to the necessity for this reason for separation. In view of the concerns that have been raised at various times, the rule provides greater discussion of the basis for the policy, and greater description of procedural rights, than is provided for any other reason for separation.

Another comment objected to the fact that the definition of homosexual includes a person who desires to engage in or intends to engage in homosexual acts. (Section H.1.b.(1)). These items are included because a person who, by conduct or statements, demonstrates a propensity to engage in homosexual acts, has an adverse impact on the armed forces. *See* section H.1.a.

Several comments suggested that greater detail be provided on the issue of characterization of service in cases involving homosexuality (section H.2), including suggestions that the characterization be Honorable in most cases. Elsewhere, the final rule contains modifications of the general guidance on characterization which will apply to all reasons for separation, including homosexuality. *See* section C. of Part 2. As a further protection, the rule sets forth specific limitations as to when service may be characterized Under Other Than Honorable Conditions when separation is based upon homosexuality (section H.2.). In view of the many variables that affect characterization of service as Honorable, General (under honorable conditions), and Under Other Than Honorable Conditions, however, it would not be desirable to set forth further restrictions. The guidance in section C. of Part 2. provides ample latitude to issue a character of service

determination that is appropriate to each case.

Several comments criticized the listing of grounds for characterization Under Other Than Honorable Conditions (section H.2., second sentence). The primary concern expressed in these comments was that this provision treats homosexual conduct more harshly than other forms of illegal conduct. These comments fail to recognize that the listing of circumstances in section H.2. provides an important procedural protection because it expressly limits the grounds on characterization set forth in section C. of Part 2 that apply to other reasons for separation. The final rule makes it clear that characterization Under Other Than Honorable Conditions cannot be issued unless two conditions are met: (1) There is a finding that the conduct falls into the circumstances listed in section H.2.; and (2) characterization of service Under Other Than Honorable Conditions is warranted in the specific case under the guidance in section C. of Part 2.

One comment suggested that the proposed rule was unclear as to the type of findings required. Under the final rule, findings are required on the following matters: (1) Homosexuality (section H.1.c.); (2) the factual circumstances raising the authority to characterize service Under Other Than Honorable Conditions (section H.2., subsections (a)–(g)); and (3) the limited circumstances authorizing retention if raised by the respondent or relied upon by the Board or Separation Authority (section H.3.f.).

Other comments noted a potential lack of clarity regarding the relationship between homosexuality and fraudulent enlistment as reasons for separation. The changes made in the final rule on this matter are discussed above with respect to section E.4. (Fraudulent Entry into Military Service).

Another comment suggested that homosexuality be placed under a broader section such as Convenience of the Government on the basis of "the simple right of privacy and the improperly prejudicial use of this description in society * * *." This was rejected because even under Convenience of the Government, homosexuality would have to be separately identified as a subordinate reason in order to provide the guidance necessary to the proper application of separation policies.

I. *Drug Abuse Rehabilitation Failure.* The final rule is taken from the proposed rule (§ 41.6(h)), with a number of changes. First, the proposed rule, which dealt with both drug and alcohol rehabilitation, has been divided into separate sections for drug and alcohol (see section J. below with respect to alcohol rehabilitation failures). Second, the final rule provides greater detail in section I.1.a. regarding the basis for rehabilitation failure as a means of providing improved guidance. Third, section I.1.b. has been revised to provide a clear statement on the authority to separate a member who has been referred to a rehabilitation program under other provisions of this directive. Fourth, the discussion of characterization in section I.2. has been modified to provide cross-references to the limitations in cases involving voluntary submission or mandatory urinalysis.

One comment stated that the potential for a characterization of service as General (under honorable conditions) would be detrimental to the goals of treatment. The Department takes the opposite view: A mandatory Honorable characterization would be contrary to the goals of treatment because it would provide an easy means to avoid both the service obligation and the rehabilitation program without making a reasonable effort. Moreover, a mandatory Honorable characterization would be inconsistent with the concept of basing characterization at the time of separation upon character of service. The comment also suggested that it would be improper to characterize a separation after a voluntary submission or positive urinalysis that was not preceded by a self-incrimination warning under Article 31, UCMJ, or probable cause. There is no legal requirement for Article 31 warnings with respect to voluntary submission for treatment. Moreover, the implementing documents will establish clear policy that failure to complete the program will result in separation, and that a characterization of service determination will be made at the time of separation. With respect to urinalysis, the Military Rules of Evidence do not limit the range of permissible intrusions to those based on probable cause. So long as the intrusions are consistent with the guidance from the Secretary of Defense and the Military Departments, there is no limitation on the use of urinalysis results on the issue of characterization. *See* section C.2.c(7) of Part 2.

Another comment suggested that this reason be placed under a broader reason, such as Convenience of the Government, "to minimize the impact on privacy." The suggestion was not adopted. Even under Convenience of the Government, it would be listed as a subordinate reason in order to provide the guidance necessary to the proper application of separation policies.

J. *Alcohol Abuse Rehabilitation Failure.* As noted with respect to section I. above, this provision was combined with Drug Abuse Rehabilitation Failure in the proposed rule. Although the treatment and rehabilitation issues are similar to those involving drug abuse, there are certain differences in evidentiary and procedural considerations because drug abuse involves criminal activity. It was determined that clearer guidance could be provided by listing this as a separate reason.

K. *Misconduct.* The final rule is taken from the proposed rule (§ 41.6(i)) with a number of changes. A new category entitled "minor disciplinary infractions" has been added to permit a more detailed description of the relationship between Misconduct and Entry Level Performance and Conduct as reasons for separation. The category entitled "A pattern of misconduct," which has been retained from the proposed rule, includes minor disciplinary infractions as well as other offenses.

The category entitled "Commission of a serious offense" has been amended to remove the prohibition on separations where former jeopardy would have precluded a trial by court-martial, which had been in § 41.6(i)(1)(B)(3) of the proposed rule. No such limitation exists in the current directive. Upon further review, it was deleted for the following reasons. In a court-martial, the court determines whether a criminal offense has been committed and, if so, an appropriate punishment. The court-martial has no power to separate an individual for an administrative reason; nor can it make an administrative character of service determination. The power of a court-martial in this regard is limited to imposition of a punishment in the form of a bad-conduct or dishonorable discharge. A court-martial cannot order a separation or characterize service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions even if the members of the court-material believe that such action would be in the best interests of the Service. Accordingly, the determination by a court-martial that an individual convicted of an offense should receive, *e.g.*, confinement without a punitive discharge, does not represent a judgment as to whether the member should be retained in service or separated with a characterization of service as Honorable, General, or Under Other Than Honorable Conditions.

An administrative separation proceeding involves issues that are different from those before a court-martial. The first question in an administrative proceeding is whether the individual committed the act of misconduct; the second question is whether the act, in light of the factors in section A. of Part 2 warrants separation from service (regardless of characterization); the third question involves the characterization of service as Honorable, General (under honorable conditions), or (Under Other Than Honorable Conditions) under the guidance of section C. of Part 2. The character of service determination is not a form of punishment, but is an administrative personnel action. The directive contains important safeguards to insure that this authority is used fairly. Section A.3.a. of Part 2 precludes separation for misconduct (even with an Honorable characterization) when the conduct has been the subject of prior federal judicial proceedings resulting in acquittal. When the sole basis for separation is conduct that resulted in conviction by a court-martial that did not impose a bad-conduct or dishonorable discharge, section C.2.c. (4) of Part 2 precludes characterization Under Other Than Honorable Conditions except when approved by the Secretary concerned. An absolute bar on separation for an offense that resulted in a court-martial conviction would unnecessarily mix administrative and criminal justice concepts.

A prohibition on separation based upon conviction by court-martial would lead to anomalous results. For example, it would be incongruous if the directive permitted separation of a member sentenced by a civilian court to six months confinement (section K.1.a.(4)), but precluded separation of a member who received the same punishment for the same offense in the military justice system. Likewise, it would be incongruous if the directive permitted misconduct to be considered on the issue of characterization for other reasons for separation, but required an Honorable characterization when the member is separated on the basis of a serious offense. A court-martial conviction should not bar a commander from initiating a separation proceeding, and the judgment of conviction by a court-martial is an appropriate matter for consideration on the issue of characterization.

In section K.1.a.(4), (civilian conviction) the reference to actions "tantamount to a finding of guilty" includes pleas of nolo contendere and actions that are subject to being expunged based on factors unrelated to guilt or innocence. In the final rule, the minimum period of civilian confinement which may for the basis for separation has been reduced from one year to six months in order to provide flexibility when such circumstances impact on personnel assignment policy. In this regard, it is noted that this provision does not require separation upon civilian conviction; rather, the initiation of separation proceedings is a command decision based upon the circumstances of the case, and the decision as to separation must be made under the factors set forth in Section A. of Part 2.

A new subsection (K.1.b) has been added to detail reporting requirements. At a minimum, the reporting categories under each of the four reasons in section K.1.a. will be "drug abuse," "unauthorized absence," and "all other."

The matter set forth in the second sentence of § 41.6(i)(1)(ii) of the proposed rule has been moved to Section K.1.a.(1) of the final rule.

The guidance on characterization of the proposed rule (§ 41.6(i)(2)) has been revised in the final rule (Section K.3.) to distinguish more clearly among the various characterizations in the context of misconduct.

The guidance on counseling and rehabilitation in the final rule (section K.2.) is taken from §§ 41.6(i)(3)(ii) and 41.8(c)(1) of the proposed rule, with minor modifications.

The procedural requirements in the final rule (section K.4.) are taken from § 41.6(i)(3) of the proposed rule, with minor changes to conform to the other changes discussed above.

One comment inquired as to whether misconduct consists solely of criminal offenses. The answer is no. Misconduct consists of offenses under the Uniform Code of Military Justice and civilian offenses. In addition, it consists of minor disciplinary infractions, discreditable involvement with civil or military authorities, and conduct prejudicial to good order and discipline regardless of whether such actions are subject to UCMJ jurisdiction or otherwise meet the technical requirements of pleading and proof for civilian or military offenses.

Several comments suggested that it is improper to permit separation for misconduct on the basis of conduct that is triable by courts-martial. The Department does not agree. The purpose of a court-martial is to determine whether a member has committed a criminal offense, and, if so, what is an appropriate punishment. The purpose of an administrative separation proceeding for misconduct is to determine whether an individual has committed an act of misconduct (which may or may not constitute an offense under the UCMJ); if so, whether the member should be separated on the basis of the act and other aspects of the service record; and, if separation is warranted, what is an appropriate characterization of service. The administrative action does not entail the possibility of confinement, a criminal conviction, or a bad-conduct or dishonorable discharge. The determination as to whether administrative separation proceedings should be initiated is a matter of command discretion related to personnel management considerations that are substantially different from the disciplinary considerations that enter into a judgment as to whether court-martial proceedings should be initiated.

One comment suggested that greater detail be provided as to the number and type of actions that would support separation for a pattern of misconduct (section K.1.a.(1),(2)). Under the rule such actions may be based on counseling statements, adverse administrative action, non-judicial punishment, court-martial, and similar actions. In view of the variety of considerations that might affect the relationship between the type of misconduct and the standards for separation in section A., it was determined that further guidance would not be useful.

With respect to separation on the basis of a serious offense (section K.1.a.(3)), one comment expressed concern that this provision would be applied whenever a punitive discharge would be authorized for the same or a closely related offense under the Manual for Court-Martial. The comment noted that the seriousness of an offense is not necessarily measured by the theoretical possibility of a punitive discharge. The rule does not state that the mere possibility of a bad-conduct discharge for an act of misconduct is the sole measure of the seriousness of an offense. The rule requires that there also be a determination that the "specific circumstances of the offense warrant separation * * *" (section K.1.a.(3)(a)). In addition, the rule requires a determination "under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service * * *." These requirements are sufficient to demonstrate that the reference to punitive discharge offenses in section K.1.a.(3)(a) merely establishes the minimum level of "seriousness," and does not require separation unless such action is otherwise warranted under the tests established by the rule.

Another comment opposed characterization of service Under Other Than Honorable Conditions when the basis for separation is a civilian conviction (section K.1.a.(4)). This comment was rejected because such a conviction is an appropriate part of the member's military record. However, the rule permits the member to demonstrate that the conduct did not adversely affect his or her military service. *See* Part 2, section C.2.a.(2). Moreover, the rule does not mandate characterization Under Other Than Honorable Conditions; a more favorable characterization may be issued when appropriate under the standards in the rule. *See* section K.3 and section C. of Part 2.

One comment inquired as to whether the rule eliminated from consideration in misconduct proceedings the types of conduct forming the basis for misconduct separations under the current directive. The answer is no; any conduct that could form the basis for separation under the current directive may be considered on the issue of misconduct under the new rule. The new rule, however, establishes several different tests with respect to a "pattern" or "seriousness" of offenses, and provides detailed guidance on the issue of separation in section A. of Part 2. Accordingly, although there is no difference between the new rule and old rule as to the types of conduct that may be considered under misconduct, the question of retention or separation involves a somewhat different set of considerations.

L. *Separation in Lieu of Trial by Court-Martial.* The final rule is taken from the proposed rule (§ 41.6(j)), with several changes. The basis has been changed to require a determination that separation is warranted under the standards in section A. of Part 2. The guidelines on characterization have been revised to conform to the guidelines under Section K. (Misconduct). The procedures have been changed to provide the Military Departments with latitude in determining whether the request should include acknowledgment of guilt or evidence in support of the charges (or both).

Several comments recommended that the provisions of the Uniform Code of Military Justice apply to such separations in lieu of trial by court-martial. These comments were rejected in view of the differences between UCMJ proceedings and administrative separations, particularly in that the latter do not involve the possibility of confinement or a criminal conviction. One comment suggested that the separation file contain a statement of the Government's evidence rather than an admission of guilt by the individual. The final rule partially incorporates this by permitting the military Departments to determine whether the request for separation should include a statement of guilt, material concerning the evidence supporting the charges, or both.

Several comments expressed concern over the possibility that this authority might be misused when the circumstances would warrant separation or characterization of service as General (under honorable conditions) of Under Other Than Honorable Conditions. One such comment recommended that such requests be reviewed by a military judge or military magistrate. Such a diversion of military justice personnel into administrative matters was deemed unnecessary, particularly because the final rule establishes a number of safeguards not contained in the current directive. Charges must be preferred, the member must be afforded the opportunity to consult with counsel qualified under the UCMJ, the counsel must sign the request, the request must contain information reflecting the respondent's understanding of the charges and the consequences, and the request must contain an acknowledgment of guilt or material concerning the evidence (or both). In addition, if the sole basis for the request involves minor offenses in which a punitive discharge would be warranted only under the "escalator clause" of the Manual for Courts-Martial, this provision may not be used unless the charges have been referred to trial. In short, the procedures are designed to insure that the authority is used only when voluntarily invoked by the accused and qualified counsel. Moreover, the separation authority also must determine that separation is warranted under the standards section A. of Part 2. These guidelines represent significant improvements over the old rule and are designed to promote appropriate use of this procedure for administrative purposes.

M. *Security.* The final rule is taken from the proposed rule (§ 41.6(k)) with minor changes in terminology to conform to other changes in the final rule.

N. *Unsatisfactory Participation in the Ready Reserve.* The final rule is taken from the proposed rule (§ 41.6(1)) with minor changes in terminology, and section N. 3 has been changed to conform to the procedural rights generally applicable to other reasons for separation.

O. *Secretarial Plenary Authority.* The final rule is taken from the proposed rule (§ 41.6(m)), with minor changes in terminology. The exemption from counseling requirements, which was contained in the proposed rule, has been eliminated as unnecessary in view of the structure of the final rule (which limits counseling and rehabilitation requirements to those reasons for separation that expressly include such provisions). The basis for separation has been modified to make it clear that the limitations applicable to other reasons for separation do not apply to the Secretarial Plenary Authority.

One comment suggested that characterization as General (under honorable conditions) should not be permitted without an Administrative Board hearing. The rule requires adequate notice and an opportunity to respond through incorporation of the Notification Procedure. *See* section B.2. of Part 3. The question of whether a Board hearing should be a prerequisite for characterization of service as General (under honorable conditions) is discussed below in connection with section C. of Part 2.

P. *Reasons Established by the Military Department.* The final rule is taken from § 41.6(n) of the proposed rule, with minor changes in terminology. The section on counseling and rehabilitation has been added to conform to the change of format in the final rule.

Part 2, Guidelines on Separation and Characterization

The final rule changes the title that appeared in the proposed rule (§ 41.7) in the interests of clarity and brevity.

A. *Separation.* The final rule is taken from § 41.7(a) of the proposed rule, with the changes noted below.

1. *Scope.* This is taken from § 41.7(a)(2)(i) of the proposed rule, and has been rewritten to make it clear that the guidance in this section applies only to the extent that this section is referenced in Part 1.

2. *Guidance.* This is taken from § 41.7(a)(1) and § 41.7(a)(2) of the proposed rule, with minor changes in terminology.

3. *Limitations on separation actions.* This is taken from §41.7(a)(3) of the proposed rule, but has been substantially rewritten to clarify the circumstances in which matter considered in a previous proceeding may be used in a subsequent separation action. One comment suggested that there be an absolute bar on consideration of matter from a previous proceeding in which there was a

determination that a member should be retained. The final rule generally prohibits use of such evidence, but does not establish an absolute bar. Two examples illustrate this position. In the first example, assume that an Administrative Board determines that the evidence did not sustain an allegation with respect to a specific incident in a misconduct proceeding. The final rule precludes use of that conduct in a subsequent separation proceeding unless the finding was obtained by fraud. In the second example, assume that an Administrative Board determined that the evidence sustained an allegation that such misconduct occurred, but the Board recommended retention on the basis of other aspects of the member's record; subsequently, the member engaged in a pattern of misconduct, and was processed for separation. In the former example, the Board determined that there was insufficient evidence to support a finding as to the occurrence of the incident of misconduct. In the latter example, however, the Board entered a finding that the incident of misconduct did occur. In such a case, there is no reason to exclude consideration of the previous finding of misconduct in a subsequent action.

B. *Suspension of Separation.* The final rule is taken from § 41.7(b) of the proposed rule, with minor changes in the grounds for vacation of suspension and the requirement for legal review. One comment recommended that a Board hearing be provided prior to vacation of a suspended separation. The final rule provides notice, counsel, and an opportunity to respond. These provisions are sufficient to protect the interests of members facing execution of a previously approved separation.

C. *Characterization or Description of Service.* The final rule is taken from the proposed rule (§ 41.7(c)), with the changes noted below.

1. *Types of characterization or description.* This is taken from § 41.7(c)(1)(i) of the proposed rule. The title has been rewritten to make it clear that the term "characterization" pertains to characterization of the entire record of service at the time of separation, not simply characterization of the fact of separation. Characterization of service involves more than simply reflecting the reason for separation; it entails an evaluation of the member's entire record while a member of the service. Conforming changes have been made throughout the rule.

Section 41.7(c)(1)(i)(D) of the proposed rule (Separation from the Delayed Entry Program) has been deleted as a description of separation. This subject is covered in the new rule under section C.3.a(4) of Part 2.

A number of comments reflected misunderstanding of the relationship between the issues of separation from service and characterization of service. These comments viewed characterization as a means of punishing a member for circumstances that occasioned the separation. This is not correct. The issue of separation is directed solely at the administrative decision as to whether the individual should remain a member of the armed forces, regardless of characterization. The issue of characterization does not arise until a decision has been made to separate. At the time of separation, a determination is made as to character of service. This determination is made regardless of whether the separation is voluntary or involuntary, and regardless of whether it is because a member has completed successfully a term of service or whether the member is separated for cause (*e.g.*, Misconduct). The character of service determination reflects the entire period of enlistment, including both positive and negative aspects of the member's record, *see* section C. of Part 2. The reason for separation is just one factor that is considered on the issue of characterization, although in some cases it may be of such importance as to be the dominant factor as to the character of service. *See* subsection C.2. of Part 2. As noted above, the final rule has been revised throughout to make it clear that the issue of characterization involves a character of service determination, and is not a means of characterizing the fact of separation.

Several comments recommended elimination of the practice of characterizing service. The Department does not agree. Characterization of service is a traditional aspect of military personnel policy, and is designed to enhance morale, performance, and discipline by providing an appropriate recognition of service. In addition, characterization of service is relied upon by the Department, other agencies, and Congress in a variety of matters involving military service.

Other comments suggested various modifications of the present system, primarily focussing on a "two-tier" (*e.g.*, Honorable and Other Than Honorable) system. The Department believes that the present system provides appropriate distinctions between various types of service. The middle-tier in the present three-tiered system is the characterization of service as General (under honorable conditions). The Department has retained this characterization as a means of recognizing honorable service by members whose records do not warrant an Honorable Discharge, but whose service to the nation generally has been honest and faithful.

The new rule provides for several descriptions of separation not found in the current directive, particularly the Entry Level Separation. Most of the comments reacted favorably to the concept of generally not characterizing service of persons separated during the first six months of active duty, although some comments expressed concern that the new description might cause some public confusion. The Department believes that the new policy will strengthen the concept of characterization. The new rule will remove the requirement for characterization when the period of service has been too brief to establish the character of service; absent specific circumstances in which a basis for characterization has been established. *See* section C.3.a.

2. *Characterization of service.* a. *General considerations.* This is taken from the proposed rule (41.7(c)(2)(i)) with several changes. A sentence has been added to subparagraph C.2.a.(2) to set forth the procedure for determining whether conduct in the civilian community should be considered on the issue of characterization with respect to a member on active duty or active duty for training. An additional sentence has been added to section C.2.a.(3) to make it clear that the reason for separation may be considered on the issue of characterization, although a single incident normally will not be the basis for characterization. Subparagraph C.2.a.(4) has been amended to provide expressly that standards of conduct and performance, as well as physical and mental condition, may be considered in conjunction with the other factors specified in that provision on the issue of characterization.

Several comments suggested that conduct in the civilian community should not be considered on the issue of characterization except when such conduct has some adverse impact on the military service or the member's service. The rule provides that conduct in the civilian community considered on the issue of characterization must be service discrediting or prejudicial to good order and discipline. Subparagraph C.2.a.(2). These standards are consistent with the opinion in *Roelofs v. Secretary of the Air Force*, 628 F. 2d. 594 (D.C. Cir. 1980), which was cited in the comments.

b. *Types of characterization.* This is taken from § 41.7(c)(2)(ii) of the proposed rule. The standard for

characterization of service as Honorable has been amended to conform to the changes in the guidance on characterization upon completion of an obligated term of service. *See* section A. of Part 1, above. The guidance on characterization of service as General (under honorable conditions) has been amended by deleting the references to age, length of service, grade, and aptitude. These factors are listed under the guidance applicable to all characterizations (section C.2.a.(4)), and it would be confusing to repeat these matters again. In addition, the reference to a rating system has been deleted as redundant. The standards for characterization of service Under Other Than Honorable Conditions have been amended to provide more detailed guidance.

Several comments suggested that the guidance in the proposed rule was insufficient to produce uniformity in characterization. Uniformity is an important consideration in separation policy, but it must be viewed in the context of other important interests. Separation policy is applied tens of thousands of times each year by military personnel in widely disparate circumstances. Differing missions, requirements, and responsibilities produce a wide variety of factors that impact on the decision to separate and on the characterization of service. In addition, the factors applicable to individual members involve countless variations. There is an inherent tension between the goal of uniformity and the need to address individual cases according to individual circumstances. The amendments to this Section, as well as the guidance on characterization in Enclosure 3, Part 1, balance these considerations by establishing specific restrictions, along with general guidance applicable to all cases. The rule is designed to insure that in each case, the decisionmaker will consider the factors that have a direct bearing on the issue of characterization. Through this process, the rule produces uniformity of procedure on the issue of characterization.

Another comment commended the improved guidance, but suggested that separate findings on characterization be required when service is characterized as General (under honorable conditions) or Under Other Than Honorable Conditions. Such findings are provided by the Discharge Review Boards under 32 CFR Part 70 (DOD Directive 1332.28) and it is not necessary to provide for the same action in this rule.

c. *Limitations on characterization.* This is taken from § 41.7(c)(2)(iii) of the proposed rule, with several changes. The limitation on consideration of preservice activities on the issue of characterization (subparagraph C.2.c.(2)) has been revised to make it clear that the only exception is for proceedings involving fraudulent entry. The prohibition in subparagraph C.2.c.(3) on consideration of acts relied upon in previous proceedings has been revised to parallel the prohibitions that apply to consideration of such matters on the issue of separation in subsection A.3. A new provision (subparagraph C.2.c.(4)) has been added governing characterization when the sole basis for separation is an offense that resulted in conviction by court-martial (whether or not empowered to impose a punitive discharge.) The matters at issue in a separation proceedings are not identical to those involved in a court-martial. There are cases in which a court-martial—which does not have the power to impose an administrative discharge—does not impose a punitive discharge, but the command believes that administrative separation is in the best interest of the service. In such cases, it would be inconsistent with the purposes of characterization to preclude consideration of the court-martial. *See* the discussion of Part 1, section K. above. In order to insure that this authority is handled with proper discretion, the new provision requires approval by the Secretary concerned in any such case in which service is characterized Under Other Than Honorable Conditions.

Two additional provisions (subparagraphs C.2.c. (6), (7)) have been added to implement the Department's change in-policy on urinalysis and drug treatment, as set forth in the Deputy Secretary of Defense Memorandum, "Alcohol and Drug Abuse," December 28, 1981. *See United States* v. *Armstrong*, 9 M.J. 374 (C.M.A. 1980).

One comment on this section suggested that the limitation on consideration of prior courts-martial apply to characterization of service as General (under honorable conditions). This has been accommodated in the change to subparagraph C.2.c.(3) discussed above. Another comment criticized the fact that discharge characterization could be based upon matters considered by a court-martial. Matters considered by a court-martial that did not result in acquittal (or a decision having the same effect) are appropriate aspects of the service record for consideration on the issue of characterization for the reasons set forth in the discussion of Part 1, section K. A different comment suggested that the exception to the general prohibition on consideration of preservice conduct in § 41.7(c)(2)(iii)(B) the proposed rule was unclear and unduly harsh if it involved recruiter misconduct. The new rule (subparagraph C.2.c.(2)) has been revised as described above. Because the final rule limits consideration to cases involving fraudulent entry—a traditional element of the service record—consideration of the fraud is appropriate on the issue of characterization. The existence of recruiter misconduct is an appropriate matter for consideration in assessing of character of service, but it should not be the sole consideration.

Several comments noted that the opportunity to request an Administrative Separation Board, which is applicable to characterizations Under Other Than Honorable Conditions under Subparagraphs C.2.b(3)(b), should also apply to characterization of service as General (under honorable conditions). The new rule greatly expands the rights of all persons facing involuntary separation, including those involving characterization of service as General (under honorable conditions), by establishing a detailed Notification Procedure, section B. of Part 3. This procedure also permits a person with six or more years of service to request an Administrative Board regardless of characterization. Characterization of service as General (under honorable conditions) includes a statement that the member has served under honorable conditions. The additional administrative requirements of an Administrative Board are not necessary to provide appropriate procedural protections for personnel with less than six years of service whose service is characterized under honorable conditions. Requiring a Board in every such case would be contrary to the best interests of the armed forces in providing for timely processing of administrative separations.

3. *Uncharacterized Service.* a. *Entry Level Separation.* This is taken from § 41.7(c)(3) of the proposed rule. Subparagraph C.3.a.(2) has been added to permit limited delegation of the authority to characterize service as Honorable with respect to persons in operational units who are in Entry Level Status. This delegation is not likely to be used except in combat operations or othe special circumstances. The material in subparagraphs C.3.a.(3)–(4) has been modified. Because the Entry Level Separation is new, there is a need to set forth its relationship to various statutory and administrative matters related to characterization. The amended sections permit flexibility favorable to the

member when the Entry Level Separation is considered for such purposes, except when a statutory or administrative matter expressly requires different treatment of an Entry Level Separation. The sole exception is an Entry Level Separation from the Delayed Entry Program. Because this is a separation from a Reserve Component without an Administrative Board, this will be considered to be a separation under honorable conditions in view of the requirements of 10 U.S.C. 1163.

b. *Void enlistments or inductions.* This is taken from §41.7(c)(4) of the proposed rule. The final rule deletes the reference in the proposed rule to enlistments of persons under age 18 without parental consent. This conforms to Part 1, paragraph E.1.b., which calls for an Entry Level Separation for 17 year-olds in such circumstances. One comment objected to that portion of the rule which adopts the criteria for construction enlistment in 10 U.S.C. 802 (Article 2 of the UCMJ). The Department's implementation, however, reflectes congressional intent.

c. *Dropping from the rolls.* This is taken from §41.7(c)(5) of the proposed rule, with minor changes in terminology to conform to other aspects of the final rule.

Part 3, Procedures for Separation

This part is taken from §41.8 of the proposed rule, with the changes set forth below.

A. *Scope.* This is taken from §41.8(a) of the proposed rule. Subsection 1 has been rewritten to clarify the relationship between the procedures in Part 3 and the procedures required under specific reasons for separation in Part 1. Subsection 2 has been added to describe the procedural requirements when a member is being processed for separation for multiple reasons.

B. *Notification Procedure.* This is taken from §41.8(b) of the proposed rule, with the changes noted below. The general reference to counseling and rehabilitation requirements in § 41.8(b)(1) of the proposed rule has been deleted. The final rule has specific counseling and rehabilitation requirements under designated reasons for separation in Part 1 of Appendix A. This change is designed to give counseling and rehabilitation requirements greater visibility as part of the goal of reducing unnecessary attrition.

1. *Notice.* This is taken from §41.8(b)(2) of the proposed rule with minor changes in terminology. In addition, the material related to counsel has been expanded in conjunction with the elimination of the definition of counsel from Enclosure 2. The right to request a board (regardless of characterization) has been reivsed by eliminating the reference to noncommissioned officers and by reducing the time in service requirement from 8 years to 6 years. The rule also sets forth the right to request documents concerning the basis for the proposed action. If such documents are classified, a summary may be provided to the respondent.

One comment suggested that all persons facing involuntary separation have the right to request an Administrative Board. The new rule greatly expands procedural requirements for persons facing involuntary separation, and reduces the amount of time in service required before a member is eligible to request a board, as described above. As noted in the discussion of characterization of service (Part 2, section C.), the procedures established in this section provide greater protection than given in the past for persons facing separation under honorable conditions, and it would be contrary to the best interest of the armed forces to establish additional requirements for junior personnel separated under such circumstances. Another comment noted the importance of access to documents that will be used as the basis for the proposed separation, and the final rule clarifies the respondent's right to such matter.

With respect to the question of waiver, one comment suggested involvement of a "neutral magistrate" to preclude unwarranted waivers by "immature" members. This is not necessary under the new rule, which provides for more detailed notice as to the nature of the waiver than the old rule, and requires that the respondent have the opportunity to consult with counsel before executing a waiver, regardless of characterization of separation. The respondent's counsel is the appropriate person to provide guidance as to the advisability of a waiver, and the Separation Authority is the appropriate official to review such a waiver. Introduction of a third party between the counsel and the Separation Authority would produce delay in the process without a clear benefit to either the servicemember or the separation process.

One comment recommended that respondent have the right to consult with a lawyer. The final rule permits the respondent to consult with civilian counsel retained at the member's own expense, and further authorizes the provision of military counsel at no expense to the member. Such military counsel must be a judge advocate, with limited exceptions set forth in the rule for circumstances in which judge advocates are not available.

2. *Additional Notice Requirements.* This is taken from § 41.8(b)(3) of the proposed rule, with minor changes in terminology.

3. *Response.* This is taken from § 41.8(b)(4) of the proposed rule. An additional sentence has been added to make it clear that an extension in the time for a response may be granted upon a timely showing of good cause. Several comments suggested that the requirement to provide the respondent with at least two days for preparation of a response was insufficient. These comments overlooked the fact that the rule requires that the respondent be provided with "a reasonable period of time" to act on the notice, and that the reference to two working days in the rule is merely a minimum. In order to deal with potential problems, the rule has been modified to provide for extensions upon a showing of good cause, as described above.

Other comments recommended deletion of that aspect of the rule which specifies that failure to exercise the rights provided therein constitutes a waiver. The final rule provides the applicant with detailed notice, counsel, a reasonable period of time to act on the notice, and an opportunity to obtain an extension of time to act on the notice upon showing a good cause. The rule further requires that the respondent and counsel sign any decision as to election of rights. When the respondent declines to respond, a notation to that effect will be made. If the respondent has been provided with a reasonable period of time and does not have a good cause for inaction, then the failure to respond on the part of the respondent should not act as vehicle for unwarranted delaying tactics.

4. *Separation Authority.* This is taken from § 41.8(b)(5) of the proposed rule. The proposed rule has been modified to permit this authority to be exercised by commanding officers in grade O–5 and above who are not special court-martial convening authorities under circumstances approved by the Assistant Secretary of Defense (MRA&L) (Subsection 4.a.). In addition, the proposed rule has been amended to delete the repetitive reference to the standard of evidence. The evidentiary standard is applicable to the proof of factual allegations, which is covered in subsection 4.c. The action of the Separation Authority on the issues of separation and characterization is a matter of discretion. One comment recommended that a more rigorous

evidentiary standard than a preponderance should apply on the grounds that this is a quasi-criminal proceeding. The Department rejects the view that this administrative procedure is quasi-criminal. As noted in the discussion of Part 1, the proceeding involves three separate considerations: Are the allegations accurate; if so, should the member be separated or retained; and if separated, what has been the member's character of service. These matters are solely of an administrative nature. The proceedings do not impose any criminal or quasi-criminal punishment, and the sole purpose of the proceedings is to further the military personnel and force management policies of the Department of Defense. Moreover, the preponderance standard is higher than is required for many administrative actions.

C. *Administrative Board Procedure.* This is taken from § 41.8(c) of the proposed rule. The references to counseling and rehabilitation have been deleted for the reasons set forth above in the discussion of the Notification Procedure (section B). A number of the comments as to notice, opportunity to respond, and standard of proof were applicable to both the Notification Procedure (section B.) and the Administrative Board Procedure (this section). These comments were considered separately with respect to each procedure, with full recognition of the differences between the Notification Procedure and the Administrative Board Procedure. The discussion of comments below is directed on matters not previously noted in this analysis with respect to the Notification Procedure.

1. *Notice.* This is taken from § 41.8(c)(2) of the proposed rule, with minor changes in terminology. In addition, the material related to counsel has been expanded in conjunction with the elimination of the term "counsel" from the definitions (§ 41.6). The rule also sets forth the right to request documents, as explained in the discussion of this matter with respect to the Notification Procedure (paragraph B.1.d.).

2. *Additional Notice Requirements.* This is taken from § 41.8(c)(3) of the proposed rule with minor changes in terminology.

3. *Response.* This is taken from § 41.8(c)(4) of the proposed rules with changes similar to those discussed under the Notification Procedure (subsection B.3).

4. *Waiver.* This is taken from § 41.8(c)(5) of the proposed rule with minor changes in terminology. One comment expressed concern that the conditional waiver could lead to lack of uniformity, and could prompt a member to opt for characterization of service as General (under honorable conditions) even though the member believed characterization as Honorable would be more appropriate. This comment overlooks the fact that a conditional waiver can produce characterization of service as Honorable, as well as General. Moreover, elimination of the conditional waiver would preclude servicemembers from gaining the benefit of the procedure in close cases where a full board hearing might result in a recommendation for a less favorable characterization than that resulting from the conditional waiver. The Secretaries of the Military Departments will monitor this authority to ensure appropriate use.

5. *Hearing Procedure.* This is taken from § 41.8(c)(6) of the proposed rule with minor changes in terminology to conform to changes in parallel aspects of the Notification Procedure (section B.). The duties of the Separation Authority have been moved to subsection C.6., which is discussed below. The guidance on production of witnesses (paragraph C.5.c.) has been revised. The rights of the respondent (paragraph C.5.f.) have been set forth as a separate paragraph. The guidance on findings and recommendations (paragraph C.5.g.) has been rewritten in the interests of clarity and to specify that the evidentiary standard applies to factual allegations; the recommendations are a matter of discretion.

One comment recommended that removal of the limitation that enlisted members of the Board be in grade E-7 or higher on the grounds that no such limitation exists under the UCMJ. Actions under the UCMJ, however, are in the nature of criminal justice proceedings, whereas separation board actions are an aspect of personnel management. As such, it is appropriate that only senior noncommissioned officers be appointed to the Boards in order to ensure that Board members possess the appropriate degree of experience in personnel matters.

Two comments suggested greater reliance on live testimony than is provided by the rule. The rule gives the respondent considerable latitude in obtaining live testimony, and has reasonable restrictions with respect to production of witnesses at government expense, i.e., military personnel or government employees who are not located at same place as the hearing. The requirement for legal advice on witness requests is designed to ensure fair application of these restrictions. Another comment recommended provision of a verbatim transcript or tape recording in every case involving characterization of service under other than honorable conditions. A transcript requirement would impose undesirable delays and expenditures in the separation process, and a tape recording would not necessarily produce a meaningful record of the proceeding without a reporter's transcription. The rule leaves this matter for determination by the Military Departments.

One comment recommended that the Board be required to make specific findings and give reasons as to why a better form of characterization was not given to the respondent (e.g., when the respondent receives a characterization of service as General (under honorable conditions) or Under Other Than Honorable Conditions). The Board's function is to make findings on the factual allegations and to recommend action as to retention and characterization. The question of characterization involves an evaluation of the entire service record. The Separation Authority traditionally has been free to disregard the Board's recommendations on characterization in order to approve the same or a more favorable characterization (but not a less favorable characterization). The Discharge Review Board, acting under 32 CFR Part 70 (DOD Directive 1332.28) may approve the same or more favorable characterization as that approved by the Separation Authority, but the Discharge Review Board must give findings and reasons for its actions. This process provides an appropriate means for allowing comprehensive review of the service record at all stages, and ensures that the respondent can obtain findings and reasons on the issue of characterization if he so requested from the Discharge Review Board without the risk of obtaining a less favorable characterization upon such a request.

6. *Separation Authority.* This is taken from § 41.8(c)(6)(vii) of the proposed rule, with minor changes in terminology to conform to other related aspects of the final rule. The requirement for legal review has been revised to state that such review is not required unless the respondent specifies legal issues for consideration or the case involves characterization of service under other than honorable conditions. Section 41.8(c)(6)(vii)(E) of the proposed rule, relating to limitations on former proceedings, has been deleted. This subject is covered in Part 2, subsection A.3. of the final rule.

D. *Additional provisions concerning members confined by civil authorities.*

This is taken from § 41.8(d) of the proposed rule with minor changes in terminology.

E. *Additional requirements for certain members of Reserve Components.* This is taken from § 41.8(e) of the proposed rule with minor changes in terminology. One comment recommended that reservists facing an Administrative Board be allowed to have the Board near their homes or be provided a sufficient period of time to arrange for attendance. These are matters which the member should address in the response to the notice under subsection C.3., and are appropriate for consideration as to whether the member has established good cause for delay under that section. The decision, however, rests with the sound discretion of the Convening Authority.

F. *Additional requirements for members beyond military control by reason of unauthorized absence.* This is taken from § 41.8(f) of the proposed rule with minor changes in terminology.

The existing 32 CFR Part 41 (46 FR 9571) and the change thereto, published in this Part II, shall continue to be used for administrative separation proceedings initiated on or before September 30, 1982.

Accordingly, 32 CFR Part 41 is revised to apply for administrative separation proceedings initiated on or after October 1, 1982, and reads as follows:

PART 41—ENLISTED ADMINISTRATIVE SEPARATIONS

Sec.
41.1 Purpose.
41.2 Applicability and scope.
41.3 Policy.
41.4 Responsibilities.
41.5 Effective date and implementation.
41.6 Definitions.
Appendix A Standards and Procedures

Authority: Title 10, U.S.C. 1162, 1163, 1169, 1170, 1172, and 1173.

§ 41.1 Purpose.

This Part establishes policies, standards, and procedures governing the administrative separation of enlisted members from the Military Services.

§ 41.2 Applicability and scope.

The provisions of this part apply to Office of the Secretary of Defense and the Military Departments (including their reserve components). The term "Military Services," as used herein, refers to the Army, Navy, Air Force and Marine Corps.

§ 41.3 Policy.

(a) It is the policy of the Department of Defense to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

(1) Ensure that the Military Services are served by individuals capable of meeting required standards of duty performance and discipline;

(2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service;

(3) Achieve authorized force levels and grade distributions; and

(4) Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

(b) DOD separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

(1) The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the service, and one's fellow citizens and servicemembers to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the armed forces. It is the policy of the Department of Defense to provide servicemembers with the training, motivation, and professional leadership that inspires the dedicated enlisted member to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

(3) The Military Services make a substantial investment in training, time, equipment, and related expenses when persons are enlisted or inducted into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accession. Consequently, attrition is an issue of significant concern at all levels of responsibility within the armed forces. Reasonable efforts should be made to identify enlisted members who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings. Enlisted members who do not demonstrate potential for further military service should be separated in order to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance that are associated with retention of enlisted members who do not conform to required standards of discipline and performance despite efforts at counseling, retraining, or rehabilitation.

(c) Standards and procedures for implementation of these policies are set forth in Appendix A to this part.

§ 41.4 Responsibilities.

(a) The *Secretaries of the Military Departments* shall prescribe implementing documents to ensure that the policies, standards, and procedures set forth in this part are administered in a manner that provides consistency in separation policy to the extent practicable in a system that is based on command discretion. The implementing documents also shall address the following matters:

(1) *Processing goals.* The Secretary concerned shall establish processing time goals for the types of administrative separations authorized by this part. Such goals shall be designed to further the efficient administration of the armed forces and shall be measured from the date of notification to the date of separation. Normally such goals should not exceed 15 working days for the Notification Procedure (Part 3, section B., Appendix A) and 50 working days for the Administrative Board Procedure (Part 3, section C., Appendix A) Goals for shorter processing times are encouraged, particularly for cases in which expeditious action is likely. Variations may be established for complex cases or cases in which the Separation Authority is not located on the same facility as the respondent. The goals, and a program for monitoring effectiveness, shall be set forth in the implementing document of the Military Department. Failure to process an administrative separation within the prescribed goal for processing times shall not create a bar to separation or characterization.

(2) *Periodic explanations.* The Secretary concerned shall prescribe appropriate internal procedures for periodic explanation to enlisted members of the types of separations, the basis for their issuance, the possible effects of various actions upon reenlistment, civilian employment, veterans' benefits, and related matters, and the effects of 10 U.S.C. 977 and Pub. L. No. 97–66, concerning denial of certain benefits to members who fail to complete at least 2 years of an original enlistment. Such explanation may be provided in the form of a written fact

sheet or similar document. The periodic explanation shall take place at least each time the provisions of the Uniform Code of Military Justice (UCMJ) are explained pursuant to Article 137 of the UCMJ. The requirement that the effects of the various types of separations be explained to enlisted members is a command responsibility, not a procedural entitlement. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

(3) *Provision of information during separation processing.* The Secretary concerned shall ensure that information concerning the purpose and authority of the Discharge Review Board and the Board for Correction of Military/Naval Records, established under 10 U.S.C. 1552 and 1553 and 32 CFR Part 70 (DOD Directive 1332.28) is provided during the separation processing of all members, except when the separation is for the purpose of an immediate reenlistment. Specific counseling is required under 38 U.S.C. 3103(a) which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a Discharge Review Board. The information required by this paragraph should be provided in the form of a written fact sheet or similar document. Failure on the part of the member to receive or to understand such explanation does not create a bar to separation or characterization.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* may modify or supplement the enclosures to this Directive, and may delegate the authority to establish reporting requirements for the reasons for separation (Part 1, Appendix A) to a Deputy Assistant Secretary.

§ 41.5 Effective date and implementation.

(a) This part applies only to administrative separation proceedings initiated on or after October 1, 1982.

(b) Part 41, effective December 29, 1976 shall continue to be used for administrative separation proceedings initiated on or before September 30, 1982.

§ 41.6 Definitions.

(a) *Member.* An enlisted member of a Military Service.

(b) *Discharge.* Complete severance from all military status gained by the enlistment or induction concerned.

(c) *Release from Active Duty.* Termination of active duty status and transfer or reversion to a reserve component not on active duty, including transfer to the Individual Ready Reserve (IRR).

(d) *Separation.* A general term which includes discharge, release from active duty, release from custody and control of the armed forces, transfer to the IRR, and similar changes in active or reserve status.

(e) *Military Record.* An individual's overall performance while a member of a Military Service, including personal conduct and performance of duty.

(f) *Separation Authority.* An official authorized by the Secretary concerned to take final action with respect to a specified type of separation.

(g) *Convening Authority.* (1) The Separation Authority or (2) a commanding officer who has been authorized by the Secretary concerned to process the case except for final action and who otherwise has the qualifications to act as a Separation Authority.

(h) *Respondent.* A member of a Military Service who has been notified that action has been initiated to separate the member.

(i) *Entry Level Status.* The first 180 days of continuous active military service. For members of a reserve component who have not completed 180 days of continuous active military service and who are not on active duty, entry level status begins upon enlistment in a reserve component (including a period of assignment to a delayed entry program) and terminates 180 days after beginning an initial period of entry level active duty training. For purposes of characterization of service or description of separation, the member's status is determined by the date of notification as to the initiation of separation proceedings.

Appendix A—Standards and Procedures

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Part 1—Reasons for Separation

A. *Expiration of Service Obligation.* 1. *Basis.* A member may be separated upon expiration of enlistment or fulfillment of service obligation. This includes separation authorized by the Secretary concerned when the member is within 30 days of the date of expiration of term of service under the following circumstances:

a. The member is serving outside the continental United States (CONUS); or

b. The member is a resident of a state, territory, or possession outside CONUS and is serving outside the member's state, territory, or possession of residence.

2. *Characterization or description.* Honorable, unless:

a. An Entry Level Separation is required under subsection C.3. of Part 2;

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2 on the basis of numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis; or

c. Another characterization is warranted upon discharge from the IRR under section E. of Part 3.

B. *Selected Changes in Service Obligations.* 1. *Basis.* A member may be separated for the following reasons:

a. General demobilization or reduction in authorized strength.

b. Early separation of personnel under a program established by the Secretary concerned. A copy of the document authorizing such program shall be forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) on or before the date of implementation.

c. Acceptance of an active duty commission or appointment, or acceptance into a program leading to such a commission or appointment in any branch of the Military Services.

d. Immediate enlistment or reenlistment.

e. Interservice transfer of inactive reserves in accordance with DOD Directive 1205.5.

2. *Characterization or description.* Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2;

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2 on the basis of numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis; or

c. Another characterization is warranted upon discharge from the IRR under section E. of Part 3.

C. *Convenience of the Government.* 1. *Basis.* A member may be separated for convenience of the government for the reasons set forth in subsection C.4., below.

2. *Characterization or description.* Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2; or

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2.

3. *Procedures.* Procedural requirements may be established by the Secretary concerned, subject to procedures established in subsection C.4., below. Prior to characterization of service as General (under honorable conditions), the member shall be notified of the specific factors in the service record that warrant such a characterization, and the Notification Procedure (section B. of Part 3) shall be used. Such notice and procedure is not required, however, when characterization of service as General (under honorable conditions) is based upon numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis.

4. *Reasons.* a. *Early release to further education.* A member may be separated under DOD Directive 1332.15 to attend a college, university, vocational school, or technical school.

b. *Early release to accept public office.* A member may be separated to accept public office only under circumstances authorized by the Military Department concerned and consistent with DOD Directive 1344.10.

c. *Dependency or hardship.* (1) Upon request of the member and concurrence of the government, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the member has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to Military Service.

d. *Pregnancy or childbirth.* A female member may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interests of the service under section A. of Part 2 and guidance

established by the Military Department concerned.

e. *Parenthood.* A member may be separated by reason of parenthood if as a result thereof it is determined under the guidance set forth in section A. of Part 2 that the member is unable satisfactorily to perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used. Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

f. *Conscientious objection.* A member may be separated if authorized under 32 CFR Part 75 (DOD Directive 1300.6).

g. *Surviving family member.* A member may be separated if authorized under 32 CFR Part 52 (DOD Directive 1315.14).

h. *Other designated physical or mental conditions.* (1) The Secretary concerned may authorize separation on the basis of other designated physical or mental conditions, not amounting to Disability (section D., below), that potentially interfere with assignment to or performance of duty under the guidance set forth in section A. of Part 2. Such conditions may include but are not limited to chronic seasickness or airsickness, enuresis, and personality disorder.[1]

(2) Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(3) Separation on the basis of personality disorder is authorized only if a diagnosis by a psychiatrist or psychologist, completed in accordance with procedures established by the Military Department concerned, concludes, that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired.

(4) Separation for personality disorder is not appropriate when separation is warranted under sections A. through N. or section P. of this Part. For example, if separation is warranted on the basis of unsatisfactory performance (section G.) or misconduct (section K.), the member should not be separated under this section regardless of the existence of a personality disorder.

(5) Nothing in this provision precludes separation of a member who has such a condition under any other basis set forth under this section (Convenience of the Government) or for any other reason authorized by this part.

(6) Prior to involuntary separation under this provision, the Notification Procedure (section B. of Part 3) shall be used.

(7) The reasons designated by the Secretary concerned shall be separately reported.

i. *Additional grounds.* The Secretary concerned may provide additional grounds for separation for the convenience of the government. A copy of the document authorizing such grounds shall be forwarded to the ASD(MRA&L) on or before the date of implementation.

D. *Disability.* 1. *Basis.* A member may be separated for disability under the provisions of 10 U.S.C. chapter 61.

2. *Characterization or description.* Honorable, unless:

a. An Entry Level Separation is required under section C. of Part 2; or

b. Characterization of service as General (under honorable conditions) is warranted under section C. of Part 2.

3. *Procedures.* Procedural requirements for separation may be established by the Military Departments consistent with 10 U.S.C. chapter 61. If separation is recommended, the following requirements apply prior to characterization of service as General (under honorable conditions): the member shall be notified of the specific factors in the service record that warrant such a characterization, and the Notification Procedure (section B. of Part 3) shall be used. Such notice and procedure is not required, however, when characterization of service as General (under honorable conditions) is based upon numerical scores accumulated in a formal, service-wide rating system that evaluates conduct and performance on a regular basis.

E. *Defective Enlistments and Inductions.* 1. *Minority.* a. *Basis.* (1) *Under age 17.* If a member is under the age of 17, the enlistment of the member is void, and the member shall be separated.

(2) *Age 17.* A member shall be separated under 10 U.S.C. 1170 in the following circumstances except when the member is retained for the purpose of trial by court-martial:

(a) There is evidence satisfactory to the Secretary concerned that the member is under 18 years of age;

(b) The member enlisted without the written consent of the member's parent or guardian; and

(c) An application for the member's separation is submitted to the Secretary concerned by the parent or guardian within 90 days of the member's enlistment.

b. *Description of separation.* A member separated under subparagraph E.1.a.(1), above, shall receive an order of release from the custody and control of the armed forces (by reason of void enlistment or induction). The separation of a member under subparagraph E.1.a.(2), above, shall be described as an Entry Level Separation.

c. *Procedure.* The Notification Procedure (section B. of Part 3) shall be used.

2. *Erroneous.* a. *Basis.* A member may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment under the guidance set forth in section A. of Part 2. An enlistment, induction, or extension of enlistment is erroneous in the following circumstances, if:

(1) It would not have occurred had the relevant facts been known by the government or had appropriate directives been followed;

(2) It was not the result of fraudulent conduct on the part of the member; and

(3) The defect is unchanged in material respects.

b. *Characterization or description.* Honorable, unless an Entry Level Separation or an order of release from the custody and control of the Military Services (by reason of void enlistment or induction) is required under section C. of Part 2.

c. *Procedure.* (1) If the command recommends that the individual be retained in military service, the initiation of separation processing is not required in the following circumstances:

(a) The defect is no longer present; or

(b) The defect is waivable and a waiver is obtained from appropriate authority.

(2) If separation processing is initiated, the Notification Procedure (section B. of Part 3) shall be used.

3. *Defective enlistment agreements.* a. *Basis.* A defective enlistment agreement exists in the following circumstances:

(1) As a result of a material misrepresentation by recruiting personnel, upon which the member reasonably relied, the member was induced to enlist with a commitment for which the member was not qualified;

(2) The member received a written enlistment commitment from recruiting personnel for which the member was

[1] Personality disorders are described in the Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, 3rd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1978.

qualified, but which cannot be fulfilled by the Military Service; or

(3) The enlistment was involuntary. *See* 10 U.S.C. 802.

b. *Characterization or description.* Honorable, unless an Entry Level Separation or an order of release from the custody and control of the Military Services (by reason of void enlistment) is required under section C. of Part 2.

c. *Procedures.* This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(1) The member did not knowingly participate in creation of the defective enlistment;

(2) The member brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by the member;

(3) The member requests separation instead of other authorized corrective action; and

(4) The request otherwise meets such criteria as may be established by the Secretary concerned.

4. *Fraudulent entry into military service.* a. *Basis.* A member may be separated under guidance set forth in section A. of Part 2 on the basis of procurement of a fraudulent enlistment, induction, or period of military service through any deliberate material misrepresentation, omission, or concealment which, if known at the time of enlistment, induction, or entry onto a period of military service, might have resulted in rejection.

b. *Characterization or description.* Characterization of service or description of separation shall be in accordance with section C. of Part 2. If the fraud involves concealment of a prior separation in which service was not characterized as Honorable, characterization normally shall be Under Other Than Honorable Conditions.

c. *Procedures.* The Notification Procedure (section B. of Part 3) shall be used except as follows:

(1) Characterization of service Under Other Than Honorable Conditions may not be issued unless the Administrative Board Procedure (section C. of Part 3) is used.

(2) When the sole reason for separation is fraudulent entry, suspension of separation (section B. of Part 2) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

(a) A waiver of the fraudulent entry is approved; and

(b) The suspension pertains to reasons for separation other than the fraudulent entry.

(3) If the command recommends that the member be retained in military service, the initiation of separation processing is unnecessary in the following circumstances:

(a) The defect is no longer present; or

(b) the defect is waivable and a waiver is obtained from appropriate authority.

(4) If the material misrepresentation includes preservice homosexuality (subsection H.1.), the standards of paragraph H.1.c. and procedures of subsection H.3. shall be applied in processing a separation under this section. In such a case the characterization or description of the separation shall be determined under paragraph E.4.b., above.

F. *Entry Level Performance and Conduct.* 1. *Basis.* a. A member may be separated while in entry level status (§ 41.6(i)) when it is determined under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment or minor disciplinary infractions.

b. When separation of a member in entry level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the member normally should be separated under this section. Nothing in this provision precludes separation under another provision of this Directive when such separation is authorized and warranted by the circumstances of the case.

2. *Counseling and rehabilitation.* Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are important with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when this is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. *Description of separation.* Entry Level Separation.

4. *Procedures.* The Notification Procedure (section B. of Part 3) shall be used.

G. *Unsatisfactory Performance.* 1. *Basis.* A member may be separated when it is determined under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service by reason of unsatisfactory performance. This reason shall not be used if the member is in entry level status (§ 41.6(i)).

2. *Counseling and Rehabilitation.* Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because military service is a calling different from any civilian occupation, a member should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation under standards prescribed by the Secretary concerned.

3. *Characterization or description.* The service shall be characterized as Honorable or General (under honorable conditions) in accordance with section C. of Part 2.

4. *Procedures.* The Notification Procedure (section B. of Part 3) shall be used.

H. *Homosexuality.* 1. *Basis.* a. Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service; and to prevent breaches of security.

b. As used in this section:

(1) Homosexual means a person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts;

(2) Bisexual means a person who engages in, desires to engage in, or

intends to engage in homosexual and heterosexual acts; and

(3) A homosexual act means bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.

c. The basis for separation may include preservice, prior service, or current service conduct or statements. A member shall be separated under this section if one or more of the following approved findings is made:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are approved further findings that:

(a) Such conduct is a departure from the member's usual and customary behavior;

(b) Such conduct under all the circumstances is unlikely to recur;

(c) Such conduct was not accomplished by use of force, coercion, or intimidation by the member during a period of military service;

(d) Under the particular circumstances of the case, the member's continued presence in the Service is consistent with the interest of the Service in proper discipline, good order, and morale; and

(e) The member does not desire to engage in or intend to engage in homosexual acts.

(2) The member has stated that he or she is a homosexual or bisexual unless there is a further finding that the member is not a homosexual or bisexual.

(3) The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved) unless there are further findings that the member is not a homosexual or bisexual and that the purpose of the marriage or attempt was the avoidance or termination of military service.

2. *Characterization or description.* Characterization of service or description of separation shall be in accordance with the guidance in section C. of Part 2. When the sole basis for separation is homosexuality, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under section C. of Part 2 and there is a finding that during the current term of service the member attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;

d. Openly in public view;

e. For compensation;

f. Aboard a military vessel or aircraft; or

g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

3. *Procedures.* The Administrative Board Procedure (section C. of Part 3) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under paragraph H.1.c., above.

b. The Administrative Board shall follow the procedures set forth in subsection C.5. of Part 3, except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under paragraph H.1.c., above, is supported by the evidence, the Board shall recommend separation unless the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(2) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the member has been duly notified.

c. In any case in which characterization of service Under Other Than Honorable Conditions is not authorized, the Separation Authority may be exercised by an officer designated under paragraph B.4.a. of Part 3.

d. The Separation Authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary concerned with a recommendation that the Secretary separate the member under the Secretary's Authority (section O. of this Part 1).

(2) If the Board recommends separation, the Separation Authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1 There is insufficient evidence to support the finding; or

2 Retention is warranted under the limited circumstances described in paragraph H.1.c., above.

(3) If there has been a waiver of Board proceedings, the Separation Authority shall dispose of the case in accordance with the following provisions:

(a) If the Separation Authority determines that there is not sufficient evidence to support separation under paragraph H.1.c., the Separation Authority shall direct retention unless there is another basis for separation of which the member has been duly notified.

(b) If the Separation Authority determines that one or more of the circumstances authorizing separation under paragraph H.1.c. has occurred, the member shall be separated unless retention is warranted under the limited circumstances described in that paragraph.

e. The burden of proving that retention is warranted under the limited circumstances described in paragraph H.1.c. rests with the member, except in cases where the member's conduct was solely the result of a desire to avoid or terminate military service.

f. Findings regarding the existence of the limited circumstances warranting a member's retention under paragraph H.1.c. are required only if:

(1) The member clearly and specifically raises such limited circumstances; or

(2) The Board or Separation Authority relies upon such circumstances to justify the member's retention.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure that there has been compliance with the provisions of this part;

(2) Precludes retention of a member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(3) Authorizes a member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(4) Precludes separation in appropriate circumstances for another reason set forth in this part; or

(5) Precludes trial by court-martial in appropriate cases.

I. *Drug Abuse Rehabilitation Failure.* 1. *Basis.* a. A member who has been referred to a program of rehabilitation for personal drug and alcohol abuse may be separated for failure through inability

or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service; or

(2) Long-term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a member who has been referred to such a program under any other provision of this part in appropriate cases.

c. Drug abuse rehabilitation failures shall be reported separately from alcohol abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting requirements.

2. *Characterization or description.* When a member is separated under this provision, characterization of service as Honorable or General (under honorable conditions) is authorized except when an Entry Level Separation is required under section C. of Part 2. The relationship between voluntary submission for treatment and the evidence that may be considered on the issue of characterization is set forth in subparagraph C.2.c.(6) of Part 2. The relationship between mandatory urinalysis and the evidence that may be considered on the issue of characterization is set forth in subparagraph C.2.c.(7) of Part 2.

3. *Procedures.* The Notification Procedure (section B. of Part 3) shall be used.

J. *Alcohol Abuse Rehabilitation Failure.* 1. *Basis.* a. A member who has been referred to a program of rehabilitation for drug and alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued military service; or

(2) Long-term rehabilitation is determined necessary and the member is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a member who has been referred to such a program under any other provision of this part in appropriate cases.

c. Alcohol abuse rehabilitation failures shall be reported separately from drug abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting purposes.

2. *Characterization or description.* When a member is separated under this provision, characterization of service as Honorable or General (under honorable conditions) is authorized except when an Entry Level Separation is required under section C. of Part 2.

3. *Procedures.* The Notification Procedure (section B. of Part 3) shall be used.

K. *Misconduct.* 1. *Basis.* a. *Reasons.* A member may be separated for misconduct when it is determined under the guidance set forth in section A. of Part 2 that the member is unqualified for further military service by reason of one or more of the following circumstances:

(1) *Minor disciplinary infractions.* A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a member in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Performance and Conduct (section F., above).

(2) *A pattern of misconduct.* A pattern of misconduct consisting of (a) descreditable involvement with civil or military authorities or (b) conduct prejudicial to good order and discipline.

(3) *Commission of a serious offense.* Commission of a serious military or civilian offense if in the following circumstances:

(a) The specific circumstances of the offense warrant separation; and

(b) A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial, 1969 (Revised Edition), as amended.

(4) *Civilian conviction.* (a) Conviction by civilian authorities or action taken which is tantamount to a finding of guilty, including similar adjudications in juvenile proceedings, when the specific circumstances of the offense warrant separation, and the following conditions are present:

1 A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial; or

2 The sentence by civilian authorities includes confinement for six months or more without regard to suspension or probation.

(b) Separation processing may be initiated whether or not a member has filed an appeal of a civilian conviction or has stated an intention to do so. Execution of an approved separation should be withheld pending outcome of the appeal or until the time for appeal has passed, but the member may be separated prior to final action on the appeal upon request of the member or upon direction of the Secretary concerned.

b. *Reporting.* The Deputy Assistant Secretary (Military Personnel and Force Management), Office of the ASD (MRA&L), shall require separate reports under each subparagraph in paragraph K.1.a. for misconduct by reason of drug abuse, unauthorized absence, and such other categories as may be appropriate.

c. *Related separations.* Misconduct involving homosexuality shall be processed under section H. Misconduct involving a fraudulent enlistment is considered under subsection E.4., above.

2. *Counseling and rehabilitation.* Separation processing for a pattern of misconduct (subparagraphs K.1.a. (1) and (2)) may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. If the sole basis of separation is a single offense (subparagraph K.1.a.(3)) or a civilian conviction or a similar juvenile adjudication (subparagraph K.1.a.(4)), the counseling and rehabilitation requirements are not applicable.

3. *Characterization or description.* Characterization of service normally shall be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in section C. of Part 2. For respondents who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate and the separation is approved by a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned. When characterization of service Under Other Than Honorable Conditions is not warranted for a member in entry level status under section C. of Part 2, the separation shall be described as an Entry Level Separation.

4. *Procedures.* The Administrative Board Procedure (section C. of Part 3) shall be used, except that use of the Notification Procedure (section B. of Part 3) is authorized if separation is based upon subparagraphs K.1.a.(1) and K.1.a.(2) and characterization of service Under Other Than Honorable Conditions is not warranted under section C. of Part 2.

L. *Separation in Lieu of Trial by Court-Martial.* 1. *Basis.* A member may be separated upon request of trial by court-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized and it is determined that the member is unqualified for further military service

under the guidance set forth in section A. of Part 2. This provision may not be used when section B. of paragraph 127*c* of the Manual for Courts-Martial provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge.

2. *Characterization or description.* Characterization of service normally shall be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted under the guidelines in section C. of Part 2. For respondents who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate. When characterization of service Under Other Than Honorable Conditions is not warranted for a member in entry level status under section C. of Part 2, the separation shall be described as an Entry Level Separation.

3. *Procedures.* a. The request for discharge must be submitted in writing and signed by the member.

b. The member shall be afforded opportunity to consult with counsel qualified under Article 27(b)(1) of the UCMJ. If the member refuses to do so, counsel shall prepare a statement to this effect, which shall be attached to the file, and the member shall state that he or she has waived the right to consult with counsel.

c. Except when the member has waived the right to counsel, the request shall be signed by counsel.

d. In the written request, the member shall state that he or she understands the following:

(1) The elements of the offense or offenses charged;

(2) That characterization of service Under Other Than Honorable Conditions is authorized; and

(3) The adverse nature of such a characterization and possible consequences thereof.

e. The Secretary concerned shall also require that one or both of the following matters be included in the request:

(1) An acknowledgment of guilt of one or more of the offenses or any lesser included offenses for which a punitive discharge is authorized; or

(2) A summary of the evidence or list of documents (or copies thereof) provided to the member pertaining to the offenses for which a punitive discharge is authorized.

f. The Separation Authority shall be a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned.

g. Statements by the member or the member's counsel submitted in connection with a request under this subsection are not admissible against the member in a court-martial except as authorized under Military Rule of Evidence 410, Manual for Courts-Martial.

M. *Security.* 1. *Basis.* When retention is clearly inconsistent with the interest of national security, a member may be separated by reason of security and under conditions and procedures established by the Secretary of Defense in DoD 5200.2-R.

2. *Characterization or description.* Characterization of service or description of a separation shall be in accordance with section C. of Part 2.

N. *Unsatisfactory Participation in the Ready Reserve.* 1. *Basis.* A member may be separated for unsatisfactory participation in the Ready Reserve under criteria established by the Secretary concerned under 32 CFR Part 100 (DoD Directive 1215.13).

2. *Characterization or description.* Characterization of service or description of a separation shall be in accordance with section C. of Part 2 and 32 CFR Part 100 (DoD Directive 1215.13).

3. *Procedures.* The Administrative Board Procedure (section C. of Part 3) shall be used, except that the Notification Procedure (section B. of Part 3) may be used if characterization of service Under Other Than Honorable Conditions is not warranted under section C. of Part 2.

O. *Secretarial Plenary Authority.* 1. *Basis.* Notwithstanding any limitation on separations provided in this part the Secretary concerned may direct the separation of any member prior to expiration of term of service after determining it to be in the best interests of the Service.

2. *Characterization or description.* Honorable or General (under honorable conditions) as warranted under section C. of Part 2 unless an Entry Level Separation is required under section C. of Part 2.

3. *Procedures.* Prior to involuntary separation, the Notification Procedure (section B. of Part 3) shall be used, except the procedure for requesting an Administrative Board (paragraph B.1.g. of Part 3) is not applicable.

P. *Reasons Established by the Military Departments.* 1. *Basis.* The Military Departments may establish additional reasons for separation for circumstances not otherwise provided for in this part to meet specific requirements, subject to approval by the ASD (MRA&L).

2. *Counseling and rehabilitation.* Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records except when the Military Department concerned provides in its implementing document that counseling and rehabilitation requirements are not applicable for the specific reason for separation.

3. *Characterization or description.* Characterization of service or description of a separation shall be in accordance with section C. of Part 2.

4. *Procedures.* The procedures established by the Military Departments shall be consistent with the procedures contained in this part insofar as practicable.

Part 2—Guidelines on Separation and Characterization

A. *Separation.* 1. *Scope.* This general guidance applies when referenced in Part 1. Further guidance is set forth under the specific reasons for separation in Part 1.

2. *Guidance.* a. There is a substantial investment in the training of persons enlisted or inducted into the Military Services. As a general matter, reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings.

b. Unless separation is mandatory, the potential for rehabilitation and further useful military service shall be considered by the Separation Authority and, where applicable, the Administrative Board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

c. Counseling and rehabilitation efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under specific requirements for separation in Part 1. An alleged or established inadequacy in previous rehabilitative efforts does not provide a legal bar to separation.

d. The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(1) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the member's continued retention on military discipline, good order, and morale.

(2) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(3) The likelihood that the member will be a disruptive or undesirable influence in present or future duty assignments.

(4) The ability of the member to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(5) The member's rehabilitative potential.

(6) The member's entire military record. (a) This may include:

(1) Past contributions to the Service, assignments, awards and decorations, evaluation ratings, and letters of commendation;

2 Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities; and

3 Any other matter deemed relevant by the Board, if any, or the Separation Authority, based upon the specialized training, duties, and experience of persons entrusted by this part with recommendations and decisions on the issue of separation or retention.

(b) The following guidance applies to consideration of matter under subparagraph A.2.d.(6)(a):

1 Adverse matter from a prior enlistment or period of military service, such as records of nonjudicial punishment and convictions by courts-martial, may be considered only when such records would have a direct and strong probative value in determining whether separation is appropriate. The use of such records ordinarily shall be limited to those cases involving patterns of conduct manifested over an extended period of time.

2 Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

3. *Limitations on separation actions.* A member may not be separated on the basis of the following:

a. Conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof except in the following circumstances:

(1) When such action is based upon a judicial determination not going to the guilt or innocence of the respondent; or

(2) When the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary concerned.

b. Conduct that has been the subject of a prior Administrative Board in which the Board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion; or

c. Conduct that has been the subject of an administrative separation proceeding resulting in a final determination by a Separation Authority that the member should be retained, except in the following circumstances:

(1) When there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding;

(2) When there is new or newly discovered evidence that was not reasonably available at the time of the prior proceeding; or

(3) When the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

B. *Suspension of Separation.* 1. *Suspension.* a. Unless prohibited by this part a separation may be suspended for a specified period of not more than 12 months by the Separation Authority or higher authority if the circumstances of the case indicate a reasonable likelihood or rehabilitation.

b. During the period of suspension, the member shall be afforded an opportunity to meet appropriate standards of conduct and duty performance.

c. Unless sooner vacated or remitted, execution of the approved separation shall be remitted upon completion of the probationary period, upon termination of the member's enlistment or period of obligated service, or upon decision of the Separation Authority that the goal of rehabilitation has been achieved.

2. *Action during the period of suspension.* a. During the period of suspension, if there are further grounds for separation under Part 1, one or more of the following actions may be taken:

(1) Disciplinary action;

(2) New administrative action; or

(3) Vacation of the suspension accompanied by execution of the separation if the member engages in conduct similar to that for which separation was approved (but suspended) or otherwise fails to meet appropriate standards of conduct and duty performance.

b. Prior to vacation of a suspension, the member shall be notified in writing of the basis for the action and shall be afforded the opportunity to consult with counsel (as provided in paragraph B.1.f. of Part 3) and to submit a statement in writing to the Separation Authority. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. If the respondent identifies specific legal issues for consideration by the Separation Authority, the matter shall be reviewed by a judge advocate or civilian lawyer employed by the government prior to final action by the Separation Authority.

C. *Characterization of Service or Description of Separation.* 1. *Types of characterization or description.* a. At separation, the following types of characterization of service or description of separation are authorized under this Part:

(1) Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.

(2) Entry Level Separation.

(3) Order of release from the custody and control of the Military Services by reason of void enlistment or induction.

(4) Separation by being dropped from the rolls of the Service.

b. Any of the types of separation listed in this section may be used in appropriate circumstances unless a limitation set forth in this section or in Part 1 (Reasons for Separation).

2. *Characterization of service.* a. *General considerations.* (1) Characterization at separation shall be based upon the quality of the member's service, including the reason for separation and guidance in paragraph C.2.b., below, subject to the limitations set forth under various reasons for separation in Part 1. The quality of service will be determined in accordance with standards of acceptable personal conduct and performance of duty for military personnel. These standards are found in the 10 U.S.C., Sections 801–940, UCMJ, directives and regulations issued by the Department of Defense and the Military Departments, and the time-honored customs and traditions of military service.

(2) The quality of service of a member on active duty or active duty for training is affected adversely by conduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline, regardless of whether the conduct is subject to UCMJ jurisdiction. Characterization may be based on conduct in the civilian community, and the burden is on the respondent to demonstrate that such conduct did not adversely affect the respondent's service.

(3) The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior rather than an isolated incident. There are circumstances, however, in which the conduct or performance of duty

reflected by a single incident provides the basis for characterization.

(4) Due consideration shall be given to the member's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

b. *Types of characterization.* (1) *Honorable.* The Honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. In the case of an Honorable Discharge, an Honorable Discharge Certificate (DD Form 256) will be awarded and a notation will be made on the appropriate copies of the DD Form 214/5 in accordance with 32 CFR Part 45 (DoD Directive 1336.1).

(2) *General (under honorable conditions).* If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record.

(3) *Under Other Than Honorable Conditions.* (a) This characterization may be issued in the following circumstances:

1 When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of members of the Military Services.

2 When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death, abuse of a special position of trust, disregard by a superior of customary superior-subordinate relationships, acts or omissions that endanger the security of the United States or the health and welfare of other members of the Military Services, and deliberate acts or omissions that seriously endanger the health and safety of other persons.

(b) This characterization is authorized only if the member has been afforded the opportunity to request an Administrative Board, except as provided in section L. of Part 1 (Separation in Lieu of Trial by Courts-Martial).

c. *Limitations on characterization.* Except as otherwise provided in this paragraph, characterization will be determined solely by the member's military record during the current enlistment or period of service to which the separation pertains, plus any extensions thereof prescribed by law or regulation or effected with the consent of the member.

(1) Prior service activities, including records of conviction by courts-martial, records of absence without leave, or commission of other offenses for which punishment was not imposed shall not be considered on the issue of characterization. To the extent that such matters are considered on the issue of retention or separation (subsection A.2. of this Part 2), the record of proceedings may reflect express direction that such information shall not be considered on the issue of characterization.

(2) Preservice activities may not be considered on the issue of characterization except as follows: in a proceeding concerning fraudulent entry into military service (subsection E.4. of Part 1), evidence of preservice misrepresentations about matters that would have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction may be considered on the issue of characterization.

(3) The limitations in subsection A.3., above, as to matters that may be considered on the issue of separation are applicable to matters that may be considered on the issue of characterization.

(4) When the sole basis for separation is a serious offense which resulted in a conviction by a court-martial that did not impose a punitive discharge, the member's service may not be characterized Under Other Than Honorable Conditions unless such characterization is approved by the Secretary concerned.

(5) Conduct in the civilian community of a member of a reserve component who is not on active duty or active duty for training may form the basis for characterization Under Other Than Honorable Conditions only if such conduct affects directly the performance of military duties. Such conduct may form the basis of characterization as General (under honorable conditions) only if such conduct has an adverse impact on the overall effectiveness of the service, including military morale and efficiency.

(6) A member's voluntary submission to a DoD treatment and rehabilitation program (for personal use of drugs) and evidence provided voluntarily by the member concerning personal use of drugs as part of initial entry into such a program may not be used against the member on the issue of characterization. This limitation does not preclude the following actions:

(a) The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been first introduced by the member; and

(b) Taking action based on independently derived evidence, including evidence of drug abuse after initial entry into the treatment and rehabilitation program.

(7) The results of mandatory urinalysis may be used on the issue of characterization except as provided in the Deputy Secretary of Defense Memorandum, "Alcohol and Drug Abuse," December 28, 1981, and rules promulgated thereunder.

3. *Uncharacterized separations.* a. *Entry Level Separation.* (1) A separation shall be described as an Entry Level Separation if separation processing is initiated while a member is in entry level status, except in the following circumstances:

(a) When characterization Under Other Than Honorable Conditions is authorized under the reason for separation (Part 1) and is warranted by the circumstances of the case; or

(b) The Secretary concerned, on a case-by-case basis, determines that characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of military duty. This characterization is authorized when the member is separated under Part 1 by reason of selected changes in service obligation (section B.), Convenience of the Government (section C.), Disability (section D.), Secretarial Plenary Authority (secton O.), or an approved reason established by the Military Department (section P.).

(2) In time of mobilization or in other appropriate circumstances, the ASD (MRA&L) may authorize the Secretary concerned to delegate the authority in subparagraph (1)(b), above, (concerning the Honorable characterization) to a general court-martial convening authority with respect to members serving in operational units.

(3) With respect to administrative matters outside this Part that require a characterization as Honorable or General, an Entry Level Separation shall be treated as the required characterization. This provision does not apply to administrative matters that expressly require different treatment of

an Entry Level Separation except as provided in subparagraph (4), below.

(4) In accordance with 10 U.S.C. 1163, an Entry Level Separation for a member of a Reserve Component separated from the Delayed Entry Program is "under honorable conditions."

b. *Void enlistments or inductions.* A member shall not receive a discharge, characterization of service at separation, or an Entry Level Separation if the enlistment or induction is void except when a constructive enlistment arises and such action is required under subparagraph (3), below. If characterization or an Entry Level Separation is not required, the separation shall be described as an order of release from custody or control of the Military Services.

(1) An enlistment is void in the following circumstances:

(a) If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the Military Services, including enlistment of a person who is intoxicated or insane at the time of enlistment. 10 U.S.C. 504; Article 2(b), UCMJ.

(b) If the person is under 17 years of age. 10 U.S.C. 505.

(c) If the person is a deserter from another Military Service. 10 U.S.C. 504.

(2) Although an enlistment may be void at its inception, a constructive enlistment shall arise in the case of a person serving with a Military Service who:

(a) Submitted voluntarily to military authority;

(b) Met the mental competency and minimum 10 U.S.C. age qualifications of Sections 504 and 505 of, at the time of voluntary submission to military authority;

(c) Received military pay or allowances; and

(d) Performed military duties.

(3) If an enlistment that is void at its inception is followed by a constructive enlistment within the same term of service, characterization of service or description of separation shall be in accordance with subsection C.2. or paragraph C.3.a. of this Part 2, as appropriate; however, if the enlistment was void by reason of desertion from another Military Service, the member shall be separated by an order of release from the custody and control of the Service regardless of any subsequent constructive enlistment. The occurrence of such a constructive enlistment does not preclude the Military Departments, in appropriate cases, from either retaining the member or separating the member under section E. of Part 1 on the basis of the circumstances that occasioned the original void enlistment or upon any other basis for separation provided in this Part.

c. *Dropping from the rolls.* A member may be dropped from the rolls of the Service when such action is authorized by the Military Department concerned and a characterization of service or other description of separation is not authorized or warranted.

Part 3—Procedures For Separation

A. *Scope.* 1. The supplementary procedures in this Part are applicable only when required under a specific reason for separation (Part 1). These procedures are subject to the requirements set forth in Part 1 with respect to specific reasons for separation.

2. When a member is processed on the basis of multiple reasons for separation, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

a. The requirements for each reason will be applied to the extent practicable.

b. If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board Procedure (section C., below), the entire matter shall be processed under section C.

c. If more than one reason for separation is approved, the guidance on characterization that provides the greatest latitude may be applied.

d. When there is any other clear conflict between a specific requirement applicable to one reason and a general requirement applicable to another reason, the specific requirement shall be applied.

e. If a conflict in procedures cannot be resolved on the basis of the foregoing principles, the procedure most favorable to the respondent shall be used.

B. *Notification Procedure.* 1. *Notice.* If the Notification Procedure is initiated under Part 1, the respondent shall be notified in writing of the matter set forth in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and a reference to the applicable provisions of the Military Department's implementing regulation.

b. Whether the proposed separation could result in discharge, release from active duty to a reserve component, transfer from the Selected Reserve to the IRR, release from custody or control of the Military Services, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The right to obtain copies of documents that will be forwarded to the Separation Authority supporting the basis of the proposed separation. Classified documents may be summarized.

e. The respondent's right to submit statements.

f. The respondent's right to consult with counsel qualified under Article 27(b)(1) of the UCMJ. Nonlawyer counsel may be appointed when the respondent is deployed aboard a vessel or in similar circumstances of separation from sufficient judge advocate resources as determined under standards and procedures specified by the Secretary concerned. The respondent also may consult with civilian counsel retained at the member's own expense.

g. If the respondent has 6 or more years of total active and reserve military service, the right to request an Administrative Board (section C.).

h. The right to waive paragraphs d., e., f. or g., above, after being afforded a reasonable opportunity to consult with counsel, and that failure to respond shall constitute a waiver of the right.

2. *Additional notice requirements.* a. If separation processing is initiated on the basis of more than one reason under Part 1, the requirements of paragraph B.1.a. apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRR, the relevant notification procedures in sections D., E., or F. of this Part 3 apply.

c. Additional notification requirements are set forth in Part 1, sections C. and D., when characterization of service as General (under honorable conditions) is authorized and the member is processed for separation by reason of Convenience of the Government or Disability.

3. *Response.* The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in paragraphs 1.d. through g., above, and applicable provisions referenced in subsection 2. shall be recorded and signed by the respondent and counsel, subject to the following limitation:

a. If notice by mail is authorized under sections D., E., or F. of this Part 3 and the respondent fails to acknowledge

receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. *Separation Authority.* a. The Separation Authority for actions initiated under the Notification Procedure shall be a special court-martial convening authority or higher authority. The Secretary concerned also may authorize a commanding officer in grade 0–5 or above with a judge advocate or legal advisor available to the command to act as a Separation Authority for a specified reason for separation, subject to approval by the ASD(MRA&L). When the case has been initiated under the Administrative Board Procedure and the member has waived the right to a hearing under section C.4., the Separation Authority shall be an official designated under subsection C.6., below.

b. The action of the Separation Authority shall be recorded.

c. The Separation Authority shall determine whether there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If an allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation.

d. If there is a sufficient factual basis for separation, the Separation Authority shall determine whether separation is warranted under the guidance in sections A. and B. of Part 2. On the basis of that guidance, the Separation Authority shall direct one of the following actions:

(1) Retention;

(2) Separation for a specific reason under Part 1; or

(3) Suspended separation in accordance with the guidance in section B. Part 2.

e. If the Separation Authority directs separation or suspended separation on the basis of more than one reason under Part 1, the Separation Authority shall designate the most appropriate basis as the primary reason for reporting purposes.

f. If separation or a suspended separation is directed, the Separation Authority shall assign a characterization or description in accordance with section C. of Part 2.

g. Except when characterization Under Other Than Honorable Conditions is directed or the member is separated on the basis of homosexuality or a void enlistment or induction, the Secretary concerned may authorize the Separation Authority or higher authority to make a recommendation or determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies in cases involving separation from active duty or from the Selected Reserve. Section E. of this Part 3 is applicable if such action is approved.

c. *Administrative Board Procedure.* 1. *Notice.* If an Administrative Board is required, the respondent shall be notified in writing of the matters set forth in this section.

a. The basis of the proposed separation, including the circumstances upon which the action is based and reference to the applicable provisions of the Military Department's implementing regulation.

b. Whether the proposed separation could result in discharge, release from active duty to a reserve component, transfer from the Selected Reserve to the IRR, release from the custody or control of the Military Services, or other form of separation.

c. The least favorable characterization of service or description of separation authorized for the proposed separation.

d. The respondent's right to consult with counsel as prescribed in paragraph B.1.f. of this Part 3. However, nonlawyer counsel may not represent a respondent before an Administrative Board unless (1) the respondent expressly declines appointment of counsel qualified under Article 27(b) (1) of the UCMJ (10 U.S.C.) and requests a specific nonlawyer counsel; or (2) the Separation Authority assigns nonlawyer counsel as assistant counsel.

e. The right to obtain copies of documents that will be forwarded to the Separation Authority supporting the basis of the proposed separation. Classified documents may be summarized.

f. The respondent's right to request a hearing before an Administrative Board.

g. The respondent's right to present written statements instead of board proceedings.

h. The respondent's right to representation at the Administrative Board either by military counsel appointed by the Convening Authority or by military counsel of the respondent's own choice (if counsel of choice is determined to be reasonably available under regulations of the Secretary concerned) but not both.

i. The right to representation at the Administrative Board by civilian counsel at the respondent's own expense.

j. The right to waive the rights in paragraphs d. through i., above.

k. That failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraphs d. through i., above.

l. Failure to appear without good cause at a hearing constitutes waiver of the right to be present at the hearing.

2. *Additional notice requirements.* a. If separation processing is initiated on the basis of more than one reason under Part 1, the requirements of paragraph C.1.a. apply to all proposed reasons for separation.

b. If the respondent is in civil confinement, absent without leave, or in a reserve component not on active duty or upon transfer to the IRR, the relevant notification procedures in sections D., E., or F. of this Part 3 apply.

c. Additional notification requirements are set forth in sections C. and D., Part 1, when characterization of service as General (under honorable conditions) is authorized and the member is processed for separation by reason of Convenience of the Government or Disability.

3. *Response.* The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in paragraphs 1.d. through 1.i., above, and applicable provisions referenced in subsection 2., above, shall be recorded and signed by the respondent and counsel, subject to the following limitations:

a. If notice by mail is authorized under sections D., E., or F. of this Part 3 and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

b. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate form, the

selection of rights will be noted and an appropriate notation as to the failure to sign will be made.

4. *Waiver.* a. If the right to a hearing before an Administrative Board is waived, the case will be processed under subsection B.4. of this Part 3 (Notification Procedure), but the Separation Authority in such cases shall be an official designated under subsection C.6.

b. When authorized by the Secretary concerned, a respondent entitled to an Administrative Board may exercise a conditional waiver after a reasonable opportunity to consult with counsel under paragraph C.1.d. A conditional waiver is a statement initiated by a respondent waiving the right to a board proceeding contingent upon receiving a characterization of service or description of separation higher than the least favorable characterization or description authorized for the basis of separation set forth in the notice to the respondent.

5. *Hearing procedure.* If a respondent requests a hearing before an Administrative Board, the following procedures are applicable:

a. *Composition.* (1) The Convening Authority shall appoint to the Administrative Board at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted personnel appointed to the Board shall be in grade E–7 or above, and shall be senior to the respondent. At least one member of the Board shall be serving in the grade of 0–4 or higher, and a majority shall be commissioned or warrant officers. The senior member shall be the president of the Board. The Convening Authority also may appoint to the Board a nonvoting recorder. A nonvoting legal advisor may be appointed to assist the Board if authorized by the Secretary concerned.

(2) If the respondent is an enlisted member of a reserve component or holds an appointment as a reserve commissioned or warrant officer, the Board shall include at least one Reserve officer as a voting member. Voting members shall be senior to the respondent's reserve grade. *See* 10 U.S.C. 266.

(3) The Convening Authority shall insure that the opportunity to serve on Administrative Boards is given to women and minorities. The mere appointment or failure to appoint a member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

(4) The respondent may challenge a voting member of the Board or the legal advisor, if any, for cause only.

b. *Presiding officer.* The president shall preside and rule finally on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of evidence and challenges except challenges to himself.

c. *Witnesses.* (1) The respondent may request the attendance of witnesses in accordance with the implementing instruction of the Military Department concerned.

(2) In accordance with such instructions, the respondent may submit a written request for TDY or invitational travel orders for witnesses. Such a request shall contain the following matter:

(a) A synoposis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(3) The Convening Authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) determines that:

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and

(e) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(4) If the Convening Authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued if necessary to permit the attendance of the witness.

(5) The hearing shall be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required;

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

(6) Paragraph (5)(c), above, does not authorize a federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

d. *Record of proceedings.* The record of the proceedings shall be kept in summarized form unless a verbatim record is required by the Secretary concerned. In all cases, the findings and recommendations of the Board shall be in verbatim form.

e. *Presentation of evidence.* The rules of evidence for courts-martial and other judicial proceedings are not applicable before an Administrative Board. Reasonable restrictions shall be observed, however, concerning relevancy and competency of evidence.

f. *Rights of the respondent.* (1) The respondent may testify in his or her own behalf, subject to the provisions of Article 31(a), UCMJ (10 U.S.C.).

(2) At any time during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the Board.

(3) The respondent or counsel may call witnesses in his or her behalf.

(4) The respondent or counsel may question any witness who appears before the Board.

(5) The respondent or counsel may present argument prior to when the Board closes the case for deliberation on findings and recommendations.

g. *Findings and recommendations.* (1) The Board shall determine its findings and recommendations in closed session. Only voting members of the Board shall be present.

(2) The Board shall determine whether each allegation set forth in the notice of proposed separation is supported by a preponderance of the evidence.

(3) The Board shall then determine under the guidance in section A. of Part 2 whether the findings warrant separation with respect to the reason for separation set forth in the Notice. If more than one reason was contained in the Notice, there shall be a separate determination for each reason.

(4) The Board shall make recommendations on the following:

(a) *Retention or separation.* The Board shall recommend retention or separation.

(b) *Suspension of separation.* If the Board recommends separation, it may recommend that the separation be suspended in accordance with section B. of Part 2, but the recommendation of the Board as to suspension is not binding on the Separation Authority.

(c) *Characterization of service or description of separation.* If separation or suspended separation is recommended, the Board shall recommend a characterization of service or description of separation as authorized in Part 1 (Reasons for Separation) in accordance with the guidance in section C. of Part 2.

(d) *Transfer to the Ready Reserve.* Except when the Board has recommended separation on the basis of homosexuality or has recommended characterization of service Under Other Than Honorable Conditions, the Secretary Concerned may authorize the Board to make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies to cases involving separation from active duty or from the Selected Reserve. Section E. of this Part 3 is applicable if the action is approved.

6. *Separation Authority.* A. The separation Authority for actions initiated under the Administrative Board Procedure shall be a general court-martial convening authority or higher authority. The Secretary concerned also may authorize a commanding officer in grade 0–7 or above with a judge advocate or legal advisor available to his command to act as a separation authority in specified circumstances. When an Administrative Board recommends characterization of service as Honorable or General (under honorable conditions), the Separation Authority may be exercised by an officer designated under subsection B.4. When the case has been initiated under the Notification Procedure and the hearing is a result of a request under paragraph B.1.g., the Separation Authority shall be as designated in subsection B.4.

b. In every case in which characterization of sevice Under Other Than Honorable Conditions is recommended, the record of the Board's proceedings will be reviewed by a judge advocate or civilian attorney employed by the Military Department prior to action by the Separation Authority. Such review is not required when another characterization is recommended unless the respondent identifies specific legal issues for consideration by the Separation Authority.

c. The respondent will be provided with a copy of the Board's statement of facts and recommendations.

d. The Separation Authority shall take action in accordance with this subparagraph, the requirements of Part 1 with respect to the reason for separation, and the guidance in Part 2 on separation and characterization.

(1) If the Separation Authority approves the recommendations of the Board on the issue of separation or characterization (or both) this constitutes approval of the Board's findings and recommendations under paragraph C.5.g. unless the Separation Authority expressly modifies such findings or recommendations.

(2) If the Board recommends retention, the Separation Authority may take one of the following actions:

(a) Approve the recommendation.

(b) Forward the matter to the Secretary concerned with a recommendation for separation based upon the circumstances of the case. In such a case, the Secretary may direct retention or separation. If the Secretary approves separation, the characterization of service or description of separation will be Honorable, General (under honorable conditions) or an Entry Level Separation under the guidance in section C. of Part 2.

(3) If the Board recommends separation, the Separation Authority may:

(a) Approve the Board's recommendation;

(b) Approve the Board's recommendation, but modify the recommendations by one or more of the following actions when appropriate:

1 Approve the separation but suspend execution as provided in section B. of Part 2.

2 Change the character of service or description of separation to a more favorable characterization or description.

3 Change the Board's recommendation, if any, concerning transfer to the IRR.

(c) Disapprove the Board's recommendation and retain the respondent.

(4) If the Separation Authority approves the Board's findings and recommendations in whole or in part with respect to more than one reason under Part 1, the Separation Authority shall designate the most appropriate basis as the primary reason for reporting purposes.

(5) If the Separation Authority finds legal prejudice to a substantial right of the respondent or determines that the findings of the Board have been obtained by fraud or collusion, the case may be referred to a new board. No member of the new board shall have served on a prior board that considered the case. The Separation Authority may not approve findings and recommendations less favorable to the respondent than those rendered by the previous board unless the Separation Authority finds that fraud or collusion in the previous board is attributable to the respondent or an individual acting on the respondent's behalf.

D. *Additional Provisions Concerning Members Confined by Civil Authorities.* 1. If proceedings under this part have been initiated against a respondent confined by civil authorities, the case may be processed in the absence of the respondent. Paragraph C.5.e. of this Part 3 is not applicable except insofar as such rights can be exercised by counsel on behalf of the respondent.

2. The following requirements apply:

a. The notice shall contain the matter set forth in subsection B.1. of this Part or subsection C.1. (Notice in the Administrative Board Procedure), as appropriate. The notice shall be delivered personally to the respondent or sent by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available for delivery by U.S. mail at an address outside the United States). If the member refuses to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see 32 CFR Part 100) [DOD Directive 1215.13], which will be inserted in the member's personnel file together with PS Form 3800.

b. If delivered personally, receipt shall be acknowledged in writing by the respondent. If the respondent does not acknowledge receipt, the notice shall be sent by mail as provided in paragraph 2.a., above.

c. The notice shall state that the action has been suspended until a specific date (not less than 30 days from the date of delivery) in order to give the respondent the opportunity to exercise the rights set forth in the notice. If respondent does not reply by such date, the separation authority shall take appropriate action under subsection B.4. of this Part 3.

d. The name and address of the military counsel for appointed consultation shall be specified in the notice.

e. If the case involves entitlement to an Administrative Board, the respondent shall be notified that the board will proceed in the respondent's absence and that the case may be presented on respondent's behalf by counsel for the respondent.

E. *Additional Requirements for Certain Members of Reserve Components.* 1. *Members of reserve components not on active duty.* a. If proceedings under this Chapter have been initiated against a member of a reserve component not on active duty, the case may be processed in the absence of the member in the following circumstances:

(1) At the request of the member;

(2) If the member does not respond to the notice of proceedings on or before the suspense date provided therein; or

(3) If the member fails to appear at a hearing as provided in paragraph C.1.1.

b. The notice shall contain the matter set forth in subsections B.1. or C.1. of this Part 3, as appropriate.

c. If the action involves a transfer to the IRR under circumstances in which the procedures in this Appendix A are applicable, the member will be notified that the character of service upon transfer to the IRR also will constitute the character of service upon discharge at the completion of the military service obligation unless specified conditions established by the Secretary concerned are met.

2. *Transfer to the IRR.* Upon transfer to the IRR, the member will be notified of the following:

a. The character of service upon transfer from active duty or the Selected Reserve to the IRR, and that the character of service upon completion of the military service obligation will be the same unless specified conditions established by the Secretary concerned are met.

b. The date upon which the military service obligation will expire.

c. The date by which the member must submit evidence of satisfactory completion of the specified conditions.

3. If the member submits evidence of completion of the specified conditions but the Military Department proposes to issue a discharge other than an Honorable Discharge, the Notification Procedure shall be used. An Administrative Board is not required at this point notwithstanding the member's years of service.

4. If the member does not submit such information on or before the date specified in the notice, no further proceedings are required. The character of discharge at the completion of the military service obligation shall be the same as the character of service upon transfer from the Selected Reserve to the IRR.

5. The following requirements apply to the notices required by subsections E.1. and E.2. of this Part 3.

a. Reasonable effort should be made to furnish copies of the notice to the member through personal contact by a representative of the command. In such a case, a written acknowledgment of the notice shall be obtained.

b. If the member cannot be contacted or refuses to acknowledge receipt of the notice, the notice shall be sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the most recent address furnished by the member as an address for receipt or forwarding of official mail. The individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see 32 CFR Part 100 (DOD Directive 1215.13)), which will be inserted in the member's personnel file together with PS Form 3800.

F. *Additional Requirements for Members Beyond Military Control by Reason of Unauthorized Absence.* 1. *Determination of applicability.* If the general court-martial convening authority or higher authority determines that separation is otherwise appropriate under this Part, a member may be separated without return to military control in one or more of the following circumstances:

a. Absence without authority after receiving notice of initiation of separation processing.

b. When prosecution of a member who is absent without authority appears to be barred by the statute of limitations, Article 43, UCMJ.

c. When a member who is an alien is absent without leave and appears to have gone to a foreign country where the United States has no authority to apprehend the member under a treaty or other agreement.

2. *Notice.* Prior to execution of the separation under paragraphs 1.b. or 1.c., the member will be notified of the imminent action by registered mail or certified mail, return receipt requested (or by an equivalent form of Notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the member's last known address or the next of kin under regulations prescribed by the Military Department concerned. The notice shall contain the matter set forth in subsections B.1. or C.1., as appropriate, and shall specify that the action has been suspended until a specific date (not less than 30 days from the date of mailing) in order to give the respondent the opportunity to return to military control. If the respondent does not return to military control by such date, the separation authority shall take appropriate action under subsection B.4. of this Part 3.

3. *Members of reserve components.* See 10 U.S.C 1163 with respect to limitations on separation of members of reserve components.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 3, 1982.

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March 9, 1982

Part III

Department of Labor

Mine Safety and Health Administration

Review of Metal and Nonmetal Standards

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55 and 57

Review of Metal and Nonmetal Standards Public Conferences

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Public Conferences.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a series of public conferences throughout the country to discuss issues relating to certain standards in 30 CFR Parts 55 and 57: Section .3 (Ground Control); Section .4 (Fire Prevention and Control); Section .5 (Air Quality); Section .6 (Explosives); Section .9 (Loading, Hauling, Dumping); Section .12 (Electricity); Section .14 (Use of Equipment); and Section .21 (Gassy Mines).

The purpose of this review is to improve the quality and effectiveness of MSHA's standards by eliminating duplication, reducing excessive recordkeeping requirements, upgrading provisions consistent with advances in mining technology, and eliminating unnecessary standards. Information gathered at these conferences will assist the agency in developing regulatory proposals.

DATES: All requests to participate in the public conferences should be submitted at least five (5) days prior to the conference date. All post-conference written comments should be submitted by June 4, 1982. The conferences will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

March 29, 1982— Reno, Nevada (.3 Ground Control).

March 30, 1982— Reno, Nevada (.6 Explosives), and Knoxville, Tennessee (.4 Fire Prevention and Control).

March 31, 1982—Carlsbad, New Mexico (.21 Gassy Mines), and Knoxville, Tennessee (.12 Electricity).

April 1, 1982—Albuquerque, New Mexico (.3 Ground Control).

April 2, 1982—Albuquerque, New Mexico (.6 Explosives).

April 6, 1982—Salt Lake City, Utah (.21 Gassy Mines).

April 13, 1982—Phoenix, Arizona (.4 Fire Prevention and Control), and Louisville, Kentucky (.3 Ground Control).

April 14, 1982—Phoenix, Arizona (.12 Electricity), and Louisville, Kentucky (.6 Explosives).

April 15, 1982—Louisville, Kentucky (.5 Air Quality).

April 20, 1982—St. Paul, Minnesota (.9 Loading, Hauling, Dumping), and Albuquerque, New Mexico (.5 Air Quality).

April 21, 1982—St. Paul, Minnesota (.14 Use of Equipment).

April 22, 1982—Pittsburgh, Pennsylvania (.9 Loading, Hauling, Dumping), and Reno, Nevada (.5 Air Quality).

April 23, 1982—Pittsburgh, Pennsylvania (.14 Use of Equipment).

April 26, 1982—Spokane, Washington (.9 Loading, Hauling, Dumping).

April 27, 1982—Spokane, Washington (.14 Use of Equipment).

April 28, 1982—Spokane, Washington (.4 Prevention and Control).

April 29, 1982—Spokane, Washington (.12 Electricity), and Denver, Colorado (.9 Loading, Hauling, Dumping).

April 30, 1982—Denver, Colorado (.14 Use of Equipment).

May 4, 1982—New Orleans, Louisiana (.21 Gassy Mines).

ADDRESSES: The conferences will be held at the following locations:

Albuquerque, New Mexico (April 1—.3 Ground Control; April 2—.6 Explosives; April 20—.5 Air Quality)—Sheraton Old Town, 800 Rio Grande Boulevard, NW., Albuquerque, New Mexico 87104.

Carlsbad, New Mexico (March 31—.21 Gassy Mines)—Best Western Motel Stevens, 1829 South Canal, Carlsbad, New Mexico 88220.

Denver, Colorado (April 29—.9 Loading, Hauling, Dumping; April 30—.14 Use of Equipment)—United States Post Office, Main Office Building, Room 467, 1823 Stout Street, Denver, Colorado 80202.

Knoxville, Tennessee (March 30—.4 Fire Prevention and Control; March 31—.12 Electricity)—Hyatt Regency Knoxville, 500 Hill Avenue, Knoxville, Tennessee 37915.

Louisville, Kentucky (April 13—.3 Ground Control; April 14—.6 Explosives; April 15—.5 Air Quality)—Holiday Inn Midtown, 200 East Liberty Street, Louisville, Kentucky 40202.

New Orleans, Louisiana (May 4—.21 Gassy Mines)—F. Edward Hebert Federal Building, Room 631, 600 South Street, New Orleans, Louisiana 70130.

Phoenix, Arizona (April 13—.4 Fire Prevention and Control; April 14—.12 Electricity)—Federal Building and Courthouse, Room 1013, 230 North First Avenue, Phoenix, Arizona 85025.

Pittsburgh, Pennsylvania (April 22—.9 Loading, Hauling, Dumping; April 23—.14 Use of Equipment)—Bureau of Mines Auditorium, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

Reno, Nevada (March 29—.3 Ground Control; March 30—.6 Explosives; April 22—.5 Air Quality)—Bureau of Mines, Room 211, 1605 Evans Avenue, Reno, Nevada 89512.

St. Paul, Minnesota (April 20—.9 Loading, Hauling, Dumping; April 21—.14 Use of Equipment)—Bishop Henry Whipple Federal Building, Room 564, Fort Snelling, St. Paul, Minnesota 55111.

Salt Lake City, Utah (April 6—.21 Gassy Mines)—Salt Palace Center, Room 220, 100 South West Temple, Salt Lake City, Utah 84101.

Spokane, Washington (April 26—.9 Loading, Hauling, Dumping; April 27—.14 Use of Equipment; April 28—.4 Fire Prevention and Control; April 29—.12 Electricity)—United States Court House, Room 752, West 920 Riverside Avenue, Spokane, Washington 99201.

All requests for oral presentations and all post-conference written comments should be submitted to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

Public Participation

The purpose of these public conferences is to provide a forum for the free and open exchange of ideas in an informal setting. Each conference will begin at 9:00 a.m.

All persons making timely written requests to speak will have time allotted to them for their presentations. The request should identify the person and organization, the amount of time requested for the presentation, the specific standards as appropriate, and the location where the presentation will be made. Although written statements are not required, participants are encouraged to submit written materials in support of their positions.

Other persons wishing to speak should register prior to each conference at the beginning of the public session. If time is limited, priority will be given to those who have requested time in advance.

Interested persons may request that speakers clarify their comments or provide additional information during the conferences. It should be noted that the issues which are specifically addressed in this notice are not intended to limit the scope of discussion at the open conferences. Rather, their purpose is to focus attention on those areas which are of particular concern to the metal and nonmetal mining community.

Discussion and comment may address alternatives to existing regulatory requirements, including specific regulatory language, the continued need for specific standards, the elimination of duplicate standards, conflicts with other Federal or state regulations, the impact of specific standards on small businesses, and recordkeeping and reporting requirements. Persons are also encouraged to submit estimates related to the costs of complying with existing standards and costs related to any alternatives submitted. A formal transcript will not be made of these conferences. Following the conferences, MSHA welcomes additional written comments relevant to any issues concerning the affected standards.

On March 25, 1980, MSHA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (45 FR 19267) announcing its comprehensive review of existing metal and nonmetal mine safety and health standards in 30 CFR Part 55, 56 and 57.[1] The ANPR invited the public to fully participate in all aspects of the review. A comment period was established and subsequently extended to August 5, 1980 (45 FR 38087). In response to the agency's request for information relating to problems associated with metal and nonmetal standards, MSHA received written comments from over 100 persons representing a wide spectrum of the metal and nonmetal mining community.

On November 20, 1981, MSHA published a subsequent ANPR in the **Federal Register** (45 FR 57253) which set forth eight sections in 30 CFR Parts, 55, 56, and 57 that it initially selected for priority review. The standards that were selected cover: ground control; fire prevention and control, air quality; explosives; loading, hauling, dumping; electricity; use of equipment; and gassy mines.

As part of this review and in addition to the statutory rulemaking requirements of the Federal Mine Safety and Health Act of 1977, MSHA will also be evaluating its standards in accordance with Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1980. An appropriate regulatory analysis will be undertaken for each rulemaking.

[1] Note.—As a result of recent Congressional budget actions, restrictions have been temporarily placed on MSHA which prohibit expenditure of funds incidental to jurisdiction over mining and milling operations covered by Part 56, specific open pit mines covered by Part 55, and certain surface construction activities. As long as these restrictions remain in effect, the agency is unable to proceed with the review of standards affecting these operations.

Following these public conferences, MSHA will develop revised standards which will be published as proposed rulemaking in the **Federal Register.** The proposals will be followed by a comment period and public hearings. In issuing its final rules, MSHA will make every effort to be responsive to the concerns of the metal and nonmetal mining community and to advance the goals of regulatory relief without reducing protections necessary to miner safety and health.

Section-by-Section Analysis

For each area of standards, MSHA has prepared a section-by-section analysis of the issues raised thus far in the review process.

Section .3 Ground Control

MSHA's ground control standards are primarily intended to reduce accidents and injuries resulting from unplanned falls of ground from the roof, rib, and face areas of underground mines and from banks, pit walls and face areas of surface operations. Inspection requirements, proper scaling methods and reliable ground support are the specific objectives of most of the standards in the section.

Commenters suggested that several standards were in need of clarification or revision. Commenters stated that standard .3–3 [2] (bench width and height) was vague and that specific measurements for the width and height of benches should be included. Standard .3–6 (scaling practice) requires that loose rock and areas to be scaled must be approached from above in order to guard against the hazard of falling ground. Commenters suggested that the standard be revised to allow persons to approach such areas from an alternate safe location if appropriate. Discussion of this issue would be helpful.

Commenters noted that standard 57.3–50 (secondary breaking procedure) is confusing and complicated; MSHA seeks alternative language to clarify and simplify the standard. Standard .3–53 (rock-bolt test procedures) requires that test procedures be established and followed for rock-bolt installations. A commenter requested that the standard be revised to reflect the specific tests required. Discussion therefore should include whether MSHA should provide specific guidelines for the test procedures. Commenters stated that standard .3–55(d) (point-anchor rock-bolt testing) was ambiguous. One commenter suggested deleting the phrase "equivalent to" and replacing it with the phrase "such as." MSHA seeks further discussion on whether alternative support systems should be specified in the current standard.

[2] Note.—All standards which are currently found in identical form in both 30 CFR Parts 55 and 57 are referenced in the document without their respective Part designations. For example, "55.3–3" and "57.3–3" appear as ".3–3"; but § 57.3–50, an "underground only" standard, appears as § 57.3–50.

Comment is being solicited for those standards which impose recordkeeping requirements. Standard .3–53 requires that an operator establish test procedures for rock-bolt installations, and that a copy of the test results must be available to MSHA. Standard 57.3–35 (rock-burst detection plan) states that, if appropriate, an operator must develop a rock-burst detection plan which must be available to MSHA. MSHA requests advice on alternatives which may achieve the intent of the standards and minimize paperwork requirements.

Commenters stated that certain groups of standards contain duplicate requirements and should be combined. For instance, they stated that standards .3–8 (pre-shift and after-blasting examinations), .3–9 (examination by miners), and 57.3–22 (examination of ground conditions) contain similar inspection requirements, and therefore should be combined into a single standard. MSHA desires further discussion on this issue and suggestions for appropriate wording for a combined standard. Also, commenters thought that standards .3–1 (pit wall control), .3–2 (stripping), .3–3 (bench width and height), .3–4 (scaling pit banks), .3–5 (dangerous banks or ground), and .3–6 (scaling practices) provide duplicate coverage. MSHA seeks discussion on whether these standards should be combined, or whether the individual standards should be retained. A commenter stated that standards .3–53 (anchorage test procedures), .3–54 (torquing) and .3–55 (point-anchor rock bolts) should specifically address split-set rock bolts. MSHA requests additional input on the issue of including specific criteria for split-set and resin rock bolts.

Several commenters suggested that a comprehensive ground control plan standard should be developed by MSHA. Such a standard would require operators to develop and submit to the appropriate MSHA District Manager a detailed plan consisting of ground control procedures and mining practices which would assure safe ground conditions in all areas of the mine. However, such a standard, depending on the specific requirements, could replace existing standards in the Section. In that case, MSHA would enforce the provisions of the plan rather than the individual standards.

Specifically, it was suggested that the plan should include: structural geology of the mine; a map of the mine; chronology of development; method of rock breakage; support system and installation procedures; equipment used for the installation and testing of rock bolts and for scaling; method for monitoring ground movement; and other detailed information. As suggested, the plan and periodic modifications would be sent to the District Manager for approval. MSHA is interested in receiving further information with respect to the feasibility of a ground control plan standard.

Section .4 Fire Prevention and Control

The standards in section .4 are designed to protect miners against the hazards of fires and explosions. They also seek to protect miners from the hazards of vapors, fumes, smoke, liquids or materials which may be either flammable or combustible.

MSHA received over 150 comments on standards in Section .4. Many of these comments suggested combining or deleting standards which relate closely to or duplicate other standards. MSHA encourages comment on standards which could be combined or deleted. In each instance, MSHA will carefully assess whether the standards are redundant or whether the hazards addressed in each are significantly different to merit separate consideration. Commenters expressed concern that some standards are unclear because they do not specifically identify the hazards addressed, or identify the safety measures required.

Commenters proposed new wording for some standards. MSHA has reviewed these proposals and found that some of the alternative wording suggested could result in improved standards. MSHA will consider all suggestions.

A large number of commenters indicated that several standards incorporate ambiguous terms that may be subject to different interpretations. Examples of these terms include "suitable" and "unsafe." MSHA welcomes suggestions that would clarify or better define such terms.

MSHA would like suggestions for alternative regulatory language for standard .4–39A (storage facilities for flammable and combustible materials). Some commenters stated that the standard should not apply to combustible liquids because some liquids, such as oil and other lubricants, which are accurately classified as combustible liquids, are not flammable. Commenters also indicated that the phrase "where miners normally work" is overly broad and subject to various interpretations by MSHA's inspectors. MSHA is interested in suggestions for addressing the hazards covered by this standard in a more precise manner.

MSHA also requests suggestions for alternative regulatory language for standard .4–27 (fire extinguishers for mobile equipment) that would clarify the extent and nature of the hazard involved. Many commenters stated that the phrase "readily accessible" is vague.

The terms "combustible" and "flammable" are defined in Section .2 (Definitions), but the terms "flammable liquids" and "combustible liquids" are not defined. Commenters stated that these terms are ambiguous and confusing. MSHA is considering adoption of the definitions for "flammable liquids" and "combustible liquids" from the 14th edition of the National Fire Protection Association's *Fire Protection Handbook*. The *Handbook* defines flammable liquids as those having a flash point below 100° F (37.8° C) and having a vapor pressure not exceeding 40 psi absolute (2068.6 mm Hg) at 100° F (37.8° C). It defines combustible liquids as those with a flash point at or above 100° F (37.8° C).

Many commenters suggested a need to improve the definitions in this section. For example, standards .4–22 (firefighting equipment) and .4–1 (smoking or use of open flames) use the terms "suitable" and "unsafe distance." Commenters stated that "suitable" and "unsafe distance" are vague and ambiguous.

In standard .4–4 (storage of flammable liquids), MSHA incorporates National Fire Protection Association consensus standards. Some commenters requested that the incorporation by reference be deleted. MSHA intends to delete the incorporation where possible by including specific requirements in the standard. This will eliminate the need to look to different sources to determine compliance requirements. MSHA is interested in receiving suggestions for alternative regulatory language that would address requirements of the incorporated material. Suggestions should explain how the alternative language addresses the hazards involved.

MSHA also welcomes suggestions for improvement of any recordkeeping or reporting requirements contained in the standards in Section .4 including: .4–23 (firefighting equipment inspection records); .4–48 (employee fire emergency training records); 57.4–73 (mine evacuation drill records); and 57.4–74 (employee escape and evacuation training records). In addition, commenters suggested that many of the training requirements contained in these standards are duplicative of Part 48 training requirements. MSHA solicits comment on these issues.

Section .5 Air Quality

MSHA's initial review of Section .5 concerns standards relating to air quality health hazards (.5–1 through .5–10, §§ 57.5–15 and 57.5–16), and associated problems resulting from overexposure to airborne contaminants in mine environments.

Since MSHA first published its air quality standards, advances in the field of health technology have occurred in analytical and sampling techniques, and knowledge of the nature and effect of health hazards has increased. Moreover, MSHA believes it is important to periodically review air quality standards to assure that they provide effective and feasible protection for miners. To further this purpose, MSHA has defined several related issues and requests comments on the various provisions of existing standards. Suggestions are also welcome for specific alternatives dealing with organization and language, analysis and sampling, exposure limits, exposure control, respiratory protection programs, and recordkeeping.

One air quality standard, .5–1(b) (asbestos), will not be addressed as part of this priority standards review process because the National Institute for Occupational Safety and Health (NIOSH) is currently working on a comprehensive standards recommendation for asbestos exposure in mining. MSHA intends to address this issue after receiving the NIOSH recommendation.

Standard .5–1 (airborne contaminants) incorporates by reference portions of the 1973 edition of *Threshold Limit Values for Chemical Substances in Workroom Air*, adopted by the American Conference of Governmental Industrial Hygienists (ACGIH). Standard .5–5(b) (respiratory programs) incorporates by reference the requirements of ANSI Z88.2–1969 entitled "Practices for Respiratory Protection." To the extent possible, MSHA would like to delete incorporations by reference since they require mine operators and miners to refer to other documents for complete compliance requirements. MSHA seeks alternatives to the incorporations which would clearly set forth the agency's compliance requirements without reference to other documents.

Standard .5–5 (exposure control) currently combines requirements for engineering controls and a respiratory protection program. MSHA is considering removing the requirements

for a respiratory protection program from standard .5–5 and including these requirements in section .15 (Personal Protection) as a separate standard. MSHA is also considering combining the exposure control provisions of standard .5–5 with the exposure limit provisions of standard .5–1. Further discussion is invited.

In the ACGIH booklet, the term "Threshold Limit Value" (TLV) is used. This term is copyrighted by ACGIH. MSHA is considering use of the term "Permissible Exposure Limit" (PEL) instead of TLV to designate the daily average exposure level which must not be exceeded. The agency invites comment on the use of this term or alternative suggestions.

Commenters pointed out a conflict between standards .5–6 (chemical substances) and .20–5 (carbon tetrachloride). The former permits the use of carbon tetrachloride by competent persons under laboratory conditions while the latter forbids its use at all. Also, an apparent inconsistency may exist between standards .5–10 (silica sand) and 57.5–16 (silica sand). MSHA prohibits the use of silica sand containing more than one percent (1%) free silica for sand blasting underground, but permits its use on the surface with the use of air supplied respirators. MSHA intends to study the circumstances surrounding the use of carbon tetrachloride and silica sand blasting, and seeks further comments on these issues.

With respect to standard .5–3 (dust control measures for drilling), MSHA is evaluating whether this standard should be moved to Section .7 (Drilling). Another alternative would be to delete the standard and treat wet drilling as a contaminant control under standard .5–5. MSHA solicits specific comments on these issues.

Certain standards use words or phrases which some commenters have described as overly broad or difficult to interpret. For example, standard .5–2 (dust, gas, mist and fume surveys) requires that surveys be conducted "as frequently as necessary." MSHA recognizes the need to provide operators with specific language to provide them with proper notice of their compliance obligations; however, the agency also wishes to provide maximum flexibility for operators in meeting their obligations. MSHA solicits specific language to clarify this standard.

To simplify requirements and to reduce administrative costs, MSHA is considering updating the method of collecting mineral dust samples. This change would replace midget impinger sampling with gravimetric sampling. It would also replace TLVs expressed in millions of particles per cubic foot (mppcf) with corresponding TLVs in milligrams per cubic meter (mg/m^3). This change has been incorporated in TLV documents published since 1976.

MSHA uses shift-weighted average (SWA) contaminant concentrations to normalize time-weighted average (TWA) contaminant concentrations to an eight-hour shift to measure compliance. Some commenters have expressed the opinion that MSHA should adjust the exposure limit to account for novel work schedules rather than adjusting the TWA.

MSHA is considering the use of the respirable dust sampling method for sampling nuisance dusts. The total dust sampling method would be reserved for sampling for specific health hazards, for example, those contaminants that cause upper respiratory tract irritation. MSHA seeks comments on the appropriateness of such an alternative.

Some substances for which a TLV exists may not be present in mine atmospheres, or may not be present at levels which pose an occupational hazard to the health of miners. Other substances may be present for which adverse health effects have been observed after exposure to concentrations below the MSHA exposure limit. MSHA requests information on those substances which have little or no adverse health effect on miners, and those which have generated concern in the mining community for the health of miners.

MSHA is considering reprinting the ACGIH TLV list, as appropriate, in standard .5–1. MSHA seeks data developed since 1973 which demonstrates that the health risk associated with a given substance justifies the setting of a limit different from the existing one. MSHA then will evaluate the appropriateness of adjusting the limit. Also, rapidly changing industrial practices often introduce new chemicals into the workplace. Where data exist indicating that specific substances not on the TLV list pose significant hazards, MSHA will consider the advisability of adding these to the list.

MSHA is considering adopting a general mine dust standard to provide an exposure limit for all airborne particles not otherwise appearing in the ACGIH TLV list. This limit would then be adjusted to take into account the limits for those substances that appear on the TLV list and constitute a significant percentage of the mine dust. MSHA welcomes comments concerning the concept of "mine dust", relevant data for setting an appropriate limit of exposure, and specific alternatives to the mine dust concept.

MSHA incorporates as part of standard .5–1(a) ANSI *Maximum Exposure Limits*, ANSI *Ceiling Limits*, *Pennsylvania Rules on Short-Term Limits*, and the ACGIH *Threshold Limit Values Excursion Factors*. MSHA is considering the publication of short-term limits to clarify which requirements are to be applied when more than one contaminant limit exists. Similarly, MSHA is evaluating the appropriateness of revising standard .5–1(c) to require withdrawal of employees from areas where substances are found in concentrations which exceed the MSHA short-term limit published for that substance. MSHA requests comments on specific substances for which employee withdrawal would be appropriate.

An extended period of time may be necessary for the installation of exposure controls under .5–5. Unusual economic considerations could also become a factor affecting installation of such controls. When these circumstances are present, MSHA now requests an operator to submit a contaminant control plan outlining the steps which will be taken to comply with this standard. MSHA then determines an appropriate time frame for abatement of the hazard. MSHA welcomes specific comments on this policy and on the appropriate role of personal protection equipment in contaminant control plans.

MSHA also seeks comments on the concept of an exposure control plan, including specific suggestions concerning implementation and maintenance.

At the present time MSHA enforces the respiratory protection program contained in ANSI Z88.2–1969. This document was revised in 1980. MSHA is considering updating the respiratory program requirements of standard .5–5(b) by adopting the mandatory provisions of ANSI Z88.2–1980. MSHA seeks comments on these mandatory provisions and on alternatives to the use of ANSI Z88.2–1980 as a basis for MSHA's standard for a respiratory protection program. Comments should include specific, performance-oriented regulatory language.

In the standards under review which relate to air quality, the only one which explicitly requires the keeping of a record is standard .5–5(b) which incorporates ANSI Z88.2–1969. ANSI requires the keeping of various records, including records of fitting, testing, selection, and maintenance of respirators. MSHA will examine each

recordkeeping requirement to determine whether it is necessary and effective. MSHA welcomes any substantive comments on this issue.

Standard .5–2 requires that surveys be conducted as frequently as necessary to determine the adequacy of control measures. The surveys provide a basis for determining compliance with exposure levels specified in standard .5–1; MSHA is considering specifying the frequency of these surveys and requiring that records be kept. MSHA specifically solicits comments and suggestions on this issue including current practices, record retention periods, and alternatives to recordkeeping.

Section .6 Explosives

Section .6 addresses hazards involved in the transportation, storage, use and disposal of explosives, blasting agents and related devices in metal and nonmetal mines.

Commenters raised several issues with regard to standard .6–20 (surface magazine requirements). MSHA seeks specific discussion on whether incorporated material from the Institute of Makers of Explosives publication, *American Table of Distances for Storage of Explosives*, should be modified, or deleted and distance requirements specifically published in section .6; whether non-sparking materials should be allowed to be stored in magazines; the appropriateness of allowing the use of acceptable electrical heating devices; a clarification of "suitable" danger signs and "substantial construction" requirements; and the proper minimum distance of magazines from fuel storage facilities.

Several commenters stated that certain terms need clarification. For example, .6–40 (transportation of explosives and detonators) contains the phrase "separated by 4 inches of hardwood or the equivalent"; standards .6–56 (containers for transporting explosives) and .6–57 (containers for transporting fuses and detonators) use the terms "substantial nonconductive containers" and "nonconductive containers," respectively. MSHA would like specific suggestions for clarifying these terms.

MSHA seeks additional comments on clarifying language of the phrase "suitable fire extinguishers" in standard .6–42 (vehicles used to transport explosive material). The agency is also interested in information concerning whether a chart should be included in the standard which would list the acceptable types and size of fire extinguishers. For example, the type and size could correspond to the gross weight of the vehicle including explosive materials.

Several commenters stated that the term "proper warning signs" in standard .6–43 (vehicles for explosive material transportation) needs clarification. Also in need of clarification is standard .6–46 (vehicle maintenance and operation) which requires that such vehicles be maintained in "good condition," operated at "safe" speeds and in accordance with "safe operating practices." Commenters requested guidance on the practical application of these terms.

In standard 57.6–77 (vehicles containing explosives or detonators), commenters stated that MSHA should provide a definition for the term "attended", and suggested that it may not be realistic to require that vehicles holding explosive materials underground be attended at all times. MSHA seeks additional comments on these issues.

Standard .6–90 (qualifications of blasters) and standard .6–91 (authorized persons) address the hazard presented where inexperienced or untrained persons use explosive materials. One commenter suggested that the word "experienced" be replaced by the defined word "competent" in standard .6–90. Another commenter questioned the appropriateness of the phrase "authorized persons" in standard .6–91. MSHA requests discussion of these issues.

Commenters requested clarification of standard .6–92 (disposal of explosive material). MSHA seeks additional comments concerning whether the term "designated agent" should be changed; whether the term "disposed of promptly" should be added; and whether the disposal of small quantities of materials could be exempted from the requirement of the standard without adversely affecting the safety of miners.

MSHA is aware that application of the terms "charged" and "loaded" have caused concern within the mining community. Either one or both of the terms is used in standards .6–65 (vehicles containing explosives), 57.6–77 (vehicles loaded with explosives), .6–93 (borehole obstruction), .6–94 (timing of blast hole preparation and blasting), .6–96 (separation of explosive materials), .6–98 (connection of initiators), .6–102 (safe locations) and .6–103 (security of blast areas). Discussion should also address definitions of the terms "charged" and "loaded", or altrnatively, whether the terms should be deleted and be replaced by more descriptive language.

Commenters questioned the return time to a misfired hole or holes in standards .6–104 (when safety fuse is used) and .6–105 (when electric blasting caps are used). MSHA solicits comments on this issue. Also, suggestions are solicited as to whether the phrase "after each shot" should be added to either or both of these standards.

Commenters requested clarification of standard .6–135 (collaring holes in bootlegs) which currently prohibits holes from being collared in "bootlegged" holes. Discussion is also requested on the issue of combining standard .6–135 with standard .6–107 (drilling near holes containing explosive materials).

In response to comments, MSHA requests alternative language for standard .6–138 which protects against the unplanned detonation of explosive materials placed into hot drilled or "sprung" blast holes.

Section. 9 Loading, Hauling, Dumping

This Section covers potential hazards relating to the defects, repairs, inspection and operation of mobile and stationary equipment, and related activities. Among the areas covered are roadways, track roadbeds, berms and guards, ramps, dumping places and facilities, muck piles and materials transfer points.

General comments indicated that Section .9 should be expanded to include all mobile equipment, and reorganized by grouping standards by subject matter such as separate areas for rail haulage and mobile equipment. Categories such as maintenance of equipment, performance of equipment, and conduct of personnel were also suggested. Other commenters identified duplicative or overlapping standards that could be eliminated through consolidation. Clarification for the following terms was also requested: "self-propelled equipment"; "powered mobile equipment"; and "heavy duty mobile equipment".

Certain standards have been identified by commenters as being unclear. MSHA solicits alternative language for these and any other standards that may be ambiguous.

Commenters believe the term "adequate brakes" in standard .9–3 (powered mobile equipment brakes) should be clarified and parking brakes should be included in the standard.

Suggestions were made to either clarify or delete standard .9–19 (track rails, guard rails, and frogs).

Commenters suggested that standard .9–37 (unattended mobile equipment) should be revised to clarify the term "unattended", and to specify the type of

brakes required. They also suggested that .9–37 should be combined with standard .9–36 (unattended electrically-powered mobile equipment). Discussion of these issues is requested.

In addition, standards .9–40 (transportation of men), .9–41 (authorized persons on trains), .9–65 (coupling of railroad cars), § 57.9–103 (collars of open draw holes), and § 57.9–107 (broken rock or draw points) were identified as vague, ambiguous, and in need of clarification.

Commenters indicated that the following standards should be combined or rewritten because they either duplicate or overlap one another: standards .9–2 (equipment safety defects) and .9–73 (tagging of equipment), also .9–23 (power control and .9–24 (operator control of equipment). They suggested that certain standards be made more specific or expanded to better address the hazards involved. MSHA requests further comment and alternative language.

With respect to standard .9–6 (starting conveyors), it was recommended that the standard be expanded to include automatic warning devices with built-in delays. Commenters also suggested broadening standard .9–11 (condition of cab glass windows) to include glass windows on equipment without cabs.

MSHA received requests for more definitive guidelines for berms under standard .9–22 (berms or guards on elevated roadways). For example, the standard would specify the mid-axle height of the largest equipment on the roadway as the required height for berms.

Commenters stated that back-up alarms required by standard .9–87 (audible warning devices for heavy duty mobile equipment) are not reliable, and that MSHA should establish performance standards for back-up alarms. Also, visual aids (mirrors) and visual warnings for backing-up were suggested. MSHA solicits suggestions on how to improve the above standards while retaining flexibility in the methods an operator may use to address the hazards involved.

Several commenters noted that other standards in Section .9 need to be reworded to clarify the scope of a standard or to simplify complex standards. Concerning standard .9–48 (braking shoes for railroad cars), commenters pointed out that mine operators have no control over public railroads and equipment. As presently worded, this standard may be confusing and may need clarification. Commenters also recommended rewording standard .9–53 (hazards to moving equipment) to emphasize protection of miners rather than equipment.

Standard .9–88 (roll-over Protective structures-ROPS) incorporates by reference several ANSI documents. Commenters suggested that the standard be reworded for simplification, that a section be added to include conditions where ROPS are not needed, and that a retrofit requirement be included. Commenters also noted that this standard is inconsistent with standard .14–13 (canopies). MSHA solicits further comments and recommendations on these standards, with specific suggestions on the appropriateness of the incorporated material, or alternative language.

Section .12 Electricity

The standards in section .12 are designed to protect miners against hazards resulting from electrical arcs, electrically generated heat and explosions, and from electrical shock and electrocution.

MSHA has received many comments on the standards in Section .12, including a number referring to terms that are undefined or subject to different interpretations. Some commenters suggested that MSHA define more of the terms used; others suggested that MSHA use the definitions provided by the Institute of Electrical and Electronics Engineers, Inc. (IEEE). MSHA will review the definitions in this Section. Some commenters expressed concern about the application and scope of standards, while others expressed concern that many standards were unclear because they do not sufficiently identify the hazard addressed or clearly identify the safety measure required.

Commenters expressed the following concerns about the clarity of some Section .12 standards: standard .12–1 (protection of circuits against overloads) does not specify the correct type and capacity of fuses or circuit breakers needed to prevent excessive overloads; standard .12–10 (protection of telephone and low-potential signal wires) does not specify what constitutes "isolation" of wires and "suitable insulation;" standard .12–25 (grounding electrical circuits) does not specify the proper means of grounding; standard .12–28 (testing grounding systems) contains underfined terms that make compliance with the standard difficult, and that some small operators may find it difficult to conduct the continuity and resistance testing required by the standard; and standard 57.12–82 (separation or insulation of power lines) does not clearly define the phrase "well separated or insulated" or the word "powerlines." MSHA solicits suggestions for alternative regulatory language for these standards.

Some commenters requested consolidation of standards .12–16 (deenergizing electrically powered equipment) and .12–17 (deenergizing power circuits). Other commenters believed that standard .12–16 should be transferred to Section .14 (Use of equipment).

Standards .12–45 (installation of powerlines), .12–47 (requirements for guy wires) and .12–48 (installation of telegraph, telephone or signal wires) reference the *National Electrical Code* and the *National Electrical Safety Code*. MSHA is considering deleting these incorporations and developing standards which contain all requirements necessary for compliance by mine operators. This action would eliminate the need to refer to different sources for compliance with MSHA's requirements.

This approach was recently adopted by the Occupational Safety and Health Administration which promulgated standards (29 CFR 1910.302–309) to replace the incorporation by reference of the *National Electrical Code*. Alternative regulatory language for requirements which would eliminate the incorporated documents in this Section is welcome. Such suggestions should include an explanation as to how the alternative language would address the hazards involved.

Commenters suggested that the terms "electrical grounding", "distribution box", "insulation", "overload", and "circuit" need to be redefined or clarified. Alternative language for these and other terms which cause confusion is solicited. Suggested alternatives will be considered with the view that any new definition of a term will affect the application of each standard in which it is used.

Standard .12–28 (testing grounding systems) requires that a record of the last resistance measured be made available to MSHA on request. In an effort to reduce this recordkeeping requirement in accordance with the Paperwork Reduction Act of 1980, MSHA is considering accepting a written certification by the operator that the standard has been complied with, instead of requiring the retention of a record. Suggestions are solicited on whether the recordkeeping requirements should be changed to a certification requirement.

Section .14 Use of Equipment

Section .14 deals with the physical hazards associated with the use of a wide variety of mechanical equipment

and exposure of their component parts. MSHA's statistics reveal that the standards within Section .14 are cited more frequently than standards in any other section.

Based upon the public comments and the agency's own review, three major categories of issues have been identified: standards which may be deleted; standards which may be consolidated; and standards which may be improved through clarification of wording or the addition of defined terms.

Several issues have been raised relating to the deletion of certain standards on the basis that they duplicate other standards or overlap other regulatory requirements. The requirements of standard .14–9 (grinding wheel operation) provide that grinding wheels are to be operated according to the manufacturer's specifications. Commenters questioned whether this is adequately covered by standard .14–36 (use of tools and equipment) which requires that tools and equipment only be used in the manner in which they were designed and for their intended purposes. Standard .14–14 (grinding wheel eye protection) provides for wearing face shields or goggles during grinding wheel operations and may be adequately covered in the fact protection provision of standard .15–4 (eye protection). Standards § 57.14–55 (welding operations) and .14–45 (surface welding operations) contain the identical requirement that welding operations be shielded and well-ventilated. Commenters suggested that they be combined. Standard .14–31 (shifting of drive belts) applies to the shifting of drive belts while they are in motion, and standard .14–32 (power drives-use of hands) covers hand guiding of belts, chains, and ropes onto power driven moving pulleys. It has been suggested that these standards have become outmoded due to automation within the mining industry and the state-of-the-art of drive belts and moving pulleys.

Standards .14–1 (equipment guards), .14–2 (overhead belt guards), and .14–3 (conveyors at pulleys) dealing with machinery guarding may be consolidated into one standard without reducing any margin of safety protection to miners exposed to such hazards.

Comments suggesting the need for clarification of the meaning and scope of Section .14 standards, either through the use of more precise language or the adoption of defined terms, constituted the most frequent type of public comment.

The following issues were raised with respect to specific words and phrases within Section .14 standards:

—The scope of the phrase "similar exposed moving machine parts which may be contacted by persons" in standard .14–1;

—The impreciseness of the terms "sufficient" and "accidentally" in standard .14–3;

—The ambiguity of the terms "substantial construction" and "properly maintained" which may result in a lack of meaningful guidelines in reference to the quality of guards in standard .14–7 (guard maintenance);

—The need for clarification of the phrase "friction or other equivalent safety devices" relating to hand-held power tools in standard .14–10 (hand-held power tools); and

—The redundancy of standard .14–13 (canopies), dealing with a requirement for substantial canopies when necessary to protect the operator of a fork-lift truck, front-end loader, or bulldozer, with standard .9–88 (ROPS), which pertains to roll-over protection. A separate issue raised with respect to this standard was whether the term "substantial" is too vague in describing the canopy requirment.

Commenters suggested that the phrase "unsafe equipment or machinery" in standard .14–26 (equipment and machinery safety), relating to a requirement that such objects be immediately removed from service, may use excessively broad language. They have also indicated that the same hazards may be adequately addressed by standard .9–73 (defective equipment), .18–2 (working place safety examination), and .7–2 (equipment defects).

Standard .14–27 (machinery equipment operators) and its requirement that only competent persons be assigned to the operation of machinery or equipment may be covered adequately by 30 CFR Part 48, "Training and Retraining of Miners."

In standard .14–35 (lubrication of machinery), commenters stated that there is need for a definition or further clarification of the phrase "where a hazard exists." The standard requires that machinery shall not be lubricated while it is in motion, unless it is equipped with extended fittings or cups. Discussion of this issue is also requested.

Section 21 Gassy Mines

The potential for flammable gas including methane emanating from the ore body or the strata surrounding an ore body exists in virtually every underground mine. Methane may emanate from fractures, faults, or shear zones overlying or underlying the strata that surround the ore body, as well as from certain ore bodies themselves. When methane is present, it is often found in open workings near the mine back or roof, or in other high places. After becoming thoroughly mixed with air, it may become uniformly distributed over any cross section of moving air currents.

Among metal and nonmetal underground mines with flammable gas problems are the emerging oil shale mines in Colorado and Utah, domal salt mines in Louisiana, torna mines in Wyoming, and potash mines in New Mexico.

Under the existing classification systems provided in standard 57.21–1 (classification), underground mines are either "nongassy" or "gassy." The system is currently structured so that once a mine is deemed to be gassy it will always be gassy. This has been criticized by the mining industries. Specific areas of criticism are:

—The finding of a relatively small amount of flammable gas (0.25%) classifies a mine as gassy;

—One ignition of flammable gas is cause for a gassy classification;

—The classification standard and other metal and nonmetal gassy mine standards in § 57.21 are inappropriately premised on underground coal mine experience;

—The system classifies the whole mine and not a part of the mine as gassy;

—The system does not provide for a change from gassy to nongassy;

—The system does not provide for a classification of gasssy before a mine begins operations in a known or potentially gassy geology; and

—The system applies to all mines without making a distinction between the various mining methods and the types of flammable gas emissions in each mine.

The issues raised by public comments suggest that MSHA consider alternatives to the existing classification system. The agency is considering several alternatives to this system including:

—Retention of the existing system with revisions to the classification standard and certain standards published in § 57.21;

—Revision of the existing system to provide for an interim classification period once flammable gas has been found (This interim period would provide a sufficient amount of time to study the hazards of involved gases, monitor gas emissions, study ventilation

and equipment, and to improve mine supervision. During this period the mine would operate under an MSHA approved plan rather than comply with all of the standards published in § 57.21.);

—Creation of a separate classification system for oil shale mines, domal salt mines, potash mines, uranium mines, and other selected mines (Each of the special systems would have specific standards developed for the gas hazards applicable to that system and its related dangers.); and

—Creation of a new classification system with levels based upon the degree of gas dangers or hazards, and each with specific standards.

MSHA would appreciate detailed comments on why the classification should be changed, how the change should be made and specific wording for any new classification system or standard.

In addition to the classification standard, § 57.21 sets forth 62 mandatory standards under which a gassy mine must operate.

Commenters indicated that standard 57.21–29(c) (booster fan safety devices) is unclear. The intent of paragraph (c) is to provide an open airway once the booster fan is stopped so that air from the main fan will continue to flow in the airway and will not be obstructed by the booster fan installation. Compliance with the standard is normally achieved by installing doors which open automatically at the booster fan installation.

A recommendation has been made which would increase the volume of air required in the last open crosscut and across longwall faces as stated in standard § 57.21–34 (minimum quantity of air flow). The standard specifies 6,000 and 9,000 CFM (cubic feet per minute). However, while the specified quantities may provide adequate air velocity in mines with small openings, the standard may prove to be inadequate for the large openings found in other mines, such as oil shale or domal salt mines.

Standard 57.21–51 (providing crosscuts before abandoning workings) poses no particular problems for mines utilizing a room and pillar method of mining in bedded deposits, but MSHA's experience suggests that it may present problems in other types of mining. Alternatives are sought which will assure that air in such openings is of satisfactory quality.

There is a general misunderstanding concerning the interpretation and application of standard 57.21–78 (permissible equipment) to various gassy mines. MSHA is considering defining certain terms and clarifying the requirements of the standard, including the locations where permissible equipment must be used.

MSHA recognizes that gassy metal and nonmetal mines include a variety of situations with diverse mining techniques and hazards of different levels and intensities. Accordingly, MSHA has been requested to develop specific safety standards for trona, oil shale, domal salt and potash mining, or to study the feasibility of an approved mining plan standard for such gassy mines. The plans would tailor compliance to the individual mine, rather than require all of the mines to comply with each of the 62 standards in § 57.21. MSHA requests comments on these concepts, particularly with respect to the retention of existing standards.

Under the existing standards, clarification has been requested for the following terms: flammable gas, last open crosscut, permissible, bleeder system, suitable, dangerous quantities of flammable gas, and air analysis. MSHA requests specific wording for any revisions of these terms, and others where appropriate, as used in Section .21.

Clarification has been requested for the sampling procedures, calibration and use of specific measuring devices, recordkeeping provisions, and the qualifications of persons who sample for methane. MSHA requests further comments and recommendations concerning these requirements.

Commenters suggested that standards be added providing for the use of exhaust-type face ventilation fan equipment or systems used in gassy mines. Essentially, these fans are used in room and pillar mines when the contaminated air is pulled from the face and through the exhausting fan. One possibility would be to add a requirement for methane monitors on the exhaust fans and on drilling, cutting, and loading face equipment. The monitors would turn off all power in the panel if a concentration of one percent (1.0%) or more of methane is detected. MSHA requests further comments on this recommendation and the wording for such a standard.

Generally, based upon the comments, MSHA is considering the feasibility of an alternative to existing ventilation practices in large open mines that permits a positive, separate exhaust ventilation system. This system could require driving smaller drifts above the production drift or ore body and drilling boreholes at strategic locations in the floor of the exhaust ventilation drift through the back of the production drift. Airborne contaminants would then be drawn up through the boreholes and out the exhaust ventilation drift. MSHA requests comments on this type of ventilation system.

Recommendations have also been made to require certification of miners who perform certain critical tasks such as testing for methane, electrical work, blasting or shot firing, and conducting preshift and on-shift examinations. MSHA requests further comments on these recommendations and the wording for such standards.

Dated: March 4, 1982.

Ford B. Ford,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 82-6323 Filed 3-8-82; 8:45 am]

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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.

Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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